

PEOPLE OF THE PHILIPINES, PLAINTIFF-APPELLEE, V. RODERICK LAZARO Y FLORES, ACCUSED-APPELLANT.

G.R. No. 229219. November 21, 2018

Ponente: A. REYES, JR., J.

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A. REYES, JR., J.:

This is an Ordinary Appeal[1] seeking to reverse and set aside the Decision[2] dated February 9, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07000 affirming with modification the Decision[3] dated June 26, 2014 of the Regional Trial Court (RTC) of Dagupan City, Branch 42 in Criminal Case No. 2008-0007-D finding accused-appellant Roderick Lazaro y Flores (Lazaro) guilty beyond reasonable doubt of violation of Section 5,[4] Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On January 7, 2008, Lazaro was charged with violation of Section 5, Article II of R.A. No. 9165 or Illegal Sale of Dangerous Drugs. The accusatory portion of the Information[5] reads:

That on or about the 4[th] day of January 2008, in the City of Dagupan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, RODERICK LAZARO Y FLORES, did then and there, wilfully, unlawfully and criminally, sell and deliver to a customer Shabu contained in one (1) heat-sealed plastic sachet, weighing more or less 0.06 gram, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.[6]

On arraignment, Lazaro pleaded "not guilty." [7]

Version of the Prosecution

On January 4, 2008, Police Officer 2 Michael C. De Vera (PO2 De Vera), together with Police Inspector (P/Insp.) Leo Llamas, P/Insp. Gilbert Ferrer, Senior Police Officer 4 Alex Corpuz, PO2 Romulo Lavarias and PO2 Reynaldo Reside, conducted a buy-bust operation at Philippine National Railways (PNR) Site, Dagupan City. After a short briefing, the buy-bust money consisting of one (1) piece Php 100.00-peso bill and two (2) pieces of Php 50.00-peso bill, as well as the planned buy-bust operation itself, were put into the record. The buy-bust team then proceeded to Lazaro's house together with the confidential asset.[8]

Upon reaching the target area, the confidential asset introduced the poseur-buyer, PO2 De Vera to Lazaro, by uttering the words "Bibili ang barkada ko." When asked how much shabu he needed, PO2 De Vera replied, "P200.00 worth of drugs." PO2 De Vera handed over the marked money to Lazaro. The latter then brought out one (1) plastic sachet of suspected shabu. When PO2 De Vera gave the pre-arranged signal, the backup team rushed to the scene. Simultaneously, PO2 De Vera introduced himself as a police officer and arrested Lazaro. PO2 De Vera frisked Lazaro and was able to confiscate the buy-bust money composed of three (3) bills. A Confiscation Receipt was prepared by PO2 De Vera at the place of transaction.[9]

Lazaro was thereafter brought to Region 1 Medical Center for check-up then to Perez Market Site, Philippine National Police (PNP) Station. After the documentation and photo-capture of the confiscated item and the buy-bust money, PO2 De Vera brought the drug item to the PNP Crime Laboratory, Urdaneta City, Pangasinan. The Chemistry Report on the seized item yielded positive results for methamphetamine hydrochloride also known as "shabu." [10]

Version of the Defense

According to Lazaro, on January 4, 2008, he was beside his house at PNR Site, Mayombo District, Dagupan City, having a drinking spree with his friend, Julio Viray (Viray), when four (4) police officers suddenly barged into his house and arrested him; that when he asked why he was being arrested, the officers simply replied "you just go with us," that he was thereafter brought to Perez Police Station and was shown a heat-sealed, plastic sachet containing shabu. To his surprise, he was apparently charged with illegal sale of shabu. [11]

Viray, the other defense witness, testified that he was having a conversation with Lazaro on January 4, 2008 at his house around 6:00 p.m. when two (2) men suddenly entered his house, forcibly held Lazaro, pushed the latter down and arrested him. [12]

After trial on the merits, the trial court ruled that the evidence adduced by the prosecution satisfied the quantum of proof required - guilt beyond reasonable doubt. The dispositive portion of the Decision [13] dated June 26, 2014 reads:

WHEREFORE, premises considered, the court finds the accused RODERICK LAZARO GUILTY beyond reasonable doubt of the crime of Violation of Section 5 of Art. II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos. Let the shabu subject matter of this case be disposed of in the manner provided by law.

SO ORDERED. [14]

On appeal, the CA affirmed with modification the trial court's judgment of conviction. The dispositive portion of the CA Decision [15] dated February 9, 2016 reads:

WHEREFORE, the appeal is DENIED. Consequently, the assailed Decision is AFFIRMED with the MODIFICATION that [Lazaro] shall not be eligible for parole in keeping with the Indeterminate Sentence law.

IT IS SO ORDERED. [16]

Hence, this appeal.

The Issue

The pivotal issue to be resolved is whether or not the CA erred in affirming the ruling of the trial court, i.e., that the prosecution was able to sufficiently establish Lazaro's guilt beyond reasonable doubt.

Ruling of the Court

The appeal is meritorious.

To convict an accused who is charged with illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. [17]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms 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 in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[18]

In this case, Lazaro was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Sections 5, Article II of R.A. No. 9165. He insists that he should be acquitted for failure of the prosecution to establish the integrity and identity of the seized item beyond reasonable doubt. He claims that there were significant lapses with respect to compliance with the procedure mandated by Section 21, Article II of R.A. No. 9165. Section 21 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

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 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. (Emphasis and underscoring Ours)

In 2014, R.A. No. 10640[19] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the Anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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 person/s for 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 by the apprehending" officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphases and underscoring Ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two - an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. It is likewise worthy to note that failure of the arresting officers to justify the absence of the required witnesses, i.e., the representative from the media or the DOJ and any elected official, constitutes as a substantial gap in the chain of custody.

Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply, viz.:

(a) The apprehending officer/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. 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, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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. (Emphasis and underscoring Ours)

From the foregoing, it is clear that the venue of physical inventory is not limited to the place of apprehension. The venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation. As regards the number of witnesses who must be present thereat, Section 21 requires the presence of three witnesses during the physical inventory of the seized items, i.e., (1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media. The Court, in *People v. Mendoza*,^[20] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or 'planting' of evidence, viz.:

[W]ithout the insulating presence of the representative from the media or the [DOJ], 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 [R.A. No.] 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.^[21]

The appellate court opined that the prosecution was able to prove substantial compliance with the "Chain of Custody" requirement. It likewise held that although the apprehending officers failed to conduct an inventory of the seized item as required by paragraph 1, Section 21, Article II of R.A. No. 9165 and its IRR, the non-compliance did not affect the seized item's evidentiary weight and admissibility in evidence. The pertinent portion of the CA decision reads:

From the time of Lazaro's arrest, the seized item was properly marked and photographed in the presence of the appellant at the police station. While the apprehending officers may have failed to conduct an inventory of the seized item as required by paragraph 1, Section 21, Article II of R.A. No. 9165 and the above [IRR], the non-compliance did not affect the seized item's evidentiary weight and admissibility in evidence. As previously

discussed, the chain of custody of the seized item was unbroken, hence, its integrity and evidentiary value were not compromised. It must be stressed that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized item.[22]

The Court disagrees.

The arresting officers' failure to fully comply with the mandatory requirements set forth in Section 21 without offering any justification or excuse as to why these requirements were not met is fatal to the prosecution's case. Marking of the seized item is merely the first stage in the chain of custody. After marking, the arresting officers shall proceed with the physical inventory and photography of the seized item in the presence of the accused and the required witnesses. The accused and the required witnesses are likewise required to sign the copies of the inventory and be given a copy thereof to serve as proof that they witnessed the inventory and that the seized item described in the certificate is the same item subject of the inventory. It is not sufficient that the seized item was marked by PO2 De Vera and thereafter handed over to the PNP Crime Laboratory for forensic examination. The inadequacy of the physical inventory conducted and the absence of the required witnesses constitute a huge and significant gap in the chain of custody which substantially affects the identity of the corpus delicti.

The trial court held that unless there is convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly informing their duty, their testimony as regards the buy-bust operation deserves full faith and credit.

Jurisprudence is replete with pronouncements that should there be a departure from the mandated procedure outlined in Section 21, the arresting or apprehending officers must be able to justify the same. It must be alleged and likewise proven as a fact that they put in their best effort to ensure compliance therewith otherwise the presumption of regularity in the performance of official duty will not apply. Stated otherwise, the presumption of regularity in the performance of official duty will not apply when there are unjustified lapses and deviations from the standard conduct of official duty as provided for in the law.

In *People v. Relato*,^[23] the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (shabu) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the corpus delicti, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the corpus delicti when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.^[24]

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact. The prosecution cannot simply invoke the saving clause found in Section 21 - that the integrity and evidentiary value of the seized items have been preserved - without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*^[25] is instructive on the matter:

Minor deviations from the procedures under R.A. [No.] 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were

recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. No. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officer's failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. [No.] 9165. These lapses effectively produced serious doubts on the integrity and identity of the corpus delicti, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[26] (Citations omitted)

In the present case, the prosecution failed to justify their non-compliance with the requirements found in Section 21, specifically their failure to conduct a physical inventory and the unjustified absence of the three required witnesses during the inventory of the seized items. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the corpus delicti. As such, Lazaro must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[27] that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[28] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, the appeal is GRANTED. The Decision dated February 9, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07000 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Roderick Lazaro y Flores is ACQUITTED of the crime 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), Perlas-Bernabe, Caguioa, and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated as Acting Member per Special Order No. 2587 dated August 28, 2018.

[1] CA rollo, pp. 86-87.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Danton Q. Bueser and Renato

C. Francisco, concurring; rollo, pp. 2-14.

[3] Rendered by Presiding Judge A. Florentino R. Dumlao, Jr.; CA rollo, pp. 37-41.

[4] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute[,] dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[5] CA rollo, p. 37.

[6] Id.

[7] Id.

[8] Id. at 38.

[9] Id.

[10] Id.

[11] Id. at 38-39.

[12] Id. at 39.

[13] Id. at 37-41.

[14] Id. at 41.

[15] Rollo, pp. 2-14.

[16] Id. at 13.

[17] *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 131-132.

[18] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[19] 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 June 9, 2014.

[20] 736 Phil. 749 (2014).

[21] Id. at 764.

[22] Rollo, p. 12.

[23] 679 Phil. 268 (2012).

[24] Id. at 277-278.

[25] 686 Phil. 1024 (2012).

[26] Id. at 1053-1054.

[27] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[28] G.R. No. 210610, January 11, 2018.

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