

# FIRST DIVISION

[ G.R. No. 234040, June 26, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
AUGUSTO N. MAGANON, ACCUSED-APPELLANT.**

## DECISION

**DEL CASTILLO, J.:**

This is an appeal from the May 30, 2017 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08159, which affirmed the Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Pasig City, Branch 164, finding accused-appellant Augusto Maganon y Nabia (appellant) guilty of illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act No. (RA) 9165.

### ***Factual Antecedents***

On November 28, 2014, appellant was charged with illegal sale (Crim. Case No. 19752-D) and illegal possession (Crim. Case No. 19753-D) of dangerous drugs in two separate Informations, to wit:

Crim. Case No. 19752-D

Violation of Section 5, Article II, RA 9165

On or about November 23, 2014, in Pasig City and within the jurisdiction of this Honorable Court, [appellant] not being lawfully authorized by law, did then and there, wilfully, unlawfully, and feloniously sell, deliver, and give away to PO1 Marvin Santos y Avila, a member of Philippine National Police, who acted as a police poseur buyer, two (2) heat-sealed transparent plastic sachets each containing 0.03 gram of white crystalline substance or with a total weight of 0.06 gram, which were found positive [xxx] for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[3]</sup>

Crim. Case No. 19753-D

Violation of Section 11, Article II, RA 9165

On or about November 24, 2014, in Pasig City and within the jurisdiction of this Honorable Court, [appellant] not being lawfully authorized to possess any dangerous drug, did then and there wilfully, unlawfully, and feloniously have in his possession and under his custody and control four (4) heat-sealed transparent plastic sachets each containing 0.03 gram or with a total weight of 0.12 grams [sic] of white crystalline substance, which were found positive [xxx] for methamphetamine hydrochloride, a

dangerous drug, in violation of the said law.

Contrary to law.<sup>[4]</sup>

Upon arraignment, appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

### **Version of the Prosecution**

On November 22, 2014, at around 3 p.m., PCI Renato Banas Castillo (PCI Castillo), Chief of Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station, received a report from a confidential informant that appellant was involved in the rampant selling of illegal drugs in C. Santos St., Purok 4, Brgy. Ugong, Pasig City. PCI Castillo, thus, ordered that a buy-bust operation be made against appellant. PO1 Marvin A. Santos (PO1 Santos) was designated as poseur-buyer and given two one hundred-peso bills to be used as marked money.<sup>[5]</sup>

The next day, November 23, 2014, the buy-bust team proceeded to the barangay hall of Brgy. Ugong to coordinate the planned operation and to place said operation on blotter. Thereafter, PO1 Santos, together with the confidential informant, went to the house of appellant, while the other members of the buy-bust team positioned themselves nearby. Upon arriving at the target area, PO1 Santos and the confidential informant saw appellant seated in front of his house. They approached appellant and PO1 Santos asked to buy *shabu* worth two hundred pesos. PO1 Santos gave the marked money to appellant who, thereafter, gave him (PO1 Santos) two plastic sachets which contained suspected *shabu*. PO1 Santos put the said two sachets in his pocket. He, then, made the pre-arranged signal and held the hand of appellant while the buy-bust team converged thereat. PO1 Santos ordered appellant to produce the marked money and empty his pockets; appellant did as told, and the marked money and four plastic sachets which contained suspected *shabu* were recovered from appellant. PO1 Santos placed the said four sachets in his other pocket so it will not get mixed with the two sachets he previously bought from appellant. Due to the sudden influx of people at the place of the arrest, the buy-bust team decided to proceed to the *barangay* hall of Brgy. Ugong to secure appellant and the evidence. At the *barangay* hall, PO1 Santos marked and inventoried the aforesaid plastic sachets in the presence of appellant, Brgy. Capt. Engracio E. Santiago (Brgy. Capt. Santiago) and Ms. Zenaida Concepcion, head of the Anti-Drug Abuse Council of Pasig City. Brgy. Capt. Santiago and appellant signed the inventory.<sup>[6]</sup>

Thereafter, the team brought appellant to the police station where the evidence was turned over by PO1 Santos to the duty investigator, PO1 Lodjie Coz (PO1 Coz), who prepared the necessary documentation. Thereafter, PO1 Santos and PO1 Coz went to the Eastern Police District-Crime Laboratory Service in Mandaluyong City and submitted the seized sachets of suspected *shabu* to the forensic chemist, PCI Rhea Fe Alviar (PCI Alviar), who conducted the laboratory examinations which confirmed the presence of methamphetamine hydrochloride or *shabu* in the said sachets.<sup>[7]</sup>

### **Version of the Defense**

On November 22, 2014, appellant arrived at his house from work. His common-law

spouse, Rosemarie Apinan, was eating lunch at the time. Thereafter, four police officers suddenly entered appellant's house and searched it. When they found nothing, they arrested appellant and brought him to the *barangay* hall of Brgy. Ugong. Appellant saw several sachets and two one hundred-peso bills on top of a table in the presence of the Brgy. Capt. Santiago. After appellant and Brgy. Capt. Santiago signed the inventory, the police officers brought him to the Pasig City Police Station.<sup>[8]</sup>

### ***Ruling of the Regional Trial Court***

On November 25, 2015, the RTC rendered judgment finding appellant guilty of the crimes charged, to wit:

WHEREFORE:

1. In *Criminal Case No. 19752-D*, the Court finds [appellant] Augusto N. Maganon GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposed [sic] upon him the penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00) with all the accessory penalties under the law.
2. In *Criminal Case No. 19753[-D]*, the Court finds [appellant] Augusto N. Maganon GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (P300,000.00) with all the accessory penalties under the law.

The six (6) transparent plastic sachets of *shabu* (Exhibits "P" to "U") subject matter of these cases are hereby ordered confiscated in favour of the government and turned over to the PDEA for destruction in accordance with law.

SO ORDERED.<sup>[9]</sup>

The RTC gave credence to the testimony of PO1 Santos over that of appellant. It ruled that the prosecution was able to establish all the elements of illegal sale and all the elements of illegal possession of *shabu*. It also found that there was an unbroken chain of custody of the evidence, thus, the integrity and evidentiary value of the sachets of *shabu* bought and confiscated from appellant had been preserved.

### ***Ruling of the Court of Appeals***

On May 30, 2017, the CA affirmed the Judgment of the RTC:

WHEREFORE, the appeal is DENIED. The assailed Decision of the RTC is AFFIRMED.

SO ORDERED.<sup>[10]</sup>

The CA ruled that the prosecution had sufficiently established every link of the chain of custody from the time of the seizure of the drugs up to their presentation before the RTC; that while the police officers did not strictly follow the requirements under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the prosecution was nonetheless able to properly preserve the integrity and evidentiary value of the seized items; and that in any event, the prosecution presented justifiable grounds for non-compliance with the said requirements.

Hence, this appeal.

### **Issue**

In the main, appellant contends that the police operatives violated Section 21, Article II of RA 9165 and its IRR, because they failed to comply with the procedural requirements during the marking, the inventory and the photographing of the evidence; hence, this creates reasonable doubt as to the integrity and evidentiary value of the seized items and justifies the acquittal of appellant.

### **Our Ruling**

The appeal is meritorious.

It is axiomatic that the presentation of the dangerous drugs as evidence in court is a basic requirement in every prosecution for the illegal sale and for illegal possession of dangerous drugs. The prosecution must establish with moral certainty the identity of the prohibited drugs as this is the *very corpus delicti* of the crime. Equally important, the prosecution must prove that there has been an unbroken chain of custody over the dangerous drugs to erase any lingering doubts as to its identity owing to or by reason of switching, "planting" or contamination of evidence. Each link in the chain of custody of evidence must be accounted for from the moment the drugs are seized up to their presentation as evidence in court.<sup>[11]</sup>

The acts subject of this case were allegedly committed after the effectivity of RA 10640.<sup>[12]</sup> In order to preserve the chain of custody of evidence in drugs cases, Section 21, Article II of RA 9165, as amended by RA 10640, spells out the mandatory procedural safeguards in a buy-bust operation 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 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 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.

As the Court noted in *People v. Lim*,<sup>[13]</sup> RA 10640 now only requires two witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; **and** (2) either a representative from the National Prosecution Service **or** the media.<sup>[14]</sup> Hence, the witnesses required are: (a) *prior* to the amendment of RA 9165 by RA 10640, a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official; or (b) *after* the amendment of RA 9165 by RA 10640, an elected public official **and** a representative of the National Prosecution Service **or** the media.<sup>[15]</sup>

Significantly also, as the Court observed in *People v. Lim*,<sup>[16]</sup> the saving clause previously contained in Section 21 (a), Article II of the IRR of RA 9165 was essentially incorporated or inserted into the law by RA 10640 which, to restate, pertinently provides that "[n]oncompliance 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." Hence, for this saving mechanism under RA 10640 to apply, the self-same conditions must be met, *viz.*: those laid down in previous jurisprudence interpreting and applying Section 21 (a), Article II of the IRR of RA 9165 prior to its amendment, *i.e.*, (1) the prosecution must acknowledge or recognize the lapse/s in the prescribed procedure, and then provide justifiable reasons for said lapse/s,<sup>[17]</sup> **and** (2) the prosecution must show that the integrity and evidentiary value of the seized items has been properly preserved.<sup>[18]</sup> The justifiable ground/s for failure to comply with the procedural safeguards mandated by the law must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.<sup>[19]</sup>

In the absence of the witnesses required by law, during the physical inventory and photographing of the seized items, the Court stressed in *People v. Lim*<sup>[20]</sup> that —

It must be **alleged and proved** that the presence of the three witnesses (now two witnesses under RA 10640) 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**