Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

AUGUSTO N. MAGANON,
Accused-Appellant.

G.R. No. 234040

Present:

BERSAMIN, *C.J.*,
DEL CASTILLO,
JARDELEZA,*
GESMUNDO, *and*
CARANDANG, *JJ.*

Promulgated:
JUN 26 2019

x----------x

DECISION

DEL CASTILLO, *J.*:

This is an appeal from the May 30, 2017 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08159, which affirmed the Judgment[2] of the Regional Trial Court (RTC) of Pasig City, Branch 164, finding accused-appellant Augusto Maganon *y* Nabia (appellant) guilty of illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act No. (RA) 9165.

Factual Antecedents

On November 28, 2014, appellant was charged with illegal sale (Crim. Case No. 19752-D) and illegal possession (Crim. Case No. 19753-D) of dangerous drugs in two separate Informations, to wit:

---

* On official leave.

1 CA *rollo*, pp. 139-153; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Pedro B. Corales and Jhosep Y. Lopez.

2 Records, pp. 88-98; penned by Presiding Judge Jennifer Albano Pilar.

Crim. Case No. 19752-D
Violation of Section 5, Article II, RA 9165

> On or about November 23, 2014, in Pasig City and within the jurisdiction of this Honorable Court, [appellant] not being lawfully authorized by law, did then and there, wilfully, unlawfully, and feloniously sell, deliver, and give away to PO1 Marvin Santos *y* Avila, a member of Philippine National Police, who acted as a police poseur buyer, two (2) heat-sealed transparent plastic sachets each containing 0.03 gram of white crystalline substance or with a total weight of 0.06 gram, which were found positive [x x x] for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law.[3]

Crim. Case No. 19753-D
Violation of Section 11, Article II, RA 9165

> On or about November 24, 2014, in Pasig City and within the jurisdiction of this Honorable Court, [appellant] not being lawfully authorized to possess any dangerous drug, did then and there wilfully, unlawfully, and feloniously have in his possession and under his custody and control four (4) heat-sealed transparent plastic sachets each containing 0.03 gram or with a total weight of 0.12 grams [sic] of white crystalline substance, which were found positive [x x x] for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law.[4]

Upon arraignment, appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

Version of the Prosecution

On November 22, 2014, at around 3 p.m., PCI Renato Bañas Castillo (PCI Castillo), Chief of Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station, received a report from a confidential informant that appellant was involved in the rampant selling of illegal drugs in C. Santos St., Purok 4, Brgy. Ugong, Pasig City. PCI Castillo, thus, ordered that a buy-bust operation be made against appellant. PO1 Marvin

---

[3] Id. at 1.
[4] Id. at 3.

A. Santos (PO1 Santos) was designated as poseur-buyer and given two one hundred-peso bills to be used as marked money.[5]

The next day, November 23, 2014, the buy-bust team proceeded to the barangay hall of Brgy. Ugong to coordinate the planned operation and to place said operation on blotter. Thereafter, PO1 Santos, together with the confidential informant, went to the house of appellant, while the other members of the buy-bust team positioned themselves nearby. Upon arriving at the target area, PO1 Santos and the confidential informant saw appellant seated in front of his house. They approached appellant and PO1 Santos asked to buy *shabu* worth two hundred pesos. PO1 Santos gave the marked money to appellant who, thereafter, gave him (PO1 Santos) two plastic sachets which contained suspected *shabu.* PO1 Santos put the said two sachets in his pocket. He, then, made the pre-arranged signal and held the hand of appellant while the buy-bust team converged thereat. PO1 Santos ordered appellant to produce the marked money and empty his pockets; appellant did as told, and the marked money and four plastic sachets which contained suspected *shabu* were recovered from appellant. PO1 Santos placed the said four sachets in his other pocket so it will not get mixed with the two sachets he previously bought from appellant. Due to the sudden influx of people at the place of the arrest, the buy-bust team decided to proceed to the *barangay* hall of Brgy. Ugong to secure appellant and the evidence. At the *barangay* hall, PO1 Santos marked and inventoried the aforesaid plastic sachets in the presence of appellant, Brgy. Capt. Engracio E. Santiago (Brgy. Capt. Santiago) and Ms. Zenaida Concepcion, head of the Anti-Drug Abuse Council of Pasig City. Brgy. Capt. Santiago and appellant signed the inventory.[6]

Thereafter, the team brought appellant to the police station where the evidence was turned over by PO1 Santos to the duty investigator, PO1 Lodjie Coz (PO1 Coz), who prepared the necessary documentation. Thereafter, PO1 Santos and PO1 Coz went to the Eastern Police District-Crime Laboratory Service in Mandaluyong City and submitted the seized sachets of suspected *shabu* to the forensic chemist, PCI Rhea Fe Alviar (PCI Alviar), who conducted the laboratory examinations which confirmed the presence of methamphetamine hydrochloride or *shabu* in the said sachets.[7]

---

5 CA *rollo*, pp. 141-142.
6 Id. at 142-143.
7 Id. at 143.

Version of the Defense

On November 22, 2014, appellant arrived at his house from work. His common-law spouse, Rosemarie Apinan, was eating lunch at the time. Thereafter, four police officers suddenly entered appellant's house and searched it. When they found nothing, they arrested appellant and brought him to the *barangay* hall of Brgy. Ugong. Appellant saw several sachets and two one hundred-peso bills on top of a table in the presence of the Brgy. Capt. Santiago. After appellant and Brgy. Capt. Santiago signed the inventory, the police officers brought him to the Pasig City Police Station.[8]

Ruling of the Regional Trial Court

On November 25, 2015, the RTC rendered judgment finding appellant guilty of the crimes charged, to wit:

> WHEREFORE:
>
> 1. In *Criminal Case No. 19752-D*, the Court finds [appellant] Augusto N. Maganon GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposed [sic] upon him the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00) with all the accessory penalties under the law.
>
> 2. In *Criminal Case No. 19753[-D]*, the Court finds [appellant] Augusto N. Maganon GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00) with all the accessory penalties under the law.
>
> The six (6) transparent plastic sachets of *shabu* (Exhibits "P" to "U") subject matter of these cases are hereby ordered confiscated in favour of the government and turned over to the PDEA for destruction in accordance with law.
>
> SO ORDERED.[9]

---

[8] Id. at 144.

[9] Records, p. 98.

The RTC gave credence to the testimony of PO1 Santos over that of appellant. It ruled that the prosecution was able to establish all the elements of illegal sale and all the elements of illegal possession of *shabu*. It also found that there was an unbroken chain of custody of the evidence, thus, the integrity and evidentiary value of the sachets of *shabu* bought and confiscated from appellant had been preserved.

Ruling of the Court of Appeals

On May 30, 2017, the CA affirmed the Judgment of the RTC:

> WHEREFORE, the appeal is DENIED. The assailed *Decision* of the RTC is AFFIRMED.
>
> SO ORDERED.[10]

The CA ruled that the prosecution had sufficiently established every link of the chain of custody from the time of the seizure of the drugs up to their presentation before the RTC; that while the police officers did not strictly follow the requirements under Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the prosecution was nonetheless able to properly preserve the integrity and evidentiary value of the seized items; and that in any event, the prosecution presented justifiable grounds for non-compliance with the said requirements.

Hence, this appeal.

Issue

In the main, appellant contends that the police operatives violated Section 21, Article II of RA 9165 and its IRR, because they failed to comply with the procedural requirements during the marking, the inventory and the photographing of the evidence; hence, this creates reasonable doubt as to the integrity and evidentiary value of the seized items and justifies the acquittal of appellant.

---

[10] CA *rollo*, p. 153.

Our Ruling

The appeal is meritorious.

It is axiomatic that the presentation of the dangerous drugs as evidence in court is a basic requirement in every prosecution for the illegal sale and for illegal possession of dangerous drugs. The prosecution must establish with moral certainty the identity of the prohibited drugs as this is the very *corpus delicti* of the crime. Equally important, the prosecution must prove that there has been an unbroken chain of custody over the dangerous drugs to erase any lingering doubts as to its identity owing to or by reason of switching, "planting" or contamination of evidence. Each link in the chain of custody of evidence must be accounted for from the moment the drugs are seized up to their presentation as evidence in court.[11]

The acts subject of this case were allegedly committed after the effectivity of RA 10640.[12] In order to preserve the chain of custody of evidence in drugs cases, Section 21, Article II of RA 9165, as amended by RA 10640, spells out the mandatory procedural safeguards in a buy-bust operation as follows:

> SEC. 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 dangerous drugs, controlled precursors and essential chemicals,

[11] *People v. Ramos*, G.R. No. 233744, February 28, 2018.

[12] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002. Approved on July 15, 2014.

As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018, footnote 26), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014. The acts subject of this case allegedly occurred on November 23 and 24, 2014, hence, after the effectivity of RA 10640.

> instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

As the Court noted in *People v. Lim*,[13] RA 10640 now only requires two witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; **and** (2) either a representative from the National Prosecution Service **or** the media.[14] Hence, the witnesses required are: (a) *prior* to the amendment of RA 9165 by RA 10640, a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official; or (b) *after* the amendment of RA 9165 by RA 10640, an elected public official **and** a representative of the National Prosecution Service **or** the media.[15]

Significantly also, as the Court observed in *People v. Lim*,[16] the saving clause previously contained in Section 21(a), Article II of the IRR of RA 9165 was essentially incorporated or inserted into the law by RA 10640 which, to re-state, pertinently provides that "[n]oncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." Hence, for this saving mechanism under RA 10640 to apply, the self-same conditions must be met, *viz.*: those laid down in previous jurisprudence interpreting and applying Section 21(a), Article II of the IRR of RA 9165 prior to its amendment, *i.e.*, (1) the prosecution must acknowledge or recognize the lapse/s in the prescribed procedure, and then provide justifiable reasons for said lapse/s,[17] **and** (2) the prosecution must show that the integrity and evidentiary

---

[13] G.R. No. 231989, November 13, 2018. (*En Banc* Resolution)
[14] Id.
[15] *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.
[16] G.R. No. 231989, September 4, 2018. (*En Banc* Decision)
[17] *People v. Alagarme*, 754 Phil. 449, 461 (2015).

value of the seized items has been properly preserved.[18] The justifiable ground/s for failure to comply with the procedural safeguards mandated by the law must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.[19]

In the absence of the witnesses required by law, during the physical inventory and photographing of the seized items, the Court stressed in *People v. Lim*[20] that —

> It must be **alleged and proved** that the presence of the three witnesses (now two witnesses under RA 10640) 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 proved 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.**[21] (Emphasis in the original)

The prosecution must provide proof of earnest efforts to secure the attendance of these witnesses. As the Court explained in *People v. Ramos*:[22]

> 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

---

[18] *People v. Ramos*, supra note 11.
[19] Id.
[20] Supra note 16.
[21] Id.
[22] Supra note 11.

> 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 non-compliance. 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 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.[23] (Emphasis in the original; underline supplied)

In the case at bar, the records indicate that only an elected public official, *i.e.*, Brgy. Capt. Santiago, was present during the physical inventory and photographing of the seized items at the *barangay* hall of Brgy. Ugong, Pasig City. Upon the other hand, the prosecution admitted the absence of a representative from the DOJ and from media, and sought to explain the reasons for such absence through the testimony of PO1 Santos, to wit:

> Prosecutor Ponpon:
> Q: After you marked the evidence, what did you do next, if any?
> A: I accomplished the inventory in front of Barangay Chairman Santiago.
>
> Q: Who else were present during the inventory?
> A: The chief of ADCOP but there in [sic] no representative from the media and DOJ.
>
> Q: Why [was] the preparation of the inventory was [sic] not witness [sic] by the media and the representative from the DOJ?
> A: My contact person in the media had a new number[.] I was not able to contact him.
>
> Q: What effort did you exert in contacting him?
> A: I asked other police officers about his number but they did not know the new number.
>
> x x x x
>
> Q: You said you prepared the Inventory of Seized Evidence in the presence of Barangay Captain Santiago, how about the representative

[23] Id.

from the DOJ, what effort tid [sic] you exert to contact the DOJ witness [sic] the inventory?

A: Our chief tried to call a representative from the DOJ but no [sic] available personnel.[24]

The Court finds the above-quoted explanations unjustified and said efforts to secure either of said witnesses insufficient for the following reasons.

First, the decision to make the buy-bust operation subject of this case was reached a day before the buy-bust operation. Indeed, as testified to by PO1 Santos, on November 22, 2014, at around 3 p.m., PCI Castillo received the report from their confidential informant of appellant's alleged involvement in the illegal sale of *shabu.* After the preparation of the necessary documentation and coordination with the PDEA, the decision was reached to undertake the subject buy-bust operation the following day, November 23, 2014, at around 12 noon.[25]

Second, PO1 Santos likewise testified that his contact in the media had changed his contact number; that he did not know the new contact number; and that his fellow-police officers did not, likewise, know of the said new contact number. However, PO1 Santos failed to explain why he did not exert reasonable efforts to secure the new contact number through other means *or* find another suitable media representative *prior* to undertaking the buy-bust operation, considering that, as previously stated, the decision to make the subject buy-bust operation was made a day before the actual buy-bust operation itself. It is evident that the police operatives had ample time to procure or secure a media representative who can be on standby prior to the buy-bust operation.

In *People v. Balderrama*,[26] while an elected public official was present during the inventory and photographing of the seized items, there was no media and DOJ representative. The police operatives claimed that the buy-bust operation happened so fast that they were not able to summon the required witnesses. In rejecting their explanation and acquitting the accused, the Court held that, based on the testimony of the poseur-buyer himself, the police operatives had ample time (some eight hours to be exact) to secure the required witnesses, but unjustifiably failed to do so.[27] Similarly, in *People v. Ramos*,[28]

---

[24] TSN October 1, 2015, pp. 6-7.

[25] TSN May 26, 2015, pp. 3 and 9.

[26] G.R. No. 232645, February 18, 2019.

[27] Id.

[28] Supra note 11.

an elected public official was present, but no representative from the media and from the DOJ was present. In rejecting the explanation of the police operatives on the unavailability of the said witnesses, the Court noted that the briefing on the planned buy-bust operation was done as early as 2 p.m. and the operation was conducted at 8 p.m. of the same day, thus, giving them sufficient time to secure the attendance of said witnesses, who were nonetheless conspicuous by their absence.[29]

And third, with respect to the explanation for the absence of a DOJ representative, the evidence is hearsay, because, as PO1 Santos' testimony bears out, it was his chief, PCI Castillo, who allegedly tried to contact the DOJ representative. However, there is no showing that PO1 Santos in fact saw or knew that his chief was indeed trying to contact a DOJ representative; worse, PCI Castillo himself did not testify in court that he even attempted to do so. Moreover, the prosecution again failed to explain why no DOJ representative was contacted, considering that the police operatives had ample time, since the decision to conduct the buy-bust operation was made a day prior to the actual conduct thereof. PO1 Santos' testimony on this point constitutes mere statements of unavailability, lacking actual serious attempts to contact the said witness; thus, unacceptable as justified grounds for non-compliance.

The necessity of a media representative *or* a DOJ representative, during the physical inventory and photographing of the seized items becomes all the more critical and imperative in this case, because, as correctly pointed out by appellant, it was the lone witness present, Brgy. Capt. Santiago, who requested the making of the buy-bust operation against appellant. As stated in the affidavit of arrest executed by PO1 Santos, which he confirmed[30] during his testimony in open court: "3. *Na, ganap na alas 11:00 ng tanghali, ika-23 ng Nobyembre 2014 ay nagsagawa kami ng pagpupulong para sa gaganaping buy-bust operation ayon na rin sa kahilingan ng kanilang Punong Barangay na si Kapitan Engracio E[.] Santiago x x x.*"[31] It appears that, apart from the report of the confidential informant the day before, it was Brgy. Capt. Santiago himself who requested the buy-bust operation against appellant. Indeed, during the testimony of appellant, the trial court even asked appellant whether he was aware that it was Brgy. Capt. Santiago who tipped the police operatives about his (appellant's) alleged involvement in the illegal sale of *shabu*.[32]

---

[29] Id.

[30] TSN October 1, 2015, p. 14.

[31] Records, p. 10.

[32] COURT:

Q: Do you know, Mr. Witness, that it was Barangay Captain Santiago who tipped you to that SAID (Station Anti-Illegal Drugs) about your selling of drugs?

A: I do not know, Your Honor. (TSN October 19, 2015, p. 12)

The purpose of the law in requiring the presence of certain witnesses, at the time of the seizure and inventory of the seized items, is to "insulate the seizure from any taint of illegitimacy or irregularity."[33] In *People v. Mendoza*,[34] the Court ruled that "without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the *shabu*, the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (*Dangerous Drugs Act of 1972*) might again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affect the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would preserve an unbroken chain of custody."[35]

In the case at bar, the reliance of the police operatives on the lone witness, Brgy. Capt. Santiago, who was the very party interested in the arrest, prosecution and conviction of appellant, as it was this *barangay* captain himself who requested the buy-bust operation against appellant, and the police operatives' failure to secure the presence of either a DOJ *or* media representative, without justifiable reasons and without exerting earnest efforts to do so, effectively rendered nugatory the salutary purpose of the law, which is designed to provide an insulating presence during the inventory and photographing of the seized items, in order to obviate switching, 'planting' or contamination of the evidence. Needless to say, this adversely affected the integrity and credibility of the seizure and confiscation of the sachets of *shabu* subject of this case.

WHEREFORE, the appeal is **GRANTED**. The May 30, 2017 Decision of the Court of Appeals in CA-GR. CR-HC No. 08159 is **REVERSED** and **SET ASIDE**. Appellant Augusto Maganon *y* Nabia is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, National Bilibid Prison, Muntinlupa City for immediate implementation. The said Director is **DIRECTED** to report to this Court the action taken within five (5) days from receipt of this Decision.

---

[33] *People v. Catalan*, 699 Phil. 603, 619 (2012).
[34] 736 Phil. 749 (2014).
[35] Id. at 764.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

(On official leave)
FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
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.

LUCAS P. BERSAMIN
Chief Justice