

SECOND DIVISION

[G.R. No. 229047, April 16, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAMONCITO CORNEL Y ASUNCION, ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

This is an appeal of the Court of Appeals (CA) Decision^[1] dated June 9, 2016 dismissing appellant's appeal and affirming the Decision^[2] dated October 29, 2014 of the Regional Trial Court (RTC), Branch 64, Makati City convicting appellant of Violation of Section 5, Article II, Republic Act (R.A.) No. 9165.

The facts follow.

On December 15, 2013, PO1 Mark Anthony Angulo reported for work and a buy-bust operation was conducted against appellant Ramoncito Cornel. In preparation for the buy-bust operation, coordination was made with the District Anti-Illegal Drugs (DAID) and Philippine Drug Enforcement Agency (PDEA). Control No. PDEA-RO-NCR 12/13-00175 was issued by the PDEA as proof that they received the coordination form dated December 15, 2013. Led by PCI Gaylord Tamayo, a pre-operation plan was made where PO1 Angulo was designated a poseur-buyer. A one thousand peso bill was provided and marked for use in the operation. A petty cash voucher was prepared in relation to his receipt of the money from PCI Tamayo. The team then proceeded to the reported place of operation at *Barangay* East Rembo, Makati City and arrived therein at around 7:30 in the evening. A final briefing was conducted by PCI Tamayo. After the final briefing, PO1 Angulo proceeded on foot to 23rd Street together with the regular informant. Before they could reach their destination, they saw the subject appellant at a store. The informant introduced him to the subject as a "*tropa*." In the course of their conversation, he asked appellant "*kung meron ba*" to which appellant replied, "*meron naman*". PO1 Angulo then asked appellant if he could see the item, but the latter asked for the payment first. Appellant took the buy-bust money and placed it in his pocket. Appellant then brought out the item from the same pocket and handed it over to PO1 Angulo. The transaction having been consummated, PO1 Angulo gave the pre-arranged signal, by means of removing his cap, to the rest of the team. SPO1 Randy Obedoza arrived after PO1 Angulo grabbed appellant and introduced himself as a police officer. They then placed appellant under arrest. Initial body search was made where they were able to recover the marked money used in buying the item. SPO1 Obedoza informed the appellant of his constitutional rights. The inventory was conducted at the *barangay* hall. After the inventory, PO1 Angulo turned the seized items over to the duty investigator, PO2 Michelle Gimena, so that the necessary referrals could be made. A Request for Laboratory Examination was prepared and the seized items were submitted to the Scene of the Crime Operatives (SOCO) for examination. Photographs of the inventory and the marking were also taken at the *barangay* hall.

[3]

Thus, an Information was filed against the appellant for violation of Section 5, Article II of R.A. No. 9165 that reads as follows:

On the 15th day of December 2013, in the City of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point zero three (0.03) gram, a dangerous drug, in consideration of Php1,000.00.

CONTRARY TO LAW.[4]

Appellant used denial as a defense. According to him, he was on his way home when he was accosted by two men who introduced themselves as police officers.

The RTC of the City of Makati, Branch 64 found appellant guilty beyond reasonable doubt of the crime charged and sentenced him, thus:

WHEREFORE, in view of the foregoing, judgement (sic) is hereby rendered finding the accused RAMONCITO CORNEL y ASUNCION, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.[5]

The RTC ruled that all the elements for violation of Section 5, Article II of R.A. No. 9165 have been proved beyond reasonable doubt by the prosecution. It also held that the integrity and the evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule. It further ruled that the defense of denial by the appellant cannot surmount the positive and affirmative testimony offered by the prosecution.

The CA affirmed the decision of the RTC *in toto*. It ruled that the illegal sale of *shabu* has been established beyond reasonable doubt. It was also ruled that appellant was validly arrested during a legitimate buy-bust operation. It also ruled that the defense of denial should be looked with disfavor for they are easily concocted but difficult to prove, especially the claim that one has been the victim of frame-up. The appellate court also ruled that the integrity and evidentiary value of the *shabu* taken from appellant were clearly established by the prosecution.

Hence, the present appeal with the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT TO THE TESTIMONY OF PO1 ANGULO DESPITE ITS IRREGULARITIES, THUS, CASTING DOUBT UNTO HIS CREDIBILITY AND THE VERACITY OF DECLARATIONS.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT'S WARRANTLESS ARREST WAS ILLEGAL.

III

THE COURT *A QUO* GRAVELY ERRED IN NOT RENDERING INADMISSIBLE THE ALLEGEDLY CONFISCATED SHABU FOR BEING A FRUIT OF THE POISONOUS TREE.

IV

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE OPERATIVES TO MARK THE ALLEGEDLY CONFISCATED PLASTIC SACHET IMMEDIATELY AFTER IT WAS SEIZED.

V

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE IRREGULARITIES IN THE CONDUCT OF THE INVENTORY OF THE CONFISCATED ITEM.

VI

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

According to appellant, his guilt was not proven beyond reasonable doubt as the testimony of the witness had full of irregularities. He also claims that his warrantless arrest was illegal. He also questions the irregularities committed in the conduct of the inventory of the confiscated item. He also insists that there was a broken chain of custody of the confiscated dangerous drug.

The appeal is meritorious.

Under Article II, Section 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.^[6]

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."^[7]

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.^[8] In *People v. Gatlabayan*,^[9] the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.^[10] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence. are removed."^[11]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(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.

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:

(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 non-compliance 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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."^[12] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all comers of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended."^[13] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."^[14]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."^[15] In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

x x x x

Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.