

## SECOND DIVISION

[ G.R. No. 225741, December 05, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BRANDON DELA CRUZ AND JAMES FRANCIS BAUTISTA,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this ordinary appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated October 9, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06576, which affirmed the Decision<sup>[3]</sup> dated November 25, 2013 of the Regional Trial Court of Bambang, Nueva Vizcaya, Branch 37 (RTC) in Crim. Case No. 3156 finding accused-appellants Brandon Dela Cruz (Dela Cruz) and James Francis Bautista (Bautista; collectively, accused-appellants) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, 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 an Information<sup>[5]</sup> filed before the RTC charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that at around five (5) o'clock in the afternoon of August 1, 2012, members of the Bambang Police Station successfully implemented a buy-bust operation against accused-appellants, during which 0.029 gram of white crystalline substance was recovered from them. The police officers then took accused-appellants and the seized item to the police station where the marking, inventory, and photography were done in the presence of Municipal Councilor Gregorio B. Alias, Jr. (Alias) and Conrad Gaffuy (Gaffuy), an employee of the Department of Justice (DOJ). The seized item was then brought to the crime laboratory where, after examination, the contents thereof tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[6]</sup>

In defense, accused-appellants denied the accusation against them and instead averred that at the time of the alleged incident, Dela Cruz was drinking with his friends in a hut inside their compound while Bautista was repairing Dela Cruz's motorcycle when, suddenly, armed men in civilian clothes alighted from two (2) cars parked at their gate and pointed guns at them. They claimed that these men searched their house and arrested them, and when asked by Bautista's mother-in-law<sup>[7]</sup> about the charges against them, one of the armed men brought out a small plastic sachet from his belt bag and answered that accused-appellants were selling drugs.<sup>[8]</sup>

In a Decision<sup>[9]</sup> dated November 25, 2013, the RTC found accused-appellants guilty

beyond reasonable doubt of the crime charged, and accordingly, sentenced them to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.<sup>[10]</sup> The RTC held that the prosecution was able to establish all the elements of the crime charged, as accused-appellants sold a sachet containing 0.029 gram of *shabu* to IO1 Nelmar Benazir C. Bugalon, which was later on presented to the court for identification. Moreover, the RTC ruled that there was substantial compliance with the chain of custody rule as it was shown, *inter alia*, that the conduct of the marking and photography were done at the police station and witnessed by an elected official and a representative of the DOJ in the presence of the accusedappellants.<sup>[11]</sup> Aggrieved, accused-appellants appealed to the CA.<sup>[12]</sup>

In a Decision<sup>[13]</sup> dated October 9, 2015, the CA affirmed in toto the RTC ruling.<sup>[14]</sup> It held that the prosecution had established beyond reasonable doubt all the elements of the crime charged. The CA ruled that the absence of a media representative in the inventory, marking, and photography of the seized item did not affect the integrity of the *corpus delicti*, as a DOJ representative and an elected municipal councilor were present to witness the same.<sup>[15]</sup>

Hence, this appeal seeking that accused-appellants' conviction be overturned.

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

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crime charged.

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

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>[16]</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>[17]</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>[18]</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>[19]</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>[20]</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>[21]</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>[22]</sup> a representative from the media AND the DOJ, and any elected public official;<sup>[23]</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 OR the media.<sup>[24]</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>[25]</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>[26]</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>[27]</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>[28]</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 noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>[29]</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>[30]</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>[31]</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>[32]</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>[33]</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>[34]</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>[35]</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>[36]</sup>

Notably, the Court, in *People v. Miranda*,<sup>[37]</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