

## SECOND DIVISION

[ G.R. No. 233702, June 20, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MANUEL GAMBOA Y FRANCISCO @ "KUYA," ACCUSED-APPELLANT.**

### DECISION

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>[1]</sup> filed by accused-appellant Manuel Gamboa y Francisco @ "Kuya" (Gamboa) assailing the Decision<sup>[2]</sup> dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07857, which affirmed the Decision<sup>[3]</sup> dated October 15, 2015 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case Nos. 14-303187 and 14-303188 finding Gamboa guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>[4]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

This case stemmed from two (2) Informations<sup>[5]</sup> filed before the RTC charging Gamboa of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, the accusatory portions of which state:

#### **Criminal Case No.14-303187**

That on or about January 31, 2014, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer / poseur buyer one (1) heat - sealed transparent plastic sachet containing ZERO POINT ZERO FOUR ONE (0.041) gram of white crystalline substance containing Methamphetamine Hydrochloride, commonly known as *Shabu* a dangerous drug.

Contrary to law.<sup>[6]</sup>

#### **Criminal Case No. 14-303188**

That on or about January 31, 2014, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control (1) heat -sealed transparent plastic sachet containing ZERO POINT ZERO TWO ONE (0.021) gram, of white crystalline substance containing Methamphetamine Hydrochloride, commonly known as *Shabu* a dangerous drug.

Contrary to law.<sup>[7]</sup>

The prosecution alleged that on January 30, 2014, the chief of Manila Police District (MPD) gave instructions to organize a buy-bust operation against one alias "Kuya" who was allegedly engaged in rampant selling of shabu at Moriones St., corner Elena St., Tondo, Manila. In response thereto, a team was formed where PO2 Richard Nieva (PO2 Nieva) was designated as the poseur-buyer, while Senior Police Officer 1<sup>[8]</sup> Brigido Cardifio and Police Officer 3 Noel R. Benitez (PO3 Benitez) served as back-ups. PO2 Nieva prepared the buy-bust money<sup>[9]</sup> and after coordinating with the Philippine Drug Enforcement Agency (PDEA), the team, together with the confidential informant, proceeded to the target area the following day. Upon arrival thereat, the informant approached Gamboa and introduced PO2 Nieva as a buyer of shabu. The latter asked Gamboa if he could buy P200.00 worth of shabu, handing as payment the buy-bust money, and in turn, Gamboa gave PO2 Nieva a plastic sachet containing white crystalline substance. Afterwhich, PO2 Nieva removed his bull cap, the pre-arranged signal, prompting the back-up officers to rush towards the scene and arrest Gamboa. Subsequently, a preventive search was conducted on Gamboa, where they recovered another plastic sachet and the buy-bust money. PO2 Nieva immediately marked the two (2) plastic sachets and inventoried the items at the place of arrest in the presence of Gamboa and a media representative named Rene Crisostomo. Photographs of the confiscated items were also taken by PO3 Benitez during the marking and inventory. Thereafter, PO2 Nieva brought Gamboa and the seized drugs to the police station where PO3 Benitez prepared the Request for Laboratory Examination.<sup>[10]</sup> After securing the letter-request, PO2 Nieva delivered the same to Police Chief Inspector Erickson Calabocal (PCI Calabocal), the forensic chemist at the Philippine National Police (PNP) Crime Laboratory, who later on confirmed after examination that the substance inside the seized items were positive for methamphetamine hydrochloride or *shabu*,<sup>[11]</sup> a dangerous drug.<sup>[12]</sup>

For his part, Gamboa denied the allegations against him, claiming that on said day, he was just walking along Pavia Street<sup>[13]</sup> when three (3) unidentified men arrested him for vagrancy because of his tattoos. He was then brought to the precinct where police officers interrogated him and told him to point to something. When he refused, photographs were taken and he was later on imprisoned.<sup>[14]</sup>

### **The RTC Ruling**

In a Decision<sup>[15]</sup> dated October 15, 2015, the RTC found Gamboa guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165 and, accordingly, sentenced him as follows: (a) in Crim. Case No. 14-303187, to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and (b) in Crim. Case No. 14-303188, to suffer the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine of P300,000.00.<sup>[16]</sup> It held that the prosecution sufficiently established all the elements of the crimes of Illegal Sale and Possession of Dangerous Drugs and that, there was no break in the chain of custody of the seized drugs given that: (a) PO2 Nieva immediately marked and inventoried the seized items at the place of arrest; (b) Gamboa, an investigator, and a media representative were present during the said proceedings; (c) PO2 Nieva personally turned over the items for examination to PCI Calabocal; and (d) PCI Calabocal confirmed that the substance inside the sachets tested positive for shabu.

[17] In addition, the RTC ruled that while a representative from the Department of Justice (DOJ) and a barangay official were absent during the inventory, the failure to strictly comply with Section 21, Article II of RA 9165 was not fatal since the police officers actually *sought the presence* of a media man to witness the proceedings.[18]

Aggrieved, Gamboa appealed[19] to the CA.

### **The CA Ruling**

In a Decision[20] dated May 31, 2017, the CA affirmed the RTC's ruling,[21] finding all the elements of the crimes charged present as Gamboa was caught *in flagrante delicto* selling *shabu* and in possession of another sachet containing the same substance.[22] The CA ruled that the integrity and evidentiary value of the seized drugs were duly preserved, considering that the sachets remained in PO2 Nieva's possession from the time of its confiscation until they were transmitted to the PNP Crime Laboratory for examination.[23]

Hence, this appeal.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly upheld Gamboa's conviction for Illegal Sale and Illegal Possession of Dangerous Drugs.

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

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[24] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [25]

Here, Gamboa was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, 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.[26] 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.[27]

Case law states that 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 doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account

for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.<sup>[28]</sup>

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>[29]</sup> Under the said section, prior to its amendment by RA 10640,<sup>[30]</sup> the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>[31]</sup> In the case of *People v. Mendoza*,<sup>[32]</sup> the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."<sup>[33]</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.<sup>[34]</sup> In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640<sup>[35]</sup> – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**<sup>[36]</sup> In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does 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 justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>[37]</sup> In *People v. Almorfe*,<sup>[38]</sup> **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**<sup>[39]</sup> Also, in *People v. De Guzman*,<sup>[40]</sup> it was emphasized 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>[41]</sup>

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Gamboa.

An examination of the records reveals that while the seized items were properly marked by PO2 Nieva immediately upon confiscation at the place of the arrest and in the presence of Gamboa and a media representative, the same was not done in the presence of any elected public official, as well as a representative from the DOJ. In fact, such lapse was admitted by PO2 Nieva when he stated that:

[Fiscal Maria Cielo Rubie O. Galicia (Fiscal Galicia)]: You make the marking at the place. Were there barangay officials present during the marking of the evidence, Mr. Witness?

[PO2 Nieva]: My other co-policemen went to the barangay office, ma'am.

x x x x

Fiscal Galicia: **Were there barangay officials present?**

[PO2 Nieva]: **No, ma'am.**

[Fiscal Galicia]: Why, Mr. Witness?

[PO2 Nieva]: **No one arrived to witness, ma'am.**

x x x x

Fiscal Galicia: Who called, Mr. Witness for this barangay official?

[PO2 Nieva]: **We called for the barangay official by the other operatives but no one went to the area, ma'am.**

[Fiscal Galicia]: When you came to the area, what else did you do if any, Mr. Witness?

[PO2 Nieva]: The one who arrived there was the media man Mr. Rene Crisostomo, ma'am.

[Fiscal Galicia]: And what did he do if any in the area?

[PO2 Nieva]: He witnessed the evidences and he signed the form of the seized evidence, ma'am.

x x x x<sup>[42]</sup> (Emphases and underscoring supplied)

The law requires the presence of an elected public official, as well as representatives from the DOJ or the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non observance of the witness requirement, no plausible explanation was given by the prosecution. In an attempt to justify their actions, PO2 Nieva testified that:

[Fiscal Galicia]: You mentioned earlier that no one came to the area, no one from the barangay came to the area to witness the marking of the