

SECOND DIVISION

[G.R. No. 229362, June 19, 2019]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO SILAYAN
Y VILLAMARIN, APPELLANT.**

DECISION

CARPIO, J.:

The Case

On appeal is the 18 January 2016 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 06941, which affirmed the 20 June 2014 Decision^[2] of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, in Criminal Case No. 12-0343, finding appellant Ernesto Silayan y Villamarin (Silayan) guilty of violating Section 5, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On or about 15 June 2012, PO1 Rommel Bilog (PO1 Bilog) and PO1 Mark Riel Canilon (PO1 Canilon), along with the informant, went to Barangay Pag-asa, Binangonan, Rizal to conduct a surveillance and verify the tip that there was an illegal drug trade in the area. The informant pointed Silayan to PO1 Bilog. Silayan was having a drinking spree along the side of the road with two companions. The informant introduced the "scorer" to PO1 Bilog and PO1 Canilon. The "scorer" met with Silayan who handed a small plastic sachet to the "scorer." After confirming the sale, PO1 Bilog and PO1 Canilon went back to the police station to prepare for the buy-bust operation.

At the police station, PO1 Bilog prepared two PIOO bills and marked them with "LOG-1" and "LOG-2." The informant and the buy-bust team proceeded to Barangay Pag-asa. The informant and PO1 Bilog approached Silayan who asked the informant, "Sino yang kasama mo? Kakampi ba yan?" to which the informant replied, "Oo pare kakampi to, mayroon ba tayo dyan." Silayan replied, "Mayroon magkano iskorin mo?" and the informant replied, "Kasang dos lang pare, tag hirap eh." Thereafter, Silayan took a plastic sachet from his pocket and gave it to the informant. PO1 Bilog handed the marked money to Silayan and scratched his head to signal that the sale has transpired. He identified himself as a police officer and arrested Silayan. PO1 Canilon arrested the two companions of Silayan. PO1 Bilog confiscated the marked money from Silayan and recovered the plastic sachet from the informant. He marked the recovered plastic sachet on site with "RNB 6/15/12." After making the markings, he informed Silayan and his two companions of their constitutional rights, and brought them to the police station for processing.

PO1 Bilog prepared the Inventory and the Request for Laboratory Examination of the

recovered evidence. Pictures were taken of Silayan with his companions and two other male persons. PO1 Bilog personally delivered the recovered plastic sachet to the Rizal Provincial Crime Laboratory Office for examination. P/Sr. Inspector Beuane Villaranza^[3] (Forensic Chemist Villaranza) received the evidence from PO1 Bilog and signed the Chain of Custody Form. The qualitative examination conducted by Forensic Chemist Villaranza on the 0.04 gram of white crystalline substance contained in the heat-sealed plastic sachet marked "RNB 6/15/12" yielded a positive result for methamphetamine hydrochloride or more commonly known as shabu, a prohibited drug.

For his defense, Silayan alleges that he went to buy a cigarette when he was invited to have a drink. After five minutes, a tricycle arrived and people in civilian clothes alighted. He was then arrested and forced to board the tricycle with his companions. He was first brought to the barangay hall where he was mauled and thereafter brought to the Binangonan Police Station where Silayan and his two other companions were charged for selling illegal drugs. This was corroborated by the testimonies of his two companions and cousin Dave Villamarin.

The Ruling of the RTC

In a Decision dated 20 June 2014, the RTC found Silayan guilty of violating Section 5, Article II of RA 9165, to wit:

In light of the above, we find accused Ernesto Silayan GUILTY beyond reasonable doubt of violating Section 5, Article II, R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of P500,000.00. However, we find accused Jeffrey Coro [a]nd Reyban Mariano NOT GUILTY because of reasonable doubt.

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.^[4]

The RTC found that the prosecution was able to prove the illegal sale of drugs by the testimonies of the police officers, which were given due credence because their duties are presumed to have been performed in a regular manner. The RTC also found that there was no evidence suggesting ill-motive or deviation from the performance of duties by the buy-bust team. The proper chain of custody was also proven by the prosecution, as testified by PO1 Bilog and Forensic Chemist Villaranza. Moreover, the RTC held that the prosecution was able to present the *corpus delicti* as evidence in court in the form of samples and chemistry report. Finally, the RTC rejected the defense of Silayan, finding it a denial that is incredible and weak, coming from a source who is not a credible witness.

The Ruling of the CA

In a Decision dated 18 January 2016, the CA affirmed the Decision of the RTC. The dispositive portion of the Decision of the CA reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated 20 June 2014 of the Regional Trial Court of Binangonan, Branch 67 in Criminal Case No. 12-0343 convicting accused appellant Ernesto Silayan of violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.^[5]

The CA found that the prosecution was able to prove the elements of the illegal sale of shabu - (1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing. PO1 Bilog was able to positively identify Silayan, to whom he handed the marked money for the sale of the plastic sachet with shabu. The marked money and the sachet were presented as evidence in court. PO1 Bilog narrated in detail the transaction that transpired between them and Silayan. As for Silayan 's contention that there was no coordination between the PNP-Binangonan and the PDEA, the CA held that such is not a condition *sine qua non* for the validity of every entrapment operation conducted by police authorities.

Moreover, the CA rejected the argument of Silayan that the physical inventory of the seized dangerous drug was made only at the police station and without a representative from the media, DOJ, and any elected public official, which was a violation of Section 21(1), Article II of RA 9165. The CA held that substantial compliance is sufficient as provided under Section 21 of the IRR of RA 9165. Contrary to the allegation of Silayan that the inventory was made only at the police station, the CA found that the inventory made by PO1 Bilog was actually made on site, at the area where Silayan was arrested. This preserved the integrity and evidentiary value of the seized items; and therefore, the inventory was considered substantial compliance with Section 21(1), Article II of RA 9165. Finally, the CA found the chain of custody to be unbroken as it was sufficiently proven through the testimonies of PO1 Bilog and Forensic Chemist Villaranza.

The Issue

The issue to be resolved in this appeal is whether or not the CA gravely erred in finding Silayan guilty of violating Section 5, Article II of RA 9165.

The Ruling of the Court

We find the appeal meritorious.

For a successful prosecution of an offense under Section 5, Article II of RA 9165, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.^[6] In this case, we find that the second element is wanting because of the failure of the police officers in the buy-bust operation to comply with the requirements of Section 21(1), Article II of RA 9165, without any justifiable grounds therefor.

In case of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the dangerous drug seized from the accused constitutes the *corpus delicti* of the

offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved.^[7] Section 21(1), Article II of RA 9165 provides the procedure to be followed for the preservation of the integrity and identity of the seized drugs, to wit:

Section 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 drugs shall, immediately after seizure and confiscation, physically inventory 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, 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 thereof; (Emphasis supplied)

The Implementing Rules and Regulations (IRR) of RA 9165 further provide:

Section 21. x x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory 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, 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 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, further*, that noncompliance 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 of and custody over said items.

x x x x (Emphasis supplied)

While RA 9165 was amended by RA 10640^[8] to modify the number of witnesses required during the conduct of inventory, the offense in this case was allegedly committed on or about 15 June 2012; and thus, the original version of Section 21(1) and its IRR as quoted above applies.

Section 21(1), Article II of RA 9165 and its IRR expressly require the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. If such is not practicable, the inventory and photographing may be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer or team. Equally important is the presence of the accused, or his representative or counsel, a representative of the DOJ, the media, and an elected public official during the inventory, who shall all be required to sign the copies of the inventory and be given a copy thereof. Thus, the three required witnesses - a representative of the DOJ, the media, and an elected public official should be physically present at the time of apprehension or immediately thereafter while the inventory is being made as this is a measure to insulate the inventory from any taint of illegitimacy or irregularity.^[9]

However, there may be instances where strict compliance with the procedure laid down in Section 21(1), Article II of RA 9165 and its IRR may be dispensed with. Specifically, the IRR allows a deviation from the requirement of the presence of the three witnesses, when the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Thus, Section 21 of the IRR provides:

Section 21. x x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, 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 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, further*, **that noncompliance 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 of and custody over said items.**

x x x x (Emphasis supplied)

The burden of proving the requisites for the deviation from compliance with the procedure laid down in Section 21 of RA 9165 and its IRR lies with the prosecution which must allege and prove that the presence of the three witnesses during the physical inventory and photographing of the illegal drug seized was not obtained due to reasons such as: