

VALMORE VALDEZ Y MENOR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 238349. August 14, 2019

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is a petition for review on certiorari[1] assailing the Decision[2] dated October 30, 2017 and the Resolution[3] dated March 16, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39508, which affirmed the Decision[4] dated January 17, 2017 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case No. C-93234, finding Valmore Valdez y Menor (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC accusing petitioner of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that at around 7:20 in the morning of January 28, 2015, Jail Officer 2 Edgardo B. Lim (JO2 Lim) was conducting a head count of the inmates at the Caloocan City Jail when he noticed that petitioner, an inmate, was near the jail gate and acting suspiciously and exhibiting odd behavior while holding a plastic bucket. Petitioner was not in line with the other inmates, prompting JO2 Lim to approach petitioner. As petitioner looked anxious, JO2 Lim conducted a pat-down frisking on the former and discovered a plastic sachet containing white crystalline substance in the front portion of his brief. Upon further inspection, he also found ten (10) more plastic sachets of white crystalline substance in a black denim coin purse inside the plastic bucket which petitioner was holding.[7] JO2 Lim then brought petitioner to the jail investigator for preparation of documents and respective markings of the confiscated items. Thereafter, JO2 Lim brought petitioner and the marked items to the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Caloocan City, where they were turned over to Senior Police Officer 3 Fernando C. Moran (SPO3 Moran).[8] SPO3 Moran then prepared the physical inventory of evidence,[9] requested for laboratory examination,[10] and took photographs[11] of petitioner and the seized items. Subsequently, SPO3 Moran forwarded the seized items to the PNP Crime Laboratory in Northern Police District Crime Laboratory Office, Valenzuela City Satellite Office (crime laboratory) for laboratory examination. Upon qualitative examination,[12] the submitted specimens tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.[13]

In his defense, petitioner denied the charges against him and claimed that after the jail count of the inmates, JO2 Lim approached another inmate, who was then holding a paint bucket, and instructed petitioner to open the bucket. He maintained that nothing was recovered from him except for money and was surprised that he was the one charged.[14]

In a Decision[15] dated January 17, 2017, the RTC found petitioner guilty beyond reasonable doubt of the crime

charged, and accordingly, sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine in the amount of P300,000.00.[16] The RTC found that the prosecution was able to establish all the elements of the crime of Illegal Possession of Dangerous Drugs, as well as the corpus delicti of the crime through the positive testimony of JO2 Lim.[17]

Aggrieved, petitioner appealed[18] to the CA.

In a Decision[19] dated October 30, 2017, the CA affirmed petitioner's conviction.[20] It found that the integrity and evidentiary value of the corpus delicti had been preserved and the post-seizure procedure under Section 21 of RA 9165 had been complied with, considering that the marking, inventory, and photography of the seized items were conducted in the presence of petitioner, the request for laboratory examination was prepared, and the seized items were personally brought by the investigator to the crime laboratory for qualitative examination.[21]

Undaunted, petitioner moved for reconsideration,[22] which was, however, denied in a Resolution[23] dated March 16, 2018; hence, the instant petition.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[24] 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.[25] 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.[26]

To establish the identity of the dangerous drugs 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.[27] 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. 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." [28] 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.[29]

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,[30] a representative from the media AND the Department of Justice, and any elected public official;[31] 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.[32] 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." [33]

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.'" 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." [34]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[35] 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.[36] The foregoing is based on the saving clause found in Section 21 (a),[37] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[38] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[39] 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.[40]

Anent the witness requirement, 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.[41] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[42] 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.[43]

Notably, the Court, in *People v. Miranda*,[44] 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." [45]

In this case, there is a deviation from the witness requirement without sufficient justification. An examination of the Physical Inventory of Evidence[46] contains only the signatures of JO2 Lim, SPO3 Moran, petitioner, and another person whose identity was not established during the course of trial. Even assuming *arguendo* that said unidentified person was one of the witnesses required by law, his presence alone does not satisfy the witness requirement, since, as already adverted to, Section 21, Article II of RA 9165, as amended by RA 10640 requires the presence of: (i) an elected public official; AND (ii) a representative from either the National Prosecution Service or the media. Hence, it was incumbent upon the prosecution to account for the deviation from the aforesaid rule by presenting a justifiable reason therefor, or at the very least, by showing that the apprehending officers exerted genuine and sufficient efforts in securing their presence. However, no such justification was given, as in fact, the prosecution did not even acknowledge that there was a deviation from the witness requirement in the first place. In view of the foregoing, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner were compromised, thereby necessitating his acquittal from the crime charged.

WHEREFORE, the appeal is GRANTED. The Decision dated October 30, 2017 and the Resolution dated March 16, 2018 of the Court of Appeals in CA-G.R. CR No. 39508 are hereby REVERSED and SET ASIDE. Accordingly, petitioner Valmore Valdez y Menor is ACQUITTED of the crime 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.

Bersamin, C. J., (Chairperson), Jardeleza, Gesmundo, and Carandang, JJ., concur.

[1] Rollo, pp. 11-30.

[2] Id. at 34-44. Penned by Associate Justice and Chairperson Romeo F. Barza with Associate Justices Myra V. Garcia-Fernandez and Ramon Paul L. Hernando (now a member of this Court), concurring.

[3] Id. at 59-61.

[4] Id. at 80-93. Penned by Presiding Judge Victoriano B. Cabanos.

[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] See records, pp. 1-2.

[7] See rollo, pp. 35-36.

[8] See id. at 36.

[9] See Physical Inventory of Evidence dated January 28, 2015; records, p. 10.

[10] See Request for Laboratory Examination dated January 28, 2015; id. at 6.

[11] Id. at 14.

[12] See Chemistry Report No. D-064-15 dated January 28, 2015; id. at 7.

[13] See id. See also rollo, p. 36.

[14] See rollo, p. 37.

[15] Id. at 80-93.

[16] Id. at 93.

[17] See id. at 90-93.

[18] See Notice of Appeal dated January 17, 2017; CA rollo, p. 10.

[19] Rollo, pp. 34-44.

[20] Id. at 43.

[21] See id. at 40-42.

[22] See Motion for Reconsideration dated December 12, 2017; id. at 45-55.

[23] Id. at 59-61.

[24] 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 II, 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]).

[25] 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).

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

[27] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 24; *People v. Sanchez*, *supra* note 24; *People v. Magsano*, *supra* note 24; *People v. Manansala*, *supra* note 24; *People v. Miranda*, *supra* note 24; and *People v. Mamangon*, *supra* note 24. See also *People v. Viterbo*, *supra* note 25.

[28] *People v. Mamalumpon*, 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).

[29] See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[30] 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.

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

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

[33] See *People v. Miranda*, *supra* note 24. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[34] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citations omitted.

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

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

[37] 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[.]" (Emphasis supplied)

[38] 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." (Emphasis supplied)

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

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

[41] See *People v. Manansala*, supra note 24.

[42] See *People v. Gamboa*, supra note 26, citing *People v. Umipang*, supra note 26, at 1053.

[43] See *People v. Crispo*, supra note 24.

[44] Supra note 24.

[45] See *id.*

[46] Records, p. 10.

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