



Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

PEOPLE OF THE G.R. No. 241324  
 PHILIPPINES,

Plaintiff-Appellee, Present:

- versus -

MARIVIC COHAYCO y REVIL  
 @ "Kakang,"

Accused-Appellant.

BERSAMIN, C.J., Chairperson,  
 PERLAS-BERNABE,  
 JARDELEZA,  
 GESMUNDO, and  
 CARANDANG, JJ.

Promulgated:

SEP 11 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated April 24, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01579-MIN, which affirmed the Decision<sup>3</sup> dated July 27, 2016 of the Regional Trial Court of Oroquieta City, Branch 12 (RTC) in Criminal Case No. 2132, finding accused-appellant Marivic Cohayco y Revil @ "Kakang" (Cohayco) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

<sup>1</sup> See Notice of Appeal dated May 15, 2018; *rollo*, pp. 16-17.  
<sup>2</sup> *Id.* at 5-15. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Oscar V. Badelles, concurring.  
<sup>3</sup> CA *rollo*, pp. 41-57. Penned by Presiding Judge Alma V. Azanza.  
<sup>4</sup> Entitled "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," approved on June 7, 2002.

### The Facts

This case stemmed from an Information<sup>5</sup> filed before the RTC charging Cohayco of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that in the evening of March 19, 2014, operatives from the Philippine Drug Enforcement Agency Region X (PDEA) successfully implemented a buy-bust operation against Cohayco, during which one (1) big sachet containing ten (10) small sachets of white crystalline substance with an aggregate of 0.2075 gram was recovered from her. As the place of arrest is a known *shabu* hotbed, the PDEA took her and the seized items to the PDEA Satellite Office where the seized items were marked, inventoried, and photographed in her presence, as well as barangay officials and media representatives. Thereafter, the seized items were brought to the crime laboratory where, after examination,<sup>6</sup> the contents thereof yielded positive for methamphetamine hydrochloride, or *shabu*, a dangerous drug.<sup>7</sup>

In defense, Cohayco denied the charges against her, claiming instead that she was just looking for her five (5)-year old son when two (2) men riding on a motorcycle stopped in front of her, restrained her, then took her to the police station. Thereat, she was searched but nothing was found in her body. A few moments later, a barangay official arrived and signed a document that she knew nothing about. Thereafter, she was brought to the crime laboratory.<sup>8</sup>

In a Decision<sup>9</sup> dated July 27, 2016, the RTC found Cohayco guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.<sup>10</sup> It found that the prosecution, through the testimonies of the PDEA operatives, had established beyond reasonable doubt that Cohayco indeed sold plastic sachets containing *shabu* to the poseur-buyer during a legitimate buy-bust operation.<sup>11</sup> In this regard, the RTC opined that the chain of custody of the seized items was properly established, thereby preserving the integrity and evidentiary value of the same.<sup>12</sup> Aggrieved, Cohayco appealed<sup>13</sup> to the CA.

In a Decision<sup>14</sup> dated April 24, 2018, the CA affirmed Cohayco's conviction.<sup>15</sup> It held that the prosecution had established all the elements of

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<sup>5</sup> Records, p. 2.

<sup>6</sup> See Chemistry Report No. D-66-2014MO dated March 20, 2014; id. at 21.

<sup>7</sup> *Rollo*, p. 8.

<sup>8</sup> See id. at 8-9.

<sup>9</sup> *CA rollo*, pp. 41-57.

<sup>10</sup> Id. at 57.

<sup>11</sup> See id. at 53-55.

<sup>12</sup> Id. at 55.

<sup>13</sup> See Notice of Appeal dated October 28, 2016; records p. 132.

<sup>14</sup> *Rollo*, pp. 5-15.

<sup>15</sup> Id. at 14.

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the crime charged, and that there was compliance with the chain of custody rule.<sup>16</sup>

Hence, this appeal seeking that Cohayco's conviction be overturned.

### The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>17</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>18</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.<sup>19</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>20</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>21</sup> In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>22</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in

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<sup>16</sup> See *id.* at 10-14.

<sup>17</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 313.

<sup>18</sup> See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.* at 53; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>19</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>20</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 17; *People v. Sanchez*, *supra* note 17; *People v. Magsano*, *supra* note 17; *People v. Manansala*, *supra* note 17.; *People v. Miranda*, *supra* note 17, at 53; and *People v. Mamangon*, *supra* note 17. See also *People v. Viterbo*, *supra* note 18.

<sup>21</sup> See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 356-357 (2015).

<sup>22</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>23</sup>

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **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”;<sup>24</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, “[a]n elected public official and a representative of the National Prosecution Service **or** the media.”<sup>25</sup> The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>26</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”<sup>27</sup> This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”<sup>28</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>29</sup> As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>30</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>31</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>32</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the

<sup>23</sup> See *People v. Tumalak*, supra note 21; and *People v. Rollo*, supra note 21.

<sup>24</sup> Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>25</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>26</sup> See *People v. Miranda*, supra note 17, at 57.

<sup>27</sup> See *People v. Miranda*, id. at 60-61. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 19, at 1038.

<sup>28</sup> See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, id.

<sup>29</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>30</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>31</sup> Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**Provided, further, that non-compliance with 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 of and custody over said items[.]**”

<sup>32</sup> Section 1 of RA 10640 pertinently states: “**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.**”

reasons behind the procedural lapses,<sup>33</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>34</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>35</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>36</sup> 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 fully well that they would have to strictly comply with the chain of custody rule.<sup>37</sup>

Notably, the Court, in *People v. Miranda*,<sup>38</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”<sup>39</sup>

In this case, the Court finds that the police officers were justified in conducting the markings, inventory, and photography of the seized items at the PDEA Satellite Office instead of the place of arrest, considering that the same is a known hotbed of *shabu*, and that Cohayco’s arrest and seizure of the plastic sachets might be compromised. Nonetheless, it appears that the inventory and photography of the seized items were not conducted in the presence of a DOJ representative, as evinced by the Inventory of Seized Items/Confiscated Non-Drugs,<sup>40</sup> which only showed signatures from barangay officials and media representatives, contrary to the mandatory procedure laid down in RA 9165. This fact is confirmed by the testimony of PDEA Operative Intelligence Officer 2 Elvis M. Taghoy, Jr. (IO2 Taghoy),

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<sup>33</sup> *People v. Almorfe*, supra note 30.

<sup>34</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>35</sup> See *People v. Manansala*, supra note 17.

<sup>36</sup> See *People v. Gamboa*, supra note 19, citing *People v. Umipang*, supra note 19, at 1053.

<sup>37</sup> See *People v. Crispo*, supra note 17.

<sup>38</sup> Supra note 17.

<sup>39</sup> See *id.*

<sup>40</sup> Records, p. 17.

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who is a member of the buy-bust team which arrested Cohayco, pertinent portions of which are as follows:

[Prosecutor Farmacion]: We have here another document marked as Exhibit C for the prosecution Inventory of Seized Items/Confiscated Non-drugs, can you please examine this document?

[IO2 Taghoy]: This is the inventory sheet which was prepared by agent Patino, sir.

Q: Where were you when agent Patino prepared this Inventory of Seized Items/Confiscated Non-drugs?

A: I was just beside her, sir.

Q: There are signatures on this document, do you know whose signatures are these?

A: In the document, the signatures of Laudener A. Catane, the Barangay Chairman sir, Leonid O. Montejo, Barangay Kagawad, Mike Samba-an, Media Representative, IO2 Remedios P. Patino, sir, my co-arresting officer, and my signature sir, IO2 Elvis M. Taghoy, Jr., sir.<sup>41</sup>

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As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, IO2 Taghoy acknowledged that only barangay officials and media representatives were present during the marking, inventory, and photography of the seized items. At this point, the prosecution should have noted the absence of the DOJ representative and further interrogated its witnesses on the matter in order to determine if, at the very least, earnest efforts were exerted in ensuring the presence of this DOJ representative during the conduct of inventory and photography. Absent any determination of earnest efforts, the Court is constrained to hold that there was an unjustified deviation from the chain of custody rule, resulting in the conclusion that the integrity and evidentiary value of the items purportedly seized from Cohayco were compromised. Perforce, her acquittal is warranted under these circumstances.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated April 24, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01579-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Marivic Cohayco y Revil @ "Kakang" is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

**SO ORDERED.**

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<sup>41</sup> TSN, January 19, 2016, pp. 18-19.

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**SO ORDERED.**

*Ms. Herb*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Chief Justice  
Chairperson

*Francis H. Jardeleza*  
**FRANCIS H. JARDELEZA**  
Associate Justice

*Alexander G. Gesmundo*  
**ALEXANDER G. GESMUNDO**  
Associate Justice

*Rosmarie D. Carandang*  
**ROSMARIE 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*  
**LUCAS P. BERSAMIN**  
Chief Justice