

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. VICTOR VELASCO Y PORCIUNCULA, ACCUSED-APPELLANT.*G.R. No. 233084. October 08, 2018*

Ponente: PERLAS-BERNABE, J.

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Assailed in this ordinary appeal[1] is the Decision[2] dated January 20, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07192, which affirmed the Decision[3] dated November 21, 2014 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC) in Crim. Case Nos. 10-425 and 10-426 finding accused-appellant Victor Velasco y Porciuncula (Velasco) guilty beyond reasonable doubt of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, 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 Velasco 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. The prosecution alleged that at around nine (9) o'clock in the evening of May 13, 2010, a team comprised of members of the Philippine National Police Muntinlupa City, Station Anti-Illegal Drugs - Special Operations Task Group (PNP Muntinlupa SAID-SOTG) conducted a buy-bust operation against Velasco, during which: (a) he allegedly sold to the poseur-buyer a plastic sachet containing 0.02 gram of suspected methylamphetamine hydrochloride or shabu; and (b) during his arrest, another sachet containing 0.02 gram of suspected methylamphetamine hydrochloride or shabu, was recovered from him. The team, together with Velasco, then proceeded to the PNP Muntinlupa SAID-SOTG headquarters where the seized items were photographed and inventoried in the presence of one Jemma V. Gonzales of the Muntinlupa City Government's Drug Abuse Prevention and Control Office (DAPCO Operative Gonzales). Thereafter, the seized items were brought to the crime laboratory where, after examination,[6] they tested positive for the presence of methylamphetamine hydrochloride or shabu, a dangerous drug.[7]

For his part, Velasco denied the charges against him and claimed that on said date, he was just driving his tricycle when suddenly, two (2) police officers asked him to go with them and assured him that nothing will happen. When Velasco agreed, they inquired if he knew Danilo Enriquez (Enriquez) and Dexter Cayabyab (Cayabyab). He then accompanied the police officers to the houses of Enriquez and Cayabyab and the three (3) were brought to the police station. Velasco also claimed that the police officers demanded money from Enriquez and Cayabyab so that no cases will be filed against them. Cayabyab was released when his sibling paid the sum of P10,000.00, while Enriquez was released when the prosecutor from Manila talked with the police officers. Thereafter, he was told "O baka meron ka pang ibang ipapahuli kase wala kang pang-areglo." Since he chose to remain silent, he was detained and later brought for inquest.[8]

In a Decision[9] dated November 21, 2014, the RTC found Velasco guilty beyond reasonable doubt of the crimes

charged, and accordingly, sentenced him as follows: (a) in Crim. Case No. 10-425, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of P300,000.00; and (b) in Crim. Case No. 10-426 to suffer the penalty of life imprisonment, and to pay a fine of P500,000.00.[10] The RTC held that the prosecution sufficiently established all the elements of the aforesaid crimes as it was able to prove that: (a) Velasco indeed sold a plastic sachet containing shabu to the poseur-buyer during a legitimate buy-bust operation; and (b) subsequent to his arrest, another plastic sachet containing shabu was recovered from him. The RTC also observed that the integrity and evidentiary value of the seized items were preserved, considering that the buy-bust team substantially complied with the chain of custody rule.[11] Aggrieved, Velasco appealed[12] to the CA.

In a Decision[13] dated January 20, 2017, the CA upheld Velasco's conviction.[14] It held that the prosecution, through Police Officer 2 Salvador T. Genova (PO2 Genova), was able to establish the commission of the crimes charged. In light of the positive identification of Velasco as the perpetrator of the crimes, the CA did not give credence to his defense of denial and frame-up which was unsupported by clear and convincing evidence. Finally, the CA opined that the arresting officers were able to establish substantial compliance with the chain of custody rule.[15]

Hence, this appeal seeking that Velasco's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[16] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime.[17] Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[19] As part of the chain of custody procedure, the law requires, inter alia, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[20] The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640,[21] "a representative from the media and the Department of Justice (DOJ), and any elected public official";[22] or (b) if after the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service or the media." [23] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." [24]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." [25] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." [26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[27] As such, the failure of the apprehending team to strictly comply with the same would 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 a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[28] The foregoing is based on the saving clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was adopted into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] and 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.[32]

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced. that the failure to comply was reasonable under the given circumstances.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] These considerations arise from the fact that police 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 chain of custody rule.[35]

Notably, the Court, in *People v. Miranda*,[36] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings a quo; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review." [37]

In this case, a perusal of the Receipt/Inventory of Property Seized[38] dated May 13, 2010 shows that while DAPCO Operative Gonzales was present during the inventory of the seized items, she is not one of the required witnesses under the law, i.e., an elected public official, a representative from the DOJ, or a representative from the media. When asked about this matter on cross-examination, re-direct examination, and re-cross-examination, the poseur-buyer, PO2 Genova, testified as follows:

CROSS-EXAMINATION:

[Atty. Mary Glenn Moldez (Atty. Moldez)]: Before proceeding with this buy bust operation did you not coordinate with the barangay official of this Katarungan place in Muntinlupa City?

[PO2 Genova]: No, ma'am.

Q: Mr. Witness, isn't (sic) not a fact that you need to coordinate with the barangay official to conduct this buy bust operation?

A: No, ma'am.

Q: I will show you the inventory that you made. Earlier, you testified that you were the one who made this inventory, am I correct?

A: Yes, ma'am.

Q: And who is this witness again?

A: A DAPCO employee.

Q: She is only a witness as to the making of inventory, am I correct?

A: Yes, ma'am.

Q: But for the actual seizure she was not there?

A: Yes, ma'am.

Q: And you said that she was a DAPCO official?

A: Yes, ma'am.

Q: And it is only your testimony that can prove that this Gemma Gonzales is a DAPCO?

A: Yes, ma'am.

x x x x

Q: So meaning to say Mr. Witness, you did not coordinate with the barangay official and you did not make them as witness to the actual seizure of the substance from Victor Velasco?

A: Yes, ma'am.

x x x x[39] (Emphases and underscoring supplied)

RE-DIRECT EXAMINATION:

[Public Prosecutor Tomas Ken Romaquin]: Do you know if this Victor Velasco has connections in the barangay in that area where you conducted the buy bust operation? Ms. Witness (sic), how long have you been an evidence custodian of the NBI?

[PO2 Genova]: I have none in particular.

Q: So that's why you did not coordinate with the barangay because you are not sure if there is a possibility that this Victor Velasco has connections in the barangay?

A: Yes, sir.

Q: And this could burn your operations?

A: Yes, sir.

x x x x[40] (Emphases and underscoring supplied)

RE-CROSS-EXAMINATION:

[Atty. Moldez]: Mr. Witness you said earlier you did not coordinate with the barangay because you don't know whether this accused has a connection in the barangay?

[PO2 Genova]: Yes, ma'am.

Q: Do you really inquire as to the connections of every persons suspected to be selling shabu whether they are connected with the barangay?

A: We tried, whatever connections the subject person has.

Q: But in this particular case, did you inquire as to the connections of this accused to the barangay?

A: No, ma'am.

x x x x[41] (Emphases and underscoring supplied)

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, the justification offered by PO2 Genova – that they suspect Velasco to have connections with the barangay which could jeopardize the buy-bust operation against him – was not only flimsy, but also self-serving and unsubstantiated. In fact, PO2 Genova himself admitted that the buy-bust team did not even bother to check if Velasco indeed had such connections. As these justifications would not pass the foregoing standard to trigger the operation of the saving clause, the Court is therefore constrained to conclude

that the integrity and evidentiary value of the items purportedly seized from Velasco were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is GRANTED. The Decision dated January 20, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07192 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Victor Velasco y Porciuncula 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), Jardeleza,[*] Caguioa, and A. Reyes, Jr., JJ., concur.

[*] Designated Additional Member per Special Order No. 2587-C dated September 5, 2018.

[1] See Notice of Appeal dated February 1, 2017; rollo, pp. 16-17.

[2] Id. at 2-15. Penned by Associate Justice Jose C. Reyes, Jr. (now a member of the Court) with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando, concurring.

[3] CA rollo, pp. 64-77. Penned by Presiding Judge Myra B. Quiambao.

[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] The Information dated June 3, 2010 in Crim. Case No. 10-425 was for Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs); records, pp. 1-2; while the Information dated June 3, 2010 in Crim. Case No. 10-426 was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs); records, pp. 3-4.

[6] See Physical Science Report No. D-159-10S dated May 14, 2010; id. at 13.

[7] See rollo, pp. 4-5. See also CA rollo, pp. 65-67.

[8] See rollo, pp. 5-6. See also CA rollo, pp. 67-68.

[9] CA rollo, pp. 64-77.

[10] Id. at 76.

[11] See id. at 68-76.

[12] See Notice of Appeal dated December 16, 2014; id. at 14.

[13] Rollo, pp. 2-15.

[14] Id. at 14.

[15] See id. at 8-14.

[16] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (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; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

[17] See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[18] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[19] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 16; *People v. Miranda*, *supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 17.

[20] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumalak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

[21] 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.

[22] Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

[23] Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

[24] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 16: See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[25] See *People v. Miranda*, *id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 18, at 1038.

[26] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id.*

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

[28] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[29] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]"

[30] Section 1 of RA 10640 pertinently states: "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."

[31] *People v. Almorfe*, supra note 28.

[32] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[33] See *People v. Manansala*, supra note 16.

[34] See *People v. Gamboa*, supra note 18, citing *People v. Umipang*, supra note 17, at 1053.

[35] See *People v. Crispo*, supra note 16.

[36] Supra note 16.

[37] See *id.*

[38] Records, p. 16.

[39] TSN, June 7, 2011, pp. 24-25.

[40] *Id.* at 26.

[41] *Id.* at 28.

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