

RECEIVED
JAN 21 2020

BY: YSA
TIME: 3:14 PM



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff-Appellee,

- versus -

NORIN SENDAD y KUNDO
a.k.a. "NHORAIN SENDAD y
KUSAIN,"*

Accused-Appellant.

G.R. No. 242025

Present:

PERLAS-BERNABE, J.,
Chairperson,
A. REYES, JR.,
HERNANDO,**
INTING, and
ZALAMEDA,*** JJ.

Promulgated:

20 NOV 2019

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal¹ is the Decision² dated June 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01626-MIN, which affirmed the Judgment³ dated April 28, 2016 of the Regional Trial Court of Tacurong City, Branch 20 (RTC) in Criminal Case Nos. 3637-T and 3638-T, finding accused-appellant Norin Sendad y Kundo a.k.a. "Nhorain Sendad y Kusain" (Sendad) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

* Also referred to as "Nhor-ain Sendad y Kusain" in some parts of the records.

** On leave.

*** Designated Additional Member per Special Order No. 2712 dated September 27, 2019.

¹ See Notice of Appeal dated July 19, 2018; *rollo*, pp. 20-21.

² Id. at 3-19. Penned by Associate Justice Tita Marilyn Payoyo-Villordon with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

³ CA *rollo*, pp. 48-83. Penned by Judge Milanio M. Guerrero.

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," approved on June 7, 2002.

The Facts

This case stemmed from two (2) Criminal Complaints⁵ filed before the RTC accusing Sendad of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 1:00 p.m. of January 11, 2013, the members of the San Narciso Police successfully implemented a buy-bust operation against Sendad, during which two (2) plastic sachets containing white crystalline substance were recovered from her. After Sendad's arrest, she was bodily searched, and four (4) more plastic sachets wrapped in paper containing a combined weight of 0.2613 gram of suspected *shabu* were recovered from her. PO3 Relyn Gonzales (PO3 Gonzales) then marked the six (6) plastic sachets he recovered, while PO1 Emmanuel Europa (PO1 Europa) marked the cellphone. They then brought Sendad and the seized items to the police station for further documentation and investigation. Thereat, they turned over Sendad and the seized items to the investigator and Senior Police Officer 1 John Bacea (SPO1 Bacea) who conducted the inventory and photography of the same in the presence of Sendad, Barangay Kagawad Randy L. Casama, and Leo Diaz, a media representative. Notably, there was no Department of Justice (DOJ) personnel present during such inventory and photography. Afterwards, the seized items were returned to PO3 Gonzales who kept the same on his person until the next day when he turned it over to the crime laboratory where, after examination,⁶ the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.⁷

In defense, Sendad denied the charges against her, claiming instead, that she was inside Kimsan Plaza to buy some household supplies when suddenly, PO3 Gonzales put his arm on her shoulder, while two (2) other persons followed from the back. They told her not to resist or shout, and to just go with them. She did not know these men. She was then brought to the Tacurong City Police Station where she was frisked. They took ₱3,500.00 from her as well as her cellphone and made her sign a document. She was then detained in the lock-up cell. She later found out that she was being arrested for selling *shabu*, which she denied. She further denied that there was any such commotion caused by her supposed arrest in Kimsan Plaza. This was corroborated by the testimony of Rosemarie Belandres (Belandres), the roving guard assigned to the grocery section of the Kimsan Plaza on the date of the incident, who testified that there was no commotion in that section of Kimsan Plaza on the said date. Furthermore, she had no knowledge of a police apprehension for drugs on the said date. Additionally, Anthony Gonio (Gonio), the head of security of Kimsan Plaza during the time of the incident, likewise confirmed that he did not receive any report of

⁵ Criminal Case No. 3637-T is for violation of Section 5, Article II of RA 9165, while Criminal Case No. 3638-T is for violation of Section 11, Article II of RA 9165 (See *rollo*, p. 4. See also *CA rollo*, pp. 48-49)

⁶ See Chemistry Report No. D-013-2013 dated January 12, 2013; records, p. 8.

⁷ *Rollo*, pp. 5-6. See also *CA rollo*, pp. 50-62.

an apprehension on the said date, or of any marking or inventory of drugs that supposedly happened in the grocery section.⁸

In a Judgment⁹ dated April 28, 2016, the RTC found Sendad guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: (a) in Criminal Case No. 3637-T, she was sentenced to suffer the penalty of life imprisonment with no eligibility for parole, and to pay a fine in the amount of ₱500,000.00; and (b) in Criminal Case No. 3638-T, she was sentenced to suffer the penalty of imprisonment ranging from eight (8) years, as minimum, to fourteen (14) years, four (4) months, and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.¹⁰ The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Sendad indeed sold two (2) plastic sachets containing dangerous drugs to the poseur-buyer, resulting in her arrest, and that she was later found to have been in illegal and knowing possession of four (4) more plastic sachets of dangerous drugs. Likewise, the RTC held that the identity, integrity, and evidentiary value of the illegal drugs were duly preserved. While the testimonies of PO3 Gonzales and PO1 Europa had contradictions, these refer to collateral matters which actually strengthened their credibility as it erased any suspicion of prior rehearsal. On the other hand, the RTC found Sendad's defense of denial untenable for her failure to substantiate the same, and in light of her positive identification by the prosecution's witnesses. The RTC also did not give credence to the statements of Belandres and Gonio, whose testimonies may be unreliable owing to the period of time which elapsed from the date of the incident and when they took the witness stand.¹¹ Aggrieved, Sendad appealed¹² to the CA.

In a Decision¹³ dated June 21, 2018, the CA affirmed the RTC ruling, with modification on the penalty of imprisonment imposed in Criminal Case No. 3638-T to twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum.¹⁴ It held that the prosecution had sufficiently established beyond reasonable doubt all the elements of the crimes charged against Sendad, and all the links constituting the chain of custody. The CA also agreed with the RTC that the contradictions in the testimonies of PO3 Gonzales and PO1 Europa did not weaken their credibility.¹⁵

Hence, this appeal seeking that Sendad's conviction be overturned.

⁸ *Rollo*, pp. 6-10. See also *CA rollo*, pp. 62-67.

⁹ *CA rollo*, pp. 48-83.

¹⁰ *Id.* at 82-83.

¹¹ *Id.* at 68-81.

¹² See Notice of Appeal dated July 20, 2016; *id.* at 17.

¹³ *Rollo*, pp. 3-19.

¹⁴ *Id.* at 18-19.

¹⁵ *Id.* at 12-18.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹⁶ 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.¹⁷ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.¹⁸

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.¹⁹ 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. In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”²⁰ 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.²¹

¹⁶ 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, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 84, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

¹⁷ 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).

¹⁸ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁹ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *id.*; *People v. Miranda*, *supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 17.

²⁰ *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).

²¹ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

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 10640,²² a representative from the media AND the Department of Justice (DOJ), and any elected public official;²³ or (b) if **after** the amendment of RA 9165 by RA 10640, “[a]n elected public official and a representative of the National Prosecution Service²⁴ 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

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

²² 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,’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018) RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, **RA 10640 appears to have become effective on August 7, 2014.**

²³ Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

²⁴ Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010].)

²⁵ Section 21, Article II of RA 9165, as amended by RA 10640.

²⁶ See *People v. Miranda*, supra note 16, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁷ See *People v. Miranda*, id. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 18, at 1038.

²⁸ See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

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*

M

(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 required witnesses rule, 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 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, there was a deviation from the required witnesses rule as the conduct of inventory and photography were not witnessed by a representative from the DOJ. This may be easily gleaned from the Inventory

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 31.

³⁴ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁵ See *People v. Manansala*, supra note 16.

³⁶ See *People v. Gamboa*, supra note 18, citing *People v. Umipang*, supra note 18, at 1053.

³⁷ See *People v. Crispo*, supra note 16.

³⁸ Supra note 16.

³⁹ See *id* at 61.

N

of Property Seized⁴⁰ which only confirms the presence of an elected public official, *i.e.*, Barangay Kagawad Randy L. Casama, and a media representative, *i.e.*, Leo Diaz. The absence of the DOJ personnel during the aforesaid conduct was left unacknowledged, much less justified. As earlier stated, it is incumbent upon the prosecution to account for this witness' 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 his presence. This was clearly absent in this case.

In view of this unjustified deviation from the chain of custody rule, and the inconsistencies surrounding the conduct of the buy-bust operation, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Sendad were compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 21, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01626-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Norin Sendad y Kundo a.k.a. "Nhorain Sendad y Kusain" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

WE CONCUR:


ANDRES B. REYES, JR.
Associate Justice

On leave
RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

⁴⁰ Records, p. 5.

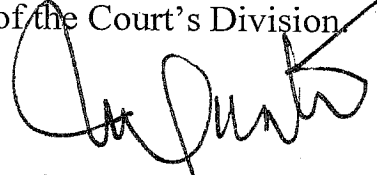
ATTESTATION

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, 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.


DIOSDADO M. PERALTA
Chief Justice