

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MA.
FLORIZA FULGADO Y COLAS @ "THANE,"
ACCUSED-APPELLANT.**

G.R. No. 246193. February 19, 2020

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

This resolves the appeal filed by Ma. Floriza Fulgado y Colas @ "Thane" (Fulgado) from the Decision[1] dated October 5, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 09800 which affirmed the Decision[2] dated August 6, 2017 of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67 in Criminal Case Nos. 15-109 to 15-111. The RTC found Fulgado and her co-accused Edlyn Tamayo (Tamayo) guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Factual Antecedents

The two Informations charging Fulgado are quoted below:

Criminal Case No. 15-109

(Violation of Section 5, Article II of R. A. No. 9165)

That on or about the 11[th] day of February 2014[3] in the Municipality of Cardona, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, without being authorized by law to sell and dispose of any dangerous drug, did, then and there wil[l]fully, unlawfully and knowingly sell, deliver and give away to another 0.02 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet for and in consideration of the amount of Php200.00 which substance after examination conducted by the PNP Rizal Crime Laboratory Office was found positive to the test for Methamphetamine Hydrochloride or shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Criminal Case No. 15-111

(Violation of Section 11, Article II of R. A. No. 9165)

That on or about the 11[th] day of February 2014[5], in the Municipality of Cardona, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drugs did, then and there willfully, unlawfully and knowingly have in her possession, direct custody and control 0.02 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which substance when examined at the PNP Rizal Provincial Crime Laboratory Office, was found positive to the test for Methamphetamine Hydrochloride also known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

When arraigned, Tamayo and Fulgado pleaded not guilty[7] to the charges against them. Thus, trial on the merits ensued.

Version of the Prosecution

At around 5:00 p.m. on February 11, 2015, a confidential informant tipped off the Cardona Police Station that Tamayo and Fulgado were dealing with dangerous drugs near the Iglesia Ni Cristo church in Brgy. San Roque, Cardona, Rizal.[8] Senior Police Officer 2 Vernie Mendoza (SPO2 Mendoza) informed the Chief of Police and thereafter coordinated with Region 4A of the Philippine Drug Enforcement Agency (PDEA) for the conduct of an entrapment operation.[9] A buy-bust team was formed designating Police Officer 2 John Rossmund Cruz (PO2 Cruz) as poseur-buyer and the buy-bust money, consisting of two P100.00 bills marked as "JRC-1" and "JRC-2," was prepared.[10] The team then proceeded to the target site.[11]

At the place of operation, PO2 Cruz approached a woman initially called alias "Dlen" but later identified as Tamayo and asked "Madam, meron ba dyan?"[12] It was Fulgado who replied, "meron po." [13] PO2 Cruz then gave the marked money to Fulgado and approached Tamayo who, in turn, handed him a plastic sachet containing white crystalline substance.[14] Immediately thereafter, PO2 Cruz did the pre-arranged signal, introduced himself as a police officer, and arrested Tamayo from whom two other transparent plastic sachets were seized.[15] SPO2 Mendoza handcuffed and frisked Fulgado, and recovered one plastic sachet.[16] PO2 Cruz then proceeded to mark the purchased sachet, as well as the two (2) other sachets nabbed from Tamayo as "EST-1," "EST-2," and "EST-3,"[17] while SPO2 Mendoza marked the sachet copped from Fulgado as "MCF." [18] Thereafter, at the police station, an inventory of the confiscated drugs was made in the presence of a Barangay Kagawad.[19] After inventory, the seized plastic sachets were turned over to PO2 Allen Mendoza who then prepared the request for laboratory examination.[20] Afterwards, the request, together with the seized items were brought to the Crime Laboratory Office.[21] Upon receipt of the seized items, forensic chemist Police Senior Inspector Maria Pia Ovejas Moskito (PSI Moskito) conducted tests on the specimen.[22] In her Final Laboratory Report No. D-116-15, PSI Moskito concluded that the white crystalline substance contained in the plastic sachets yielded positive for methamphetamine hydrochloride or more commonly known as shabu.[23]

Version of the Defense

Fulgado denied the charges and insisted that the drugs were planted. According to her, on February 11, 2015, at around 8:00-9:00 p.m. She and Tamayo's children met Tamayo in front of Iglesia Ni Cristo church.[24] Tamayo then instructed her children to board a jeepney and to wait at the Queen Mary.[25] Tamayo asked Fulgado to stay behind when suddenly, persons coming from the other side of the road approached them uttering the words "isakay na mga yan." [26] Fulgado recounted that they were brought to the police station on board a tricycle.[27] She testified that they were told to strip in a small room where they were frisked.[28] She claimed that the police found nothing on them but still placed them inside the jail.[29] She averred that the next day their photographs were taken while being made to point at some sachets.[30]

The RTC Ruling

On August 6, 2017, the RTC of Binangonan, Rizal, Branch 67, rendered a Decision finding Tamayo and Fulgado guilty beyond reasonable doubt of violation of Sections 5 and 11 of R.A. No. 9165.

The RTC held that as between the bare denials of Tamayo and Fulgado and the straightforward testimonies of the apprehending officers, the latter should be given full faith and credit as it bears the badges of truth especially since it is replete with rich details.[31] Moreover, the RTC found that the chain of custody of the seized items was duly

established by the prosecution.[32]

Thus, the dispositive portion of the Decision reads:

In light of this, we find [Tamayo] and [Fulgado] GUILTY beyond reasonable doubt of violating Section 5, Article II, R.A. No. 9165 and sentence them to each suffer a penalty of life imprisonment and to each pay a fine of P500,000.00. We also find [Tamayo] GUILTY beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 [for] illegally possessing a total of 0.07 grams of Methamphetamine Hydrochloride or shabu and accordingly sentence her to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of P300,000.00. Finally, we find [Fulgado] GUILTY beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 [for] illegally possessing 0.02 grams of Methamphetamine Hydrochloride or shabu and accordingly sentence her to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of P300,000.00.

x x x x

SO ORDERED.[33]

The CA Ruling

In the Brief[34] filed by Fulgado, she maintained that the prosecution failed to establish her guilt beyond reasonable doubt. She argued that the integrity of the corpus delicti was compromised since the testimonies of the police officers are fraught with inconsistencies. She contended that there were several irregularities surrounding the buy-bust operation, the marking, and the inventory.

In its Decision dated October 5, 2018, the CA denied the appeal. In affirming the RTC Decision, the CA ruled that all elements of the crimes charged were proven to a moral certainty.[35] The CA held that the supposed incongruencies cited by Fulgado to discredit the prosecution's evidence are inconsequential and insufficient to warrant her exoneration.

Unfazed, Fulgado filed the instant appeal, seeking a reversal of his conviction based on the same arguments she brought up before the CA.

The Court's Ruling

The appeal has merit.

To begin, it must be stressed that the Notice of Appeal[36] filed by Fulgado in accordance with Rule 122,[37] Section 3(e), in relation to Rule 124,[38] Section 13(c) of the Rules of Court opens the entire case for review by the Court on any question be it one of fact or law, or mixed, and even one not raised by the parties.[39]

Ordinarily, the Court refrains from disturbing the factual findings and conclusions of the RTC, especially when affirmed by the CA.[40] However, the Court will not hesitate to do so where the lower courts overlooked certain facts of substance and value which, if considered, would affect the outcome of the case - as here.

Fulgado stands charged with selling 0.02 gram of shabu and possessing 0.02 gram of shabu. For the successful prosecution of illegal sale of prohibited drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established beyond reasonable doubt, to wit: (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.[41] On the other hand, in order to secure conviction for illegal possession of prohibited drugs under Section 11, Article II of R.A. No. 9165 the prosecution must prove: (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 drug.[42] In both cases, the existence of the drug - being the corpus delicti of the crimes - must be clearly established by the

prosecution.[43] Corollarily, the prosecution has the burden of proving that there was no interruption in the chain of custody of the dangerous drugs, from the moment the drugs were seized up to their presentation in court.[44]

Section 21, Article II of R.A. No. 9165 outlines the procedure that police officers must follow in handling the confiscated drugs in order to ensure that their integrity and evidentiary value are preserved, to wit:

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.

While Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides:

SEC. 21. (a) The apprehending officer/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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; 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)

On July 15, 2014, Section 21 was amended by R.A. No. 10640[45] to this effect:

SEC. 21. x x x. —

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: 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.

Stated otherwise, the law requires that the 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 R.A. No. 9165 by R.A. No. 10640, "a representative from the media and the DOJ, and any elected public official"; or (b) if after the amendment of R.A. No. 9165 by R.A. No.

10640, "an elected public official and a representative of the National Prosecution Service or the media." [46]

Here, the Court finds that the prosecution failed to comply with the three-witness rule under R.A. No. 9165 - the law applicable at the time of the commission of the offense. The testimonies of the prosecution witnesses tell us so, viz.:

x x x x

Q: Now Mister Witness, where did you cause the marking of this sachet?

A: At the place of the incident in front of a barangay kagawad, Sir.

Q: Now after you handcuffed and arrested accused [Fulgado], what did you do next, if any Mister Witness?

A: After the marking, we then brought her to the police station. Sir.

Q: What happened in the police station?

A: We asked her of her personal circumstances for her to be brought to the Crime Lab including the pieces of evidence recovered from her, Sir.

Q: How about the drugs that you recovered from her, when you reach[ed] the police station, what did you do with it?

A: We forwarded it to the investigator for him to prepare the request for chemistry examination, Sir. [47]

x x x x

Q: So after you marked those sachets, what else did you do?

A: After marking the pieces of evidence, we proceeded to the police station and there we conducted the inventory because the barangay kagawad proceeded there.

Q: Now, who is that barangay kagawad you summoned, if you remember?

A: I could not recall the name, Sir.

Q: Now, you mentioned that you prepared an inventory of evidence that you seized from the accused. I have here a document attached to the records of these cases which is the Inventory of Evidence Seized. Now, please take a look at this document and tell us if that is the inventory that you prepared?

A: Yes, sir.

Q: Now, below that is a signature above the printed name PO2 CRUZ, now whose signature is that?

A: My signature, sir. [48]

First, it is evident from the foregoing that the physical inventory and photographing of the seized items were not executed immediately at the place of arrest. Second, when the apprehending officers conducted the physical inventory at the police station, the presence of all the required witnesses was not secured. Only an elected official was present during the inventory of the confiscated drugs. There were no representatives from the media and the DOJ present at the time.

Admittedly, strict compliance with the requirements of law may not always be possible and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No 9165 does not ipso facto render the seizure and custody over the items void, this has always been 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. [49] In the landmark case of *People v. Lim*, [50] the Court held that:

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.

Earnest effort to secure the attendance of the necessary witnesses must be proven.

Regrettably, nowhere in the records does it show that the prosecution even attempted to explain the non-compliance with the strict requirement of immediate inventory and photograph at the place of arrest nor justify why two of the three required witnesses were not present during the marking and inventory. Further, there is no iota of evidence to show that the police officers exerted effort to contact and secure the other witnesses, notwithstanding the fact that buy-bust operations are usually planned out ahead of time.

In *People v. Retada*,^[51] the Court was clear:

Time and again, the Court has held that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. (Emphasis supplied)

"It is well-settled that the procedure in Section 21, Article II of R.A. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects."^[52] Verily, any breach in the procedure laid down in our laws has the effect of compromising the integrity and evidentiary value of the very corpus delicti of the case and thereby militates against a finding of guilt beyond reasonable doubt against the accused.

All told, Fulgado must be and is so acquitted for failure of the prosecution to justify the arresting officers' non-compliance with the three-witness rule under Section 21 of R.A. No. 9165.

In view of this, Tamayo, Fulgado's co-accused in this case, must perforce be acquitted as well considering that (1) under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure,^[53] a favorable judgment shall benefit the co-accused who did not appeal; and (2) the evidence against and the conviction of Tamayo and Fulgado are inextricably linked. Hence, the acquittal of Fulgado based on reasonable doubt should likewise apply to her co-accused Tamayo albeit no appeal was filed by the latter.

WHEREFORE, the appeal is GRANTED. The October 5, 2018 Decision of the Court of Appeals is REVERSED and SET ASIDE. Appellant Ma. Floriza Fulgado y Colas @ "Thane" and her co-accused Edlyn Tamayo are hereby ACQUITTED of the crimes charged for failure of the prosecution to prove their guilt beyond reasonable doubt and ORDERED immediately RELEASED from detention unless confined for another lawful cause.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women for immediate implementation and to report any action taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Peralta, C.J., (Chairperson), Caguioa, Lazaro-Javier, and Lopez, JJ., concur.

[1] Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando (now a member of this Court), concurring; CA rollo, pp. 104-117.

[2] Penned by Presiding Judge Dennis Patrick Z. Perez; id. at 61-63.

[3] Should be 2015.

[4] Records (Crim. Case No. 15-109), p. 1.

[5] Should be 2015.

[6] Records (Crim. Case No. 15-111), p. 1.

[7] Id. at 18.

[8] TSN, February 23, 2017, p. 4.

[9] TSN, October 13, 2016, p. 6.

[10] TSN, February 23, 2017, p. 6.

[11] TSN, October 16, 2017, p. 7.

[12] TSN, February 23, 2017, p. 8.

[13] Id. at 9.

[14] Id.

[15] Id. at 10.

[16] TSN, October 13, 2016, p. 11.

[17] TSN, February 23, 2017, p. 13.

[18] TSN, October 13, 2016, p. 14.

[19] TSN, February 23, 2017, p. 15.

[20] TSN, October 13, 2016, p. 16.

[21] TSN, February 23, 2017, p. 17.

[22] TSN, November 5, 2015, p. 10.

[23] Records (Crim. Case No. 15-109), p. 91.

[24] TSN, June 29, 2017, pp. 7-8.

[25] Id. at 9.

[26] Id.

[27] Id. at 11.

[28] Id. at 13.

[29] Id. at 14.

[30] Id. at 15-17.

[31] CA rollo, p. 63

[32] Id.

[33] Id.

[34] CA rollo, pp. 41-59.

[35] Id. at 110.

[36] Id. at 17.

[37] Rule 122 - APPEAL

x x x x

SEC. 3. How appeal taken. -

x x x x

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45.

[38] Rule 124 - PROCEDURE IN THE COURT OF APPEALS

x x x x SEC. 13. Certification or appeal of case to the Supreme Court.- x x x

x x x x

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment. imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[39] People v. Rivera, 613 Phil. 660, 668 (2009).

[40] People v. Amar y Montano, 813 Phil. 369, 376 (2017).

[41] People v. Ejan y Bayato, G.R. No. 212169, December 13, 2017.

[42] People v. Torio y Paragas, G.R. No. 225780, December 3, 2018.

[43] People v. Piñero, G.R. No. 242407, April 1, 2019.

[44] People v. Baradi y Velasco, G.R. No. 242407, October 1, 2018.

[45] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF R.A. NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

[46] People v. Cuevas y Martinez, G.R. No. 238906, November 5, 2018.

[47] TSN, October 13, 2016, p. 15.

[48] TSN, February 23, 2017, pp. 14-15.

[49] People v. Ceralde y Ramos, 815 Phil. 711, 720-721 (2017).

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

[51] G.R. No. 239331, July 10, 2019.

[52] *People v. Jugo y Villanueva*, G.R. No. 231792, January 29, 2018.

[53] SECTION 11. Effect of appeal by any of several accused. —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

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