



Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
AUG 08 2019
BY: CA
TIME: 6:51

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 220464

Present:

- versus -

CARPIO, J., *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,* and
LAZARO-JAVIER.

NELSON FLORES y FONBUENA,
Accused-Appellant,

Promulgated:

10 JUN 2019

x-----
[Handwritten Signature]-----x

DECISION

CAGUIOA, J.:

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated February 12, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05893, which affirmed the Decision³ dated November 27, 2012 rendered by the Regional Trial Court, Branch 28, San Fernando City, La Union (RTC) in Criminal Case No. 8978, finding herein accused-appellant Nelson Flores y Fonbuena (Nelson) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165,⁴ otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended (RA 9165).

The Facts

The Information⁵ filed against Nelson for violation of Section 5, Article II of RA 9165 pertinently reads:

* On leave.
¹ See Notice of Appeal dated March 5, 2015, *rollo*, pp.11-12.
² *Rollo*, pp. 2-10. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy, concurring.
³ *CA rollo*, pp. 36-50. Penned by Judge Victor M. Viloria.
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.

That on or about the 22nd day of November 2010, in the City of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there, willfully, unlawfully[,] and feloniously, deliver and sell two (2) pieces of transparent plastic sachets containing methamphetamine hydrochloride otherwise known as "shabu" with an individual weight of zero point zero one nine zero (0.0190) gram and zero point zero two five four (0.0254) gram or with a total weight of zero point zero four four four (0.0444) gram, to IO2 Ricky Ramos, who posed as [a] poseur buyer, and in consideration of said shabu, used marked money, consisting of two (2) pieces of FIVE HUNDRED (P500.00) Philippine Currency bill with serial numbers EJ988043 and EK460440 without first securing the necessary permit, license or authority from the proper government agency.⁶

Upon arraignment, Nelson pleaded not guilty to the offense charged.⁷

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

The witnesses for the prosecution were Intelligence Officer 2 (IO2) Ricky Ramos, PO2 Armand Bautista, and Forensic Chemist Leiyen⁸ Valdez. x x x

The evidence of the prosecution showed that on 22 November 2010, at around 3:00 in the afternoon, IO2 Ricky Ramos of the Philippine Drug Enforcement Agency (PDEA), Region I, Camp Diego Silang, Carlatan, San Fernando City, La Union received a tip from an informant that accused-appellant was selling illegal drugs. IO2 [Ricky] Ramos relayed the information to the team leader, IO3 Sharon Bautista, who promptly coordinated with the Quick Reaction Force Team and with the Illegal Drug Special Operation Task Group (PAIDSOTG) of the Philippine National Police and thereafter, formed a team to conduct an anti-illegal drug operation. It was composed of IO2 Ricky Ramos who was designated as poseur-buyer, PO2 Armand Bautista as the immediate back-up, the confidential informant, and about six (6) members of the PNP Quick Reaction Force. They prepared the buy-bust money and the pre-arranged signal to indicate the done deal is for IO2 Ricky Ramos to remove his bull-cap.

After the briefing, the confidential informant contacted accused-appellant to arrange the sale of *shabu* worth ₱1,000.00. IO2 Ramos and the confidential informant then proceeded to meet [the] accused-appellant at Purok 4, Sevilla, San Fernando City, La Union near a Shell gasoline station. Upon reaching the place, they found accused-appellant standing in front of his house and the informant introduced IO2 Ramos to accused-appellant as the buyer. After a brief

⁶ Id.

⁷ *Rollo*, p. 4.

⁸ Also "Lei Yen" in some parts of the *rollo*.

conversation, the confidential informant told accused-appellant in Ilocano dialect. “*daytoy diay mangala ti sangaribo*” (he is the one who will get one thousand). Accused-appellant asked for the money and simultaneously took out two (2) pieces of small heat-sealed transparent plastic sachets from his pocket and handed them to IO2 Ramos. At this point[,] IO2 Ramos executed the pre-arranged signal and the rest of the team rushed to the scene. As IO2 Ramos informed accused-appellant that he was a police officer, accused-appellant suddenly ran towards his house. The policemen chased accused-appellant who jumped into a canal, and he was eventually arrested. Accused-appellant was allowed to wash up and change clothing, and thereafter, IO2 Ramos marked the items and took pictures thereof. Accused-appellant and the drugs were brought to the police office where IO2 Ramos made an inventory and prepared a request for laboratory examination. He personally submitted the request and the subject plastic sachets with white crystalline substance to the crime laboratory and they were received by Forensic Chemist Lei Yen Valdez. After examination, she issued Chemistry Resport No. PDEAROI-DD010-0007 affirming that the subject substances were positive for methamphetamine hydrochloride, commonly known as “*shabu*[.]”⁹

Version of the Defense

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

On the other hand, accused-appellant [, who was the sole witness for the defense,] vehemently denied the charge against him. He contended that on 22 November 2010, at around 3:00 in the afternoon, he was cooking inside his house when members of the PDEA suddenly barged in looking for a certain Mike, a former boarder in his house. He told the police that Mike no longer lived there, but the police insisted that he was Mike. The police then grabbed, kicked[,] and punched him until he fell into a canal near the kitchen. Two of the team members poked a gun at him, handcuffed[,] and then brought to the water pump for bathing. After cleaning, he was brought back to the house where he saw a woman [take] out two (2) pentel-marked sachets and two (2) five hundred peso bills placed on the table. He was directed to point at the sachets as the police took photographs of him. Thereafter, he was brought to the PDEA office and detained in a cell. After two (2) hours, he was brought back to the office where he saw barangay officials signing some papers and soon thereafter, he was brought back to the cell.¹⁰

Ruling of the RTC

In the assailed Decision dated November 27, 2012, the RTC held that the prosecution clearly established the *corpus delicti* of the crime¹¹

⁹ *Rollo*, pp. 4-6.

¹⁰ *Id.* at 6.

¹¹ *CA rollo*, p. 41.

and that the police officers complied with the chain of custody rule.¹² It further held that there was substantial compliance with the requirements of Section 21 of RA 9165, thus the integrity of the drugs seized from Nelson was preserved.¹³ Lastly, it ruled that the defense of denial interposed by Nelson is a weak defense.¹⁴

The dispositive portion of the RTC Decision reads: *

WHEREFORE, in light of the foregoing premises, the court finds accused NELSON FLORES y FONBUENA guilty beyond reasonable doubt of the crime of Violation of Sec. 5 of R.A. 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

X X X X

SO ORDERED.¹⁵

Aggrieved, Nelson appealed to the CA.

Ruling of the CA

In the assailed Decision dated February 12, 2015, the CA affirmed Nelson's conviction. The dispositive portion of the CA Decision reads:

WHEREFORE, foregoing considered, the Decision dated 27 November 2012 of the Regional Trial Court, Branch 28, San Fernando City, La Union is **AFFIRMED**.

SO ORDERED.¹⁶

The CA ruled that the testimony of an informant in drug-pushing cases is not essential for conviction and may be dispensed with if the poseur-buyer testified on the same.¹⁷ It ruled that the absence or non-presentation of the marked money does not create a hiatus in the evidence for the prosecution as long as the sale of the dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.¹⁸ It further ruled that the presence of actual monetary consideration is not indispensable for the existence of the offense.¹⁹ Lastly, it held that the police officers substantially complied with the chain of custody rule.²⁰

¹² Id.

¹³ Id. at 42.

¹⁴ Id. at 49.

¹⁵ Id. at 50.

¹⁶ *Rollo*, pp. 9-10.

¹⁷ Id at 7.

¹⁸ Id. at 8.

¹⁹ Id.

²⁰ Id. at 9.

Hence, the instant appeal.

Issue

Whether Nelson'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 offense²¹ 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 drug be established with moral certainty.²³ Thus, in order to obviate any unnecessary doubt on its 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 drug is seized up to its 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**; and (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 the seized drugs must be turned over to the PNP Crime

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[.]

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 allows 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 does not *ipso facto* render the seizure and custody over the items void. 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 drugs from Nelson.

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).



First, none of the three required witnesses was present during the arrest of the accused and the marking, photography, and inventory of the seized drugs. The barangay official and media representative only arrived at the police station to sign the Certificate of Inventory, which was already prepared beforehand by the police officers. Neither did the police officers offer any sufficient explanation as to the absence of the DOJ representative. The testimony of IO2 Ricky Ramos (IO2 Ramos) equivocally established that the three mandatory witnesses were “called-in” only when the police and the accused were already at the police station. As IO2 Ramos testified:

Q Mr. Witness, there are two (2) other signatures in this document marked as Exh. “H”, do you know whose signatures are these?

A Yes, Sir.

Q Whose signatures are these?

A Above the Elected Official is the signature of barangay kagawad Danilo Estrada, a barangay official in Sevilla, San Fernando City.

X X X X

Q Likewise, Mr. Witness, there is another signature at the right side of the signature of barangay kagawad Danilo Estrada, whose signature is this?

A It is the signature of the media representative, sir.

X X X X

Q I noticed, Mr. Witness, that there is no signature above the DOJ representative, do you know the reason why there was no DOJ representative at that time.

A We tried to invite a DOJ representative but it was already 5:00 or 6:00 in the afternoon at that time, so we were not able to locate any DOJ representative, sir.³³

X X X X

Q Isn't it a fact that you called for an elected official or the barangay kagawad at your office already?

A Yes, ma'am.

Q At the time that you called for them, Mr. witness, the certificate of inventory was already prepared and they were just made to sign the same?

A After putting my inventory at [sic] the inventory form the barangay officials were already there, ma'am.

Q But they just signed the inventory that was already prepared, correct?

³³ TSN, February 23, 2011, pp. 26-27.

A **Yes, ma'am.**³⁴ (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.³⁵ In the instant case, the belated participation of the two mandatory witnesses after the arrest of the accused and seizure of the drugs defeats the aforementioned purpose of the law in having these witnesses present at the place of apprehension.

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

The Court has consistently held that the prosecution has the burden of (1) proving its compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.³⁶ As the Court *en banc* unanimously held in the recent case of *People vs. Lim*,³⁷

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.**³⁸ (Emphasis in the original and underscoring supplied)

In the case at bar, the police officers offered no such explanation. They admittedly “called-in” the mandatory witnesses only after the buy-bust operation had already been supposedly accomplished although it is

³⁴ TSN, March 8, 2011, p. 32.

³⁵ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, pp. 11-12.

³⁶ *People v. Musor*, G.R. No. 231843, November 7, 2018; *People v. Bricero*, G.R. No. 218428, November 7, 2018.

³⁷ G.R. No. 231989, September 4, 2018.

³⁸ *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

obvious that they had no excuse to do so. It is worthy to note that IO2 Ramos has been an intelligence officer of the Philippine Drug Enforcement Agency (PDEA) since 2008; thus, he has already previously conducted several buy-bust operations.³⁹ The buy-bust operation in this case happened in 2010. 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.

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 Nelson.

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.⁴⁰

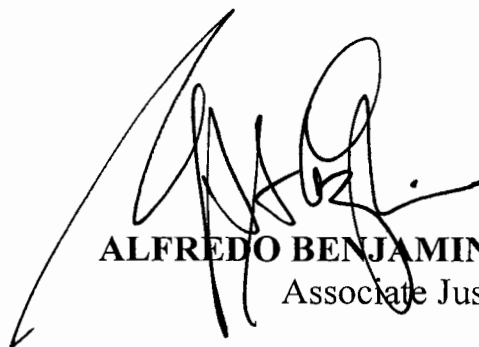
WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 12, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05893, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **NELSON FLORES y FONBUENA** is **ACQUITTED** of the crime charged on 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.

³⁹ TSN, February 23, 2011, p. 3.

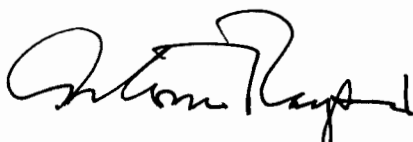
⁴⁰ See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson


ESTELA M. PERLAS-BERNABE
Associate Justice

(On leave)
JOSE C. REYES, JR.
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

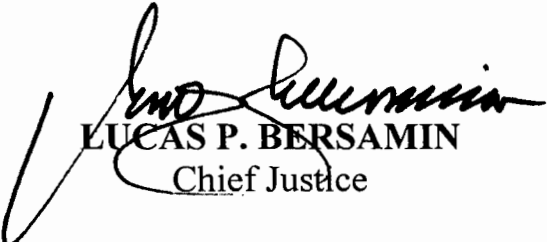
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

