

SECOND DIVISION

[G.R. No. 236023, February 20, 2019]

MACACUNA BADIO Y DICAMPUNG, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*^[1] filed by petitioner Macacuna Badio y Dicampung (Badio), assailing the Decision^[2] dated April 20, 2017 and Resolution^[3] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38542, which affirmed with modification the Decision^[4] dated March 21, 2016 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case No. 13-299331, finding him guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165,^[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[6] filed before the RTC charging Badio of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that on August 24, 2013, the Station Anti-Illegal Drugs Special Operation Task Unit of the Moriones, Tondo Police Station 2 received a tip that an illegal drug transaction would take place beside a specified vehicle along Antonio Rivera Street corner CM. Recto Avenue, Manila. Upon receipt of such information, the station commander formed a team to, *inter alia*, conduct a surveillance around the area and effect arrests, if necessary. At around 8:30 in the evening of even date and after the team had established its position about four (4) to five (5) meters from the specified vehicle, the team noticed that a person – later on identified as Badio – approached the vehicle and started conversing with the passengers therein. Shortly after, Police Officer 3 Roman Jimenez (PO3 Jimenez) saw Badio showing two (2) transparent plastic sachets containing white crystalline substance to the passengers and when the team then approached him, Badio threw away the plastic sachets. However, PO3 Jimenez was able to recover the said sachets and arrest Badio, while the other members of the team apprehended the latter's companions. Subsequently, PO3 Jimenez marked the seized sachets and conducted a body search on Badio from whom he recovered another piece of plastic sachet. Immediately, all three (3) plastic sachets were photographed and inventoried^[7] in the presence of Badio and a media representative. The team then went to the police station where Badio was held for further questioning, while the seized items were turned over to the investigating officer, Senior Police Officer 1 Elymar B. Garcia (SPO1 Garcia), who likewise prepared the necessary paper works therefor. Thereafter, the seized items were brought to the crime laboratory, where, upon examination,^[8] the contents

thereof tested positive for the presence of a total of 5.01 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.^[9]

In his defense, Badio denied the charges against him, claiming instead that between one (1) to two (2) o' clock in the afternoon of August 24, 2013, he was inside a vehicle parked at a restaurant in Baclaran, when four (4) unidentified men suddenly arrived and grabbed him. The men then introduced themselves as police officers, handcuffed him, and brought him to the Moriones, Tondo Police Station. Later on, he learned that he was being charged of the crime of Illegal Possession of Dangerous Drugs.^[10]

In a Decision^[11] dated March 21, 2016, the RTC found Badio guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine in the amount of P300,000.00.^[12] It found the prosecution to have established with moral certainty that Badio was in possession of *shabu* without any lawful license or authority, and that there was an unbroken chain of custody over the dangerous drugs seized from his possession. Finally, it gave credence to the testimonies of the prosecution witnesses who are presumed to have regularly performed their duties in the absence of proof to the contrary.^[13] Aggrieved, Badio filed an appeal before the CA.

In a Decision^[14] dated April 20, 2017, the CA affirmed Badio's conviction with modification, sentencing him to suffer the penalty of imprisonment for a period of twenty (20) years and one (1) day, and to pay a fine in the amount of P400,000.00.^[15] It found the sole testimony of PO3 Jimenez to be sufficient in convicting Badio of the crime charged. It likewise pointed out that despite the absence of a Department of Justice (DOJ) representative and an elected public official in the inventory and photography of the seized items, the prosecution nonetheless was able to establish that the integrity and evidentiary value of such items were properly preserved, as shown by the following links in the chain of custody, namely: (a) PO3 Jimenez recovered from Badio three (3) heat-sealed plastic sachets containing white crystalline substance, which were subsequently marked, photographed, and inventoried in the presence of a media representative; (b) PO3 Jimenez had been in possession of the seized items from the place of arrest up to the police station where they were turned over to SPO1 Garcia; (c) SPO1 Garcia then handed the seized items to the forensic chemist for laboratory examination; and (d) the same items were thereafter surrendered to the court for identification.^[16] Undaunted, Badio filed a motion for reconsideration^[17] which was denied in a Resolution^[18] dated November 29, 2017.

Hence, this appeal seeking that Badio's conviction 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,^[19] 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.^[20] 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.^[21]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[22] 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 "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."^[23] 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.^[24]

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,^[25] "a representative from the media **and** the [DOJ], and any elected public official";^[26] 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."^[27] 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."^[28]

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."^[29] 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."^[30]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.^[31] 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.^[32] The foregoing is based on the saving clause found in Section 21 (a),^[33] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.^[34] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,^[35] 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.^[36]

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