

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. PHILIP MAMANGON Y ESPIRITU, ACCUSED-APPELLANT.

G.R. No. 229102. January 29, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Philip Mamangon y Espiritu (Mamangon) assailing the Decision[2] dated November 27, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06565, which affirmed the Decision[3] dated September 17, 2012 of the Regional Trial Court of Manila, Branch 53 (RTC) in Crim. Case Nos. 09-266829 and 09-266830 finding him guilty beyond reasonable doubt of violating Sections 5 and 11 (3), Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Mamangon of the crimes of illegal sale and illegal possession of dangerous drugs, the accusatory portions of which state:

Criminal Case No. 09-266829

That on or about February 20, 2009, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there [willfully], unlawfully and knowingly sell, trade, deliver or give away ZERO POINT ZERO ZERO NINE (0.009) gm. of white crystalline substance containing methylamphetamine hydrochloride, known as "SHABU", a dangerous drug.

Contrary to law.[6]

Criminal Case No. 09-266830

That on or about February 20, 2009, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there [willfully], unlawfully and knowingly have in his possession and under his control and custody ZERO POINT ZERO ZERO SEVEN (0.007) gm. white crystalline substance containing methylamphetamine hydrochloride, known as "SHABU", a dangerous drug.

Contrary to law.[7]

The prosecution alleged that at around seven (7) o'clock in the evening of February 20, 2009, a tip was received from a confidential informant that a certain "Pepe," who was later on identified as Mamangon, was selling illegal drugs along the railroad track of Dagupan Extension and Antipolo Street in Tondo, Manila.[8] Acting on the said tip, a buy-bust operation was organized in coordination with the Philippine Drug Enforcement Agency (PDEA), and the buy-bust team went to the target area at around 8:40 in the evening.[9] Upon arriving thereat, the informant, together with Police Officer (PO) 3 Erick Guzman (PO3 Guzman), the designated poseur-buyer,

approached Mamangon and ordered P300.00 worth of shabu from him. Subsequently, Mamangon handed over one (1) piece of plastic sachet containing shabu to PO3 Guzman, who simultaneously paid the former using the marked money. Shortly after, PO3 Guzman removed his cap, which was the pre-arranged signal for the police to come in, and consequently, Mamangon was apprehended. PO3 Guzman then recovered the marked money from Mamangon and ordered him to empty his pockets, which purportedly contained another plastic sachet of shabu. After securing the additional plastic sachet, PO3 Guzman marked it alongside the other seized item in the presence of Mamangon. Thereafter, the team went to the barangay hall but immediately left since no one was around. The team then proceeded to Police Station 7, where PO3 Guzman turned over Mamangon, as well as the seized items, to PO2 Rolando Dela Cruz (PO2 Dela Cruz), the investigator on duty.[10] PO2 Dela Cruz then conducted the requisite inventory, while PO3 Guzman took photographs of the confiscated items in the presence of Mamangon and the other arresting officers. After conducting the inventory to which were attached the photographs, PO2 Dela Cruz prepared the request for laboratory examination, which was submitted together with the seized items to the Philippine National Police (PNP) Crime Laboratory for examination. Accordingly, they were received and examined by Forensic Chemist, Police Senior Inspector Elisa G. Reyes (FC Reyes), who confirmed that they contained methylamphetamine hydrochloride, a dangerous drug.[11]

In his defense, Mamangon denied the allegations against him. He maintained that at around four (4) o'clock in the afternoon of February 19, 2009, he was with his cousin, Moises Mamangon, in Dagupan Street, Tondo, Manila, when PO2 Jayson Magbitang (PO2 Magbitang) suddenly approached and asked them if they saw a person running towards their direction. When Mamangon answered in the negative, another police officer arrived, asked for his name, and frisked him. Mamangon claimed that PO2 Magbitang then invited him to the police station for "verification." However, upon their arrival, he was allegedly placed inside the detention cell and was brought out the following day, only to have his pictures taken with the seized items. Mamangon clarified that while he knew PO2 Magbitang to be a police officer, he did not know PO3 Guzman until the latter testified in court.[12]

The RTC Ruling

In a Decision[13] dated September 17, 2012, the RTC found Mamangon guilty beyond reasonable doubt of violating Sections 5 and 11 (3), Article II of RA 9165 and respectively sentenced him as follows: (a) in Crim. Case No. 09-266829, to suffer the penalty of life imprisonment and to pay a fine of P500,000.00, with costs; and (b) in Crim. Case No. 09-266830, to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of P300,000.00, with costs.[14] It held that the prosecution proved with moral certainty all the necessary elements of the crimes of illegal sale and illegal possession of dangerous drugs. On the contrary, Mamangon's unsubstantiated defense of denial failed to overcome the positive testimonies of witnesses, who had no ill-motive to testify falsely against him.[15]

Furthermore, the RTC found that the identity of the corpus delicti was competently established by the prosecution, as the integrity and evidentiary value of the dangerous drugs were shown to have been preserved from the time they were seized from Mamangon until they were submitted to the forensic chemist for examination up to the time they were offered in evidence.[16]

Aggrieved, Mamangon appealed[17] to the CA.

The CA Ruling

In a Decision[18] dated November 27, 2015, the CA affirmed the ruling of the RTC,[19] holding that the prosecution adequately proved all the elements of the crimes charged.[20] Further, the CA ruled that the chain of custody rule was complied with: first, PO3 Guzman immediately marked the confiscated illegal drugs at the place of arrest and delivered them to PO2 Dela Cruz for further investigation and documentation; second, PO2 Dela

Cruz conducted an inventory of the seized drugs in the presence of Mamangon and the other police officers; third, after the inventory, PO2 Dela Cruz brought the seized items to the PNP Crime Laboratory, where they were examined by FC Reyes; and fourth, after examination, FC Reyes issued Chemistry Report No. D-121-09[21] dated February 21, 2009 finding the drugs positive for the presence of methylamphetamine hydrochloride.[22]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Mamangon's conviction for the crimes charged.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[23] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [24]

Mamangon was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11 (3), Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements are proven beyond reasonable doubt: (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.[25] Meanwhile, in order to convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (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.[26]

In both cases, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court as evidence of the crime.[27]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[28] Under the said section, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[29] In the case of *People v. Mendoza*,[30] the Court stressed that "[w]ithout 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 [seized drugs], 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) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the

incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody." [31]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. [32] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 [33] - provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 - under justifiable grounds - will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. [34] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does 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 justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. [35] In *People v. Almorfe*, [36] the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. [37] Also, in *People v. De Guzman*, [38] it was emphasized 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. [39]

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Mamangon.

First, records reveal that while the requisite inventory and photography of the confiscated drugs were conducted in the presence of Mamangon and the other apprehending officers, the same were not done in the presence of an elected public official and any representative from the DOJ and the media, viz.:

[Atty. Winston Aris M. Mendoza (ATTY. MENDOZA)]:

That during the Inventory of the confiscated item there was no other witness present.

[Fiscal Juan Eugenio T. Banico (FISCAL BANICO)]:

The accused as well as the arresting police officers were present. Your Honor.

ATTY. MENDOZA:

But there are no other witness present, Your honor, only the arresting police officers and when the evidence were photograph [sic] the evidence was not yet marked, Your Honor.

FISCAL BANICO:

It was already marked and the photograph is the best evidence, Your Honor.

x x x [40] (Underscoring supplied)

Additionally, it also appears that when the police officers subsequently arrived at the barangay hall, they had every opportunity to coordinate with the barangay officials and secure the presence of the other witnesses, yet they decided to leave and immediately proceed to the police station. During the Direct Examination of PO3 Guzman, he testified that:

FISCAL FRANCISCO L. SALOMON:

Q: How about to the barangay officials, did you coordinate with the barangay officials after the arrest?

[PO3 GUZMAN]:

A: We went at the barangay but no one is around sir.

Q: When you leave the place, where did you proceed Mr. Witness?

A: We proceeded to our office, at Station 7 sir.

x x x x[41] (Underscore supplied)

To make matters worse, the prosecution did not proffer a plausible explanation - apart from their unsubstantiated claim that "no one is around" the barangay hall when they arrived - in order for the saving clause to apply. Records fail to disclose that the police officers even attempted to contact and secure the presence of an elected public official, as well as a representative from the DOJ and the media, when they were already at the police station. To reiterate, the law requires the presence of these witnesses to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21 of RA 9165, the integrity and evidentiary value of the confiscated drugs are seriously put into question.

Verily, procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the corpus delicti had been compromised.[42] It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[43] As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as well as its IRR, Mamangon's acquittal is perforce in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [order is too high a price for the loss of liberty. x x x].[44]

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the corpus delicti and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction.

WHEREFORE, the appeal is GRANTED. The Decision dated November 27, 2015 of the Court of Appeals in CA-G.R. CR HC No. 06565 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Philip Mamangon y Espiritu is ACQUITTED of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

[1] See Notice of Appeal dated December 21, 2015; rollo, pp. 15-16.

[2] Id. at 2-14. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes concurring.

[3] CA rollo, pp. 13-16. Penned by Judge Reynaldo A. Alhambra.

[4] 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.

[5] Both dated February 24, 2009; CA rollo, pp. 11-12.

[6] Id. at 11.

[7] Id. at 12.

[8] Rollo, p. 3.

[9] Id. at 3-4. See also TSN, September 17, 2010, pp. 6-9.

[10] See id. at 4-5.

[11] See id. at 5. See also Chemistry Report No. D-121-09 dated February 21, 2009 signed by FC Reyes; records, p. 18.

[12] See id. at 5-6.

[13] CA rollo, pp. 13-16.

[14] Id. at 16.

[15] See id. at 15-16.

[16] See id.

[17] See Notice of Appeal dated October 1, 2012; id. at 17.

[18] Rollo, pp. 2-14.

[19] Id. at 13.

[20] See id. at 12-13.

[21] Records, p. 18. Signed by FC Reyes.

[22] Rollo, pp. 9-12.

[23] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[24] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[25] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[26] *People v. Bio*, 753 Phil. 730, 736 (2015).

[27] See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[28] See *People v. Sumili*, *supra* note 25, at 349-350.

[29] See Section 21 (1) and (2), Article II of RA 9165.

[30] 736 Phil. 749 (2014).

[31] *Id.* at 764; emphases and underscoring supplied.

[32] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[33] Entitled "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, Section 1 of which states:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read 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, 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 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.

x x x x

[34] See Section 24 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[35] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[36] 631 Phil. 51 (2010).

[37] See *id.* at 60.

[38] 630 Phil. 637 (2010).

[39] *Id.* at 649.

[40] TSN, February 18, 2011, pp. 6-7.

[41] TSN, September 17, 2010, pp. 17-18.

[42] See *People v. Sumili*, *supra* note 25, at 352.

[43] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil 1024, 1038 (2012).

[44] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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