

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VERONICA GONZAGA, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Judgment[1] of the Regional Trial Court (RTC), Branch 57, Cebu City dated March 20, 2013 in Criminal Case No. CBU-89004 finding accused-appellant Veronica Gonzaga guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (RA) 9165[2] and sentencing her with imprisonment of 12 years and 1 day to 15 years and a fine of P300,000.00.

The Antecedents

Accused-appellant Veronica Gonzaga (appellant) was indicted in Criminal Case No. CBU-89004 for violating Section 11, Article II of Republic Act 9165 under the following Information,[3] viz.:

That on or about the 23[rd] of May 2010 at about 9:00 P.M. more or less, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in her possession and control eight (8) heat sealed transparent plastic sachet (sic) of white crystalline substance weighing 0.31 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty to the offense charged.[4] Trial subsequently ensued.

According to the prosecution, on May 23, 2010, at around 9:00 o'clock in the evening, a group of policemen were at Villagonzalo II, Barangay Tejero, Cebu City to conduct a saturation drive against illegal gambling, mole-mole and video carrera machines. The group included PO3 Alner Maglinte (Maglinte), SPO1 Alfredo Petallar (Petallar), PO3 Regalado dela Victoria, PO3 Melberth Dio and PO1 Alain Dignos. While the policemen were in the interior portion of the place, they heard someone shouted “naay gobierno!” to caution those around of the presence of the policemen. The police officers rushed to the area where the shout came from and there, Maglinte saw appellant trying to insert a medium sized transparent plastic pack into her bra. He then told appellant, “surrender na lang na mother,” to convince her to just hand him the plastic pack. Appellant gave the pack to Maglinte who examined it and found that it contained eight (8) small plastic sachets of shabu. The whole event was also witnessed by Petallar who was just about 6 meters away from appellant and Maglinte. At the place of the seizure, Maglinte marked the plastic pack with “VG” and the 8 packets with “VG-1” to “VG-8”. Thereafter, PO3 Regalado dela Victoria took pictures[5] of the confiscated items. Subsequently, appellant was brought to the police station. The incident was recorded in the police blotter[6] and an Inventory[7] of the confiscated items was prepared. The confiscated drugs were then sent[8] to the Philippine National Police crime laboratory (crime lab) and the forensic chemist, after examining the same, found these to be positive of the presence of methamphetamine hydrochloride.[9]

Meanwhile, appellant was the lone witness for her defense. She averred that on the date of the incident, her close friend Jiji brought her to a birthday party of the child of a certain Malyn in Villagonzalo, Cebu City. They arrived

at the place at around 6:00 o'clock in the evening. There, they ate pancit and drank bottles of Red Horse beer. At about 8:00 o'clock in the evening, appellant and Jiji left Malyn's house to go home. However, when they crossed the street, they were met and then held by a police officer. When appellant asked what was it about, the police officer told appellant and Jiji to just board the police vehicle that was parked nearby. The two were brought to the burnt White Gold building where the policemen scolded them. The policemen also asked money from them but appellant declared that she did not have money. The policemen subsequently brought appellant and Jiji near SM department store. In a dark area thereat, appellant was frisked and the police officer told her that she had a thing inserted in her bra. Appellant showed her bra to the policemen but they did not believe her. They tapped her bra but they found nothing. Later, at around 12:00 or 1:00 in the morning, appellant and Jiji were brought to the police station. When they arrived thereat, appellant was ordered to stand at the side and her pictures were then taken. The policemen also made her sign a document. Jiji, however, was allowed to go home but appellant did not make any comment as she was afraid that the policemen might do something wrong to her while she was inside the jail.

After the parties presented their respective sides, the trial court convicted appellant of the charge. The dispositive portion of its Decision reads, viz.:

WHEREFORE, premises considered, the Court finds Veronica Gonzaga guilty beyond reasonable doubt of the crime of Section 11, Article II of RA 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

The eight plastic sachets of shabu are forfeited in favor of the government.

SO ORDERED.[10]

Aggrieved, appellant elevated the matter to Us and cited the lone error that:

THE COURT A QUO GRAVELY ERRED IN RELYING ON THE WEAKNESS OF THE DEFENSE IN ARRIVING AT A CONVICTION DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE GUILT OF ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

This Court's Ruling

The appeal is unimpressed with merit.

Appellant argued against the propriety of convicting her for possession of illegal drugs. She assailed the police officers' supposed failure to comply with the requirements in Section 21 of RA 9165 regarding the procedures to be observed in the handling, custody and disposition of seized or confiscated illegal drugs and its presentation as evidence. Appellant contended that while there was an inventory and photographing of the drugs, there was nothing in the records to show that the procedures were done in her presence, or in the presence of her counsel, representatives from the media, the Department of Justice and an elected public official. Since the inventory and photographing of the items were made without the required witnesses, there can be no other person who could testify that the items listed in the inventory were the same items taken from appellant and that these were not tampered or replaced.

Appellant's arguments fail to persuade.

Section 21 of RA No. 9165 lays down the procedure to be followed in the custody and disposition of illegal drugs, thus:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs . . . -

(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.

Although RA 9165 is silent on the effect of non-compliance with Section 21 thereof, its Implementing Rules and Regulations provide 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". What is, therefore, of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[11]

In this case, the records show that the items were immediately marked at the place of seizure. It was likewise photographed thereat and the Court duly takes notice that the pictures offered as evidence validated the testimony of police officer Maglinte that the confiscated items were photographed in the cemented alley in the area where appellant was arrested.[12] From the place of seizure, Maglinte handled the items in going to the police station[13] where an inventory thereof was prepared. Thereafter, it was brought by Maglinte to the crime lab together with the request for examination. Thereat, it was examined by the forensic chemist who, after finding the same to be positive of methamphetamine hydrochloride, turned it over to the evidence custodian. The latter subsequently gave the seized items to the handling prosecutor who presented the same in court. With these procedures being clear on the record, the Court is convinced that the integrity and the evidentiary value of the drug items seized from appellant were not at all compromised.

The Court is aware that excusing the non-compliance with Section 21 of RA 9165 must be based on justifiable ground, which in this case, was not revealed by the prosecution. It is best to emphasize, however, that appellant's defense regarding the alleged non-compliance by the police officers with the aforementioned section was only raised for the first time on appeal. In the case of *People v. Pringas*, [14] the Supreme Court ruled that objections or questions regarding the safekeeping of the seized items could not be raised for the first time on appeal, but must, instead, be timely made during the trial when such evidence is offered. The pertinent discussion on the matter is hereby quoted, as follows:

Though the justifiable ground for non-compliance with Section 21 was not expressly stated by the arresting/buy-bust team, this does not necessarily mean that appellant's arrest was illegal or the items seized/confiscated inadmissible. In the case at bar, as in *Sta. Maria*, the justifiable ground will remain unknown because appellant did not question during the trial the custody and disposition of the items taken from him. Assuming that Sections 21 and 86 were indeed breached, appellant should have raised these issues before the trial court. This, he did not do. Never did he question the custody and disposition of the items that were supposedly taken from him. It was only on appeal before the Court of Appeals that he raised them. This, he cannot do. We held:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act 9165 were not raised before the trial court but were raised instead for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal. [Emphasis and underscoring supplied.]

Appellant also cited in his Brief the alleged flaws in the chain of custody of the illegal drugs. According to her,

while the prosecution named the person who delivered the seized item to the PNP crime lab, and those who received and examined the same thereat, the records do not show how the items were handled after the examination was made by the forensic chemist and up to the time these were presented in court. According to appellant, the chain of custody established by the prosecution only ended with the examination of the forensic chemist. The gaps in the chain created lingering doubts whether the specimen seized from appellant were the same ones brought to the crime lab and eventually offered as evidence in court.

Appellant's above contentions contradict the records. The Court reminds appellant that the chain of custody, specifically the matter on what happened to the specimen after the examination by the forensic chemist, was already resolved by the admissions made by the parties during the arraignment and pre-trial. The Order^[15] of the trial court dated July 1, 2010 revealed the unbroken chain showing the custody of the illegal items from the time of seizure until these were offered in court. The said Order declared that:

During the pre-trial, the following facts were admitted by the parties:

- the letter-request and the subject evidence consisting of eight (8) packs of white crystalline substance with markings "VG-1" to "VG-8" were received on May 23, 2010 by officer Cabahug of the PNP Crime Laboratory;
- 2. officer Maglinte delivered the letter-request and the subject evidence to the PNP Crime Laboratory;
- 3. the letter-request and the object evidence were received by P/Supt. Salinas from officer Cabahug;

xxx xxx xxx

- Salinas examined the very same object evidence, the eight (8) plastic sachets of white crystalline substance, which she received from officer Cabahug;
- Salinas after examination of the object evidence, the same were found positive for the presence of Methamphetamine hydrochloride, a dangerous drug, per Chemistry Report No. D-430-2010;

xxx xxx xxx

- Salinas submitted the letter-request, the object specimen or evidence and her report to the Evidence Custodian of the PNP Crime Laboratory, who in turn delivered the same to the handling prosecutor; [Emphasis and underscoring supplied.]

The foregoing admissions, thus, negate appellant's claim that there were gaps in the chain of custody. On the contrary, the prosecution successfully established a continuous chain and clearly identified all persons who handled the confiscated items from the time these were taken from appellant until these were delivered to the handling prosecutor for presentation in court.

WHEREFORE, in view of all the foregoing, the appeal is DENIED. The Judgment of the Regional Trial Court, Branch 57, Cebu City dated March 20, 2013 in Criminal Case No. CBU-89004 is hereby AFFIRMED.

SO ORDERED.

Delos Santos, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 25-30.

[2] Otherwise known as 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.

[3] Record, pp. 1-2.

[4] See Certificate of Arraignment, record, p. 29.

[5] Record, p. 6.

[6] Record, p. 7.

[7] Record, p. 8.

[8] See letter Laboratory Request for Examination, record, p. 66.

[9] See Chemistry Report No. D-430-2010, record, p. 65.

[10] Rollo, p. 29-30.

[11] See People of the Philippines v. Mateo, G.R. No. 179478. July 28, 2008.

[12] See TSN dated April 27, 2011, p. 9.

[13] See TSN dated February 9, 2011, p. 14.

[14] G.R. No. 175928. August 31, 2007.

[15] Record, pp. 25-26.

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