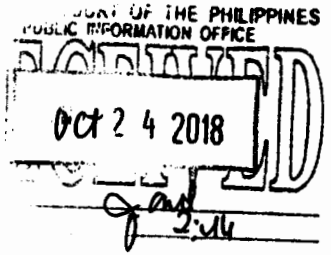




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 227707

Present:

- versus -

LEONARDO-DE CASTRO, C.J.,
 BERSAMIN,*
 DEL CASTILLO,
 PERLAS-BERNABE,** and
 REYES, A. JR.,*** JJ.

JEROME PASCUA y AGOTO
 a.k.a. "OGIE,"
Accused-Appellant.

Promulgated:

OCT 08 2018

X

DECISION

DEL CASTILLO, J.:

This is an appeal filed by appellant Jerome Pascua y Agoto *a.k.a.* "Ogie" from the October 9, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05998, affirming the December 4, 2012 Decision² of the Regional Trial Court (RTC) of Laoag City, Branch 13, in Criminal Case No. 14722, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

The Factual Antecedents

Appellant was charged with violations of Sections 5 and 12, Article II of RA 9165, while his co-accused, Manilyn Pompa y Remedios (Manilyn), was charged with violation of Section 12 of Article II of the same law. Pertinent portions of the said Informations are quoted below:

* On official leave.

** Per raffle dated September 13, 2017.

*** Per raffle dated October 3, 2018.

¹ *Rollo*, pp. 2-20; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Francisco P. Acosta.

² *CA rollo*, pp. 24-41; penned by Presiding Judge Philip G. Salvador.

Criminal Case No. 14722: Violation of Section 5, Article II of RA 9165

That on or about the 31st day of March 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being a person authorized [to] sell, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, feloniously and knowingly sell 0.0154 grams of met[h]amphetamine hydrochloride, a dangerous drug placed inside one (1) heat sealed transparent plastic sachet.

CONTRARY TO LAW.³


Criminal Case No. 14723: Violation of Section 12, Article II of RA 9165

That on or about the 31st day of March 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously have in their possession, control and custody the following dangerous drugs [paraphernalia] to wit: one (1) piece glass tooter; one (1) piece black lighter; three (3) pieces foil; two (2) pieces wooden clip; one (1) piece paper scoop; and one (1) piece brown box, without any license or authority to possess the same, in violation of the aforesaid law.

CONTRARY TO LAW.⁴

When arraigned, appellant entered a plea of not guilty to both crimes of illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 and illegal selling of *shabu* under Section 5, Article II of the same law.⁵ Manilyn, on the other hand, entered a plea of not guilty to the crime of illegal possession of drug paraphernalia.⁶

During the trial, the prosecution and the defense stipulated on the proffered testimonies of the receiving officer of the Ilocos Norte Provincial Crime Laboratory Office, SPO2 Teodoro Flojo (SPO2 Flojo), and the forensic chemist of the said crime laboratory, Police Inspector Roanalaine Baligod (PI Baligod). Forensic chemist PI Baligod was called to the stand to explain why she failed to indicate the "TCF" markings placed by SPO2 Flojo on the plastic sachet of *shabu* and glass tooter submitted as specimen.⁷



³ Records, p. 1.

⁴ CA rollo, p. 25.

⁵ Id.

⁶ Id.

⁷ Id. at 26.

Thereafter, the prosecution presented on the witness stand PO2 Jefferson Sulmerin (PO2 Sulmerin), the poseur-buyer, and PO2 Cristopher⁸ Pola (PO2 Pola), one of the arresting officers.⁹

Version of the Prosecution

Based on their testimonies, the version of the prosecution is, as follows:

At around 2:00 p.m. of March 31, 2011, the Office of the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) received an information or “tip” from a female informant regarding the rampant selling of *shabu* by appellant. Thereafter, PO2 Pola, PO2 Joey Aninag (PO2 Aninag) and PO2 Sulmerin coordinated with the resident agents of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG), PO2 Jovani Butay (PO2 Butay) and PO2 Dennis Ramos (PO2 Ramos), as well as with the members of the Philippine National Police (PNP) Laoag City led by SPO4 Rovimmanuel Balolong (SPO4 Balolong) to conduct a buy-bust operation in the residence of appellant at Brgy. 40, Nalbo, Laoag City.¹⁰

At around 4:00 p.m., PO2 Sulmerin, the poseur-buyer, and the confidential informant went to the house of appellant.¹¹ PO2 Pola and PO2 Aninag, the designated arresting officers, stayed close behind while the rest of the team stayed inside their vehicles to wait for the pre-arranged signal, which was a “missed call” on the cellphone of PO2 Pola from PO2 Sulmerin.¹² When PO2 Sulmerin and the confidential informant reached the house of appellant, the confidential informant knocked on the door.¹³ Appellant opened the door and asked the confidential informant who she was with, referring to PO2 Sulmerin.¹⁴ She said that PO2 Sulmerin was her companion who wanted to buy “stuff.”¹⁵ Appellant then invited them inside the living room of the house.¹⁶ PO2 Sulmerin then told appellant his desire to buy *shabu* worth ₱1,000.00 and gave appellant the marked money.¹⁷ Appellant placed the marked money inside his front pocket and went inside one of the rooms.¹⁸ When he came back, he handed PO2 Sulmerin one heat-sealed plastic sachet containing white crystalline substance.¹⁹ PO2 Sulmerin then called PO2

⁸ Spelled as “Christopher” in the RTC Decision and CA Decision.

⁹ *CA rollo*, p. 26.

¹⁰ *Id.*

¹¹ *Id.* at 27.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Pola's cellphone.²⁰ PO2 Pola and PO2 Aninag immediately rushed into the house and announced their authority as police officers.²¹ Appellant was handcuffed, apprised of his constitutional rights, and frisked.²² Recovered from him was the marked ₱1,000.00 bill.²³ He was then asked to sit in the living room while the team searched the room from where he got the *shabu*.²⁴ Inside the room, they found Manilyn sitting on the bed.²⁵ Likewise recovered from the room was a brown box which contained a glass tooter, a lighter, three pieces foil, two wooden clips, and a paper scoop.²⁶ PO2 Sulmerin asked Manilyn to join appellant in the living room.²⁷ PO2 Sulmerin then placed the seized items together with the marked money and the plastic sachet of *shabu* on the table in the living room for marking and inventory in the presence of appellant, Manilyn, media person Juvelyn Curameng (Curameng) of the DZEA media station, and Chief Tanod Atanacio Bugaoisan (Chief Tanod Bugaoisan).²⁸ PO2 Sulmerin marked the items with his initials "JS" and the initial of appellant "JP" while PO2 Pola took pictures.²⁹

After the inventory, PO2 Sulmerin placed the seized items inside a resealable bag.³⁰ Appellant and Manilyn were then brought to Camp Juan.³¹ PO2 Elison Pasamonte (PO2 Pasamonte) prepared the booking sheets for both suspects while PO2 Pola prepared two sketches³² of the vicinity and floor plan of the house.³³ PO2 Sulmerin prepared the request for laboratory examination and delivered the seized items to the crime laboratory.³⁴ SPO2 Flojo received the items, which he marked with his initials "TCF," and indorsed the same to forensic chemist PI Baligod.³⁵ Upon receipt of the seized items, forensic chemist PI Baligod conducted an initial test and a confirmatory test on the white crystalline substance contained in the plastic sachet and on the residue inside the glass tooter, which both tested positive for the presence of methamphetamine hydrochloride or commonly known as *shabu*.³⁶ She then prepared the Initial Laboratory Report³⁷ and the Confirmatory Chemistry Report.³⁸ After placing her initials "RBB" on the plastic sachet of *shabu* and the glass tooter, she kept the items and the reports in her evidence locker.³⁹ On April 7, 2011, she turned over the said items to the court through Clerk of Court

²⁰ Id.

²¹ Id.

²² Id. at 28.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Records, pp. 40-41.

³³ CA *rollo*, p. 28.

³⁴ Id.

³⁵ Id.

³⁶ Id. at 28-29.

³⁷ Records, p. 37.

³⁸ Id. at 24.

³⁹ CA *rollo*, p. 29.

Atty. Bernadette Espejo.⁴⁰

Version of Appellant

Appellant and Manilyn denied the accusations against them.

Appellant testified that, around 1:00 p.m., he went out to buy a fluorescent lamp; that when he came back at around 2:00 p.m., he saw his friend Ronald Ramos (Ronald) standing by the door of their house waiting for a friend; that after replacing the fluorescent lamp, appellant again went out to buy shampoo; that when he came back, Ronald was still at the door; that appellant went inside their house to get a towel and then went to the back of the house to take a bath; that while he was pumping water, he saw Ronald running towards the back of their house where there was an egress; that he heard someone shouting; that he looked inside their house and saw a woman he did not know; that he also saw the police officers, who were in civilian clothes, rummaging through their kitchen; that they asked him whose house it was; that when he answered that it was their house, they immediately handcuffed and pulled him inside the house; that they frisked him and took his money in the amount of ₱870.00; that he was boxed by one of the police officers; that he was allowed to sit at the living room; that he saw a glass tube being placed on the table in the living room; that he and Manilyn were boarded in a van and brought to Camp Juan; that when they were already at the camp, the police officers boxed him on the stomach and asked him where he placed the *shabu* and from whom was he getting the *shabu*; and that he denied any knowledge of what they were asking him.⁴¹

Manilyn, for her part, testified that she was the girlfriend of appellant; that on March 31, 2011, she visited appellant; that at around 2:00 p.m., after eating, she went inside the room of appellant; that she heard somebody shout “police” in front of the house; that she did not go out to check as she was then texting her sister; that she noticed that somebody was trying to open the door of the room; that when it was opened, she saw a man wearing civilian clothes; that he pointed a gun at her and asked her where the rest of the *shabu* were hidden; that she told the man that she did not know what he was talking about; that she was told to get out of the room; that she saw appellant handcuffed in the living room; that she saw some items were being placed on the table in the living room; and that she and appellant were later taken to the camp.⁴²

To corroborate the testimonies of appellant and Manilyn, the defense also presented the testimonies of Rogelio Pascua (Rogelio), the brother of appellant, and

⁴⁰ Id.

⁴¹ Id. at 29-31.

⁴² Id.



Reynald Burmudez (Reynald), the cousin and neighbor of appellant.

Rogelio testified that on March 31, 2011 at around 2:30 p.m., he went out of their house to take a snack; that when he returned to their house after 10 minutes, he saw his brother surrounded by three police officers at the back of their house; that when he went inside their house, he saw things being placed on the table in their living room; that he saw appellant and Manilyn, who were seated beside each other, being photographed; and that he saw the lady from DZEA and the Tanod, who were signing something.⁴³

Reynald, on the other hand, testified that on March 31, 2011 at around 2:30 p.m., he went out of their house which was adjacent to the house of appellant; that he saw that the door of the house of appellant was open; that when he looked inside, he saw Ronald watching television; that while he and his cousin, Jonifer Loa-ang, were talking, they saw a lady going towards the house of appellant; that they saw her talking to Ronald in front of the house; that a closed van then arrived from which about five men alighted; that SPO4 Balolong pointed a gun at him and asked him where appellant was; that he replied that he did not know; that SPO4 Balolong went to the back of the house; that he also went to the back of the house and saw a man searching the drawer of a plastic cabinet; and that SPO4 Balolong again asked him if the man sitting inside the living room of the house was appellant.⁴⁴

Ruling of the Regional Trial Court

On December 4, 2012, the RTC rendered a Decision finding appellant guilty of the crime of illegal sale of *shabu*. The RTC upheld the validity of the buy-bust operation and gave more credence to the testimonies of the prosecution's witnesses than to the denial of appellant as it found no ill motive on the part of the police officers to falsely accuse appellant.⁴⁵ As to the testimonies of Rogelio and Reynald, the RTC found that these did not help the defense of denial of appellant as Rogelio apparently only witnessed what happened after the arrest, while the testimony of Reynald did not negate the fact that a buy-bust operation was conducted on the said date.⁴⁶ The RTC also found that the chain of custody of the seized items was established by the prosecution.⁴⁷

However, as to the charge of illegal possession of drug paraphernalia, the RTC resolved to acquit appellant and Manilyn due to inadmissibility of evidence. The RTC explained, that since appellant was already handcuffed, the possibility of

⁴³ Id. at 31-32.

⁴⁴ Id. at 32.

⁴⁵ Id. at 33-39.

⁴⁶ Id. at 39-40.

⁴⁷ Id. at 38-39.



him getting a weapon or any contraband in the room was remote. Thus, the search of the room incidental to the arrest was not valid.⁴⁸ As to Manilyn, the RTC found that there was no ample evidence to show that she was the live-in partner of appellant or that she was in control and dominion of the room from which the seized paraphernalia were found.⁴⁹

Thus, the dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered finding [appellant] GUILTY beyond reasonable doubt as charged in Criminal Case No. 14722 of illegal sale of shabu as punished under Section 5, Article II of [RA] No. 9165 and is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a [fine] of ₱2,000,000.00.

Said [appellant] and Manilyn Pompa are however ACQUITTED as charged in Criminal Case No. 14723 for illegal possession of drug paraphernalia for inadmissibility of evidence.

The shabu and the drug paraphernalia subject hereof are confiscated, the same to be disposed as the law prescribes.

SO ORDERED.⁵⁰

Ruling of the Court of Appeals

Appellant appealed to the CA.

On October 9, 2015, the CA rendered a Decision affirming the RTC Decision. The CA ruled that there was a valid buy-bust operation based on the evidence presented.⁵¹ Although there was no prior surveillance, the CA explained that it was not a prerequisite for a valid buy-bust operation.⁵² The CA also found that the Chain of Custody Rule was complied with and that the failure of forensic chemist PI Baligod to indicate the actual markings on her reports was adequately explained.⁵³ The CA further said that the non-presentation of the confidential informant was not fatal to the case.⁵⁴ What is important was that the elements of the crime of illegal sale of *shabu* were duly established by the evidence presented by the prosecution.⁵⁵

⁴⁸ Id. at 36-37.

⁴⁹ Id. at 36.

⁵⁰ Id. at 41.

⁵¹ *Rollo*, pp. 11-13.

⁵² Id. at 13-14.

⁵³ Id. at 15-18.

⁵⁴ Id. at 18-19.

⁵⁵ Id. at 14-15.

Hence, appellant filed the instant appeal, raising the same arguments he had in the CA.

Our Ruling

The appeal has merit.

The Chain of Custody Rule, embodied in Section 21, Article II of RA 9165,⁵⁶ the law applicable at the time of the commission of the crime charged, provides –

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

⁵⁶ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

X X X X

In the recent case of *People v. Lim*⁵⁷ the Court stressed the importance of the presence of the three witnesses (i.e. any elected public official and the representative from the media and the DOJ) during the physical inventory and the photograph of the seized items. In case of their absence, the Court ruled that –

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure


⁵⁷ G.R. No. 231989, September 4, 2018.

prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

Simply put, under prevailing jurisprudence, in case the presence of the necessary witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance.

Here, the prosecution failed to prove both.

Under RA 9165, the law prevailing at that time, the physical inventory and photography must be witnessed by three necessary witnesses. In this case, PO2 Sulmerin conducted an inventory of the seized items in the presence of appellant, Manilyn, media person Curameng, and Chief Tanod Bugaoisan, who, as aptly pointed out by Justice Bernabe, was not even an elected public official. There was also no DOJ representative present at the time. Thus, strictly speaking, there was only one valid witness, media person Curanmeng, who signed the Receipt of Properties/Article Seized.⁵⁸ The Court has carefully reviewed the records and found that no explanation was also offered by the prosecution to explain the absence of the DOJ representative and an elected public official, nor did it show that earnest efforts were exerted to secure the presence of the same. In view of the foregoing, the Court is constrained to reverse the conviction of the appellant due to the failure of the prosecution to provide a justifiable reason for the non-compliance with the Chain of Custody Rule, which creates doubt as to the integrity and evidentiary value of the seized plastic sachet of *shabu*.

WHEREFORE, the appeal is **GRANTED**. The October 9, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05998, which affirmed the December 4, 2012 Decision of the Regional Trial Court of Laoag City, Branch 13, in Criminal Case No. 14722, finding appellant Jerome Pascua y Agoto guilty beyond reasonable doubt of the charges against him is **REVERSED** and **SET ASIDE**. Accordingly, appellant Jerome Pascua y Agoto, a.k.a. "Ogie," is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. 

⁵⁸ Records, p. 36.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice

(On official leave)
LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Chief Justice