

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. GARRY BRIONES Y ESPINA, ACCUSED-APPELLANT.

G.R. No. 239077. March 20, 2019

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CAGUIOA, J:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated August 17, 2016 of the Court of Appeals, Tenth Division (CA) in CA-G.R. CR-HC No. 07216, which affirmed the Judgment[3] dated December 10, 2014 rendered by the Regional Trial Court, Branch 84, Batangas City (RTC) in Criminal Case No. 18040, finding herein accused-appellant Garry Briones y Espina (Garry) 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, as amended.

The Facts

The Information[5] filed against Garry for violation of Section 5, Article II of RA 9165 pertinently reads:

That on or about April 16, 2013 at around 11:50 in the morning at Brgy. Gulod Labac, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally sell, dispense[,] or deliver one (1) transparent plastic sachet of Methamphetamine Hydrochloride, more commonly known as Shabu, a dangerous drug, weighing 0.15 gram, which is a clear violation of the above-cited law.

CONTRARY TO LAW.[6]

Upon arraignment, Garry pleaded not guilty to the offense charged.[7]

Version of the Prosecution

The facts of the case, as culled from the records and the Decision of the CA, are as follows:

On April 16, 2013 at around 10:00 o'clock in the morning, PO1 Carandang was on duty at the office of the Station Anti-Illegal Drugs Special Operation Task Force of the Batangas City Police Station. His asset arrived at the police station and reported that there was a person who was selling shabu on a consignment basis. PO1 Carandang relayed the information to SPO1 de Chavez, SPO1 Yap and PO2 Ponciano Asilo. SPO1 de Chavez, acting as team leader, decided to conduct a buy-bust operation against the drug pusher who the asset referred to as "Garry." SPO1 Pepito Adelantar prepared the coordination form and the pre-operation report while SPO1 de Chavez coordinated with the PDEA. Upon receipt of their coordination forms, PDEA provided them with the control number 0413-00087.

During the briefing, PO1 Carandang was assigned to act as the poseur-buyer, accompanied by the asset during the purchase of the illegal drug. Thereafter, the team, together with the asset, boarded the tinted car of SPO1 de Chavez. Before they left the police station for the buy-bust operation, desk officer PO2 Adora recorded their departure in Entry No. 010317 date 4/16/13 at 11:15 a.m. They proceeded to the barangay hall of Brgy. Gulod Labac, Batangas City before going to the place of transaction. SPO1 de Chavez coordinated with the barangay officials and had the buy-bust operation recorded in the barangay blotter. Afterwards, the team proceeded to

the Fil Oil Gasoline Station in Brgy. Gulod Labac, Batangas City.

When they reached the gasoline station, PO1 Carandang and the asset alighted from the car and waited at a vacant lot nearby. SPO1 de Chavez and SPO1 Yap parked the car in front of PO1 Carandang and the asset. After five (5) minutes, a man referred to by the asset as alias "Garry" arrived. The asset and Garry talked while PO1 Carandang stood just beside both of them. Then, Garry handed the asset a plastic sachet and uttered, "point three yan, two five yan." The asset immediately passed the plastic sachet to PO1 Carandang. Thereafter, PO1 Carandang arrested Garry.

SPO1 Yap and SPO1 de Chavez were parked about two (2) meters [a]way from PO1 Carandang, the asset and the accused. When SPO1 Yap and SPO1 de Chavez saw the transaction take place, they alighted from the car. PO2 Asilo also approached the trio when he saw that his team members alighted from the car. SPO1 de Chavez frisked the accused, who identified himself as Garry Briones y Espina, but did not recover any other illegal item. Then, PO1 Carandang marked the plastic sachet with his initials "RBC" and the date of arrest 04/16/13. Pictures were taken while PO1 Carandang was marking the evidence.

From the place of arrest, the team brought the accused to the barangay hall of Brgy. Gulod Labac, Batangas City as evidenced by an entry in the barangay blotter. SPO1 de Chavez called up SPO1 Adelantar and Fiscal Bien Patulay for the conduct of inventory. He tried to call a media representative but no one arrived. Upon arrival of SPO1 Adelantar and the DOJ representative, the inventory of confiscated items was conducted. Pictures were also taken while the inventory was being conducted. A Certificate of Inventory was prepared by SPO1 Adelantar and signed by SPO1 de Chavez, DOJ Representative Fiscal Bien Patulay and Brgy. Councilor Danilo Alcones. PO1 Carandang was in possession of the plastic sachet of shabu from the time it was confiscated until it was turned over to SPO1 Adelantar after the inventory was conducted. Both PO1 Carandang and SPO1 Adelantar signed the Chain of Custody Form to record the turn-over of evidence. Thereafter, they proceeded back to the police station.

At the police station, the team's arrival was recorded by desk officer PO2 Adora under Entry No. 013027. SPO1 Adelantar prepared the request for laboratory examination and for drug test. Then, he delivered the documents and the confiscated item with markings "RBC 04/16/13" to the Batangas Provincial Crime Laboratory Office. SPO3 Lito Vargas received the letter request and the specimen. Immediately after SPO3 Vargas received the confiscated item, he turned it over to Forensic Chemist PCI Herminia Llacuna, who then conducted the laboratory examination. As shown in the Chemistry Report No. BD 204-2013, the specimen tested positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.[8]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

On April 16, 2013, between 9:00 o'clock and 10:00 o'clock in the morning, accused was at home. His mother asked him to buy viand at the carinderia in front of their house. When he reached the carinderia, he decided to stay and eat there. While he was there, police officers Chavez and Yap arrived and handcuffed him. The two police officers were looking for Garry's neighbor, Ranie, who was in Mindoro at that time. Accused was brought to the police station where he learned that he was charged with violation of R.A. 9165.

Accused testified that prior to his arrest, he knew SPO1 de Chavez and SPO1 Yap because he saw them at the cockpit. Occasionally, PO1 Carandang, who was also known as "Buttercup," joined the two at the cockpit. Accused did not have any altercation with the police officers prior to his arrest.[9]

Ruling of the RTC

In the assailed Judgment dated December 10, 2014, the RTC held that it is immaterial that no consideration or payment was given by the asset to the accused upon receipt of the plastic sachet of shabu since the evidence

adduced by the prosecution adequately proved that the accused personally passed the plastic sachet of shabu to the asset.[10] It further ruled that the identity of the subject dangerous drug was established by the prosecution.[11] Lastly, it held that the prosecution sufficiently established that the accused was guilty of the crime charged in the information.[12]

The dispositive portion of the Judgment reads:

WHEREFORE, judgment is hereby rendered finding the accused GARRY BRIONES Y Espina @ "Garry" GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and sentencing him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (PhP 500,000.00).

x x x x

SO ORDERED.[13]

Aggrieved, Garry appealed to the CA.

Ruling of the CA

In the assailed Decision dated August 17, 2016, the CA affirmed in toto Garry's conviction. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED The Judgment dated December 10, 2014 is AFFIRMED.

SO ORDERED.[14]

The CA ruled that although Garry could not be convicted of the crime of illegal sale of dangerous drugs due to lack of consideration or payment, nevertheless, he may still be held liable for violation of Section 5, Article II of RA 9165.[15] Section 5, Article II of R.A. No. 9165 does not only punish illegal sale of dangerous drugs, but also punishes illegal delivery of dangerous drugs.[16] Verily, all the elements of illegal delivery of dangerous drugs were established by the prosecution.[17]

It further ruled that the procedural lapses alleged by Garry were minor and did not affect the integrity and evidentiary value of the confiscated drug.[18] The failure to secure the attendance of the media representative was sufficiently explained.[19] Moreover, the failure of the police officers to strictly comply with the provisions of Section 21, paragraph 1 of Article II of RA 9165 did not prevent the presumption of regularity in the performance of duty being applied to the instant case.[20]

Hence, the instant appeal.

Issue

Whether Garry's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very corpus delicti of the offense[21] and the fact of its existence is vital to sustain a judgment of conviction.[22] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[23] Thus, in order to obviate any unnecessary doubt on their identity, 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.[24]

In this regard, Section 21, Article II of RA 9165,[25] the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.[26]

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[27] In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[28] and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not ipso facto render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[29] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[30] Without any justifiable explanation, which must be proven as a fact,[31] the evidence of the corpus delicti is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[32]

The buy-bust team failed to comply
with the mandatory requirements
under Section 21.

In the instant case, the buy-bust team failed to comply with the mandatory requirements under Section 21, which thus creates reasonable doubt as to the identity and integrity of the seized drug from Garry.

Based on the testimony of PO1 Ruther Carandang (PO1 Carandang), the police officers only tried to contact the three mandatory witnesses when they were already at the barangay hall after the arrest of the accused and seizure of the drug at the crime scene. Verily, due to their delayed action, only a DOJ representative and a barangay official were able to go to the police station to witness the inventory and photography of the seized drug. Neither did they offer any sufficient explanation as to the absence of the media representative. As PO1 Carandang testified:

Q:

And After the barangay blotter entry was made in the Barangay Hall, what happened next if any?

A:

Then we called for an investigator SPO1 Adelantar and we also called for a DOJ representative, Fiscal Patulay.

Q:

And after you called for the investigator and DOJ representative, what happened next if any?

x x x x

A:

Our team leader contacted [a] representative from [the] media but nobody arrived, Sir.[33] (Emphasis supplied)

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose - to prevent or insulate against the planting of drugs.[34] In the instant case, the belated participation of the two witnesses after the arrest of the accused and seizure of the drug defeats the aforementioned purpose of the law in having these witnesses present at the place of apprehension.

Moreover, the buy-bust team did not offer any explanation for its failure to strictly comply with the requirements of Section 21.

The Court has consistently held that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.[35] As the Court en banc unanimously held in the recent case of *People v. Lim*,[36]

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[37] (Emphasis in the original and underscoring supplied)

In the case at bar, the police officers gave no such explanation. They merely "called-in" the mandatory witnesses after the buy-bust operation was already accomplished although it is obvious that they had no excuse to do so. The buy-bust team had enough time to secure the presence of the required witnesses at the place of arrest and seizure. PO1 Carandang testified that Garry has been under surveillance and has been in the watch list since 2010 and that his co-police officers already knew him.[38] His informant, who has been his asset for more or less five months already, informed him about the transaction at 10:00 a.m. Thereafter, they left the police station at 11:15 a.m. and coordinated with the barangay officials and had the buy-bust operation recorded in the barangay blotter.[39] Therefore, based on these facts, they had more than sufficient time to contact the required witnesses prior to the buy-bust operation.

In addition, the Court notes that PO1 Carandang has been a member of the Station Anti-Illegal Drugs Special Operations Task Force since May 3, 2012 and he has already previously conducted surveillance and monitoring,

and has arrested persons involved in illegal drugs operations. Verily, he and his team already knew the standard procedure in a buy-bust operation and the mandatory requirements under Section 21. Hence, they should have had the foresight to do all the necessary preparations for it.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[40] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[41]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[42] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[43] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[44]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[45] that it will not presume to set an a priori basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized item according to the procedures in their own operations manual.

All told, the prosecution failed to prove the corpus delicti of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Garry.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the corpus delicti. To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[46]

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated August 17, 2016 of the Court of Appeals, Tenth Division in CA-G.R. CR-HC No. 07216, is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant GARRY BRIONES y ESPINA is ACQUITTED of the crime charged on the ground of reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for

immediate implementation. The said Superintendent is ORDERED to REPORT to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio,[*] (Chairperson), Perlas-Bernabe, J. Reyes, Jr., and Lazaro-Javier, JJ., concur.

[*] Designated as Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

[1] See Notice of Appeal dated September 15, 2016, rollo, p. 24.

[2] Rollo, pp. 2-23. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles, concurring.

[3] CA rollo, pp. 62-68. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

[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" (2002).

[5] Records, p. 1.

[6] Id.

[7] Rollo, p. 3.

[8] Id. at 5-7.

[9] Id. at 7.

[10] CA rollo, p. 67.

[11] Id. at 67-A.

[12] Id. at 67-A-68.

[13] Id. at 68.

[14] Rollo, p. 23.

[15] Id. at 14.

[16] Id.

[17] Id. at 15.

[18] Id. at 22.

[19] Id.

[20] Id.

[21] People v. Sagana, G.R. No 208471, August 2, 2017, 834 SCRA 225, 240.

[22] Derilo v. People, 784 Phil. 679, 686 (2016).

[23] People v. Alvaro, G.R. No. 225596, January 10, 2018, p. 9.

[24] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[25] The said section reads 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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her 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 thereof[.]

[26] See RA 9165, Art. II, Sec. 21(1) and (2).

[27] IRR of RA 9165, Art. II, Sec. 21 (a).

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

[29] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

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

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

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[33] TSN, November 14, 2013, pp. 12-13.

[34] See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, pp. 11-12.

[35] *People v. Musor*, G.R. No. 231843, November 7, 2018; *People v. Bricero*, G.R. No. 218428, November 7, 2018.

[36] G.R. No. 231989, September 4, 2018.

[37] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[38] TSN, February 13, 2014, p. 6.

[39] Rollo, p. 5.

[40] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[41] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[42] *People v. Mendoza*, 736 Phil. 749, 769-770. (2014).

[43] *Id.*

[44] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[45] 393 Phil. 68, 133 (2000).

[46] People v. Jugo, G.R. No. 231792, January 29, 2018.

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