

## SECOND DIVISION

[ G.R. No. 243615, November 11, 2019 ]

**EDWIN GEMENTIZA MATABILAS, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated March 22, 2018 and the Resolution<sup>[3]</sup> dated October 17, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01488-MIN, which affirmed the Judgment<sup>[4]</sup> dated November 12, 2014 of the Regional Trial Court of Kidapawan City, Branch 17 (RTC) in Criminal Case No. 1147-2012 finding petitioner Edwin Gementiza Matabilas (petitioner) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>[5]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

This case stemmed from an Information<sup>[6]</sup> filed before the RTC accusing petitioner of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that at around 5:00 in the afternoon of September 6, 2012, acting on a tip received from a confidential informant, several officers of the Kidapawan City Police Station successfully conducted a buy-bust operation against petitioner at the Villanueva Subdivision in Kidapawan City, Cotabato, during which one (1) plastic sachet containing 0.05 gram of white crystalline substance was recovered from him. After the arrest, police officers immediately conducted the requisite marking, inventory,<sup>[7]</sup> and photography<sup>[8]</sup> of the seized item in the presence of petitioner himself, as well as Ruel C. Anima (Anima), a *kagawad* of Barangay Poblacion, Kidapawan City, and Romnick Cabaron (Cabaron), a member of radio station DXND. Thereafter, the seized item was brought to the Philippine National Police Provincial Crime Laboratory of the Province of Cotabato,<sup>[9]</sup> where after examination, its contents tested positive<sup>[10]</sup> for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[11]</sup>

In defense, petitioner denied the charge against him, claiming that, at the time of the alleged incident, he was at Kidapawan City looking for potential customers of coconuts when two (2) police officers suddenly approached, conducted a futile search on his person and motorcycle, then forcibly brought him to the store of a certain Clifton Cris Simene, where they falsely made it appear that a P500.00 bill and a sachet containing white crystalline substance were recovered from his possession.<sup>[12]</sup>

In a Judgment<sup>[13]</sup> dated November 12, 2014, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced him to

suffer the penalty of life imprisonment and ordered him to pay a fine in the amount of P500,000.00.<sup>[14]</sup> Giving credence to the testimonies of the prosecution witnesses, it held that all the elements of the alleged crime had been duly established, and that there was proper compliance with the chain of custody rule.<sup>[15]</sup>

Aggrieved, petitioner moved for reconsideration,<sup>[16]</sup> which was denied in an Order<sup>[17]</sup> dated September 2, 2015. Undaunted, petitioner elevated the case to the CA via appeal,<sup>[18]</sup> arguing that the trial court erred in appreciating the testimonies of the prosecution witnesses as they allegedly contained glaring inconsistencies which indicate that they had been fabricated, and in failing to give probative weight to the testimonies of the witnesses presented by the defense. Moreover, he asserted that the arresting officers violated the mandatory requirements of the chain of custody rule.<sup>[19]</sup>

In a Decision<sup>[20]</sup> dated March 22, 2018, the CA **affirmed** petitioner's conviction.<sup>[21]</sup> It held that the alleged inconsistencies in the testimonies of the prosecution witnesses merely pertained to trivial matters which did not affect the outcome of the case, and that petitioner failed to prove that the conduct of the buy-bust operation had been fabricated. Further, it found that there was substantial compliance with the chain of custody rule considering that the prosecution was able to establish the whereabouts of the seized drugs, from the time it was seized by the police officers until it was offered as evidence in court.<sup>[22]</sup>

Undaunted, petitioner moved for reconsideration,<sup>[23]</sup> which was denied in a Resolution<sup>[24]</sup> dated October 17, 2018 for lack of merit; hence, this petition.

### **The Court's Ruling**

At the outset, the Court observes that petitioner made a procedural lapse in elevating the case before the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court (Rules). While, as a general rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13 (c), Rule 124 of the Rules provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal.<sup>[25]</sup> Nonetheless, in the interest of substantial justice, the Court will treat this petition as an ordinary appeal in order to finally resolve the substantive issues at hand.

In an attempt to escape conviction, petitioner argues that he should be acquitted for the following reasons: (a) there were serious and glaring inconsistencies in the testimonies of the witnesses presented by the prosecution; (b) the courts *quo* erred in failing to appreciate the testimonies of the witnesses offered by the defense; and (c) the police officers failed to comply with the mandatory witness requirement under the chain of custody rule, particularly in failing to secure the presence of a representative from the Department of Justice (DOJ) to witness the inventory of the alleged drugs.

Anent petitioner's first and second arguments, the Court finds them untenable. Well-entrenched is the rule that findings of facts of the trial court, including its calibration of the testimonies of witnesses, its assessment of their credibility, and attribution of probative weight, are entitled to great respect, if not conclusive effect, absent any showing that it had overlooked circumstances that would have affected the final

outcome of the case.<sup>[26]</sup> Moreover, this Court has repeatedly held that inconsistencies in the testimonies of witnesses do not impair their credibility provided there is consistency as to the principal occurrence of the crime as well as the identity of the accused.<sup>[27]</sup>

However, such finding notwithstanding, and as will be explained hereunder, petitioner correctly pointed out that there was an unjustified deviation from the mandatory witness requirement as provided under the chain of custody rule - a specific issue left unaddressed by the courts *a quo*.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>[28]</sup> 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.<sup>[29]</sup> 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.<sup>[30]</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[31]</sup> 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 "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."<sup>[32]</sup> 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.<sup>[33]</sup>

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,<sup>[34]</sup> a representative from the media AND the DOJ, and any elected public official;<sup>[35]</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service<sup>[36]</sup> OR the media.<sup>[37]</sup> 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."<sup>[38]</sup>

**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."**<sup>[39]</sup> 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."<sup>[40]</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>[41]</sup> 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.<sup>[42]</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>[43]</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>[44]</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>[45]</sup> 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.<sup>[46]</sup>

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 overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>[47]</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>[48]</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>[49]</sup>

Notably, the Court, in *People v. Miranda*,<sup>[50]</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, *albeit* the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."<sup>[51]</sup>

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by a representative of the DOJ. This may be easily gleaned from the Inventory of Confiscated Drugs/Seized<sup>[52]</sup> which only confirms the presence of an elected public official, *i.e.*, Anima, and a media representative, *i.e.*, Cabaron. Such finding is further supported by the testimony of Anima on direct examination, where he mentioned that only he and Cabaron were the civilian witnesses present, to wit:

#### **Direct Examination of Anima**

[Prosecutor Mary Christine B. Prudenciado]: Besides you, were there other civilian witnesses?

[Witness Ruel C. Anima]: Romnick Cabaron, ma'am.

Q: Who is Romnick Cabaron?

A: A [reporter] or DXND Radio Station, ma'am.<sup>[53]</sup>

Likewise, the absence of a DOJ representative is also evident from the respective testimonies of the arresting officers, Police Officer 1 (PO1) Rolando Cabalanan, Jr. (PO1 Cabalanan) and PO1 Armand Bada<sup>[54]</sup> (PO1 Bada), who both failed to acknowledge and explain such omission, to wit:

#### **Direct Examination of PO1 Cabalanan**

[Prosecutor Mary Christine B. Prudenciado]: Below are other signatures; tell the court whose signature is the one next or below your signature?

[PO1 Cabalanan]: The signature of the witnesses and the Brgy. Kagawad, ma'am.

Q: The next signature is whose signature?

A: The signature of the media man Romnick Cabaron, ma'am.

x x x x

Q: The next signature is whose?

A: Brgy. Kagawad Ruel Anima, ma'am.

x x x x

Q: You summoned these two (2) witnesses and be signatories to the inventory; they were there?

A: They were called, ma'am.<sup>[55]</sup>

#### **Direct Examination of PO1 Bada**

[Prosecutor Mary Christine B. Prudenciado]: After that?

[PO1 Bada]: We went to [Simene] store for proper documentation, ma'am.

Q: What do you mean documentation?

A: By taking pictures of the evidences, ma'am together with radio newscaster Romnick Cabaron and Brgy. Kagawad Ruel Anima, ma'am.<sup>[56]</sup>

#### **Cross-Examination of PO1 Bada**

[Atty. Vicente Andiano]: **During the buy-bust operation you have a representative from the Department of Justice?**

[PO1 Bada]: **I do not know, sir.**

Q: You were there during the planning?

A: Yes, sir.

Q: **But you do not know that there was no representative from the Department of Justice?**

A: **I do not know, sir.**<sup>[57]</sup>

Notably, it was even admitted by PO1 Bada on cross-examination that police officers could have easily obtained the presence of a DOJ representative since the City Prosecution Office was just near the police station, but they still nonetheless failed to do so, to wit:

#### **Cross-Examination of PO1 Bada**