

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDULLAH DALUPANG Y DIMANGADAP, ACCUSED-APPELLANT.

G.R. No. 235469. October 02, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

For failure of the drug enforcement agents to comply with the three--witness rule, an acquittal is in order.

The Case

This is an appeal from the August 15, 2017 Decision of the Court of Appeals-Cagayan de Oro (CA) in CA-G.R. CR HC No. 01524-MIN,[1] which affirmed the March 16, 2016 Joint Decision of the Regional Trial Court (RTC) of Lanao del Norte, Branch 6 in Criminal Case Nos. 06-17375 and 06-17376.[2]

The Facts

In the two Information both dated May 2, 2014, accused-appellant Abdullah Dalupang y Dimangadap (Dalupang) was charged with violation of Sections 5 and 11 of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 for sale and possession of dangerous drugs.[3] Criminal Case No. 06-17375 for illegal possession of dangerous drugs was filed in the Regional Trial Court of Lanao del Norte, Iligan City, Branch 4, while Criminal Case No. 06-17376 for illegal sale of dangerous drugs was filed in the RTC of Lanao del Norte, Iligan City, Branch 6. During arraignment, Dalupang pleaded not guilty to both charges. Upon oral motion of Dalupang's counsel, both cases were consolidated on October 2, 2014 and tried jointly before the RTC of Lanao del Norte, Iligan City, Branch 6.[4]

During trial, the prosecution presented five witnesses, namely: (1) Intelligence Officer 2 (IO2) Rovel Pamisa (Pamisa), poseur-buyer; (2) IO1 Manuel Chacon, Jr. (Chacon), arresting officer; (3) Jerome M. Garcia (Garcia), Philippine Drug Enforcement Agency (PDEA) chemist; (4) Lino Bacus (Bacus), media representative; and (5) Kagawad Dante Zamora (Kagawad Zamora), elected barangay official.[5]

According to the prosecution, at 8:00 p.m. on April 30, 2014, a confidential informant reported to IO4 Benjamin C. Recites III (Recites) that a certain Alvin Dalupang was selling shabu on Cocogrove Street, Poblacion, Iligan City. Recites informed Regional Director Emerson Margate of the confidential report, and the latter instructed the formation of a buy-bust team composed of Recites as team leader, Pamisa as poseur-buyer, Chacon as arresting officer, IO1 Lalaine Geromo (Geromo), and Joshua Gulievan (Joshua). A P500.00 bill with Serial No. AR997204 was handed to Pamisa for the buy-bust operation, and he wrote his initials "RPP" on the money.[6]

At around 12:10 a.m. on May 1, 2014, the buy-bust team parked their service vehicle on Cocogrove Street near Sungate pawnshop. Pamisa and the informant alighted and walked towards the E-Bingo game house. After waiting for a few minutes, a semibald man came out of the game house and the informant whispered to Pamisa that he was Alvin, later identified as accused Dalupang. After the informant and Dalupang talked, the informant introduced Pamisa to Dalupang as the one interested to buy shabu. Dalupang invited Pamisa inside his Nissan

Navara pick-up. Pamisa boarded the passenger's seat, while Dalupang sat on the driver's seat. Dalupang asked how much he was buying, so Pamisa handed the P500.00 bill. Dalupang took one small plastic sachet containing white crystalline substance from the compartment near the handbrake and gave it to him. While receiving the sachet, Pamisa saw several sachets inside the compartment.[7]

After the transaction, Dalupang and Pamisa alighted from the vehicle, but Pamisa left the passenger's door open. He immediately made a missed call to Chacon, which is the pre-arranged signal of a consummated transaction. The buy-bust team rushed to the Nissan Navara pick-up using their service vehicle. They identified themselves as PDEA agents and arrested Dalupang. Chacon frisked Dalupang and found the marked P500.00 in his pocket. He informed him of his violation and apprised him of his rights.[8]

Pamisa informed Chacon that there are more plastic sachets in the compartment. Chacon looked inside the vehicle and saw several sachets in plain view. He informed Recites, the team leader, about it. Recites opened the driver's door and saw the plastic sachets. He instructed the team not to touch them and ordered Geromo to take photographs of the sachets in the vehicle.[9]

The PDEA agents waited for the witnesses to arrive on Cocogrove Street, but no one came. Recites decided, for safety reasons, that they proceed to the nearest police station.[10] The buy-bust money, the four plastic sachets and the Nissan Navara pick-up were taken to Police Station 5. Pamisa was in custody of the plastic sachet subject of the buy-bust operation, while Chacon was in-charge of the three plastic sachets found in the compartment.[11]

At the station, the PDEA agents waited for the witnesses, and upon their arrival, the seized items were marked and more photographs were taken, including the arrest and the inventory conducted. Kagawad Zamora and Bacus witnessed these events and signed the inventory sheet. Pamisa marked the plastic sachet he bought from Dalupang as "RPP-050114-BB." Chacon marked the three plastic sachets as "MBC-1 AD 05-01-14," "MBC-2 AD 05-01-14," and "MBC-3 AD 05-01-14." Pamisa and Chacon conducted separate inventories of the sachets in their respective custody and prepared separate requests for laboratory examination. The buy-bust team took the sachets to the PDEA crime laboratory in Cagayan de Oro for examination.[12] The confiscated items continued to be in the respective custody of Pamisa and Chacon.[13] Garcia, a PDEA chemist, received the requests and the four plastic sachets. Chemistry Report Nos. PDEA-DD-2014-043 and PDEA-DD-2014-44 revealed that the contents of the four plastic sachets were positive for methamphetamine hydrochloride or shabu. Garcia testified that after the examination, the specimen were kept in the evidence room for safekeeping and were only brought out for presentation in court.[14]

On the other hand, the defense presented four witnesses, namely: Rashid Dalupang, Amerol Macaindig, Macala Macabandi, and accused Dalupang himself.[15]

According to the defense, at around 6:00 p.m. on April 30, 2014, the four defense witnesses went to the E-Bingo game house on Cocogrove Street, Iligan City. After losing his money, Dalupang urged his companions to go home at about past midnight. Once outside, they noticed a group of four men in civilian clothes conversing. The men suddenly accosted Dalupang and his companions. They introduced themselves as PDEA agents and told them not to move. One of the agents, Joshua, held Dalupang by the neck and pointed a gun at him, while another agent, Pamisa, frisked and asked him whether he was Alvin. Dalupang resisted, and so Joshua hit him in the head with a gun and handcuffed him. Pamisa took from Dalupang his car key, cellular phone, and P12.00 coins. Pamisa looked for Dalupang's vehicle, which is a Nissan Navara pick-up, in the parking lot and drove it.[16]

At the same time, two motorcycles and a Toyota Revo arrived. Dalupang was forcibly hauled inside the Toyota Revo, and sat in the back seat with a certain Saano Cabugatan (Cabugatan), who was also handcuffed. The motorcycles, the Toyota Revo, and the Nissan Navara pick-up proceeded to Police Station 5 in a convoy.[17]

At the police station, Cabugatan was released as he was not included in the target. Dalupang pleaded for his freedom; but the agents ignored him. An agent tried to put P500.00 and something else in Dalupang's pocket. Dalupang reported the incident to the desk officer, and so the agent backed off. Later, the agents brought Dalupang to his Nissan Navara pick-up, opened it, and took photographs. Afterwards, the agents brought him to Cagayan de Oro. Dalupang denied the accusations against him and claimed that there was no buy-bust operation.[18]

The RTC Decision

On March 16, 2016, the RTC rendered a Joint Decision convicting Dalupang of the charges against him, and imposed the penalty of life imprisonment for both offenses and a P400,000.00 fine for illegal possession of shabu, and a P500,000.00 fine for illegal sale of shabu.[19]

The prosecution presented the PDEA agents who acted as the poseur--buyer and one of the arresting officers to testify on the buy-bust operation conducted. A PDEA chemist confirmed the results of the laboratory examinations. The witnesses to the inventory were also presented in court. The RTC ruled that the prosecution proved Dalupang's guilt beyond reasonable doubt as all the elements of the offenses were established by evidence.[20]

On the other hand, Dalupang's defenses consisted of illegality of arrest, absence of valid buy-bust operation, inconsistencies in the PDEA agents' testimonies, and non-observance of the requirements under Section 21, Article II of R.A. No. 9165.[21]

The RTC did not give credence to Dalupang's defenses and held that the arrest was lawful as he was caught red-handed selling and in possession of shabu. The RTC also discussed established jurisprudence on drugs cases such as: (1) prior surveillance is not required for a valid buy-bust operation; (2) trivial inconsistencies strengthen rather than diminish the prosecution's case because it negates a rehearsed testimony; (3) insignificant inconsistencies did not discredit the positive identification of Dalupang; and (4) flexibility of compliance with Section 21 of R.A. No. 9165 is allowed as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team/officer.[22]

The CA Decision

On appeal, the CA affirmed the conviction in its August 15, 2017 Decision. The CA pronounced that the arrest was valid as Dalupang was caught in flagrante delicto selling shabu, and the subsequent seizure of the sachets was also valid as they were covered by the plain view doctrine. The CA determined that the chain of custody of the seized items from the time of confiscation until they were presented in court was established. The CA confirmed that all the elements of illegal sale and possession of shabu were present in the case; thus, an affirmance of conviction is in order.[23]

Dissatisfied, Dalupang appeals his case before the Court seeking a reversal of his conviction.

The Issue Presented

In his Supplemental Brief, which is a replication of his Appellant's Brief, Dalupang assigned the following errors:

I.

WITH ALL DUE RESPECT, THE HONORABLE [CA] ERRED IN AFFIRMING THE TRIAL COURT'S DECISION, AND IN NOT FINDING THAT ACCUSED-APPELLANT WAS A HAPLESS VICTIM OF ILLEGAL ARREST, SEARCH AND SEIZURE.

II.

WITH ALL DUE RESPECT, THE HONORABLE [CA] ERRED IN UPHOLDING THE TRIAL COURT'S DECISION, AND IN NOT FINDING THAT SAID COURT HAS RECEIVED WITH PRECIPITATE CREDULITY THE OTHERWISE CONCOCTED, INCONSISTENT AND UNBELIEVABLE TESTIMONIES OF PROSECUTION'S WITNESSES IO2 ROVEL PAMISA AND IO1 MANUEL CHACON, JR., AND IN NOT ACQUITTING ACCUSED-APPELLANT OF THE OFFENSES CHARGED IN THE [INFORMATION] DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

WITH ALL DUE RESPECT, THE HONORABLE [CA] ERRED IN AFFIRMING THE TRIAL COURT'S DECISION, AND IN NOT FINDING THAT THERE WAS INDEED NON-COMPLIANCE WITH THE MANDATORY REQUIREMENTS SET FORTH UNDER SECTION 21 OF [R.A. No.] 9165 WARRANTING ACCUSED--APPELLANT'S ACQUITTAL OF THE OFFENSES CHARGED IN THE INFORMATION.[24]

On the other hand, the People of the Philippines, as represented by the Office of the Solicitor General, contends that: (1) the prosecution established all the elements of illegal sale and illegal possession of shabu; (2) Dalupang was caught in flagrante delicto committing two offenses; (3) the PDEA agents positively identified Dalupang as the seller and in possession of the contraband; and (4) the records of the case prove that the chain of custody was unbroken.[25]

The main issue presented before the Court is whether or not Dalupang is guilty beyond reasonable doubt of illegal sale and illegal possession of shabu.

The Court's Ruling

The Court acquits the accused.

The buy-bust operation took place on May 1, 2014, at which time the law in effect was R.A. No. 9165. Section 21 of R.A. No. 9165 states that the conduct of physical inventory and photograph taking of the seized items must be in the presence of three witnesses, other than the accused or his counsel/representative: (1) a representative from the media; (2) a representative from the Department of Justice; and (3) any elected public official. The three witnesses are mandated to sign the inventory sheet and they must be given a copy thereof.

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 supplied)

The Implementing Rules and Regulations (IRR) of Section 21, R.A. No. 9165 provides the same rule on the number of witnesses.

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:

(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 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; (Emphasis supplied)

Here, the inventory was conducted in the presence of only two witnesses: Bacus, a media representative and Kagawad Zamora, an elected barangay official. The PDEA agents failed to comply with the required number of witnesses under Section 21 of R.A. No. 9165 and its IRR.

The Court held that the burden to prove that there were justifiable grounds for non-compliance with the procedure in Section 21(1) of R.A. No. 9165 and its IRR lies with the prosecution. It must show that the apprehending team exerted earnest efforts to secure the attendance of the necessary witnesses.[26]

Earnest efforts was discussed by the Court in *People v. Ramos*. [27]

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of [R.A. No.] 9165 must be adduced. In *People v. Umipang*, 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." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. 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 full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police 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. (Emphases and underscoring in the original)

In fact, in *People v. Lim*, [28] the Court enumerated the following mandatory policy in drugs cases:

1.

In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.

2.

In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3.

If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4.

If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court. (Emphases supplied)

In this case, the PDEA agents narrated in their affidavits the circumstances surrounding the conduct of inventory and photograph taking.

Affidavit of Pamisa[29]

x x x. Our Team Leader decided not to touch anything inside the vehicle and photographed the suspected shabu that we saw inside the vehicle. Due to security reasons and we hardly found witnesses at the crime scene to witness our inventory, our team leader decided to go to the nearest Police Station and further wait for the witnesses to witness the inventory.

Thereafter I then made an inventory and marked the buy bust item which I bought from @Alvin and Agent Chacon also made a separate inventory of the seized/confiscated evidence. The inventory was done in the presence of a media representative and a Barangay Official. We then proceeded to our Regional Office at Cagayan de Oro City for booking and documentation. Seized drug items were then forwarded to PDEA 10 Regional Crime Laboratory Service for qualitative and quantitative examination;

Affidavit of Chacon[30]

x x x. I then, informed our Team Leader and he ordered not to touch anything inside the vehicle and photographed the suspected shabu that we saw inside the vehicle. Due to security reasons, our team leader decided to go to the nearest Police Station and further waited for the witnesses for the inventory.

To [preserve] the integrity of the evidence, I did not touch the suspected shabu inside the vehicle until a media representative and a barangay official came to witness the inventory. The inventory was then conducted immediately after the media representative and a barangay official arrived. We then proceeded to our Regional Office a Cagayan de Oro City for booking and documentation. Seized drug items were then forwarded to PDEA 10 Regional Crime Laboratory Service for qualitative and quantitative examination;

The Court finds that the affidavits insufficiently explained why the required number of witnesses was not present during the inventory and photograph taking. The narration did not contain specific actions taken to prove exertion of earnest efforts to comply with the provisions of Section 21 of R.A. No. 9165 and its IRR. Considering that this is an organized buy-bust operation, the PDEA agents had an opportunity to prepare and follow the mandate of R.A. No. 9165 and its IRR. Their failure to comply with the three-witness rule casts doubt on the integrity and

evidentiary value of the seized items.

In *People v. Silayan*,^[31] the Court acquitted the accused because the police officers failed to comply with the three-witness rule.

The Court has, on numerous occasions, acquitted an accused based on reasonable doubt, for the failure of the police to obtain the presence of the three witnesses required by law during the conduct of the inventory of the seized items. The conviction of an accused, who enjoys the constitutional presumption of innocence, must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense. In this case, there was a blatant failure to comply with the requirements of Section 21 (1), Article II of RA 9165 and its IRR without any justifiable ground for such non-compliance. Clearly, the prosecution failed to prove the guilt of Silayan beyond reasonable doubt. We find that an acquittal is in order.

WHEREFORE, the appeal is GRANTED. The August 15, 2017 Decision of the Court of Appeals-Cagayan de Oro in CA-G.R. CR HC No. 01524-MIN affirming the March 16, 2016 Joint Decision of the Regional Trial Court of Lanao del Norte, Branch 6 in Criminal Case Nos. 06-17375 and 06-17376 is REVERSED.

Appellant Abdullah Dalupang y Dimangadap is ACQUITTED of violating Sections 5 and 11, Article II of Republic Act No. 9165 on the ground of reasonable doubt. His IMMEDIATE RELEASE from custody is hereby ordered unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the Davao Prison and Penal Farm for immediate implementation. The said Superintendent is ORDERED to REPORT to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; rollo, pp. 3-18.

[2] Penned by Judge Leonor S. Quiñones; CA rollo, pp. 52-66.

[3] Criminal Case No. 06-17375: That on or about May 1, 2014 in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there wilfully, unlawfully and feloniously has in his possession, custody and control three (3) pieces of heat sealed transparent plastic sachets weighing a total of 11.943 [grams] of [m]ethamphetamine [h]ydrochloride, a dangerous drug commonly known as [shabu]. x x x

Criminal Case No. 06-17376: That on or about May 1, 2014, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused without having been authorized by law, did then and there wilfully, unlawfully, and feloniously sell and deliver one (1) heat sealed transparent plastic sachet containing [m]ethamphetamine [h]ydrochloride commonly known as [shabu], a dangerous drug weighing about 0.0822 [gram] for the amount of Php500.00. x x x Rollo, pp. 4-5.

[4] Id. at 5.

[5] Id.

[6] Id.

[7] Id. at 5-6.

[8] Id. at 6.

[9] Id.

[10] CA rollo, p. 57.

[11] Id.

[12] Id.

[13] Rollo, p. 15.

[14] CA rollo pp. 53-54.

[15] Id. at 58.

[16] Id. at 58-60.

[17] Id. at 59.

[18] Id. at 58-60.

[19] Id. at 66.

[20] Id. at 65-66.

[21] Id. at 60.

[22] Id. at 61-65.

[23] Rollo, pp. 9-18.

[24] Id. at 43-44.

[25] Appellee's Brief, CA rollo, pp. 79-95.

[26] *People v. Silayan y Villamarin*, G.R. No. 229362, June 19, 2019.

[27] *People v. Ramos*, G.R. No. 233744, February 28, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1053 (2012).

[28] G.R. No. 231989, September 4, 2018.

[29] Exhibit "A," records, pp. 4-5.

[30] Exhibit "B," id. at 10-11.

[31] G.R. No. 229362, June 19, 2019.

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