

SPECIAL FIRST DIVISION

[G.R. No. 226485, June 06, 2018]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
BERNIE DELOCIEMBRE Y ANDALES AND DHATS ADAM Y DANGA,
ACCUSED-APPELLANTS.**

RESOLUTION

PERLAS-BERNABE, J.:

Before the Court is a Motion for Reconsideration^[1] filed by accused-appellants Bernie Delociembre y Andales (Bernie) and Dhats Adam y Danga (Dhats; collectively, accused-appellants) assailing the Resolution^[2] dated April 17, 2017 of the Court, which affirmed the Decision^[3] dated March 31, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07231 finding accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from an Information^[5] filed before the Regional Trial Court of Quezon City, Branch 78 (RTC), docketed as Crim. Case No. Q-10-163376, charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

That on or about the 7th day of April, 2010, in Quezon City, Philippines, the said accused, conspiring, confederating and mutually helping each other, without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: Five (5) pieces of transparent heat sealed plastic sachet marked as "EXH-A-1 MPA 4/7/2010, EXH-A-2 MPA 4/7/2010, EXH-A-3 MPA 4/7/2010, EXH-A-4 MPA 4/7/2010["] and "EXH-A-5 MPA 4/7/2010" with twenty one point forty one twenty nine (21.4129) grams of white crystalline substance containing Methylamphetamine Hydrochloride also known as "*shabu*", a dangerous drug.

CONTRARY TO LAW.^[6]

The prosecution alleged that on April 7, 2010, a buy-bust team composed of Senior Officer II Christopher Macairap^[7] (SOII Macairap), Inspector Officer I Junef Avenido (IO1 Avenido), and IO1 Renata Reyes (IO1 Reyes) was organized to conduct an entrapment operation against Bernie, alias "Axe," who was reportedly "operating" within the area of Quezon City.^[8] Accordingly, SOII Macairap instructed their informant to purchase twenty-five (25) grams of *shabu* worth P150,000.00 from Bernie and arrange a meeting with him, to which the latter agreed. Thus, at around

2:30 in the afternoon, the buy-bust team, together with the informant, proceeded to the target area in NIA Road, Quezon City. Upon arriving, the informant introduced IO1 Avenido, the designated poseur-buyer, to Bernie and his companion, Dhats. Dhats then handed over a folded cardboard paper with a Lotto 6/49 logo containing a white crystalline substance to IO1 Avenido, who, in turn, paid Bernie using the marked money. As Bernie was about to count the money, IO1 Avenido executed the pre-arranged signal by taking off his cap, and consequently, accused-appellants were apprehended. Shortly after, the team left the area and proceeded to the Philippine Drug Enforcement Agency (PDEA) office. Thereat, the requisite marking and inventory were done in the presence of Barangay Kagawad Jose Ruiz, Jr. and accused-appellants, while SOII Macairap took pictures of the same. Subsequently, IO1 Avenido delivered the seized drugs to the PDEA laboratory where they were received by Forensic Chemical Officer Jappeth Santiago (FCO Santiago) who confirmed that they tested positive for *methamphetamine hydrochloride* and *meferonex*, a dangerous drug. Consequently, FCO Santiago turned over the said items to the custody of the trial court.^[9]

For their part, accused-appellants raised the defenses of denial and alibi. Bernie claimed that at around twelve (12) o'clock in the afternoon of April 7, 2010, while he was at home preparing his son for school, he noticed that PDEA agents Renato Reyes and Roy Allan, the alleged bosses of his brother "Axe," were knocking at the latter's door. When asked about the whereabouts of "Axe," Bernie told them that "Axe" left for Aklan to visit his wife. Subsequently, they left but came back shortly to invite Bernie to the PDEA office. After joining the agents in the PDEA office, Bernie was again asked of "Axe's" whereabouts. In the interim, he noticed some illegal drugs placed on the table and saw Dhats for the first time. After being questioned, Bernie was purportedly taken to the city hall for inquest.^[10]

Meanwhile, Dhats maintained that at around twelve (12) o'clock in the afternoon of even date, he and his wife were having lunch at their house when six (6) armed men suddenly arrived in search of "Axe," whom he allegedly knew by name. He was then handcuffed and brought to the PDEA office where he was joined by Bernie. Thereafter, he was taken to Camp Crame for medical examination. According to Dhats, IO1 Avenido demanded the amount of P100,000.00 for his release, but since he could not produce the same, he was brought to the city hall for inquest.^[11]

The RTC Ruling

In a Judgment^[12] dated December 12, 2014, the RTC found accused appellants guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, sentencing each of them to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.^[13] It held that the prosecution proved all the elements of the crime charged, as it was able to show that: (a) an illegal sale of *shabu* actually took place during a valid buy-bust operation; (b) accused-appellants were positively identified in open court as the malefactors; and (c) the forensic examination of the seized drugs yielded positive results for the presence of *methamphetamine hydrochloride* and *meferonex*. Moreover, it ruled that accused-appellants' unsubstantiated defense of denial and alibi could not prevail over the positive testimonies of the prosecution witnesses who had no ill-motive to testify against them.^[14]

Aggrieved, accused-appellants appealed^[15] to the CA.

The CA Ruling

In a Decision^[16] dated March 31, 2016, the CA affirmed in toto the Judgment of the RTC.^[17] It found, among others, that while certain requirements under Section 21 of RA 9165 were not complied with, the prosecution nevertheless established an unbroken chain of custody of the seized drugs, which were preserved from the time of seizure to receipt by the forensic laboratory to safekeeping up to presentation in court. Besides, the arresting officers provided justifiable reasons why the marking could not be done at the place of arrest, *i.e.* a Muslim compound, since the same was – at that time – already getting crowded, and because one of the suspects allegedly belonged to a Muslim clan. Further, the absence of a DOJ representative had already become a trivial matter, considering that there was an elected local official present during the inventory.^[18]

Undaunted, accused-appellants elevated^[19] the matter to the Court.

The Proceedings Before the Court

In a Resolution^[20] dated April 17, 2017, the Court upheld the CA's conviction of accused-appellants finding them guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.^[21]

Dissatisfied, accused-appellants moved for reconsideration,^[22] arguing, among others, that the police officers failed to comply with the mandatory procedures in the handling and disposition of the seized drugs as provided under Section 21, Article II of RA 9165.^[23]

The Court's Ruling

The Court grants the motion for reconsideration.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[24] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[25]

In this case, accused-appellants were charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. Case law states that in every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (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.^[26] Moreover, it is likewise essential that the identity of the prohibited drugs be established beyond reasonable doubt, considering that the prohibited drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the

moment the illegal drugs are seized up to their presentation in court as evidence of the crime.^[27]

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.^[28] Under the said section, prior to its amendment by RA 10640,^[29] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.^[30] In the case of *People v. Mendoza*,^[31] the Court stressed that **"[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."^[32]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.^[33] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640^[34] – provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165, – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**^[35] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does 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 justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.^[36] In *People v. Almorfe*,^[37] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**^[38] Also, in *People v. De Guzman*,^[39] it was emphasized 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.**

^[40]

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from accused-appellants.

An examination of the records reveals that while the requisite inventory of the seized drugs was conducted in the presence of accused-appellants and an elected public official, the same was not done in the presence of the representatives from the media and the DOJ. More significantly, the apprehending officers failed to proffer a plausible explanation therefor.

During his cross-examination, IO1 Avenido admitted that the DOJ office is near the place of arrest, as in fact, it was only a five (5) minute walk therefrom. However, when asked if he bothered to pass by it to secure a DOJ representative, he did not provide a categorical answer, and instead, disavowed responsibility therefor, claiming that there were other members of the buy-bust team who were assigned to accomplish such task, to wit:

Q: The arrest allegedly happened at NIA Agham, correct?

A: Yes, sir.

Q: The DOJ agency building is right there, correct?

A: Yes, sir.

Q: About 5 minutes walk?

A: Yes, sir.

Q: Did you bother to pass the DOJ Building to get a DOJ representative?

A: We have other team members assigned to that, sir but I don't remember why they haven't brought any DOJ representative at that time. sir.

Q: Did you bother to get Public Attorney from the Public Attorney's Office which was also located at the DOJ Agency Building at Agham NIA Road?

A: I don't clearly remember, sir but we have the public elected official as a witness.

x x x x

Q: I was referring to the counsel of the accused. Did you furnish them of counsel of their own choice or a counsel from the government?

A: Yes, sir. During that time we appraise their rights. The other members because we have a designation in our team I think they are the one who contacted the witnesses for the accused. I think they only brought the Kagawad, sir.

x x x x^[41] (Underscoring supplied)

Similarly, IO1 Reyes disclaimed liability but maintained that it was their team leader, SOII Macairap, who was specifically assigned to contact the representatives from the media and DOJ, viz: