

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMMA T. PAGSIGAN, ACCUSED-APPELLANT.

G.R. No. 232487. September 03, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

Before Us is an appeal, assailing the Decision[1] dated January 11, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07934, which affirmed the Joint Decision[2] dated August 7, 2015 of the Regional Trial Court (RTC) of San Fernando City, Pampanga, Branch 44 in Criminal Case Nos. 15510 and 15511, which convicted Emma T. Pagsigan (accused-appellant) for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with the sale and possession of dangerous drugs, as follows:

Criminal Case No. 15510

That on or about the 27[th] day of July, 2007, in Barangay San Nicolas, City of San Fernando, (P) (sic), Philippines and within the jurisdiction of this Honorable Court, the above-named [accused-appellant], without having been lawfully permitted and/or authorized, did then and there wil[l]fully, unlawfully and feloniously have in her possession, custody and control one (1) heat sealed transparent plastic sachet containing TWO HUNDRED SIX TENTH THOUSANDTH of a gram (0.0206 gms), which when subjected for laboratory examination was found positive for Meth[y]amphetamine Hydrochloride, a prohibited drug.

Contrary to Law.[4]

Criminal Case No. 15511

That on or about the 27[th] day of July, 2007, in Barangay San Nicolas, City of San Fernando, (P) Philippines, and within the jurisdiction of this Honorable Court, the above-named [accused-appellant], not being authorized nor permitted by the law, did then and there wil[l]fully, unlawfully and feloniously sell, convey and deliver meth[y]amphetamine hydrochloride (Shabu), weighing more or less TWO HUNDRED TWENTY ONE TENTH THOUSANDTH of a gram (0.0221 grams), to a poseur buyer for and in consideration of THREE HUNDRED PESOS (P300.00), Philippine Currency, which when subjected for laboratory examination was found positive for meth[y]amphetamine hydrochloride, a prohibited drug.

Contrary to Law.[5]

During trial, the prosecution established that it received information from a confidential informant (CI) that accused-appellant was selling shabu in Barangay San Nicolas, San Fernando City, Pampanga. A buy-bust team was then formed with Police Officer 2 Jayson Constantino (PO2 Constantino) as poseur-buyer and PO2 Gerald Pediglorio (PO2 Pediglorio) as back up and the buy-bust money was marked.[6]

PO2 Constantino, PO2 Pediglorio and the CI first went to Barangay San Nicolas for coordination and for the buy-bust operation to be "blottered" before proceeding to the target area.[7]

PO2 Constantino and the CI approached accused-appellant while PO2 Pediglorio positioned himself at a distance of three meters away. The CI introduced PO2 Constantino as the person interested to buy shabu. PO2 Constantino handed to accused-appellant the marked money and in exchange, she handed to him one plastic sachet containing shabu. PO2 Pediglorio then rushed to the scene after PO2 Constantino executed the pre-arranged signal of taking off his hat.[8]

When asked to empty her pockets, another plastic sachet of shabu and the marked money were recovered from accused-appellant. She was then brought to the barangay hall where the seized plastic sachets were marked by PO2 Constantino in the presence of barangay officials. The seized drugs were then turned over to the assigned investigator, PO3 Randy Santos (PO3 Santos), who prepared the request for laboratory examination. PO3 Santos also delivered the plastic sachets to the Regional Crime Laboratory Office for forensic examination which were received by a certain PO2 Villar. The examination yielded positive results for methylamphetamine hydrochloride, or shabu.[9]

On cross-examination, PO2 Constantino testified that the seized items were marked at the barangay hall because the place of arrest is a critical place but they did not execute any inventory confiscation receipt. He also testified that they did not coordinate with the Department of Justice (DOJ) and media representatives.[10]

On re-direct examination, PO2 Pediglorio testified that the conduct of the buy bust operation was conducted in a short period of time to prevent the escape of accused-appellant and that they were unable to take photographs because they had no camera, cellular phone and no resources to list evidence. He claimed that they did not have time to grab a piece of paper, pen and camera.[11]

Accused-appellant, for her part, testified that she accompanied her friend Ana to the house of spouses Josie and Vando in Barangay San Nicolas, San Fernando City. Accused-appellant stayed at the back of the house while Ana talked to the spouses out front. Suddenly, they were arrested by police officers. She was forced to go with the policemen where she was brought to a dark place. A gun was pointed at her and was repeatedly asked about Ana's whereabouts. Spouses Josie and Vando were later allowed to go but she was left detained.[12]

In a Joint Decision[13] dated August 7, 2015, the RTC found that the prosecution has proven its cases against accused-appellant for violation of Sections 5 and 11, Article II of R.A. No. 9165 beyond reasonable doubt. It disposed, thus:

WHEREFORE, premises considered, the Court finds [accused-appellant] guilty beyond reasonable doubt of violation of Sec. 11, Art. II of R.A. 9165 in Crim. Case No. 15510 and imposes upon her the penalty of imprisonment for twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum, and to pay a FINE of Three Hundred Thousand Pesos (P300,000.00).

Said [accused-appellant] is also found guilty beyond reasonable doubt of violation of Sec. 5, Art. II of R.A. 9165 in Crim. Case No. 15511 and imposes upon her the penalty of LIFE IMPRISONMENT and to pay a FINE of Five Hundred Thousand Pesos (P500,000.00).

The prohibited dangerous drugs, subject of these cases, are ordered CONFISCATED in favor of the government.

The OIC-Branch Clerk of Court is directed to prepare the Mittimus for the immediate transfer of the herein [accused-appellant] to the Correctional Institute (sic) for Women and to immediately turn over the specimens subject of these cases to the Director, PDEA, Region III, Camp Olivas, City of San Fernando, Pampanga, for proper disposition.

Furnish all concerned parties with copies of this Joint Decision.

SO ORDERED.[14]

On appeal, the CA, in its Decision[15] dated January 11, 2017 sustained the accused-appellant's conviction. It cited that the non-compliance with Section 21 of R.A. No. 9165 does not ipso facto render the evidence inadmissible especially when there are justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved. It ruled that the integrity of the seized drugs in the case remained unscathed. It dismissed accused-appellant's denials and unsubstantiated allegations. The dispositive portion of the Decision reads:

WHEREFORE, the Appeal is hereby DENIED. The Joint Decision dated 7 August 2015 of the [RTC], Third Judicial Region, San Fernando City, Pampanga, Branch 44, in Criminal Case Nos. 15510 and 15511, is AFFIRMED.

SO ORDERED.[16]

Hence, this appeal.

Accused-appellant questions her conviction and submits that the prosecution failed to prove beyond reasonable doubt the corpus delicti of the crime on account of substantial gaps in the chain of custody and points out the various non-compliance with Section 21 of R.A. No. 9165, i.e., failed to have any inventory, confiscation receipt or photographs of the drugs allegedly seized, failed to present evidence to prove that they contacted any member of the media and the DOJ to witness the marking. She stresses that no justifiable ground to explain their failure to comply with the law was offered.

The Office of the Solicitor General (OSG) counters that the identity and integrity of the seized illegal drug were duly established. It also insists that the failure of the police officers to photograph the seized drugs and conduct the physical inventory thereof did not compromise the integrity of the illegal drugs.[17]

Ruling of the Court

The appeal is meritorious.

We have ruled that non-compliance with the requirements of Section 21 of R.A. No. 9165 casts doubt on the integrity of the seized items and creates reasonable doubt on the guilt of the accused-appellant.[18]

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by R.A. No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case:

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 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.

(2)

Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

3)

A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject items: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis ours)

"Compliance with Section 21's requirements is critical. Non-compliance is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused." [19]

The rules provide that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.[20] The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[21]

Here, there was failure all together by the police to conduct the inventory and photograph the same before the insulating witnesses as testified by PO2 Constantino:

Q:

Mr. Witness, what did you recover from the accused?

A:

Two (2) plastic sachets of suspected shabu, madam.

Q:

And when you recovered these, did you mark those two (2) plastic sachets containing illegal specimen?

A:

At the Barangay Hall of San Nicolas, madam.

Q:

Did you execute any inventory or confiscatory receipt?

A:

None, sir (sic).[22]

The lack of inventory and photographs was corroborated by PO2 Pediglorio:

Q:

Did you comply with the requirements of preparing an inventory, Mr. Witness, do you have it with you?

A:

None, sir.

Q:

Why you were not able to prepare an inventory of the evidence seized or the evidence confiscated

A:

We do (sic) not have enough resources to make an inventory, sir.[23]

Q:

Mr. Witness, how long have you been a police officer?

A:

Eight (8) years, madam.

x x x x

Q:

How many times did you conduct a buy bust operation prior to Emma Tamama Pagsigan?

A:

Maybe more than ten (10), madam.

Q:

So, you are actually familiar with R.A. 9165?

A:

Yes, madam.

Q:

And you are familiar with the procedures with regards (sic) to the conduct of a buy bust?

A:

Yes, madam.

x x x x

Q:

You also said that the markings of the alleged plastic sachets of the shabu were done in the barangay hall and not in the place (sic) of the alleged confiscation, correct?

A:

Yes, madam.

Q:

You also know that it is actually required in R.A. 9165 that markings should be done in the place of arrest, correct?

A:

Yes, madam.

Q:

Mr. Witness, you also know that there is a requirement as to the photographs of the presence of the barangay officials, of the DOJ and of the media, correct?

A:

Yes, madam.

Q:

You also did not comply with that, correct?

A:

Yes, madam.

Q:

There was also no inventory, correct?

A:

Yes, madam.

Q:

There was also no confiscation receipt, correct?

A:

Yes, madam.[24]

The lack of insulating witnesses was also apparent in the testimony of PO2 Constantino:

Q:

Did you coordinate with any official of the DOJ, Mr. Witness?

A:

No, madam.

Q:

How about any representative from the media?

A:

No madam.

Q:

And for how long have you been a police officer prior to July 27, 2007, Mr. Witness?

A:

Five (5) years, madam.

Q:

And for how long have you been conducting a buy-bust operation, Mr. Witness?

A:

More or less, two (2) years, madam.

Q:

And with those two (2) years, I presumed (sic) that you are aware of Section 21 of the Republic Act 9165 correct?

A:

Yes, madam.

Q:

Despite of knowing such act, you did not comply with the strict requirements provided particularly on Section 21 of Republic Act 9165?

A:

Yes, madam.[25]

The lack of insulating witnesses and non-compliance with the rules was elaborated on by PO2 Pediglorio:

Q:

Mr. Witness, it appears that during cross-examination questions propounded by the defense counsel to you, it appears that there was no compliance of Section 21 when you made the conduct of the buy bust operation against the accused, such as the presence of the barangay officials, presence of media representative and presence of the DOJ representative. Now, can you please explain to this Court why there was no compliance on this particular Section 21 of R.A. 9165 with respect to these matters?

A:

The reason was the buy bust operation was in a hurry and we did not comply with the presence of the barangay, media and DOJ because the buy bust operation should be conducted in a short period of time, sir.

Q:

What do you mean by the buy bust operation should be conducted in a short period time?

A:

Due to the information gathered from the confidential informant that the accused will not stay longer in that place that is why we hurriedly went to the house and we conducted buy bust operation, sir.

Q:

You also stated that there were no photographs done on the accused as well as the substance that was bought and confiscated from the accused, can you explain to us why there were no photographs or pictures made on those aspects?

A:

Because in the crime scene, sir, we do not have the resources to take photographs and also the resources for the listing of evidence, sir.

Q:

What do you mean when you said you do not have the resources in taking photographs of the substance as well as of the accused?

A:

Because that was in 2007, we do not have the cellular phone and camera, sir.

Q:

When you were asked by the defense counsel if you conducted inventory, can you tell us again if there was an inventory made?

A:

In the place of the incident, there was no inventory, sir. When the markings were made, we went to the barangay hall to mark the evidence.

Q:

Can you tell us why you decided to go to the barangay hall to make the inventory and marking the evidence instead of marking the evidence to (sic) the site where you apprehended the accused?

A:

Because it is much safer to us as police officers to do the inventory in the barangay hall instead in the place of incident, sir.

x x x x

Q:

Mr. Witness, were you actually informed by the informant at exactly 7:00 in the afternoon (sic) and you went there at 8:30 in the evening, correct?

A:

Yes, madam.

Q:

So, you did not have a (sic) time to grab a piece of paper and a pen, correct?

A:

Yes, madam.

Q:

You also did not have the time to grab a camera, correct?

A:

Yes, madam.

Q:

And you chose not to, correct?

A:

Yes, madam.[26]

Despite the attempts to clarify the lack of compliance with insulating witnesses, however, the fact remains that no inventory and photographs were taken or made even when the markings were made at the barangay hall. In *Lescano v. People*,[27] We "underscored that the mere marking of seized paraphernalia, unsupported by a physical inventory and taking of photographs, and in the absence of the persons required by Section 21 to be present, does not suffice." [28]

The Court acknowledges that the strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible. In *People of the Philippines v. Jesus Dumagay y Suacito*,[29] We have stated that:

Failure to strictly comply with rules of procedure, however, does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." [30] (Citations omitted)

However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist." [31] Also, "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." [32]

Here, We cannot accept the grounds or reasons cited by the police officers as justifiable to explain their non-compliance. We note that both police officers have been members of the force for more than five years and have stated that they are familiar with the rules set forth in R.A. No. 9165. Despite the same, the glaring non-compliance and seemingly nonchalant attitude in their attempts to comply with the said requirements appalls the Court. Had these police officers truly understood the utmost significance of the said requirements and what it seeks to protect, they would surely have found time to bring provisions to prepare an inventory, take photographs and ensure the presence of the insulating witnesses.

Considering the absence of a justifiable explanation as to the non-compliance with the rules, We find that the prosecution failed to show that the seized substance from the accused-appellant was the same substance offered in Court, especially since the amount involved in this case is minuscule. In *Mallillin v. People*, [33] this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people

in their daily lives." [34] The integrity then of the corpus delicti cannot be said to have been properly established. The Court, therefore, acquits accused-appellant on the basis of reasonable doubt.

WHEREFORE, the appeal is GRANTED. The Decision dated January 11, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07934, which affirmed the Decision dated August 7, 2015 of the Regional Trial Court of San Fernando City, Pampanga, Branch 44 in Criminal Case Nos. 15510 and 15511, is hereby REVERSED and SET ASIDE.

Accordingly, accused-appellant Emma T. Pagsigan is hereby ACQUITTED based on reasonable doubt.

The Director of the Correctional Institution for Women is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of her release or reason for her continued confinement within five (5) days from notice.

SO ORDERED.

Leonardo-De Castro, C.J., (Chairperson), Bersamin, and Jardeleza, JJ., concur.
Del Castillo, J., on official leave.

[1] Penned by Associate Justice Japar B. Dimaampao, concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan; CA rollo, pp. 111-122.

[2] Rendered by Presiding Judge Esperanza S. Paglinawan-Rozario; id. at 50-60.

[3] 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 January 23, 2002.

[4] Records (Crim. Case No. 15511), p. 2.

[5] Records (Crim. Case No. 15510), p. 2.

[6] CA rollo, p. 113, rollo, p. 4.

[7] Rollo, p. 4.

[8] CA rollo, pp. 51-52.

[9] Rollo, pp. 4-5; Records (Crim. Case No. 15510), p. 170.

[10] CA rollo, p. 52.

[11] Id. at 54.

[12] Id. at 56.

[13] Id. at 50-60.

[14] Id. at 59.

[15] Id. at 111-122.

[16] Id. at 121.

[17] Id. at 97.

- [18] People of the Philippines v. Raslid Binasing y Disalungan, G.R. No. 221439, July 4, 2018.
- [19] Lescano v. People, 778 Phil. 460, 470 (2016).
- [20] Supra note 17.
- [21] People of the Philippines v. Alsarif Bintaib y Florencia, a.k.a. "Leng", G.R. No. 217805, April 2, 2018.
- [22] TSN, February 3, 2012, p. 12.
- [23] TSN, August 31, 2012, p. 11.
- [24] TSN, February 8, 2013, pp. 3-4.
- [25] TSN, February 3, 2012, p. 14.
- [26] TSN, February 8, 2013, pp. 5-6.
- [27] 778 Phil. 460 (2016).
- [28] Id. at 476, citing People v. Garcia, 599 Phil. 416 (2009).
- [29] G.R. No. 216753, February 7, 2018.
- [30] Id.
- [31] People v. Geronimo, G.R. No. 225500, September 11, 2017, citing People v. Almorfe, et al., 631 Phil. 51 (2010).
- [32] People v. Crispo, G.R. No. 230065, March 14, 2018, citing People v. De Guzman, 630 Phil. 637 (2010).
- [33] 576 Phil. 576 (2008).
- [34] Id. at 588.

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