

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. SAIDAMEN OLIMPAIN MAMA, ACCUSED-APPELLANT.

G.R. No. 237204. October 01, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Saidamen Olimpain Mama (Mama) assailing the Decision[2] dated September 13, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08176, which affirmed the Judgment[3] dated February 24, 2016 of the Regional Trial Court of Muntinlupa City, Branch 204 (RTC) in Crim. Case Nos. 09-463 and 09-464 finding Mama guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs 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 Mama with violation of Sections 5 and 11, Article II of RA 9165, the accusatory portions of which read:

Criminal Case No. 09-463

That on or about the 20[th] day of July 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another, Methylamphetamine Hydrochloride, a dangerous drug weighing more or less 4.57 grams, contained in one (1) heat sealed transparent plastic sachet in violation of the above-cited law.

Contrary to law.[6]

Criminal Case No. 09-464

That on or about the 20[th] day of July 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Methylamphetamine Hydrochloride, contained in eleven (11) pieces heat sealed transparent plastic sachets, with a total weight of 49.89 grams, in violation of the above-cited law.

Contrary to law.[7]

The prosecution alleged that on July 20, 2009, the operatives of the District Anti-Illegal Drugs Special Operations Task Group (DAID-SOTG) of the Philippine National Police Southern Police District, Fort Bonifacio, Taguig City, received a report from an asset regarding the high-volume drug trade of a certain "RJ" – later identified as Mama – in Barangay Tunasan, Muntinlupa. After verification of said tip, the DAID-SOTG organized a buy-bust team which included the police asset, Senior Police Officer 2 Salvio R. de Lima (SPO2 de Lima) as the

poseur-buyer, and Police Officer 3 Roderick H. Cayas (PO3 Cayas) as the immediate back-up. Thereafter, the buy-bust team went to the target place and upon arrival thereat, the police asset, who arranged the transaction, and SPO2 de Lima met with Mama. After a brief conversation, SPO2 de Lima gave Mama the marked money. Consequently, Mama brought out a green pouch bag from his black shoulder bag and took from it a white envelope containing a plastic sachet of suspected shabu. After Mama gave the sachet to SPO2 de Lima, a woman – later identified as Mama's common-law wife – approached Mama and took his black shoulder bag. At that point, SPO2 de Lima performed the pre-arranged signal, prompting PO3 Cayas and the rest of the buy-bust team to swoop in and arrest Mama and his common-law wife. During the arrest, the police officers retrieved Mama's shoulder bag and inspected the same, discovering eleven (11) more plastic sachets containing suspected shabu therein. SPO2 de Lima marked the seized items in front of Mama and his common-law wife. Thereafter, the police officers brought Mama, his common-law wife, and the seized sachets to the DAID-SOTG office for booking and inventory purposes and then brought them to the PNP Crime Laboratory for drug-testing. After examination, it was confirmed that the sachets indeed contained methylamphetamine hydrochloride or shabu, a dangerous drug.[8] Nonetheless, the inquest prosecutor ordered[9] the release of Mama's common-law wife as her case needed further investigation.[10]

In his defense, Mama pleaded not guilty and denied the charges against him. He narrated that on the day of his arrest, he was sleeping inside his house with his common-law wife when suddenly, armed men, who identified themselves as policemen, barged into his house and started poking a gun at him. The armed men then demanded money and when he could not give any, they started mauling him and taking his personal belongings. He was then taken to the police station where he was accused of committing the crime charged. He then added that during his detention, the police officers were still asking him for money.[11]

The RTC Ruling

In a Judgment[12] dated February 24, 2016, the RTC found Mama guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Criminal Case No. 09-463, to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and (b) in Criminal Case No. 09-464, to suffer the penalty of life imprisonment and to pay a fine of P400,000.00.[13]

The RTC found the prosecution to have established all the elements of the crimes charged, considering that: (a) SPO2 de Lima positively identified Mama as the one who sold him one (1) plastic sachet of shabu; and (b) in the search incidental to his arrest, he was discovered to be in possession of eleven (11) more plastic sachets containing shabu. On the other hand, the RTC did not give credence to Mama's defense of denial as there was no other evidence to corroborate the same. Finally, the RTC opined that the integrity and identity of the corpus delicti of the crimes charged have not been compromised.[14]

Aggrieved, Mama appealed[15] to the CA.

The CA Ruling

In a Decision[16] dated September 13, 2017, the CA affirmed Mama's convictions.[17] It held that the prosecution, through the testimonies of SPO2 de Lima and PO3 Cayas, respectively as poseur-buyer and immediate back-up of the buy-bust team that arrested Mama, was able to show that the latter indeed committed the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. Further, the CA opined that the absence of an elected public official and representatives from the DOJ and the media during the conduct of inventory is not fatal to the prosecution's case as long as the integrity and evidentiary value of the seized items were properly preserved.[18]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Mama is guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.

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.[19] "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." [20]

In this case, Mama was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. 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.[21] 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.[22] In both instances, case law instructs that the identity of the prohibited drug must 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.[23]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[24] Under the said section, prior to its amendment by RA 10640,[25] 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 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 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.[26] In the case of *People v. Mendoza*, [27] 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." [28]

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.[29] In fact, the Implementing Rules and

Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[30] – provide 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.[31] 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.[32] In *People v. Almorfe*,[33] 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.[34] Also, in *People v. De Guzman*,[35] 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.[36]

After a judicious study of the case, the Court finds that the police 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 Mama.

A perusal of the Inventory of Seized Properties/Items[37] dated July 20, 2009 readily reveals the glaring absence of the signatures of any of the required witnesses to the inventory, i.e., public elected official, DOJ representative, and media representative, thereby indicating their failure to witness the conduct of such inventory. When asked about this irregularity, SPO2 de Lima testified as follows:

[Atty. Jaime Felicen]: However, you preferred not to conduct the inventory in the site but in your office. Is that correct?

[SPO2 de Lima]: Our common practice is to conduct the inventory in the area, sir.

Q: That is your?

A: Our common practice, sir.

Q: So, are you telling us that you conducted the inventory in that area where you arrested Arjay?

A: Yes, sir?

Q: Are you sure?

A: Yes, sir.

Q: So, your common practice is to conduct the inventory in the area, knowing that there would be no available witness you could pick up to witness the inventory?

A: Yes, sir.

Q: And, that was what happened in this case, wherein you conducted the inventory without any person witnessing that?

A: Hindi pa po mahigpit ang pamunuan po naming noon dahil sa compliance of Section 21. Nong marami na pong nangyayari doon, naghigpit na po sa compliance ng Section 21.

Q: That was your reason?

A: Noon po hindi pa masvadong mahigpit, sir.

Q: When you say, "hindi pa masyadong mahigpit" sino dapat naghigpit?

A: The PNP, sir.[38] (Emphases and underscoring supplied)

Based on jurisprudence, it is well to note that the non-compliance with the required witnesses rule does not per se render the confiscated items inadmissible.[39] However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21, Article II of RA 9165 must be adduced.[40] In *People v. Umipang*,[41] 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." [42] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[43] 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 set procedure prescribed in Section 21, Article II 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 circumstance, their actions were reasonable.[44]

Here, not only do the records disclose that the apprehending officers totally failed to comply with the required witnesses rule, SPO2 de Lima even admitted that they were not strictly implementing the mandate of Section 21, Article II of RA 9165. Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Mama have been compromised. In the prosecution of Illegal Sale and Illegal Possession of Dangerous Drugs under RA 9165, the State carries the 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 evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt,[45] as in this case. Perforce, Mama's acquittal is in order.

At a final point, 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. Order is too high a price for the loss of liberty. x x x.[46]

"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 raised, 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." [47]

WHEREFORE, the appeal is GRANTED. The Decision dated September 13, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08176 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Saidamen Olimpain Mama 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), A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.
Caguioa, J., on official business.

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

[1] See Notice of Appeal dated October 18, 2017; rollo, p. 16-18.

[2] Id. at 2-15. Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Samuel H. Gaerlan and Jhosep Y. Lopez, concurring.

[3] CA rollo, pp. 47-58. Penned by Presiding Judge Juanita T. Guerrero.

[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] Records, pp. 1-2 and 3-4.

[6] Id. at 1.

[7] Id. at 3.

[8] See Physical Science Report No. D-354-09S dated July 21, 2009; records, p. 10.

[9] See Resolution in I.S. No. INQ-090-00313 signed by 3rd Assistant City Prosecutor Agripino C. Baybay III; id. at 5-6.

[10] See rollo, pp. 4-7. See also CA rollo, pp. 49-51-A.

[11] See rollo, pp. 3 and 7-8. See also CA rollo, pp. 48 and 51-A-52.

[12] CA rollo, pp. 47-58.

[13] Id. at 57-A-58.

[14] See id. at 53-57-A .

[15] See Notice of Appeal dated February 26, 2016; records, pp. 345-346.

[16] Rollo, pp. 2-15.

[17] See id. at 14.

[18] See id. at 9-14.

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

[20] *People v. Comboy*, G.R. No. 218933, March 2, 2016, 785 SCRA 512, 521.

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

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

[23] See *People v. Manansala*, G.R. 229092, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[24] See *People v. Sumili*, *supra* note 21, at 349-350.

[25] 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.

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

[27] 736 Phil. 749 (2014).

[28] *Id.* at 764; emphases and underscoring supplied.

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

[30] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"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 persons 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.
x x x x"

[31] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

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

[33] 631 Phil. 51 (2010).

[34] *Id.* at 60.

[35] 630 Phil. 637 (2010).

[36] Id. at 649.

[37] Records, p. 21.

[38] TSN, August 1, 2012, pp. 27-28.

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

[40] See id. at 1052-1053.

[41] Id.

[42] Id. at 1053.

[43] See id.

[44] See *People v. Crispo*, G.R. No. 230065, March 14, 2018.

[45] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, supra note 39, at 1039-1040.

[46] See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[47] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

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