

## SECOND DIVISION

[ G.R. No. 236838, October 01, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
ZACARIAS LESIN[\*] MISA @ "TITING," 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 Zacarias Lesin Misa @ "Titing" (Misa) assailing the Decision<sup>[2]</sup> dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02292, which affirmed the Decision<sup>[3]</sup> dated June 9, 2016 of the Regional Trial Court of Oslob, Cebu, Branch 62 (RTC) in Crim. Case Nos. OS-15-1025 and OS-15-1026 finding Misa 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 Informations<sup>[5]</sup> filed before the RTC charging Misa 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. The prosecution alleged that at around eleven (11) o'clock in the evening of March 1, 2015, a team composed of members of the Philippine National Police Cebu Police Station, with coordination from the Philippine Drug Enforcement Agency, conducted a buy-bust operation against Misa, during which two (2) heat-sealed plastic sachets containing suspected *shabu* weighing 0.03 gram each were recovered from him. Consequently, a search incidental to his arrest yielded five (5) more heat-sealed plastic sachets containing suspected *shabu* weighing 0.03 gram each. The team, together with Misa, then proceeded to the police station where the seized items were marked, photographed, and inventoried in the presence of Municipal Councilors Raul Butron and Teodoro Mirasol. Notably, the conduct thereof was not done in the presence of representatives from the Department of Justice (DOJ) and/or the media, as police officers claimed that it was difficult to contact them "as their telephone lines were always busy" and that they had to beat the 24-hour deadline in submitting the evidence to the crime laboratory. Thereafter, the seized items were brought to the crime laboratory where, after examination,<sup>[6]</sup> they tested positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[7]</sup>

For his part, Misa denied the charges against him and claimed that on said date, he was in the public market buying barbeque with his wife when suddenly, a policeman embraced him from behind and arrested him. Despite resisting the arrest, he and his wife were brought to the police station where the police officers recovered from him cash amounting to P120.00 and devices for gapping fighting cocks. Thereafter, they were placed inside the jail.<sup>[8]</sup>

In a Decision<sup>[9]</sup> dated June 9, 2016, the RTC found Misa guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Crim. Case No. OS-15-1025, to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and (b) in Crim. Case No. OS-15-1026, to suffer the penalty of imprisonment for twelve (12) years and one (1) day to twelve (12) years and two (2) days, and to pay a fine of P300,000.00.<sup>[10]</sup> The RTC found that the prosecution sufficiently established all the elements of the aforesaid crimes as it was able to prove that: (a) a buy-bust transaction took place and Misa was identified as the seller of the dangerous drug; and (b) he had no right to possess the drugs incidentally recovered from him subsequent to his arrest.<sup>[11]</sup>

In a Decision<sup>[12]</sup> dated September 28, 2017, the CA affirmed the RTC ruling, holding that all the elements of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs were present and the chain of custody rule was duly complied with.<sup>[13]</sup>

Hence, this appeal seeking that Misa's conviction be overturned.

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

The appeal is meritorious. In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>[14]</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>[15]</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>[16]</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>[17]</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.<sup>[18]</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>[19]</sup> "a representative from the media AND the DOJ, and any elected public official";<sup>[20]</sup> or (b) if after the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service (NPS) OR the media."<sup>[21]</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>[22]</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>[23]</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>[24]</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>[25]</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>[26]</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>[27]</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was adopted into the text of RA 10640.<sup>[28]</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>[29]</sup> and that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>[30]</sup>

Anent the required witnesses rule, 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>[31]</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>[32]</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>[33]</sup>

Notably, the Court, in *People v. Miranda*,<sup>[34]</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>[35]</sup>

In this case, it is apparent that the inventory of the seized items was not conducted in the presence of a representative from the NPS (which falls under the DOJ)<sup>[36]</sup> or the media contrary to the afore-described procedure provided under Section 21, Article II of RA 9165, as amended by RA 10640. During trial, Police Officer 2 Noel Mamale (PO2 Mamale) admitted to this lapse when he testified as follows:

[Fiscal Tessa Mae R. Tapangan]: Who were present during the inventory, Mr. Witness?

[PO2 Mamale]: Two [(2)] *Sangguniang Bayan* members of Oslob, Cebu.

Q: Who were they?

A: Hon. Mirasol and Hon. Bultron.

Q: They were also present when you made the markings?

A: Yes, ma'am.

Q: **Was there anyone from the media and DOJ?**

A: **None, ma'am.**

Q: Why was none?

A: It's hard to contact them.

COURT:

Q: Even if those representatives from the media and DOJ are hard to contact or unavailable but on your part did you make attempts to contact them?

A: Yes, Your Honor.

Q: How did you make the contacts?

A: Through telephone call.

Q: Who made the telephone call?

A: Our Intel Officer PO2 Johnny Tapales.

Q: When PO2 Johnny Tapales made the call to the representatives were you there near him?

A: Yes, Your Honor.

Q: And of course because you were near you were able to know what was the response on the other line?

A: The telephone lines are always busy.

Q: And that was why you could no longer wait because you have to beat the [24-hour] deadline to submit the evidence to the PNP Crime Laboratory?

A: Yes, Your Honor. (Emphases and underscoring supplied)<sup>[37]</sup>

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Similar to sheer statements of unavailability, the plain explanation of PO2 Mamale that it was "hard to contact" the required witnesses at that time is undoubtedly too flimsy of an excuse and hence, would not pass the foregoing standard to trigger the operation of the saving clause.

Neither does the apprehending officers' 24-hour submission deadline justify their non-compliance with the required witnesses rule. Notably, if the police officers were already aware that these representatives were hard to contact (as their phone lines were, in fact, "always busy"), then they should have made the proper arrangements beforehand given that they were conducting a pre-planned buy-bust operation, and especially since they were eventually bound to follow a particular submission protocol. Besides, the apprehending officers could not reasonably expect that a representative of the NPS or the media would just be readily available for the conduct of inventory (and photography) at a mere moment's notice, much less at the officers' beck and call. Foresight is a badge of prudence, and the substantial lack thereof, demonstrates whether or not there were genuine efforts to comply with the