

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. JEROME EMAR SANCHEZ Y EDERA ALIAS "CHIN";
ACCUSED-APPELLANT.**

G.R. No. 239000. 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 September 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08608, which affirmed the Joint Judgment[3] dated August 23, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case Nos. R-QZN-13-02708-CR and R-QZN-13-02709-CR, finding accused-appellant Jerome Emar Sanchez y Edera alias "Chin" (Sanchez), inter alia, 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 two (2) Informations[5] filed before the RTC accusing Sanchez of violating Sections 5 and 15, Article II of RA 9165. The prosecution alleged that at around nine (9) o'clock in the evening of August 9, 2013, a buy-bust team composed of operatives from the Philippine Drug Enforcement Agency (PDEA) conducted a buy-bust operation against Sanchez, during which two (2) sachets containing white crystalline substance were obtained from him. As there was a crowd already forming at the place of arrest, the buy-bust team, together with Sanchez, proceeded to their headquarters, where the seized items were marked, photographed, and inventoried in the presence of Barangay Kagawad Jose Ruiz, Jr. (Kag. Ruiz). Thereafter, the seized items were brought to the crime laboratory where, upon examination,[6] the contents thereof yielded positive for a total of 0.3512[7] gram of methamphetamine hydrochloride or shabu, a dangerous drug.[8]

In defense, Sanchez denied the charges against him, claiming instead, that he was seated with Bernard, the friend of his best friend, when six (6) men approached them and asked if they knew a certain "Jerome." When Sanchez asked why they were looking for "Jerome," one of the men grabbed his arm and another choked his neck, and later forced him to board a vehicle. They were then brought to the PDEA office where the men took his belongings, and thereafter detained him. Sanchez also claimed that one of the men even demanded P100,000.00 from him, but he did not have the said amount.[9]

In a Joint Judgment[10] dated August 23, 2016, the RTC found Sanchez 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 in the amount of P500,000.00. He was, however, acquitted of violation of Section 15, Article II of RA 9165 for insufficiency of evidence.[11] The RTC found that the prosecution had established all the elements of the crime of Illegal Sale of Dangerous Drugs as it was shown that Sanchez was caught in flagrante delicto to be selling shabu during a legitimate buy-bust operation. Further, the RTC ruled that the failure of the PDEA operatives to conduct the inventory and photography of the seized items immediately at the place of

arrest did not weaken the case against him, opining that the integrity and evidentiary value thereof were nevertheless preserved.[12] Aggrieved, Sanchez appealed[13] to the CA.

In a Decision[14] dated September 4, 2017, the CA affirmed the RTC ruling.[15] It held that Sanchez was indeed caught selling shabu during a legitimate buy-bust operation and that there was substantial compliance with the chain of custody rule.[16]

Hence, this appeal seeking that Sanchez'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 "[m]arking 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, the Court has observed that the marking of the items purportedly seized from Sanchez at the PDEA office was justified as there was a crowd already forming at the place of arrest that might jeopardize the buy-bust operation. Nonetheless, it must be pointed out that, as may be gleaned from the Inventory of Seized Properties/Items^[40] dated August 10, 2013, the inventory and photography^[41] of such items were not conducted in the presence of representatives from the DOJ and the media, contrary to the afore-described procedure. This was separately confirmed by two (2) PDEA agents, namely, Intelligence Officer 1 Cesar Dealagdon, Jr. (IO1 Dealagdon) and Intelligence Officer 1 Arcadio Saplan, Jr. (IO1 Saplan) during their respective direct-examinations, to wit:

Direct Examination of IO1 Dealagdon

[Assistant City Prosecutor Alexis G. Bartolome (ACP Bartolome)]: During the last hearing, Mr. witness, you were asked to identify the Inventory Receipt which was previously marked as Exhibit "N", where was the accused at the time when this Inventory Receipt was being prepared?

[IO1 Dealagdon]: He was with us, sir.

Q: Who else was with you at that time?

A: The elected Brgy. Official, Kag. Ruiz, Agent Samplan [sic], the team leader, the accused, and the rest of the team, sir.

Q: How about the representative from the Media?

A: There was no representative from the Media, sir.

Q: Why, Mr. witness?

A: Our team leader called the presence of the representative from the Media but there was nobody [who] appeared, sir.

Q: How about the DOJ representative, Mr. witness?

A: None, sir.

Q: Why?

A: Our team leader called also the presence of the DOJ representative but there was nobody [who] came.[42]

Direct Examination of IO1 Saplan

[ACP Bartolome]: Mr. witness, why is it that there are no signatures from the representatives of the Media and the DOJ?

[IO1 Saplan]: Our team leader informed me that there were no representatives available from the DOJ and the Media, so, he instructed us to bring the specimen to the crime laboratory.[43]

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. However, both IO1 Dealagdon and IO1 Saplan acknowledged the absence of representatives from the DOJ and the media during the inventory and photography of the seized items, and offered the excuse that as per their team leader, they sought their presence during the conduct thereof but nobody came. At this point, the prosecution should have called their team leader to the witness stand in order to show, at the very least, that earnest efforts were exerted to ensure the presence of the required witnesses during the conduct of the inventory and photography. Absent any finding that such earnest efforts were made, the Court is constrained to hold that there was an unjustified deviation from the chain of custody rule, resulting in the conclusion that the integrity and evidentiary value of the items purportedly seized from Sanchez were compromised. Perforce, his acquittal is warranted under these circumstances.

WHEREFORE, the appeal is GRANTED. The Decision dated September 4, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08608 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Jerome Emar Sanchez y Edera alias "Chin" 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.

Carpio (Chairperson), Caguioa, and A. Reyes, Jr., JJ., concur.

J. Reyes, Jr.,[*] J., on official leave.

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

[1] See Notice of Appeal dated January 30, 2018; rollo, pp. 24-25.

[2] Id. at 2-23. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos, concurring.

[3] CA rollo, pp. 54-62. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[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] The Information dated August 12, 2013 in Criminal Case No. R-QZN-13-02708-CR was for Section 15, Article II of RA 9165 (Use of Dangerous Drugs); records, pp. 2-3; while the Information dated August 12, 2013 in Criminal Case No. R-QZN-13-02709-CR was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous

Drugs); records, pp. 4-5.

[6] See Chemistry Report No. PDEA-DDO13-200 dated August 10, 2013; id. at 19.

[7] One sachet contained 0.1833 gram while the other sachet contained 0.1679 gram of shabu; see id.

[8] See rollo, pp. 4-10. See also CA rollo, pp. 55-58.

[9] See rollo, pp. 10-11. See also CA rollo, pp. 58-59.

[10] CA rollo, pp. 54-62.

[11] Id. at 61-62.

[12] See id. at 59-61.

[13] See Notice of Appeal dated September 5, 2016; id. at 13-14.

[14] Rollo, pp. 2-23.

[15] Id. at 22.

[16] See id. at 13-22.

[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*, 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).

[22] See *People v. Tumulak*, 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; emphasis and underscoring supplied.

[25] Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

[26] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *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, 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. 22.

[41] As per IO1 Dealagdon, the photography of the seized items was done concurrently with the inventory thereof. (See TSN, August 7, 2014 p. 4)

[42] Id. at 2-3.

[43] TSN, August 4, 2015, pp. 9-10.

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