

## FIRST DIVISION

[ G.R. No. 239903, September 11, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RONALDO SALENGA Y GONZALES A.K.A. "BAROK," ACCUSED-  
APPELLANT.**

### D E C I S I O N

**JARDELEZA, J.:**

The rule on chain of custody was designed to safeguard the integrity of the confiscated dangerous drugs in buy-bust operations. The failure to comply with this rule without justifiable reasons warrants acquittal.

This is an appeal from the Decision<sup>[1]</sup> dated November 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08871 which affirmed the Judgment<sup>[2]</sup> dated October 18, 2016 of the Regional Trial Court of Pasig City (Taguig City Station), Branch 267 (RTC) in Criminal Case Nos. 17664-65-D-TG.

#### *The Factual Antecedents*

Two informations were filed against Ronaldo Salengay Gonzales a.k.a. "Barok" (appellant) charging him of selling 0.04 gram (g) and possessing 0.08 g of methamphetamine hydrochloride, also known as shabu, in violation of Sections 5 and 11 of Article II of Republic Act No. (RA) 9165.<sup>[3]</sup> The informations read:

#### Criminal Case No. 17664-D-TG

That, on or about the 29<sup>th</sup> day of August, 2011 in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized or licensed by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully, and knowingly sell, deliver, distribute and give away zero point zero four (0.04) gram of Methamphetamine Hydrochloride also known as shabu, a dangerous drug, in violation of [Republic Act No. 9165 (R.A. No. 9165)].<sup>[4]</sup>

#### Criminal Case No. 17665-D-TG

That, on or about the 29<sup>th</sup> day of August 2011 in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, to possess any dangerous drug, did, then and there willfully, unlawfully, and knowingly have in his possession custody and control of two (2) heat-sealed

transparent plastic sachets containing a total of zero point zero eight (0.08) gram of Methamphetamine Hydrochloride, commonly known as "SHABU," a dangerous drug, in violation of [R.A. No. 9165].<sup>[5]</sup>

Appellant entered the plea of not guilty to both charges. Trial ensued.<sup>[6]</sup>

According to the prosecution, in the early morning of August 29, 2011, a confidential informant arrived at the Office of the District Anti-Illegal Drugs in Taguig City to report the drug dealing activities of a certain Michelle. The police were able to arrange a deal with Michelle for the sale of shabu for P1,000.00 at a Petron gas station along C-5 Road, Brgy. Ususan, Taguig City. In preparation for the buy-bust operation, the police prepared a Pre-Operation Report and Coordination with the Philippine Drug Enforcement Agency, and a marked one-thousand-peso bill to be used as buy-bust money. PO2 Gerald R. Lagos (PO2 Lagos)<sup>[7]</sup> was designated as poseur buyer, while SPO1 Felix S. Mayuga (SPO1 Mayuga) was assigned as immediate back-up.<sup>[8]</sup>

The team, together with the confidential informant, arrived at the Petron gas station at around 5:00PM of the same day. PO2 Lagos and the confidential informant went inside the Jollibee outlet in the gas station to wait for Michelle. The confidential informant called Michelle to confirm the transaction but was informed by the latter that she would not be able to meet them and instead would be sending a certain Barok, who turned out to be appellant. Michelle also told the confidential informant that she would give the latter's number to Barok. PO2 Lagos immediately received a call from appellant who asked about their location. After a while, appellant approached PO2 Lagos and the informant. He told them that he was sent by Michelle to deliver the shabu. Appellant asked PO2 Lagos for the payment which he immediately handed to appellant. In return, appellant discreetly handed to PO2 Lagos one heat-sealed transparent plastic sachet of shabu. Right after he received the shabu, PO2 Lagos took off his bull cap, the pre-arranged signal that the transaction was already consummated. SPO1 Mayuga immediately approached PO2 Lagos and appellant. PO2 Lagos then introduced himself as a narcotic operative, arrested appellant, and apprised him of his constitutional rights. PO2 Lagos recovered from appellant the buy-bust money and two heat-sealed transparent plastic sachets upon being searched after the arrest.<sup>[9]</sup>

PO2 Lagos marked the plastic sachet he bought from accused-appellant with the code "GLO82911-1" and the other two sachets with "GLO82911-2" and "GLO82911-3." They proceeded to the police station where appellant, together with the illegal drugs, were turned over to SPO1 Dionisio Gastanes, Jr. (SPO1 Gastanes, Jr.), the police investigator. The turn over was evidenced by the Turn Over of Arrested Suspect/s, Turn Over of Confiscated Evidence, and the Booking and Information Sheet. Thereafter, PO2 Lagos photographed the seized items and conducted an inventory in the presence of appellant, the investigator, the police team leader, and a representative from the media. After the inventory, SPO1 Gastanes, Jr. prepared the Spot Report, Request for Laboratory Examination of the Seized Item, Request for Drug Test, Affidavit of Arrest, and Chain of Custody Form. These, along with appellant and the seized items, were turned over to the Southern Police District Crime Laboratory (SPDCL). At the SPDCL, the seized items were turned over to NUP Bernardo Bucayan and examined by P/CINSP Richard Mangalip, who executed a

Physical Science Report showing that the qualitative examination conducted on the specimen gave a positive result to the test for methamphetamine hydrochloride.<sup>[10]</sup>

For his defense, appellant claimed that he was framed by the police officers. He alleged that around 4:00 PM of August 29, 2011, he went to Jollibee at the Petron gas station to buy food. Upon entering the store, he saw two acquaintances, Michelle and Tess, who called and invited him to sit at their table. After taking his seat, appellant was suddenly approached by four armed men. One of the men told him *"wag kang kikilos, buy bust ito."* They were handcuffed and frisked. The searched yielded nothing but his mobile phone and P400.00. They boarded a white van and headed towards the Southern Police District Headquarters. On their way, the armed men informed them that they were going to be charged of selling and possessing illegal drugs. Throughout this ordeal, appellant remained silent due to fright. Once in the police station, the police officers took their statements and asked them if they could afford to settle the case in the amount of P50,000.00. Appellant answered that he could not afford it since he was only a tricycle driver. The police investigator, through appellant's mobile phone that was earlier confiscated, contacted the latter's sister who later came to the police station. After talking to his sister, appellant informed the police officers that he could not produce the amount. He was then informed that the charge against him would push through. He also claimed that Tess and Michelle were not charged because they were able to pay the police officers.<sup>[11]</sup>

In a Judgment<sup>[12]</sup> dated October 18, 2016, the RTC found appellant guilty of the crimes charged. The dispositive portion of the Decision reads:

WHEREFORE, based on the foregoing dissertation, the court finds accused Ronald Salenga y Gonzales alias "Barok" GUILTY beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165 under Criminal Case No. 17664-D-TG and judgment is hereby rendered that he should suffer the penalty of life imprisonment and to pay Fine in the amount of Five Hundred Thousand Pesos x x x. With regard to the violation of Section 11, Article II of R.A. 9165 under Criminal Case No. 17665-D-TG, judgment is hereby rendered that accused x x x should suffer the penalty of imprisonment from twelve (12) years and one (1) day to fifteen (15) years and to pay Fine in the amount of Three Hundred Thousand Pesos x x x.<sup>[13]</sup>

The trial court ruled that the prosecution was able to prove all the elements of the crimes since it was able to establish that PO2 Lagos bought shabu from appellant in consideration of P1,000.00, and that his possession of the other two sachets of shabu was illegal as he did not have authority to keep them. It was also established that the drugs seized from appellant were the same drugs that were presented before the court.<sup>[14]</sup> The trial court gave no credence to appellant's contention that the police officers did not comply with the requirements of the law when no media, barangay, and Department of Justice (DOJ) representatives were present during the arrest. According to the trial court, the presence of the stated representatives is required during the inventory and not during the actual operation; thus, the presence of the media representative alone was enough to validate the inventory.

[15] Contrary to the posture of the defense, the conduct of the inventory at the police station was in accord with the law and its implementing rules. It further ruled that appellant's bare denials cannot prevail over the positive identification made by the police because he failed to adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[16]

The CA, in a Decision<sup>[17]</sup> dated November 17, 2017, affirmed the RTC Judgment, thus:

WHEREFORE, in view of the foregoing premises, the appeal is DENIED. The October 18, 2016 Decision of the Regional Trial Court, Branch 267, Pasig City, is hereby AFFIRMED.[18]

The CA agreed with the trial court that all elements of the crimes were duly proven by the prosecution. It found appellant's contention that he is entitled to an acquittal due to the failure of the operatives to comply with the procedure laid down in Section 21, Article II of RA 9165, particularly on the marking of the confiscated narcotics at the place of seizure in his presence, to be without merit. According to the CA, the authenticity and identity of the seized narcotics were not compromised considering that the prosecution was able to establish the continuous and unbroken possession, and subsequent transfers of the said seized narcotics through the stipulations of facts entered by the parties during trial and the documentary evidence presented to support the same. In this case, there were no conflicting testimonies nor glaring inconsistencies that would cast doubt on the integrity and identity of the seized drugs as the evidence presented and scrutinized in the trial court. It emphasized that the arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Section 21, Article II of RA 9165 since what is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[19]

#### *The Issue Before the Court*

In this appeal, appellant contends that the trial court erred in finding him guilty beyond reasonable doubt of the crimes charged despite the arresting officers' failure to comply with Section 21, Article II of RA 9165 and its Implementing Rules and Regulations (IRR).[20] On the other hand, the People, through the Office of the Solicitor General, maintains that the prosecution has sufficiently established the chain of custody of the seized items and there being no evidence showing bad faith, ill will or proof that the evidence has been tampered with, the presumption that the arresting officers performed their duties regularly stands.[21]

#### *The Court's Ruling*

The appeal has merit.

In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (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. Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>[22]</sup>

In both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the crime.<sup>[23]</sup>

The rule on chain of custody was specifically enacted in order to preserve the integrity and evidentiary value of the seized drugs. The rule is embodied in Section 21, Article II of RA 9165 which provides:

*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 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[.]

x x x x (Emphasis supplied.)

Its IRR further outline the procedure for the inventory and photograph of the seized drugs:

- (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