

## SECOND DIVISION

[ G.R. No. 233480, June 20, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
MELANIE B. MERCADER, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>[1]</sup> filed by accused-appellant Melanie B. Mercader (Mercader) assailing the Decision<sup>[2]</sup> dated March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08110, which affirmed the Decision<sup>[3]</sup> dated October 3, 2015 of the Regional Trial Court of Antipolo City, Branch 73 (RTC) in Crim. Case Nos. 03-26511 and 03-26512 finding Mercader 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

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

#### **Crim. Case No. 03-26511**

That on or about the 8<sup>th</sup> day of September 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to POI Christopher Anos, who acted as a poseur buyer, One (1) heat sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, for and in the (sic) consideration of the sum of P 200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for *Methamphetamine Hydrochloride*, also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[6]</sup>

#### **Crim. Case No. 03-26512**

That on or about the 8<sup>th</sup> day of September 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in her possession, custody and control

Two (2) heat sealed transparent plastic sachets containing 0.02 gram and 0.02 gram respectively and/or with total weight of 0.04 gram of white crystalline substance, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory both gave positive results to the test for *Methamphetamine Hydrochloride*, also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[7]</sup>

The prosecution alleged that at around five (5) o'clock in the afternoon of September 8, 2003, the Philippine National Police (PNP) of Marikina City received a report from a confidential informant that Mercader and her husband, alias "*Tisoy*," were selling drugs at their house located in Corazon Compound, Cogeo, Antipolo City. Acting upon this report, a buy-bust team was formed headed by Police Officer 2 Edwin Daño (PO2 Daño), together with Police Officer 1 (PO1) Christopher Anos (PO1 Anos) who was designated as the poseur-buyer, with PO1 Roberto Muega and PO1 Richie Gaerlan as back-ups. After conducting a pre-operation procedure and coordinating with the Philippine Drug Enforcement Agency (PDEA) and the PNP of Antipolo, the buy-bust team together with the confidential informant, proceeded to the target area. As soon as the informant saw Mercader, he approached her, introduced PO1 Anos as a buyer from Marikina, and asked if the latter could purchase *shabu*. Mercader asked how much PO1 Anos wanted and the latter replied "*Dos lang, pang-gamit namin*" as he handed to her the marked money. In turn, Mercader took from her right pocket a plastic sachet of suspected *shabu*. Upon receipt of the same, PO1 Anos tied his shoe lace, which was the pre-arranged signal, and the other police officers rushed in to arrest Mercader. At that point, *Tisoy* tried to come near them, but was warned by Mercader to run away. Subsequently, a preventive search was conducted on Mercader which yielded two (2) more plastic sachets of suspected *shabu*. Upon confiscation, PO1 Anos marked the items at the place of arrest with "LBM-CA BUY BUST," "LBM-CA POSS I," and "LBM-CA POSS II." Thereafter, the police officers brought her to the Marikina Police Station where they made a request for laboratory examination of the seized items. After securing the letter-request, PO1 Anos delivered the said items to the PNP Crime Laboratory Service where they were examined by Forensic Chemical Officer-Police Senior Inspector Annalee R. Porro who confirmed that they tested positive for the presence of *methamphetamine hydrochloride*, a dangerous drug.<sup>[8]</sup>

For her part, Mercader denied the charges against her, claiming that at around seven (7) o'clock in the evening of September 8, 2003, she was on her way home with her two (2) children when a police officer suddenly held her hand and accused her of selling drugs. Despite not finding drugs on her, she was forcibly taken to the police station of Marikina City where the police officers extorted money from her.<sup>[9]</sup>

### **The RTC Ruling**

In a Decision<sup>[10]</sup> dated October 3, 2015, the RTC ruled as follows: (a) in Crim. Case No. 03-26511, Mercader was found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and (b) in Crim. Case No. 03-26512, Mercader was likewise found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of

imprisonment for twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of P300,000.00.<sup>[11]</sup>

The RTC held that the prosecution sufficiently established all the elements of both illegal sale and possession of dangerous drugs, through the testimonies of the police officers, showing that Mercader sold *shabu* to PO1 Anos during the buy-bust operation and had in her possession two (2) more plastic sachets containing the same. On the other hand, the RTC did not give credence to Mercader's defenses of denial and extortion for lack of substance. Moreover, the RTC ruled that the lack of prior surveillance and the failure to offer the marked monies as evidence, do not invalidate the buy-bust operation, since the integrity and evidentiary value of the confiscated items were properly preserved and the chain of custody sufficiently established to convict Mercader.<sup>[12]</sup>

Aggrieved, Mercader appealed<sup>[13]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[14]</sup> dated March 17, 2017, the CA affirmed Mercader's conviction for the crimes charged.<sup>[15]</sup> It ruled that Mercader was validly arrested and that all the elements of the crimes of illegal sale and possession of dangerous drugs were duly proven by the prosecution.<sup>[16]</sup> Moreover, the CA found that there was an unbroken chain of custody since PO1 Anos had in his possession the subject sachets from the time of their seizure until their turnover to the crime laboratory.<sup>[17]</sup>

Hence, this appeal.

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

The issue for the Court's resolution is whether or not the CA correctly upheld Mercader'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.<sup>[18]</sup> "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."<sup>[19]</sup>

In this case, Mercader 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.<sup>[20]</sup> Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his/her 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>[21]</sup>

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 its identity, 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>[22]</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>[23]</sup> Under the said section, prior to its amendment by RA 10640,<sup>[24]</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/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 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>[25]</sup> In the case of *People v. Mendoza*,<sup>[26]</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] 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>[27]</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>[28]</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>[29]</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>[30]</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>[31]</sup> In *People v. Almorfe*,<sup>[32]</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>[33]</sup> Also, in *People v. De Guzman*,<sup>[34]</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>[35]</sup>

Guided by the foregoing, 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 Mercader.

***First***, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the DOJ and the media. Despite the failure to observe this requirement, no justifiable ground was given to explain such lapse. In fact, there is actually no mention of these required witnesses in this case.

***Second***, no physical inventory, as well as photography, of the seized items were taken. PO1 Anos admitted the lack of inventory when he testified that:

[Atty. Vilma Mendoza]: But you did not prepare any inventory during that time?

[PO1 Anos]: No, Ma'am.

Q: You did no take any list of the confiscated items from the suspect?

A: No, Ma'am.

Q: It was not recorded in the police blotter?

A: No, Ma'am.

x x x x<sup>[36]</sup> (Underscoring supplied)

Notably, PO2 Daño contradictorily testified that PO1 Anos prepared a written inventory which Mercader signed. He likewise stated that photographs were taken of the items and existed in the file.<sup>[37]</sup> Despite the seemingly conflicting statements made by the police officers, it remains that nothing on the record shows that the required inventory or photography of the seized items was conducted. Besides, neither of the said documents mentioned by PO2 Daño were offered in evidence before the trial court.<sup>[38]</sup>

Case law states that the mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Section 21, Article II of RA 9165.<sup>[39]</sup> It is well-settled that **the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.**<sup>[40]</sup> Compliance under the rule ensures the integrity of the confiscated drug and clearly establishes the *corpus delicti*, failing in which, indicates the absence of an element of the crimes of illegal sale and illegal possession of dangerous drugs.<sup>[41]</sup> "In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a