

PEOPLE OF THE PHILIPPINES, APPELLEE, V. JOMAR MENDOZA Y MAGNO, APPELLANT.

G.R. No. 225061. October 10, 2018

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is an appeal assailing the Decision[1] dated 15 May 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06851. The CA affirmed the Joint Decision[2] dated 23 April 2014 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC), in Criminal Case Nos. L-9716 and L-9717 convicting Jomar Mendoza y Magno (appellant) of violating Section 5 and Section 11 of Republic Act No. 9165 (RA9165).

The Charges

In Criminal Case No. L-9717, appellant was charged with illegal sale of dangerous drugs under Section 5 of RA 9165. The Information[3] reads:

That on or about April 4, 2013 in the evening in Laoag, Aguilar, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully and unlawfully sell Methamphetamine Hydrochloride or Shabu, a dangerous drug, placed in a small heat sealed transparent plastic sachet worth P300.00 to SPO1 Jimmy Va[q]uilar, acting as poseur-buyer during a police buy-bust operation; such dealing by the accused with dangerous drug is without authority.

Contrary to Section 5 Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002).

In Criminal Case No. L-9716, appellant was charged with illegal possession of dangerous drugs under Section 11 of RA 9165. The Information[4] reads:

That on or about April 4, 2013 in the evening in Laoag, Aguilar, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully and unlawfully have in his possession 0.018 g. of Methamphetamine Hydrochloride or Shabu, a dangerous drug placed inside a small heat sealed transparent plastic sachet; such activity by the accused in dealing with dangerous drug is without authority.

Contrary to Section 11 Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002).

Upon arraignment, appellant pleaded not guilty.

The Version of the Prosecution

The prosecution presented one (1) witness: SPO1 Jimmy B. Vaquilar (SPO1 Vaquilar). According to the prosecution, on 25 March 2013, the Provincial Anti-Illegal Drugs Special Operation Task Group based in Lingayen, Pangasinan received a memorandum from the Philippine National Police Regional Office 1 in San Fernando City, La Union about the drug dealing activities of appellant in Laoag, Aguilar, Pangasinan. On 4 April

2013, a buy-bust operation against appellant was set into motion. Prior to the operation, a police asset transacted with appellant through cellular phone. The team then proceeded to a bridge located at the boundary of Poblacion and Laoag, Aguilar, Pangasinan. When the team arrived, SPO1 Vaquilar walked on his own to meet with appellant. SPO1 Vaquilar gave appellant the marked money, the latter, in turn, delivered to SPO1 Vaquilar a plastic sachet. Upon receipt of the sachet, SPO1 Vaquilar immediately identified himself as a policeman, simultaneously signaling the team to approach and arrest appellant. SPO1 Vaquilar marked the sachet "JBV1." Thereafter, SPO1 Vaquilar conducted a search on appellant. He was able to recover another plastic sachet, which he marked as "JBV2." SPO1 Vaquilar then prepared the confiscation receipt in the presence of Barangay Kagawad Gabriel Lagas, after which the team proceeded to the Aguilar police station where the documentation and photographing of the seized items were made. At the police station, SPO1 Vaquilar retained custody over the seized items. That same day, SPO1 Vaquilar brought the seized items to the Pangasinan Provincial Crime Laboratory Office in Lingayen, Pangasinan for examination. The seized items were received by PO1 Frias, in the presence of Police Senior Inspector Myrna Malojo-Todeño (PSI Todeño). After qualitative examination, PSI Todeño found that the seized items contained methamphetamine hydrochloride or shabu, a dangerous drug. The two sachets of shabu weighed 0.024 gram and 0.018 gram, respectively.[5]

The testimony of PSI Todeño, who conducted the qualitative examination of the contents of the two (2) plastic sachets of shabu, was dispensed with after the defense admitted: (1) that she was the one who received the said items weighing 0.018 gram and 0.024 gram, respectively from SPO1 Vaquilar who delivered the same; (2) that she conducted examination on the two plastic sachets and set forth her findings in the initial laboratory and final laboratory reports; and (3) that the items she brought to court were the same items delivered to, and examined by, her.[6]

The Version of the Defense

The defense presented three (3) witnesses: appellant, Barangay Captain Jesus Zamoco, Sr.[7] (Zamoco), and Rosemarie Mendoza. The defense claimed that appellant was working that day in the farm of Zamoco and was on his way home when two male persons, who turned out to be policemen, appeared, took him into custody without any explanation and brought him to the municipal hall of Aguilar, where he was interrogated for more than an hour without informing him of his custodial rights.[8] Appellant alleged that he was illegally arrested and the items seized from him by the police had no evidentiary value being fruits of the poisonous tree.[9]

Zamoco corroborated appellant's testimony. Zamoco testified that appellant was working for him in the farm from 7:30 a.m. to 3:45 p.m. the day when appellant was arrested.[10] Lastly, Rosemarie Mendoza, appellant's sister-in-law, also testified that appellant was illegally arrested since appellant was not in the act of selling shabu when appellant was arrested.[11]

The Ruling of the RTC

In a Joint Decision dated 23 April 2014, the RTC convicted appellant of violating Section 5 and Section 11 of RA 9165. The trial court gave credence to the positive identification by the witness for the prosecution over the evidence of the defense consisting of denial, illegal arrest, and frame-up. The RTC ruled that the buy-bust operation team caught appellant in flagrante delicto, particularly, the act of appellant of handing over the sachet containing shabu in exchange for the marked money. The subsequent search on appellant was legal since the search was incidental to a lawful arrest. Lastly, the RTC held that the chain of custody over the seized shabu was also duly established by the prosecution. The dispositive portion of the Joint Decision reads:

WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt of violation of Section 5 and Section 11 of Republic Act No. 9165 and is accordingly sentenced to suffer:

(1)

IN CRIMINAL CASE NO. L-9716: the penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to seventeen (17) years, as maximum, and to pay a fine of P300,00.00;and

(2)

IN CRIMINAL CASE NO. L-9717; the penalty of life imprisonment and to pay a fine of P500,000.00.

and such accessory penalties provided for in the law.

The two (2) sachets of methamphetamine hydrochloride subject of these cases are confiscated in favor of the government to be dealt with as the law directs.

SO ORDERED.[12]

The Ruling of the CA

In a Decision dated 15 May 2015, the CA affirmed the decision of the RTC. The CA ruled that the prosecution was able to prove the elements of illegal sale and illegal possession of dangerous drugs under Section 5 and Section 11 of RA 9165. The CA considered appellant's defense of frame-up as weak and self-serving. The CA took note that appellant's alibi could not account for his whereabouts during the time when the buy-bust operation transpired. Lastly, the CA held that the chain of custody was unbroken because it was proven by the prosecution that the integrity of the illegal drug was preserved from the time it was seized up to the time it was presented in court. The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is DENIED. The assailed Joint Decision dated April 23, 2014, of the RTC, Branch 69, Lingayen, Pangasinan, in Criminal Cases Nos. L-9716 and L-9717 is AFFIRMED in toto.

SO ORDERED.[13]

The Issue

The issue in this case is whether appellant is guilty of the offenses charged.

The Ruling of this Court

We resolve to acquit appellant based on reasonable doubt due to the prosecution's failure to comply with the requirements of the chain of custody rule under Section 21 of RA 9165, as amended.

Section 21 of RA 9165 states:

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;

x x x (Emphasis supplied)

On 15 July 2014, Republic Act No. 10640 (RA 10640) amended Section 21 of RA 9165. The pertinent provision states:

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 dangerous drugs, controlled precursors and essential chemicals, 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 persons 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 [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 and custody over said items.

x x x x (Emphasis supplied)

RA 10640 mandates that the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: (1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof. In *People v. Ocampo*,^[14] this Court ruled that the presence of the three witnesses is required to guarantee against the unlawful planting of evidence and of frame-up. The three witnesses are necessary to remove any taint of irregularity or illegitimacy in the conduct of the apprehension of the accused in the buy-bust operation.^[15]

In *People v. Sipin*,^[16] this Court stressed that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165 including the mandatory presence of the three witnesses.^[17] This Court held that the failure to follow mandated procedure in drugs cases must be adequately explained, and must be proven as a fact under the rules.^[18] The Rules require that apprehending officers do not simply mention a justifiable ground for the absence of the required witnesses, but clearly state the ground in their sworn affidavit, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items.^[19] Section 1 (A. 1.10) of the Chain of Custody Implementing Rules and Regulations provides:

A. 1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented. (Emphasis supplied)

This Court in *People v. Sipin* also ruled what constitutes justifiable reasons for the absence of any of the three witnesses, to wit:

(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.[20] (Emphasis supplied)

Likewise, in *People v. Lim*,^[21] promulgated on 4 September 2018, this Court listed mandatory guidelines that must be followed by the prosecution, including police officers, apprehending officers, and fiscals to prove chain of custody under Section 21 of RA 9165, as amended, to wit:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR (Internal Rules and Regulations).
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court. (Emphasis supplied)

In the present case, a representative of the National Prosecution Service or the media was not present during all the phases of the buy-bust operation including the conduct of the physical inventory of the seized shabu. There was also no signature of the representative of the National Prosecution Service or the media in the inventory receipt. Moreover, SPO1 Vaquilar admitted in his testimony that no picture was taken of the seized shabu at the time he marked it, to wit:

Q: Do you have a picture to show that you marked the evidence at the place of incident [and] that you marked JBV1 and JBV2 on site?

A: We don't have a picture because it [was] already 6:30 o'clock in the evening sir.

Q: So you did not take a picture?

A: Yes, sir.

Q: Are you surer

A: Yes, sir.[22] (Emphasis supplied)

During his testimony, SPO1 Vaquilar was also asked why no representative of the media was present, to wit:

Q: Mr. Witness you also know that you are supposed to bring along with you, members of the media to participate in the buy bust operation, are you aware of that?

A: We are aware but to keep our operation secret [and] not to divulge it publicly, sir.[23] (Emphasis supplied)

SPO1 Vaquilar, during cross-examination, admitted that the buy-bust team deliberately excluded the member of the media from the physical inventory of the seized drug.

Notably, the confidential character of the buy-bust operation is not a justifiable reason to exclude any required witness from the physical inventory under the law. Section 21 of RA 9165, as amended, requires that the three witnesses must be present during the physical inventory "immediately after seizure and confiscation" of the seized drug. Thus, the buy-bust team may inform the member of the media prior to the buy-bust operation or after the accused's arrest. In both instances, the law requires that the member of the media be present during the physical inventory of the seized drug, when the seized drug is photographed, and sign copies of the inventory of the seized drug.

During the buy-bust operation, the buy-bust team may bring along the representative of the National Prosecution Service or the media without giving the representative details of the buy-bust operation. The buy-bust team may also contact the representative from the National Prosecution Service or the media to go to the buy-bust site immediately after the arrest and seizure. Either approach will not result in leakage of the planned buy-bust operation. However, upon the arrest of appellant, a representative from the National Prosecution Service or the media must be present to witness the physical inventory and sign the copies of the inventory receipt. Evidently, in this case, the buy-bust team decided to proceed with the physical inventory without the required witness from the National Prosecution Service or the media as mandated under Section 21 of RA 9165, as amended.

Further, there was no justification or explanation for the non-observance of the three witness rule under Section 21 of RA 9165, as amended, in the Affidavit of Arrest[24] or in other sworn statements or affidavits submitted by the prosecution. Thus, following Section 21 of RA 9165, as amended, the Chain of Custody Implementing Rules and Regulations, and the guidelines of this Court in *People v. Lim*,[25] this Court finds that appellant should be acquitted[26] based on reasonable doubt.

WHEREFORE, we GRANT the appeal. The 15 May 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 06851, which affirmed the 23 April 2014 Joint Decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 69, in Criminal Case Nos. L-9716 and L-9717, finding appellant Jomar Mendoza y Magno guilty of violating Section 5 and Section 11 of Republic Act No. 9165, is REVERSED and SET ASIDE. Accordingly, appellant Jomar Mendoza y Magno is ACQUITTED on reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the Bureau of Corrections in Muntinlupa City for immediate implementation. The said Superintendent is ORDERED to REPORT to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Perlas-Bernabe, Caguioa, and A. Reyes, Jr.,[*] JJ., concur.

J. Reyes, Jr., J., on official leave.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

[1] Rollo, pp. 2-17. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Agnes Reyes-Carpio and Melchor Quirino C. Sadang concurring.

[2] CA rollo, pp. 7-20. Penned by Presiding Judge Loreto S. Alog, Jr.

[3] Records (Criminal Case No. L-9717), p. 1.

[4] Records (Criminal Case No. L-9716), p. 1.

[5] CA rollo, pp. 9-10.

[6] Id. at 8-9.

[7] Sometimes referred to as "Jesus Zamuco" in the records.

[8] CA rollo, pp. 10-11.

[9] Id. at 42.

[10] TSN, 25 March 2014, p. 5.

[11] TSN, 8 April 2014, p. 8.

[12] CA rollo, p. 20.

[13] Rollo, p. 16.

[14] G.R. No. 232300, 1 August 2018.

[15] Id, citing *People v. Sagana*, G.R. No. 208471, 2 August 2017.

[16] G.R. No. 224290, 11 June 2018.

[17] Id.

[18] Id.

[19] Id.

[20] Id. See also *People v. Lim*, G.R. No. 231989, 4 September 2018; *People v. Reyes*, G.R. No. 219953, 23 April 2018, and *People v. Mola*, G.R. No. 226481, 18 April 2018.

[21] G.R. No. 231989.

[22] TSN, 22 October 2013, p. 29.

[23] Id.

[24] Records (Criminal Case No. L-9716), pp 9-10.

[25] *Supra* note 21.

[26] The Constitution guarantees the accused's presumption of innocence until proven guilty. Section 14(2) of the Bill of Rights (Article III) provides that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. Section 2, Rule 133 of the Rules of Court likewise states that, in a criminal case the accused is entitled to an acquittal, unless his guilt is proved beyond reasonable doubt.

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