

SECOND DIVISION

[G.R. No. 238174, February 05, 2020]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAIDA
KAMAD Y PAKAY, ACCUSED-APPELLANT.**

DECISION

REYES, A., JR., J.:

Before the Court is a Notice of Appeal^[1] assailing the Decision^[2] dated October 26, 2017 of the Court of Appeals (CA) in CA-G.R. CR. No. 08077, which affirmed the Decision^[3] dated January 27, 2016 of the Regional Trial Court (RTC) of Taguig City, Branch 70, in Criminal Case No. 17025-D, finding Gaida Kamad y Pakay (accused-appellant) guilty beyond reasonable doubt of violation of Section 5,^[4] Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." The accused-appellant was meted the penalty of Life Imprisonment and a Fine of Five Hundred Thousand Pesos (P500,000.00).

The Facts

In an Information^[5] dated March 8, 2010, the accused-appellant was charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 5th day of March, 2010 in the City of Taguig[,] Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused, without being authorized by law did then and there willfully, unlawfully and feloniously sell, deliver and give away to a poseur[-]buyer one (1) heat[-]sealed transparent plastic sachet containing zero point zero three (0.03) gram of white crystalline substance, commonly known as "shabu," a dangerous drug, in violation of the abovesited law.

CONTRARY TO LAW.^[6]

Version of the Prosecution

Around 10:00 a.m. of March 5, 2010, a confidential informant arrived at the Anti-Illegal Drugs Station in Taguig City, and reported the selling of illegal drugs in Cagayan de Oro Street, Quiapo Dos, Maharlika Village, Taguig City by the accused-appellant.^[7]

Police Officer 2 Benedict Balas (PO2 Balas) verified the information given by the confidential informant and learned that the name of the accused-appellant is Gaida Kamad alias "Mamang." Team Leader Police Chief Inspector Porfirio Calagan (PCI

Calagan) formed a team to conduct a buy-bust operation against the accused-appellant. During the briefing, PO2 Balas was designated as the poseur-buyer, and was given two marked P1,000.00 bills, one marked P500.00 bill and one marked P100.00 bill to be used as buy-bust money.^[8]

PO2 Vergelio Del Rosario, Jr. (PO2 Del Rosario) prepared the Pre-operation Report and Coordination Form which were sent to the Philippine Drug Enforcement Agency-Metro Manila Regional Office and the Southern Police District.^[9]

Around 1:30 p.m., the buy-bust team composed of PO2 Balas, PCI Calagan, PO2 Richard Sambua and one PO2 Laurel, together with the confidential informant, proceeded to Maharlika Village on board a white Mitsubishi taxicab. Upon reaching the target area, PO2 Balas and the confidential informant alighted from the vehicle and walked to Cagayan de Oro Street.^[10]

While they were walking, they passed by an old lady whom the confidential informant introduced to PO2 Balas as the seller.^[11]

The accused-appellant asked PO2 Balas how much *shabu* he would be buying. PO2 Balas answered that he would be purchasing P2,000.00 worth of *shabu*. The accused-appellant replied that she did not have much *shabu* at the time since her supply has not been delivered yet but told PO2 Balas that if he really needs it, she has P500.00 worth of *shabu*.^[12] She then took the *shabu* out of her pants and showed it to PO2 Balas.^[13]

PO2 Balas told the accused-appellant that he would buy the *shabu*. After he handed over the marked P500.00 bill to the accused-appellant, the latter took the money and put it inside her pocket.^[14]

PO2 Balas scratched his head as a pre-arranged signal to his teammates that the sale had already been consummated. He then introduced himself as a police officer and proceeded to arrest the accused-appellant after apprising her of her constitutional rights and the cause of her arrest. After marking the dangerous drugs bought and confiscated by him, he asked the accused-appellant to empty her pockets and so he was able to recover the P500.00 marked money used for the buy-bust operation.^[15]

After the accused-appellant was arrested, a commotion took place in the area with some persons throwing stones on the police officers and their parked taxicab. This prompted them to immediately bring the accused-appellant to the police station where she and the confiscated items were turned over to the investigator, PO2 Del Rosario (PO2 Del Rosario).^[16]

Thereafter, PO2 Del Rosario prepared the Request for Laboratory Examination and the other documents necessary for the inventory. PO2 Balas brought the accused-appellant to the Philippine National Police Crime Laboratory in Makati City for examination.^[17]

The examination of the confiscated drugs, conducted by Forensic Chemist Police Chief Inspector Abraham Tecson, yielded a positive result for the presence of

methamphetamine hydrochloride, also known as *shabu*.^[18]

Version of the Defense

The accused-appellant vehemently denied the charge against her and claimed that no buy-bust operation took place on the said date.^[19]

According to the accused-appellant, she is a 60-year-old illiterate who is living alone in Taguig City (at the time of the arrest). She worked as a water vendor in her neighborhood and, on the day of the arrest, she was outside her house and was refilling a drum that was being used at a nearby public restroom. While sitting on her chair, three unidentified armed men arrived and frisked her. They asked her if she saw someone running and when she answered "no", they frisked her again and instructed her to go with them. They then dragged her to an alley and brought her to the police station where she found out that they were police officers.^[20]

At the police station, the police officers asked for her name and then placed the items in front of her. She was then incarcerated without being informed of the accusations against her.^[21]

The RTC, in its Decision^[22] dated January 27, 2016, found the accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentenced her to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. The dispositive portion of the RTC Decision reads:

WHEREFORE, in the premises, the [accused-appellant] is hereby found **GUILTY** beyond reasonable doubt of selling without any authority 0.03 gram of Methylamphetamine Hydrochloride or "shabu", a dangerous drug, in violation of Sec. 5, Article II of R.A. [No.] 9165 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS** (PHP500,000.00).

Meanwhile, pursuant to Section 21 of [R.A. No.] 9165, Magella Monashi, Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of his authorized representative is hereby ordered to take charge and to have custody of the "shabu", subject matter of this case, or proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance.

Costs against the accused.

SO ORDERED.^[23] (Emphases in the original)

On appeal,^[24] the CA found the grounds relied upon by the accused-appellant devoid of merit and affirmed the ruling of the RTC. In its Decision^[25] dated October 26, 2017, the CA disposed as follows:

ACCORDINGLY, the appeal is **DENIED**. The assailed Decision dated January 27, 2016 of the [RTC], Branch 70 of Taguig City in Criminal Case No. 17025-D which found [the accused-appellant] guilty beyond

reasonable doubt of a violation of Section 5, Article II of [R.A.] No. 9165 is **AFFIRMED**.

SO ORDERED.^[26] (Emphases in the original)

Hence, this appeal.

The issue for the Court's resolution is whether or not the accused-appellant's conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, should be upheld.

Ruling of the Court

The appeal is meritorious.

In order to sustain a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of 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 the same drugs seized from the accused.^[27]

The accused-appellant maintains that she should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21, Article II of R.A. No. 9165.

In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640,^[28] are material as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. Specifically, Section 21, Article II, as amended, provides the following rules:

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, **with an**

elected public official and a representative of the National Prosecution Service or the media 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, finally*, 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 and custody over said items.

xxxx^[29] (Emphasis ours)

It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service (Department of Justice [DOJ]) or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21^[30] of R.A. No. 9165 could be impracticable for the law enforcers' compliance,^[31] and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the Implementing Rules and Regulations (IRR) of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items.

The Court reiterates though that failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its noncompliance has serious effects and is fatal to the prosecution's case. As the Court declared in *People v. Que*:^[32]

People v. Morales explained that "failure to comply with paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*." It "produce[s] doubts as to the origins of the [seized paraphernalia]."

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Noncompliance with them tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. xxx.^[33] (Citations omitted)

In the same vein, the Court, in *People v. Mendoza*,^[34] explained that the presence of these witnesses would not only preserve an unbroken chain of custody but also