

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY SANCHEZ Y LICUDINE, ACCUSED-APPELLANT.

G.R. No. 231383. March 07, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Joey Sanchez y Licudine (Sanchez) assailing the Decision[2] dated February 19, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06911, which affirmed the Decision[3] dated May 21, 2014 of the Regional Trial Court of San Fernando City, La Union, Branch 27 (RTC) in Criminal Case Nos. 8842 and 8843, finding him guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," respectively, with modification imposing fines therefor.

The Facts

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

Criminal Case No. 8842

That on or about the 29[th] day of July, 2010 in the Municipality of Bacnotan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously for and in consideration of in the amount of Five Hundred Pesos, sell and deliver one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as SHABU, a dangerous drug, with a weight of 0.0352 gram to IO1 RAYMUND TABUYO, who posed as buyer thereof using marked money, a Five Hundred Pesos bill bearing Serial Number VX925142, without first securing the necessary permit, license or prescription from the proper government agency.

CONTRARY TO LAW.[6]

Criminal Case No. 8843

That on or about the 29[th] day of July, 2010 in the Municipality of Bacnotan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously have in his possession, control and custody two (2) heat sealed transparent plastic sachets containing methamphetamine hydrochloride, a dangerous drug, weighing 0.0430 gram and 0.0352 gram, without first securing the necessary permit, license or prescription from the proper government agency to possess the same.

CONTRARY TO LAW.[7]

The prosecution alleged that on July 29, 2010, with the help of a confidential informant, the members of the Philippine Drug Enforcement Agency (PDEA) and the Philippine National Police (PNP) Regional Public Safety Mobile Battalion organized a buy-bust operation against a certain alias "Totoy" (later on identified as Sanchez),

who was allegedly engaged in illegal drug trade at the Bacnotan Public Market, Bacnotan, La Union. After a briefing where, inter alia, PDEA Investigation Officer (IO) 1 Raymund Tabuyo (IO1 Tabuyo) was designated as the poseur-buyer, the buy-bust team proceeded to the target area. Thereat, IO1 Tabuyo was able to meet Sanchez, who, after receiving the marked money, handed over a heat-sealed plastic sachet containing a white crystalline substance to the former. After IO1 Tabuyo examined the contents of the plastic sachet, he executed the pre-arranged signal, thus prompting the other members of the buy-bust team to rush to the scene and arrest Sanchez. The buy-bust team searched Sanchez and found two (2) other plastic sachets also containing a white crystalline substance.[8]

The buy-bust team then conducted the markings, inventory, and photography on site before proceeding to their office for documentation purposes.[9] Thereat, the team was met with representatives from the Department of Justice (DOJ) and the media,[10] both of whom signed the Certificate of Inventory.[11] The seized plastic sachets were then taken to the PNP Crime Laboratory where it was confirmed[12] that their contents are indeed methamphetamine hydrochloride or shabu.[13]

For his part, Sanchez pleaded not guilty to the charges against him and offered his version of what transpired on the day he was arrested. He narrated that between 3:00 to 4:00 in the afternoon of July 29, 2010, he was in front of the public market collecting bets for jueteng, when two (2) men unknown to him suddenly approached him and gave their numbers; and that when they were about to pay, they handcuffed and arrested him for allegedly selling drugs. Sanchez then insisted that when he was frisked, the men were only able to find money from the bets he collected and that they only made it appear that they recovered sachets containing shabu from him.[14]

The RTC Ruling

In a Decision[15] dated May 21, 2014, the RTC found Sanchez guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) for illegal sale of dangerous drugs, the RTC sentenced Sanchez to suffer the penalty of life imprisonment, among others; and (b) for illegal possession of dangerous drugs, the RTC sentenced Sanchez to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years, among others.[16]

The RTC found that the buy-bust team validly arrested Sanchez who was caught in flagrante delicto selling shabu to the poseur-buyer; and that after his arrest, the arresting officers discovered two (2) more sachets, also containing shabu, from his pocket. Further, the RTC found that the arresting officers followed the procedures in conducting buy-bust operation, and that the evidence were preserved as the chain of custody thereof was not broken.[17]

Aggrieved, Sanchez appealed to the CA.[18]

The CA Ruling

In a Decision[19] dated February 19, 2016, the CA affirmed the RTC ruling with modifications, further ordering Sanchez to pay a fine of P500,000.00 for violating Section 5, Article II of RA 9165, and P300,000.00 for violating Section 11, Article II of the same law.[20] It held that the prosecution had successfully established the elements necessary to convict Sanchez of the crimes charged.[21] It further held that the arresting officers had shown an unbroken chain of custody over the seized drugs, and thus, their integrity and evidentiary value were preserved.[22]

Hence, this appeal.[23]

The Issue Before the Court

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

The Court's Ruling

The appeal is meritorious.

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.[24] "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." [25]

Here, Sanchez was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (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.[26] Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (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.[27]

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[28]

Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[29] Under the said section, prior to its amendment by RA 10640,[30] 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 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.[31] In the case of *People v. Mendoza*,[32] the Court stressed that "[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 [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." [33]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[34] In fact, the IRR of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 - provides 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, Article II 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.[35] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II 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.[36] In *People v. Almorfe*,[37] 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 evidentiary value of the seized evidence had nonetheless been preserved.[38] Also, in *People v. De Guzman*,[39] 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.[40]

After a judicious study of the case, the Court finds that the arresting 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 Sanchez.

While it appears that representatives from the DOJ and the media were present during the conduct of the inventory as evidenced by their signatures on the Certificate of Inventory,[41] a more careful scrutiny of the records shows that the buy-bust team conducted the marking, inventory, and photography where the arrest was made,[42] and merely made the aforesaid representatives sign the Certificate of Inventory upon the buy-bust team's arrival at their office. Moreover, the said procedures were not done in the presence of any elected public official. During trial, IO1 Tabuyo admitted to these procedural mishaps, viz.:

[Pros. Crispin Lamong, Jr.] Q: Now, after you recovered [the] 2 sachets and the 1 piece P500.00 buy-bust money, what did you do next?

[IO1 Tabuyo] A: We conducted an inventory at the transaction area, your honor.

Q: When you said, in the transaction area, how did you conduct an inventory? [sic]

A: We made marking and photographs.

Q: Marking on what items, mr. witness?

A: All, the 3 plastic sachets, sir.

x x x x

Q: Mr. witness, aside from the request you made, what else transpired at the PDEA Office?

A: We requested a DOJ representative to sign the inventory.

Q: Aside from the DOJ representative what else requested Mr. Witness made by your office? [sic]

A: The media representative[,] [Y]our [H]onor.

Q: And were the DOJ representative and media representative were able to sign the inventory? [sic]

A: Yes[,] [S]ir.

x x x x

Q: While the DOJ representative and the media representative signing what happened next[,] if any, mr. witness? [sic]

A: They signed, [Y]our [H]onor.

Q: How about you[?] [W]hat were you doing then at the time the DOJ representative and the media representative signing, [mr.] witness? [sic]

A: I was there[,] [Y]our [H]onor[,] to witness that they signed.

Q: And how about the accused[?] [W]here was he when these DOJ and media representatives were signing?

A: There also, [S]ir.

Q: Mr. [w]itness, do you have any proof to show that these indeed the DOJ representative and the media representative signing?

A: Yes, pictures.

Q: And who took the pictures?

A: Our photographers, [Y]our [H]onor.[43] (Emphases and underscoring supplied)

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media during the actual conduct of inventory and photography to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. For instance, in an attempt to justify the absence of any elected public official during the conduct of inventory and photography, IO1 Tabuyo stated on cross-examination that:

[Atty. Loida Martirez] Q: Mr. Witness, in your Certificate of Inventory[,] it appears that there are only three (3) persons who signed, you as the seizing officer, a media representative, and a DOJ representative.

[IO1 Tabuyo] A: Yes, ma'am.

Q: Where was the elected public official? [W]hy was he not present at the place?

A: We were not able to get one elected official because it was a rush operation and after the inventory we proceeded right away to our office.

Q: So you are now trying to tell us that you did not coordinate with any barangay official that is why they were not present, Mr. Witness.

A: Yes, ma'am.

Q: And is it not a requirement that you have to coordinate with a local official, Mr. Witness, so that they will be present during the inventory[?] [sic]

A: No, ma'am.

Q: That is not a requirement Mr. Witness?

A: No, ma'am.

Q: So you went to Bacnotan [P]ublic [M]arket which is a public place and you were not able to see even one elected public official at the place, Mr. Witness?

A: No, ma'am.

Q: That is just very near the municipal hall, is that correct, Mr. Witness?

A: (no answer)

Q: So you also did not coordinate with the Bacnotan Police, Mr. Witness?

A: We coordinate, ma'am, [sic]

Q: You coordinate with the Bacnotan PNP.

A: The precinct at the left side of the public market.

Q: You just coordinated with them after the operation when you were there already, is that correct?

A: No, ma'am.

Q: You just saw the police sub-station there, is that correct?

A: No, ma'am.[44] (Emphases and underscoring supplied)

At this point, it is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible.[45] However, in *People v. Umipang*,^[46] the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse."^[47] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.^[48] These considerations arise from the fact that these 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 set procedure prescribed in Section 21, Article II of RA 9165. As such, the apprehending officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.^[49]

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression — as in fact the only reason given was that they were conducting a "rush operation" — the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Sanchez have been compromised. It is settled that in a prosecution for the sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the corpus delicti, failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt.^[50]

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,] [o]rder is too high a price for the loss of liberty. x x x.^[51]

"In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21[, Article II] 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 the 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 raise, 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." [52]

WHEREFORE, the appeal is GRANTED. The Decision dated February 19, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06911 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Joey Sanchez y Licudine 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,[*] Acting C. J., (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] See Notice of Appeal dated March 16, 2016; rollo, pp. 17-18.

[2] Rollo, pp. 2-16. Penned by Associate Justice Rodil V. Zalameda with Associate Justices Sesonando E. Villon and Pedro B. Corales concurring.

[3] CA rollo, pp. 80-85. Penned by Presiding Judge Carlito A. Corpuz.

[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] See Information in Criminal Case No. 8842; records (Crim. Case No. 8842), p. 1; and Information in Criminal Case No. 8843; records (Crim. Case No. 8843), p. 1. See also rollo, pp. 4-5.

[6] Records (Crim. Case No. 8842), p. 1.

[7] Records (Crim. Case No. 8843), p. 1.

[8] See rollo, pp. 6-7. See also CA rollo, pp. 80-81.

[9] Records (Crim. Case No. 8842), p. 2; and records (Crim. Case No. 8843), p. 2. See also rollo, p. 7 and CA rollo, p. 81.

[10] See CA rollo, pp. 81 and 83.

[11] Records (Crim. Case No. 8842), p. 14; and records (Crim. Case No. 8843), p. 14.

[12] See Chemistry Report Number: D-066-10; records (Crim. Case No. 8842), p. 13; and records (Crim. Case No. 8843), p. 13.

[13] See rollo, p. 12. See also CA rollo, p. 82.

[14] See CA rollo, p. 83.

[15] Id. at 80-85.

[16] Id. at 84-85.

[17] Id. at 83-84.

[18] See Notice of Appeal dated May 28, 2014; records (Crim. Case No. 8842), pp. 151-153; and records (Crim. Case No. 8843), pp. 54-56.

[19] Rollo, pp. 2-16.

[20] Id. at 14-15.

[21] See id. at 12-13.

[22] See id.

[23] See Notice of Appeal dated March 16, 2016; id. at 17-18.

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

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

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

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

[28] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[29] See *People v. Sumili*, *supra* note 26, at 349-350.

[30] 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. The crime subject of this case was allegedly committed before the enactment of RA 10640, or on July 29, 2010.

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

[32] 736 Phil. 749 (2014).

[33] Id. at 764.

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

[35] See Section 21 (a), Article II of the IRR of RA 9165.

[36] *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[37] 631 Phil. 51 (2010).

[38] Id. at 60; citation omitted.

[39] 630 Phil. 637 (2010).

[40] Id. at 649.

[41] Records (Crim. Case No. 8842), p. 14; and records (Crim. Case No. 8843), p. 14.

[42] Records (Crim. Case No. 8842), p. 2; and records (Crim. Case No. 8843), p. 2. See also rollo, p. 7 and CA rollo, p. 81.

[43] TSN, July 6, 2011, pp. 8-10.

[44] TSN, October 5, 2011, pp. 11-12.

[45] *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[46] *Id.*

[47] *Id.* at 1053.

[48] See *id.*

[49] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

[50] See *People v. Umipang*, *supra* note 45, at 1039-1040; citation omitted.

[51] See *People v. Miranda*, G.R. No. 229671, January 31, 2018; citations omitted.

[52] See *id.*

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