

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. CONCEPCION SEMBRANO Y CRUZ, ACCUSED-APPELLANT.

G.R. No. 238829. October 15, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this ordinary appeal[1] is the Decision[2] dated May 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06937, which affirmed the Decision[3] dated June 10, 2014 of the Regional Trial Court of Baguio City, Branch 61 (RTC) in Criminal Case No. 32559-R finding accused-appellant Concepcion Sembrano y Cruz (Sembrano) guilty beyond reasonable doubt of violating Section 5, 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 an Information[5] filed before the RTC accusing Sembrano of violating Section 5, Article II of RA 9165. The prosecution alleged that at around six (6) o'clock in the evening of December 13, 2011, the operatives of the Baguio City Anti-Illegal Drugs – Special Operation Task Group (CAID-SOTG) conducted a test-buy operation to ascertain the veracity of a report regarding Sembrano's alleged illegal drug transactions. In the said operation, the confidential informant was able to acquire a plastic sachet from Sembrano in exchange for P5,000.00,[6] which sachet was marked by PO2 Geoffrey Bantule with his initials "GBB." After the plastic sachet with the "GBB" marking was sent to the crime laboratory and confirmed upon examination[7] to contain methamphetamine hydrochloride or shabu, a dangerous drug, the CAID-SOTG conducted a buy-bust operation against Sembrano at around eight (8) o'clock in the evening of even date, wherein the poseur-buyer, SPO1 Reynaldo Badua (SPO1 Badua), was instructed to buy illegal drugs worth P7,000.00.[8] As a result, a plastic sachet containing white crystalline substance – later marked by the poseur-buyer, SPO1 Reynaldo Badua (SPO1 Badua) with his initials "RCB" – was recovered from her. The apprehending officers together with Sembrano then proceeded to the CAID-SOTG Office and conducted an inventory and photography of the seized item and marked money which were witnessed by an elected public official and representatives from both the Department of Justice and the media. Thereafter, the seized item was brought to the crime laboratory where it was confirmed to contain shabu.[9]

In defense, Sembrano denied the charges against her, claiming instead, that she was on her way with her friend, Bong Ancheta (Bong), to a wake when suddenly, the companion of Bong's friend pointed a gun at them and introduced himself as a police officer. This prompted Bong to run away. She was then brought to the police station where police officers asked money from her. After being detained for hours, she was brought to the hospital to urinate but was unable to do so. This angered a police officer who then ordered her to sign a document, and thereafter, brought her to the city jail.[10]

In a Decision[11] dated June 10, 2014, the RTC found Sembrano guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in

the amount of P5,000,000.00.[12] The RTC held that the prosecution sufficiently established all the elements of the said crime and further ruled that the integrity and evidentiary value of the corpus delicti were preserved. On the other hand, it rejected Sembrano's defense of denial for being unsubstantiated by clear and convincing evidence.[13] Aggrieved, Sembrano appealed[14] to the CA.

In a Decision[15] dated May 27, 2016, the CA affirmed the RTC ruling. It held that Sembrano was caught in flagrante delicto to be selling shabu during a legitimate buy-bust operation, and whatever irregularities attendant to the compliance with the chain of custody rule are not fatal to the case as the integrity and evidentiary value of the seized item were nonetheless preserved.[16]

Hence, this appeal seeking that Sembrano'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.[21] To stress, "when the law requires that the drugs be physically inventoried and photographed immediately after seizure, it follows that the drugs so inventoried and photographed should – as a general rule – be the self-same drugs for which the charges against a particular accused would be based. The obvious purpose of the inventory and photography requirements under the law is precisely to ensure that the identity of the drugs seized from the accused are the drugs for which he would be charged. Any discrepancy should therefore be reasonably explained; otherwise, the regularity of the entire seizure procedure would be put into question." [22]

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." [23] 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." [24]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[25] 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.[26] The foregoing is based on the saving clause found in Section 21 (a), [27] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[28] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, [29] 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.[30]

Notably, the Court, in *People v. Miranda*, [31] 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." [32]

In this case, while the prosecution presented photographs[33] depicting the post-buy-bust operation inventory which the CAID-SOTG conducted in the presence of the required witnesses, a more circumspect examination of the photographs reveals that the plastic sachet shown therein bears the marking "GBB," which is the plastic sachet obtained from the test-buy operation; and that the plastic sachet with the marking "RCB" purportedly seized from the buy-bust operation is not in the photographs. The testimony on cross-examination of no less than the poseur-buyer, SPO1 Badua, is revelatory on this matter, to wit:

[Atty. Immanuel Awisan]: Okay, let us clarify again Officer Badua, these photographs appearing on page 58 consisting of three (3) photographs, all of these were taken during the inventory, is that correct?

[SPO1 Badua]: Yes, sir.

Q: You are very sure now?

A: Yes, Sir.

Q: That is your final answer that these photographs were taken during the inventory?

A: Yes, sir.

Q: In the second photograph found on the same page, page 58, there are only five (5) pieces of P1,000.00 peso bills depicted here, would you agree with my observation?

A: Yes, sir.

Q: The two (2) other P1,000.00 peso bills were not included in this photograph?

A: I think I have committed a mistake again, Sir, because this one the markings is "GBB" these are the ones we used in our test-buy operation and when Officer Bandas took the picture, I don't [know] why she included these ones, the item is supposed to be separated from the..

x x x x

Q: And in this first photograph there are only five (5) P1,000.00 peso bills depicted, would you agree with my observation?

A: Yes because this was only cut so let us subpoena my Chief to explain this one, Sir.

x x x x

Q: So what is this money photographed together with the item subject of the test-buy?

A: You subpoena my Chief so that he will be the one [to] explain this one because they are the ones who took the pictures, Sir.

Q: But you are sure that this item photographed on page 58 the second photograph, that is an item appearing to be a sachet of shabu, this is the item subject of the test-buy?

A: Yes, Sir.

Q: You are very sure of that?

A: Because the markings "GBB" but I cannot read the date because the following day, we arrested also... with the same amount, Sir.

Q: We are not concerned with the arrest made the following day...

A: It might be that Alma Bandas must be wrong in giving the pictures, because that operation, Geoffrey Bantule was the one who marked the item, so it might be Alma Bandas who committed a mistake for giving

the picture, Sir.

x x x x

Q: So what you are saying is, this photograph No. 2 is a photograph of a shabu taken after the arrest of Concepcion Sembrano? So this photograph refers to another operation?

A: Yes, what I know is that, Alma Bandas was the one who committed a mistake in giving the picture, Sir.

x x x x

Q: On photograph No. 1 you said that this is the photograph taken during the inventory of the items during the buy-bust operation?

A: Yes, Sir.

Q: The shabu here is the shabu taken during that buy-bust operation?

A: It was cut so I don't know if it's the same shabu, Sir.

Q: Although it was cut[,])it can be observed here that there are some markings placed and the markings placed are "Exh. A GBB", do you agree with my observation?

A: I think if the marking is "GBB" they committed a mistake for giving the picture because the buy-bust money I was the one who put my initials and signature so the test-buy operation "GBB" so it was Geoffrey Bantule who marked the evidence so they committed a mistake in giving the picture, Sir.

Q: Is there a photograph of that item that was bought during the buy-bust operation?

A: Yes, Sir.

Q: Where is it now?

A: You subpoena our office and they will be the one to bring the picture, Sir.

x x x x[34] (Emphases and underscoring supplied)

Thus, SPO1 Badua readily admitted their mistake in taking pictures of the plastic sachet obtained from the test-buy operation, i.e., the one with the "GBB" marking, instead of the one supposedly recovered from the buy-bust operation, i.e., the one with the "RCB" marking. When pressed to explain such irregularity, SPO1 Badua insisted that photographs containing the latter sachet exists, but was nevertheless evasive and elected instead to require the defense counsel to subpoena his office/Chief to produce the vital photographs.

To recapitulate, for a successful prosecution of Illegal Sale and/or Illegal Possession of Dangerous Drugs, the prosecution is bound not only to establish the elements of the crime, but also to ensure that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of the said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.[35] Unfortunately, the latter requirement is found wanting as it is evident from the afore-cited testimony that the identity of the corpus delicti has not been properly preserved and established by the prosecution. Perforce, the Court is constrained to conclude that the integrity and evidentiary value of the item purportedly seized from Sembrano during the buy-bust operation was compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is GRANTED. The Decision dated May 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06937 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Concepcion Sembrano y Cruz is ACQUITTED of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she 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. See Notice of Appeal dated June 13, 2016; rollo, pp. 21-22.

[2] Id. at 2-20. Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz, concurring.

[3] CA rollo, pp. 57-73. Penned by Presiding Judge Antonio C. Reyes.

[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] Dated December 14, 2011. Records, pp. 1-2.

[6] See TSN, December 11, 2012, pp. 10-12.

[7] See Chemistry Report No. D-137-2011 dated December 13, 2011 records, p. 8.

[8] See TSN, December 11, 2012, pp. 12-14.

[9] See rollo, pp. 3-6. See also CA rollo , pp. 58-61.

[10] See rollo, pp. 6-7. See also CA rollo, pp. 61-63.

[11] CA rollo, pp. 57-73.

[12] Id. at 73.

[13] See id. at 63-72.

[14] See Notice of Appeal dated June 24, 2014; id. at 29-30.

[15] Rollo, pp. 2-20.

[16] See id. at 12-19.

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

[22] See *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

[23] See *People v. Miranda*, supra note 17. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, supra note 19, at 1038.

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

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

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

[27] 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[.]"

[28] 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, Section 1 of which 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."

[29] *People v. Almorfe*, supra note 26.

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

[31] Supra note 17.

[32] See id.

[33] See records, pp. 57-58.

[34] TSN, April 15, 2013, pp. 21-22 and 25-28.

[35] See *People v. Bombasi*, 794 Phil. 509, 515 (2016), citing *People v. Ladip*, 729 Phil. 495 , 515 (2014).

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