



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 231796

Present:

PERLAS-BERNABE, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA, * JJ.

- versus -

JOHNNY ARELLAGA y SABADO
Accused-Appellant.

Promulgated:
24 AUG 2020

X ----- X

DECISION

HERNANDO, J.:

Accused-appellant Johnny Arellaga y Sabado (appellant) assails the September 30, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 07604 which affirmed the June 15, 2015 Decision² of the Regional Trial Court (RTC) of Manila, Branch 2, in Criminal Case Nos. 13-297289 and 13-297290 finding him guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165³ for illegal sale and possession of dangerous drugs, respectively.

* On official leave.

¹ CA *rollo*, pp. 108-125; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elihu A. Ybañez and Nina G. Antonio-Valenzuela.

² Records, pp. 87-94, penned by Presiding Judge Sarah Alma M. Lim.

³ Comprehensive Dangerous Drugs Act of 2002.

In Criminal Case No. 13-297289, appellant was charged with violation of Section 11, Article II of R.A. No. 9165 allegedly committed as follows:

That on or about May 23, 2013, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully[,] and knowingly have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets each containing white crystalline substance commonly known as “shabu” with the following markings and recorded net weights:

| | | |
|----------|-----------------------------|--------------|
| “JSA-1”- | ZERO POINT ZERO THREE EIGHT | (0.038) gram |
| “JSA-2”- | ZERO POINT ZERO ONE NINE | (0.019) gram |
| “JSA-3”- | ZERO POINT ZERO THREE THREE | (0.033) gram |

or with a total net weight of ZERO POINT ZERO NINE ZERO (0.090) gram, which after qualitative examination gave positive results to the tests for methamphetamine hydrochloride, a dangerous drug.

Contrary to law.⁴

In Criminal Case No. 13-297290, appellant was charged with violation of Section 5, Article II of R.A. No. 9165 allegedly committed as follows:

That on or about May 23, 2013, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport, or distribute any dangerous drug, did then and there willfully, unlawfully[,] and knowingly sell or offer for sale to a police officer/poseur buyer one (1) heat-sealed transparent plastic sachet with markings “JSA” containing ZERO POINT ZERO ONE EIGHT (0.018) gram of white crystalline substance commonly known as “shabu,” which after qualitative examination gave positive results to the tests for methamphetamine hydrochloride, a dangerous drug.

Contrary to law.⁵

Appellant pleaded not guilty to both charges during the arraignment.⁶

Version of the Prosecution:

The prosecution presented two witnesses: Police Officer 3 (PO3) Niño Baladjay (PO3 Baladjay) and Police Officer 2 (PO2) Reynold Reyes (PO2 Reyes). Their testimonies are summarized as follows.

On May 23, 2013, at around 4:14 p.m., based on a tip by a confidential informant that appellant was looking for a buyer of *shabu*, PO2 Reyes conducted a buy-bust operation against the appellant where he himself posed as the *poseur* buyer of *shabu*. After PO2 Reyes handed to appellant the ₱500.00 bill marked with his initials, “RR,” appellant went to his motorcycle and retrieved a coin purse from its

⁴ Records, p. 2.

⁵ Id. at 3.

⁶ Id. at 23.

compartment. Appellant opened the coin purse and pulled out four heat-sealed transparent sachets containing what appeared to be *shabu*. After inspecting one sachet, PO2 Reyes touched his left ear to signal the rest of the buy-bust team that the sale had been consummated.

PO2 Reyes then introduced himself as a police officer and arrested appellant. He then frisked the appellant and recovered from him the marked money and the coin purse containing three more heat-sealed sachets. PO2 Reyes marked the sachet he bought from appellant with "JSA," while the other three sachets found in appellant's possession were marked as "JSA-1," "JSA-2," and "JSA-3."

PO2 Reyes then took photos of the crime scene and the evidence recovered from appellant. PO2 Reyes also accomplished an Inventory of Property/Seized Evidence.

Thereafter, he turned over the seized evidence together with the Chain of Custody form to PO3 Baladjay upon arrival at the police station.

Version of the Defense:

The defense presented the testimonies of appellant and his stepdaughter, Nica Andrea Cruz (Nica).

Appellant claimed that on May 23, 2013, he and Nica were at the house of his mother-in-law watching television when suddenly, PO2 Reyes and PO3 Baladjay barged in. One of the police officers pointed a firearm at him while PO2 Reyes proceeded to search the second floor of the house. Appellant claimed that due to the unwarranted invasion and search of the house, personal items such as cellular phones, jewelry, and cash were lost and presumably stolen.

The police officers then brought appellant to the police station where the police demanded money in exchange for his release. Appellant claimed that he was repeatedly punched and interrogated about the drugs. The police officers covered his face with a plastic bag causing him to lose consciousness.

After three days, appellant was released and thereafter charged with illegal sale and possession of drugs.

Nica testified that on May 23, 2013, five to six men in civilian clothing entered their house. They pointed a gun at her and appellant and proceeded to search the second floor. Nica only identified PO3 Baladjay. She claimed that the men handcuffed appellant and brought him to the ground floor living room. The men told Nica to keep quiet since she was crying and shouting at the time.

After the men had left, Nica discovered that her grandmother's jewelry and cash were missing. She filed an incident report at the precinct and the barangay. She also visited appellant at the District Anti-Illegal Drugs unit in Ermita, Manila where he was detained. It was there that appellant told her that the police beat him up while

his head was covered with a plastic bag. She also claimed that the police asked for money.

Ruling of the Regional Trial Court:

On June 15, 2015, the RTC found appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. No. 9165. The RTC was convinced that the prosecution was able to establish, through the testimonies of the police officers, the guilt of appellant beyond reasonable doubt for both charges of illegal sale and possession of *shabu*. The RTC found that the police officers positively identified appellant as the person who received the ₱500.00 marked money in exchange for the heat-sealed sachet of *shabu*.⁷ The RTC likewise found that the prosecution had established that during his arrest, appellant was in possession of three additional plastic sachets of *shabu*. The RTC also found an unbroken chain of custody of the seized drugs.

The dispositive portion of the RTC's Decision reads:

WHEREFORE, judgment is hereby rendered as follows, to wit:

In Crim. Case No. 13-297289, finding accused JOHNNY ARELLAGA y SABADO, GUILTY beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum, and to pay a fine of ₱300,000.00 and

In Crim. Case No. 13-297290, finding accused JOHNNY ARELLAGA y SABADO, GUILTY beyond reasonable doubt of the crime charged and is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimens to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.⁸

Aggrieved by the RTC's Decision, appellant appealed to the CA.

Ruling of the Court of Appeals:

On September 30, 2016, the CA affirmed the RTC's Decision and held that all the elements of the crimes were present. According to the CA, the RTC was correct in finding PO2 Reyes' testimony sufficient to prove appellant's guilt beyond reasonable doubt, especially since the chain of custody was unbroken.⁹ Further, the CA held that even if the requirements of Section 21, Article II of R.A. No. 9165 were not strictly complied with, the integrity and evidentiary value of the seized items were properly preserved.¹⁰

⁷ Id. at 92.

⁸ Id. at 94.

⁹ CA rollo, p. 119.

¹⁰ Id.

Dissatisfied with the CA's Decision, appellant filed a Notice of Appeal.¹¹

Issue

The issue in this case is whether appellant is guilty of illegal sale and possession of *shabu*.

Appellant argues that the RTC erroneously convicted him since the arresting officers failed to strictly comply with the requirements of Section 21, Article II of R.A. No. 9165. He claims that the prosecution failed to sufficiently establish the integrity and evidentiary value of the seized drugs through an unbroken chain of custody. Lastly, appellant asserts that the RTC erred in not appreciating his defense of denial and extortion.¹²

Our Ruling

The appeal is meritorious. Accordingly, the appellant is acquitted.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be same drugs seized from the accused.¹³

With regard to the charge for illegal possession of dangerous drugs, the following elements must be established: “(1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.”¹⁴

In illegal drugs cases, the drugs seized from the accused constitute the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be clearly shown to have been duly preserved with moral certainty. “This means that on top of the elements of possession or illegal sale, the fact that the substance illegally sold or possessed is, in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required in sustaining a conviction.”¹⁵ “The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”¹⁶

¹¹ Id. at 130.

¹² Brief for Accused-Appellant, *id.* at 20-41.

¹³ *People v. Ismael*, 806 Phil. 21, 29 (2017).

¹⁴ *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

¹⁵ *People v. Adrid*, 705 Phil. 654, 670 (2013).

¹⁶ *Fajardo v. People*, 691 Phil. 752, 758-759 (2012).

After a careful review of the records of the case, we find that the prosecution failed to clearly establish that the requirements of Section 21, Article II of R.A. No. 9165 have been complied with, particularly regarding the three-witness rule.

R.A. No. 9165, prior to its amendment by R.A. No. 10640¹⁷ on July 15, 2014, is the law applicable as the alleged crimes in this case were committed on May 23, 2013. The original version of Section 21 requires the presence of three witnesses during the inventory and photograph taking: (1) media representative; (2) representative from the Department of Justice (DOJ); and (3) any elected public official.

Section 21 pertinently states:

Section 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;** (Emphasis supplied)

The Implementing Rules and Regulations (IRR) further elaborate on the proper procedure to be followed in Section 21(a), Article II of R.A. No. 9165. It provides:

(a) The apprehending office/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;

¹⁷ 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."

In this case, the Court finds that the buy-bust team failed to establish the presence of the three required witnesses at the time of the inventory and photograph taking of the drugs. Neither was it shown that there were justifiable grounds for their absence. As PO3 Baladjay himself testified:

[ATTY. GONZALES]: Likewise, you have no personal knowledge as to the ultimate source of the evidences which were submitted to you during the investigation, am I correct?

[PO3 BALADJAY]: Yes, ma'am.

Q: In fact, you could not remember how many items, at this time, am I correct?

A: Yes, ma'am.

Q: Mr. Witness, you earlier said that the inventory was merely submitted to you, correct?

A: Yes, ma'am.

Q: It was not done in your office?

A: Yes, ma'am.

Q: And when it was done, you were not present?

A: Yes, ma'am.

Q: And you were not the one who wrote the entries in that receipt form?

A: Yes, ma'am.

Q: This document was merely submitted to you together with the evidences? A: Yes, ma'am.

Q: Mr. Witness, likewise, when you were conducting the investigation of this accused, was there any presence of media man at that particular time?

A: None, ma'am.

Q: Likewise, was there any presence of D.O.J. representative?

A: None, ma'am.

Q: How about counsel for the accused, was he assisted by counsel when he was being investigated?

A: None, ma'am.¹⁸

The Court has held that the presence of the required number of witnesses at the time of the apprehension and inventory, is mandatory, and that their presence serves an essential purpose.¹⁹ In the present case, the Inventory of Property / Seized [Evidence]²⁰ shows that there was only one (1) witness, a certain Rene Crisostomo of the MPD Press Corp.

¹⁸ TSN, October 2, 2013, p. 9.

¹⁹ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018.

²⁰ Records, p. 12.

In *People v. Tomawis*,²¹ the Court held:

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

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.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."

In this case, there was only one witness during the most crucial stage of the buy-bust operation: the apprehension and inventory. This clearly falls short of what is required by Section 21, Article II of R.A. No. 9165.

It bears stressing that the prosecution has the burden of proving compliance with the requirements of Section 21. In case of deviation from or non-compliance with the said requirements, the prosecution must provide a sufficient explanation why Section 21 was not complied with. The Court has held in *People v. Lim*²² that the following are justifiable reasons for not securing three witnesses during the inventory and photograph taking:

(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.

²¹ G.R. No. 228890, April 18, 2018.

²² G.R. No. 231989, September 4, 2018.

The IRR of R.A. No. 9165 provides for a saving clause to ensure that not every non-compliance with the procedure for the preservation of the chain of custody will prejudice the prosecution's case against the accused. For the saving clause to apply, however, the following must be present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

In this case, the prosecution did not explain the absence of the three required witnesses nor did it try to justify the police's deviation from the mandatory procedure outlined in Section 21. Without the three witnesses, there is reasonable doubt on the identity of the seized drugs itself. Without the three witnesses, the Court is unsure whether there had been planting of evidence and/or contamination of the seized drugs. Because of this, the integrity and evidentiary value of the *corpus delicti* had been compromised. Consequently, appellant must be acquitted.


All told, the Court finds that the prosecution failed to: (1) overcome appellant's presumption of innocence; (2) prove that the requirements of securing three witnesses in Section 21, Article II of R.A. No. 9165 had been complied with; (3) offer any explanation for non-compliance with Section 21, Article II of R.A. No. 9165; and (4) prove the *corpus delicti* of the crime with moral certainty. For these reasons, the Court is constrained to acquit the appellant.

WHEREFORE, the appeal is **GRANTED**. The assailed Decision of the Court of Appeals in CA-G.R. CR HC No. 07604 dated September 30, 2016 is **REVERSED and SET ASIDE**. Appellant Johnny Arellaga y Sabado is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.


Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five days from receipt of this Decision. A copy shall also be furnished to the Director General of the Philippine National Police and the Department of Justice for their information and guidance.

Let entry of judgment be made immediately.

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

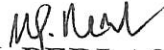

HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

On official leave
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice