

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMAN SANTOS GUTIERREZ A.K.A. “ARMAN,” ACCUSED-APPELLANT.

G.R. No. 236304. November 05, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this ordinary appeal[1] is the Decision[2] dated August 23, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08178, which affirmed the Decision[3] dated February 16, 2016 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC) in Crim. Case No. L-10499, finding accused-appellant Arman Santos Gutierrez a.k.a. "Arman" (Gutierrez) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5,[4] Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case arose from an Information[6] dated June 1, 2015 filed before the RTC accusing Gutierrez of violating Section 5, Article II of RA 9165. The prosecution alleged that in the morning of May 30, 2015, the elements of the Philippine National Police (PNP) Binmaley, Pangasinan, in coordination with the Philippine Drug Enforcement Agency (PDEA) regional office, planned a buy-bust operation against Gutierrez who was in the police's drug watch list. After the buy-bust team was organized, the operatives went to the agreed place in Canaoalan, Binmaley, Pangasinan, coordinated with the barangay officials, and briefed them about the operation. They were likewise joined by Prosecutor Jeffrey Catungal of the Office of the Provincial Prosecutor in Lingayen, Pangasinan. Further, they invited and informed Michelle Soriano (Soriano) of ABS-CBN Dagupan, Pangasinan, as the required media person to witness the inventory and photography of the item/s to be seized pursuant to law.[7]

During the buy-bust operation, Gutierrez handed over to PO1 Antonio Tadeo, Jr. (PO1 Tadeo), the designated poseur-buyer, one (1) plastic sachet with white crystalline substance and one (1) piece of aluminum foil, in exchange for the marked P500.00 bill, resulting in his apprehension. The seized items were then marked by PO1 Tadeo and, inventoried and photographed in the presence of the barangay officials and the Provincial Prosecutor.[8] Afterwards, Gutierrez together with the seized items were brought to the Binmaley Police Station where the incident was recorded in the blotter.[9] Upon securing the necessary letter-requests,[10] PO1 Tadeo delivered the plastic sachet to Police Chief Inspector Myrna C. Malojo-Todeño (PCI Todeño), Forensic Chemical Officer, at the Pangasinan Provincial Crime Laboratory, who later confirmed after qualitative examination[11] that the substance inside the seized items were positive for methamphetamine hydrochloride, a dangerous drug. Thereafter, PCI Todeño sealed the sachet with a masking tape, placed it inside an improvised paper envelope, sealed and signed the same and turned it over for safekeeping to the evidence custodian.[12]

In defense, Gutierrez denied the charges against him, contending instead that at around ten (10) o'clock in the

morning of May 30, 2015, he was in Barangay Canaoalan, Binmaley, Pangasinan to buy mangoes. Upon reaching the road leading to Barangay Linoc, he was flagged down by the police officers and thereafter, brought to a house where he was forced to admit to selling drugs. When he refused, PO1 Tadeo boxed him in the stomach and hit his back which caused him to lose consciousness. When he woke up, he was already handcuffed and drugs were "planted" inside his pocket.[13]

In a Decision[14] dated February 16, 2016, the RTC found Gutierrez guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.[15] The RTC held that the prosecution had successfully established all the elements of the crime of Illegal Sale of Dangerous Drugs and ruled that the identity, integrity, and probative value of the seized drugs were preserved and kept intact by the evidence custodian.[16] On the other hand, it brushed aside Gutierrez's allegation of frame-up for being unsubstantiated and upheld the presumption of regularity in the performance of official duties.[17] Aggrieved, Gutierrez appealed[18] to the CA.

In a Decision[19] dated August 23, 2017, the CA affirmed the RTC ruling.[20] Among others, it declared that the integrity of the seized items, from the time of its seizure up to its presentation in evidence before the RTC, was preserved.[21]

Hence, the instant appeal seeking that Gutierrez's conviction be overturned.

The Court's Ruling

The appeal is without merit.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[22] 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.[23] 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.[24]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to 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.[25] 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. 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,[26] a representative from the media AND the Department of Justice (DOJ), and any elected public official;[27] 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.[28] 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." [29]

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." [30] 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." [31]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[32] 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.[33] The foregoing is based on the saving clause found in Section 21 (a),[34] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[35] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[36] 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.[37]

Anent the witness requirement in the chain of custody procedure, non-compliance may be permitted if the prosecution is able to prove 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.[38] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[39] 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.[40]

Notably, the Court, in *People v. Miranda*,[41] issued a definitive reminder to prosecutors when dealing with drugs cases. It underscored 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 if not raised, become apparent upon further review." [42]

In this case, the Court finds no reason to disturb the findings of the courts a quo that Gutierrez committed the crime of Illegal Sale of Dangerous Drugs. Moreover, the Court holds that the chain of custody rule was duly observed following the prescribed procedure under RA 9165, as amended by RA 10640, which applies to this case considering that the seizure, marking, inventory, and photography were all conducted on May 30, 2015, after the effectivity of the latter law.[43]

Records show that after the buy-bust transaction, the plastic sachet containing shabu seized from Gutierrez was immediately marked, photographed, and inventoried in the latter's presence, the backup officers of the PNP, the Provincial Prosecutor, and the barangay officials.[44] Thereafter, PO1 Tadeo brought Gutierrez, together with the seized items, to the Binmaley Police Station, where the incident was recorded in the blotter, and thereafter to the Pangasinan Provincial Crime Laboratory for examination, where the seized plastic sachet was turned over and personally received by PCI Todeño.[45]

PO1 Tadeo's testimony on this point was corroborated by PCI Todeño who testified that at around 4:20 in the afternoon of May 30, 2015, he delivered the seized sachet marked with "ATT2 5 30 15" for qualitative examination, which yielded positive for methamphetamine hydrochloride, a dangerous drug, as contained in her initial and final chemistry report.[46] PCI Todeño also gave a clear account of the procedure she had undertaken after the examination to secure the integrity and evidentiary value of the specimen, and testified that she personally turned it over to the evidence custodian for safekeeping, who likewise affixed his signature upon receipt.[47]

Notably, while the Court observes that the media representative, i.e., Soriano from ABS-CBN, failed to witness

the inventory and photography of the seized items, her presence during the said activities was not actually necessary since the witness requirement under RA 10640 had already been complied with. As earlier stated, under RA 10640, the presence of "[a]n elected public official and a representative of the National Prosecution Service [OR] the media," and of course, the accused himself, during the conduct of the inventory and photography is required. This is in contrast to the witness requirement prior to the effectivity of RA 10640, wherein the presence of a representative from the media AND the DOJ, and any elected public official, as well as the accused, was required. In this case, the presence of the Provincial Prosecutor and the barangay officials during the inventory and photography conducted on May 30, 2015 already sufficiently complied with the procedure laid down in the amendatory law.

At any rate, it deserves pointing out that the absence of the media representative was both recognized and sufficiently explained by PO1 Tadeo who testified that he previously informed ABS-CBN's Soriano of the planned buy-bust operation and invited her to witness the same. It was, however, unfortunate that Soriano could not make it in time to witness the inventory considering that she was in an area far from the buy-bust site.[48] Nonetheless, it is undisputed that Soriano still came, albeit late, and just proceeded to the Binmaley, Police Station as the conduct of the inventory was already over.[49] Thus, based on these circumstances, the Court finds that the police officers' efforts to comply with the required procedure, whether during or prior to the amendments of RA 10640 as discussed-above, were genuine which, hence, justifies the media representative's absence.

All told, the Court finds no reason to overturn Gutierrez's conviction for the crime of Illegal Sale of Dangerous Drugs as defined and penalized under Section 5, Article II of RA 9165, as amended by RA 10640.

WHEREFORE, the appeal is DISMISSED. The Decision dated August 23, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08178 is hereby AFFIRMED. Accused-appellant Arman Santos Gutierrez a.k.a. "Arman" is found GUILTY beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

SO ORDERED.

Carpio, (Chairperson), Caguioa, and A. Reyes, Jr., JJ., concur.
J. Reyes, Jr., J.,[**] on official leave.

[*] "Arman Santos y Gutierrez" in some parts of the records.

[**] Designated Additional Member per Special Order No. 2587 dated August 28, 2018; on official leave.

[1] See Notice of Appeal dated September 6, 2017; rollo, pp. 14-15.

[2] Id. at 2-13. Penned by Associate Justice Pedro B. Corales with Associate Justices Japar B. Dimaampao and Amy C. Lazaro-Javier, concurring.

[3] CA rollo, pp. 46-53. Penned by Presiding Judge Loreto S. Alog, Jr.

[4] The pertinent portion of Section 5, Article II of RA 9165 reads:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade,

administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions x x x x.

[5] 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.

[6] Records, pp. 1-2.

[7] It appears, however, that Soriano came in late because she apparently came from a "far town." See rollo, pp. 3-4. See also CA rollo, pp. 46-47; and TSN, September 10, 2015, p. 6.

[8] The plastic sachet was marked "ATT2 5 30 15" while the aluminum foil was marked "ATT3 5 30 15." (CA rollo, p. 47. See also records, pp. 19-22; and TSN, September 10, 2015, pp. 6 and 11-12.)

[9] See CA rollo, p. 47.

[10] See Request for Drug Test Examination and Request for Laboratory Examination; records, pp. 16 and 17, respectively.

[11] See Initial Laboratory Report and Chemistry Report No. D-438-2015L; records, pp. 18 and 44, respectively.

[12] See CA rollo, pp. 47-48. See also TSN, July 28, 2015, pp. 3-7.

[13] See rollo, pp. 5-6. See also CA rollo, pp. 48-49.

[14] CA rollo, pp. 46-53.

[15] Id. at 53.

[16] See id. at 49-52.

[17] See id. at 52-53.

[18] See Notice of Appeal dated February 16, 2016; id. at 11.

[19] Rollo, pp. 2-13.

[20] Id. at 12.

[21] See id. at 8-12.

[22] 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]. See also *People v. Almodiel*, 694 Phil. 449 [2012]; and *People v. Laylo*, 669 Phil. 111 [2011].)

[23] See also *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).

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

[25] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 23; *People v. Sanchez*, *supra* note 22; *People v. Magsano*, *supra* note 22; *People v. Manansala*, *supra* note 22; *People v. Miranda*, *supra* note 22; and *People v. Mamangon*, *supra* note 22. See also *People v. Viterbo*, *supra* note 23.

[26] 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. See Office of the Court Administrator Circular No. 77-2015 dated April 23, 2015, which pertinently provides:

TO: ALL REGIONAL TRIAL COURT JUDGES

SUBJECT: APPLICATION OF REPUBLIC ACT NO. 10640

The attention of this Court has been called to the significance of the so-called 'Sotto Amendment to the Anti-Drug Law', or otherwise known as Republic Act No. 10640 (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') which took effect on July 23, 2014.

In view of the foregoing, all concerned are hereby REMINDED to COMPLY with the above-quoted law, appended herein as 'Annex A,' for the purpose of ensuring that all those involved in the proper apprehension of the drug violators will avail of the full benefits of the law. (Emphasis supplied)

Note, however, that under Section 5 of RA 10640, the "Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation" RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, *Philippine Star Metro* section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; *World News* section, p. 6) – both considered as newspapers of general circulation. Thus, following Section 5 thereof, RA 10640 appears to have become effective on August 7, 2014 or fifteen days after its publication in the *Philippine Star* and *Manila Bulletin*.

Additionally, RA 10640 was filed with the Office of National Administration (ONAR) at the University of the Philippines Law Center also on July 23, 2014. It was also published in the *Official Gazette*, Vol. 110, dated September 1, 2014.

[27] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[28] Section 21, Article II of RA 9165, as amended by RA 10640.

[29] See *People v. Miranda*, *supra* note 22. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[30] See *People v. Miranda*, *id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 24, at 1038.

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

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

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

[34] 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."

[35] 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."

[36] *People v. Almorfe*, supra note 33.

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

[38] See *People v. Manansala*, supra note 22.

[39] See *People v. Gamboa*, supra note 24, citing *People v. Umipang*, supra note 24, at 1053.

[40] See *People v. Crispo*, supra note 22.

[41] Supra note 22.

[42] See *id.*

[43] See note 26.

[44] See TSN, September 10, 2015, pp. 6-7 and 11-13. See also records, pp. 15 and 19-22.

[45] See TSN, September 10, 2015, pp. 8-10. See also CA rollo, pp. 47-48.

[46] See Initial Laboratory Report and Chemistry Report No. D-438-2015L; records, pp. 18 and 44, respectively. See also TSN, July 28, 2015, pp. 3-6.

[47] These include sealing the plastic sachet with masking tape after the examination and putting her markings thereon, placing the same inside an improvised paper envelope which was likewise sealed with masking tape and marked with her signature. See CA rollo, p. 48. See also TSN, July 28, 2015, pp. 6- 7.

[48] See TSN, September 10, 2015, p. 6. See also rollo, p. 4; CA rollo, p. 47; and records, p. 10.

[49] See Certification dated May 30, 2015; records, p. 14.

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