

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ALVIN BAMBICO Y CARVAJAL, ACCUSED-APPELLANT.*G.R. No. 238617. November 14, 2018*

Ponente: PERLAS-BERNABE, J.

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Assailed in this ordinary appeal[1] is the Decision[2] dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR. No. 07576,[3] which affirmed the Joint Decision[4] dated May 25, 2015 of the Regional Trial Court of Malabon City, Branch 72 (RTC) in Criminal Case Nos. 11-1208-MN and 11-1209-MN finding accused-appellant Alvin Bambico y Carvajal (Bambico) guilty beyond reasonable doubt of violating Sections 5 and 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 two (2) Informations[6] filed before the RTC accusing Bambico of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that in the evening of September 25, 2011, members of the Navotas City Police Station successfully implemented a buy-bust operation against Bambico, during which one (1) plastic sachet containing 0.03 gram of white crystalline substance was recovered from him. When Bambico was searched after his arrest, the police officers were able to seize two (2) more plastic sachets containing a combined weight of 0.05 white crystalline substance from his possession. The police officers then took Bambico and the seized items to the barangay hall where the marking, inventory, and photography were done in the presence of Barangay Chairman Totit Ocampo (Brgy. Chairman Ocampo). Thereafter, Bambico and the seized items were taken to the police headquarters where the necessary paperworks for examination were prepared. The seized items were then brought to the crime laboratory where, after examination,[7] the contents thereof yielded positive for methamphetamine hydrochloride or shabu, a dangerous drug.[8]

In defense, Bambico denied the charges against him, claiming instead, that he was just having dinner at a neighborhood eatery when he saw five (5) policemen chasing someone towards his direction. When the policemen failed to catch the one they were chasing, they arrested him instead and brought him to the police station. Thereat, a policeman asked him, "wala bang tutulong sa iyo para makalabas ka na?" After Bambico answered in the negative, he was detained and eventually, transferred to a jail.[9]

In a Joint Decision[10] dated May 25, 2015, the RTC found Bambico guilty beyond reasonable doubt of the crimes charged, and accordingly, penalized him as follows: (a) in Criminal Case No. 11-1208-MN, to suffer the penalty of life imprisonment and pay a fine in the amount of P500,000.00; and (b) in Criminal Case No. 11-1209-MN, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and pay a fine in the amount of P300,000.00.[11] The RTC found that the prosecution, through its testimonial and documentary evidence, had established beyond reasonable doubt that Bambico indeed sold one (1) plastic sachet containing dangerous drugs to the poseur-buyer,

resulting in his arrest, and that during the search incidental thereto, he was discovered to be in possession of two (2) more plastic sachets of dangerous drugs. On the other hand, the RTC found untenable Bambico's defense of denial for being uncorroborated and thus, self-serving.[12] Aggrieved, Bambico appealed[13] to the CA.

In a Decision[14] dated September 28, 2017, the CA affirmed the RTC ruling.[15] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Bambico, and that the integrity and evidentiary value of the seized items have been preserved due to the arresting officers' substantial compliance with the chain of custody rule.[16]

Hence, this appeal seeking that Bambico'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,[17] 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.[18] 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.[19]

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.[20] 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 "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." [21] 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.[22]

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,[23] a representative from the media AND the Department of Justice (DOJ), and any elected public official;[24] 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.[25] 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." [26]

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." [27] 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." [28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] 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.[30] The foregoing is based on the saving clause found in Section 21 (a),[31] Article II of the Implementing Rules and Regulations (IRR) of RA

9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] 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.[34]

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.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] 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.[37]

Notably, the Court, in *People v. Miranda*,[38] 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." [39]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by the representatives from the DOJ and the media. This may be easily gleaned from the Inventory of Confiscated Drugs/Seized[40] which only confirms the presence of an elected public official, i.e., Brgy. Chairman Ocampo. Such finding is confirmed by the testimony of the poseur-buyer, Police Officer 1 Samuel T. Nombre (PO1 Nombre) on direct and cross-examination, to wit:

Direct Examination

[Fiscal Lemuel B. Nobleza]: What did you do next, Mr. Witness; after you have searching [sic] and recovered two additional small heat sealed transparent plastic sachets containing suspected shabu and the recovery of the buy bust money?

[PO1 Nombre]: We brought him to the barangay [hall] to make an inventory of the shabu that [was] taken from him, sir.

Q: Who were present at that time of the inventory of the confiscated drugs?

A: The barangay chairman, sir.

Q: I am showing to you, Mr. Witness, the inventory of the confiscated drugs seized, will you go over this and tell us if this is the drug inventory you are referring to?

A: Yes, sir, this is the drug inventory.

Q: There was (sic) a signature on top of the name barangay chairman Totit Ocampo, whose signature is that?

A: The signature of [the] barangay chairman, sir.[41]

Cross-Examination

[Atty. Rodrigo Yambot]: Now, Mr. Witness, you mentioned of inventory of drugs, would you know why there was no signature on the representative of the Department of Justice?

[PO1 Nombre]: Yes, sir.

Q: Why?

A: At that time, the representative from the DOJ was not with us, sir.

Q: Did you coordinate with the representative of the DOJ after the operation?

A: No, sir.[42]

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, while PO1 Nombre acknowledged the absence of a DOJ representative during the conduct of inventory and photography, he did not offer any justification for such absence and even admitted his failure to coordinate with such representative regarding the buy-bust operation. Moreover, the absence of a media representative during the aforesaid conduct was left unacknowledged, much less justified. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Bambico were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is GRANTED. The Decision dated September 28, 2017 of the Court of Appeals in CA-G.R. CR. No. 07576 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Alvin Bambico y Carvajal 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), Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

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

[1] See Notice of Appeal dated October 25, 2017; rollo, pp. 21-22.

[2] Id. at 2-20. Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Fernanda Lampas Peralta and Elihu A. Ybañez, concurring.

[3] "CA-G.R. CR HC No. 07576" in some parts of the records.

[4] CA rollo, pp. 51-58. Penned by Presiding Judge Jimmy Edmund G. Batara.

[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] Criminal Case No. 11-1208-MN is for violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs, while Criminal Case No. 11-1209-MN is for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs. (See rescords, pp. 1 and 20. See also rollo, p. 3; and CA rollo, pp. 51-52.)

[7] See Chemistry Report No. D-242-11 dated September 26, 2011; records, p. 13.

[8] See rollo, pp. 4-8. See also CA rollo, pp. 52-54.

[9] See rollo, pp. 8-9. See also CA rollo, pp. 54-55.

[10] CA rollo, pp. 51-58.

[11] Id. at 58.

[12] See id. at 55-58.

[13] See Notice of Appeal dated June 19, 2015; records, p. 139.

[14] Rollo, pp. 2-20.

[15] Id. at 20.

[16] See id. at 10-19.

[17] 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]).

[18] 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).

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

[20] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 17; *People v. Sanchez*, supra note 17; *People v. Magsano*, supra note 17; *People v. Manansala*, supra note 17; *People v. Miranda*, supra note 17; and *People v. Mamangon*, supra note 17. See also *People v. Viterbo*, supra note 18.

[21] *People v. Mamalumpon*, 167 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).

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

[23] 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.

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

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

[26] See *People v. Miranda*, supra note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[27] 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 19, at 1038.

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

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

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

[31] 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."

[32] 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."

[33] *People v. Almorfe*, supra note 30.

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

[35] See *People v. Manansala*, supra note 17.

[36] See *People v. Gamboa*, supra note 19, citing *People v. Umipang*, supra note 19, at 1053.

[37] See *People v. Crispo*, supra note 17.

[38] Supra note 17.

[39] See *id.*

[40] Records, p. 8.

[41] TSN, October 9, 2013, pp. 9-10.

[42] TSN, October 9, 2012, p. 21.

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