

SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**PEOPLE OF THE G.R. No. 237809
PHILIPPINES,**

Plaintiff-Appellee, Present:

- versus -

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
HERNANDO,* *JJ.*

**ROSALINA AURE y
ALMAZAN and GINA
MARAVILLA y AGNES,****
Accused-Appellants.

Promulgated:

14 JAN 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal¹ is the Decision² dated August 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08065, which affirmed the Judgment³ dated November 16, 2015 and the Order⁴ dated January 5, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Crim. Case No. Q-14-00697, finding accused-appellants Rosalina Aure y Almazan (Rosalina) and Gina Maravilla y Agnes (Gina; collectively, accused-appellants) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of

* Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.
** "Agnes" in some parts of the records.
¹ See Notice of Appeal dated September 19, 2017; *rollo*, p. 17.
² *Id.* at 2-16. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Amy C. Lazaro-Javier and Pedro B. Corales, concurring.
³ *CA rollo*, pp. 36-47. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.
⁴ *Id.* at 48-52.



Republic Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

This case stemmed from an Information⁶ filed before the RTC charging accused-appellants of violating Section 5, Article II of RA 9165. The prosecution alleged that at around one (1) o'clock in the afternoon of January 15, 2014, a team composed of members from the District Anti-Illegal Drugs – Special Operation Task Group (DAID-SOTG) of the Quezon City Police District conducted a buy-bust operation against accused-appellants during which one (1) plastic sachet containing white crystalline substance was recovered from them. After marking the plastic sachet at the place of arrest, the apprehending officers, together with accused-appellants, then proceeded to the DAID-SOTG headquarters in Camp Karingal, Quezon City, where the seized item was inventoried and photographed in the presence of a media representative. Thereafter, the seized item was brought to the crime laboratory where, upon examination,⁷ the contents thereof yielded positive for 4.75 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.⁸

In defense, accused-appellants denied the charges against them, claiming instead, that they were just going about their personal matters when two (2) men suddenly grabbed them, and thereafter, dragged them to their vehicle and took them to Camp Karingal. Thereat, the men demanded ₱150,000.00 for their release, but since they could not produce the said amount, the instant criminal charge was filed against them. Notably, accused-appellants maintained that they only saw each other for the first time in Camp Karingal and that it was only during trial when they first laid their eyes on the plastic sachet purportedly seized from them.⁹

In a Judgment¹⁰ dated November 16, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced them to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.¹¹ The RTC found that the prosecution, through the testimony of the back-up arresting officer, Police Officer 3 Fernando Salonga (PO3 Salonga), had established the fact that accused-appellants indeed sold *shabu* to the poseur-buyer, Police Officer 3 Miguel Cordero (PO3 Cordero). In this regard, the RTC opined that the

⁵ 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.

⁶ Dated January 17, 2014. Records, pp. 1-2.

⁷ See Chemistry Report No. D-27-14 dated January 15, 2014, id. at 12.

⁸ See *rollo*, pp. 2-5. See also CA *rollo*, pp. 37-38.

⁹ See *rollo*, pp. 5-6. See also CA *rollo*, pp. 38-39.

¹⁰ CA *rollo*, pp. 36-47.

¹¹ Id. at 47.

failure to present the testimony of PO3 Cordero is not indispensable to accused-appellants' conviction as PO3 Salonga attested to his knowledge of the afore-described transaction.¹² Aggrieved, accused-appellants separately moved for reconsideration,¹³ which were, however, denied in an Order¹⁴ dated January 5, 2016, thus, they appealed¹⁵ to the CA.

In a Decision¹⁶ dated August 24, 2017, the CA affirmed the RTC ruling. It held that despite the absence of the testimony of PO3 Cordero, the prosecution was nevertheless able to prove accused-appellants' commission of the crime charged through the testimony of another member of the buy-bust team, PO3 Salonga, who was inside a car just 10-15 meters away from where the sale transaction occurred. Further, the CA ruled that the police officers substantially complied with Section 21, Article II of RA 9165 even though PO3 Cordero was not able to testify as to the links of the chain of custody of the confiscated drug and in spite of the absence of the Department of Justice (DOJ) representative and the elected public official during the inventory.¹⁷

Hence, this appeal seeking that the conviction of accused-appellants be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹⁸ 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.¹⁹ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State

¹² See *id.* at 39-47.

¹³ See motion for reconsideration of Rosalina dated November 24, 2015 (records, pp. 248-253); and motion for reconsideration of Gina dated November 26, 2015 (records, pp. 262-273).

¹⁴ CA *rollo*, pp. 48-52.

¹⁵ See Notice of Appeal of Rosalina dated January 27, 2016 (*id.* at 12); and Notice of Appeal of Gina dated February 5, 2016 (*id.* at 13-14).

¹⁶ *Rollo*, pp. 2-16.

¹⁷ See *id.* at 8-15

¹⁸ 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].)

¹⁹ 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).

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insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.²⁰

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.²¹ 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.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

²⁰ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²¹ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 18; *People v. Sanchez*, supra note 18; *People v. Magsano*, supra note 18; *People v. Manansala*, supra note 18; *People v. Miranda*, supra note 18; and *People v. Mamangon*, supra note 18. See also *People v. Viterbo*, supra note 19.

²² 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].)

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 18. 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 20, at 1038.

²⁸ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id.*

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

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 18.

³⁶ See *People v. Gamboa*, supra note 20, citing *People v. Umipang*, supra note 19, at 1053.

³⁷ See *People v. Crispo*, supra note 18.

³⁸ Supra note 18.

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, a perusal of the Inventory of Seized/Confiscated Item/Property⁴⁰ dated January 15, 2014 readily reveals that while the inventory of the plastic sachet purportedly seized from accused-appellants was conducted in the presence of a media representative, it was nevertheless done without the presence of any elected public official and DOJ representative, contrary to the afore-described procedure. When asked about this deviation from procedure, PO3 Salonga offered the following justification:

[Public Prosecutor Alexis G. Bartolome]: Mr. Witness, there are signatures appearing in this inventory receipt, there is a signature above the name PO3 Cordero, whose signature is this?

[PO3 Salonga]: That is the signature of PO3 Miguel Cordero, sir.

Q: How did you know that this is the signature of PO3 Cordero?

A: Because I was present when he signed it, sir.

Q: There is also a signature of Rey Argana of Police Files Tonite, whose signature is this?

A: That is the signature of Rey Argana from Police Files Tonite, sir.

x x x x

Q: It appears, Mr. Witness, that there is no signature from the representative of the Department of Justice and elected barangay official where the accused was arrested, why?

A: Our team leader tried to get a representative from the barangay official and other representative, but according to our team leader, they failed to appear in our invitation to be our witness.

x x x x⁴¹ (Emphasis and underscoring supplied)

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. Here, PO3 Salonga tried to justify their deviation from procedure by offering the perfunctory excuse that their team leader tried to invite the required witnesses but to no avail, without really expounding on the same. Neither did the prosecution press on PO3 Salonga to determine how such earnest efforts were exerted, or even

³⁹ See *id.*

⁴⁰ Records, p. 18.

⁴¹ TSN, February 24, 2015, pp. 15-16.

attempt to call the buy-bust team leader to the witness stand to determine whether or not earnest efforts were really done in order to ensure the required witnesses' presence during the inventory.

Moreover, the Court notes that PO3 Cordero was not presented as a witness during trial. In *People v. Bartolini*⁴² (*Bartolini*), the Court explained that while the non-presentation of the poseur-buyer is, *per se*, not necessarily fatal to the cause of the prosecution, there must be at least someone else who is competent to testify as to the fact that the sale transaction indeed occurred between the poseur-buyer and the accused. Otherwise, the testimonies of the other witnesses regarding the matter become hearsay, and thus, inadmissible in evidence, to wit:

Aside from the points raised by Bartolini on the chain of custody and *corpus delicti*, we find that the first element of the crime involving the sale of illegal drugs – that the transaction or sale took place – was also not sufficiently proven by the prosecution. The non-presentation of the poseur-buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between Bartolini and the poseur-buyer. In this case, SPO4 Larot admitted that he did not hear the conversation between the poseur-buyer and Bartolini, and that he only saw the pre-arranged signal before apprehending Bartolini:

x x x x

As SPO4 Larot could not hear the conversation between Bartolini and the poseur-buyer, his testimony was mere hearsay and thus the prosecution failed to prove the fact of the transaction. The non-presentation of the poseur-buyer was fatal to the prosecution x x x

x x x x

While there have been instances where the Court affirmed the conviction of an accused notwithstanding the non-presentation of the poseur-buyer in a buy-bust operation, this is only when the testimony of such poseur-buyer is merely corroborative, and another eyewitness can competently testify on the sale of the illegal drug. In this case however, the lone witness for the prosecution was not competent to testify on the sale of the illegal drug as he merely relied on the pre-arranged signal to apprehend Bartolini.⁴³ (Emphasis and underscoring supplied)

In this case, the sole witness for the prosecution, PO3 Salonga, was a back-up arresting officer positioned inside a car 10-15 meters away from where the supposed sale transaction between PO3 Cordero and accused-appellants took place.⁴⁴ Clearly, similar to the lone witness in *Bartolini*, PO3 Salonga could not competently testify on the fact of the sale as he was in no position to overhear the conversation between the transacting parties and

⁴² 791 Phil. 626 (2016).

⁴³ Id. at 640-642; citations omitted.

⁴⁴ See TSN, February 24, 2015, pp. 10-11.

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only relied on PO3 Cordero's pre-arranged signal to effect the arrest of accused-appellants.

In view of the following circumstances, namely: (a) the unjustified deviation from the chain of custody rule which compromised the integrity and evidentiary value of the item purportedly seized from accused-appellants; and (b) the prosecution's failure to prove an essential element of the crime charged, *i.e.*, that a sale transaction involving drugs indeed occurred between PO3 Cordero and accused-appellants, the acquittal of accused-appellants is warranted.

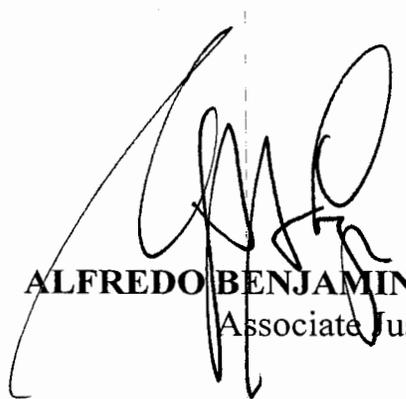
WHEREFORE, the appeal is **GRANTED**. The Decision dated August 24, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08065 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Rosalina Aure y Almazan and Gina Maravilla y Agnes are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

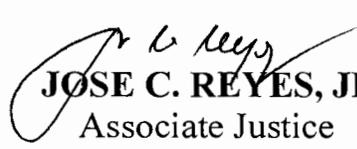
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

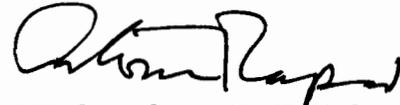

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.



LUCAS P. BERSAMIN
Chief Justice