



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES **G.R. No. 230070**

Plaintiff-Appellee,

Present:

- versus -

NESTOR AÑO y DEL REMEDIOS,

Accused-Appellant.

CARPIO, J.,* Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., JJ.

Promulgated:

14 MAR 2018

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DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal¹ is the Decision² dated December 4, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06127, which affirmed the Decision³ dated October 1, 2012 of the Regional Trial Court of San Mateo, Rizal, Branch 76 (RTC) in Criminal Case No. 11427 finding accused-appellant Nestor Año y Del Remedios (Año) guilty beyond reasonable doubt for violating Section 5 of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

¹ See Notice of Appeal dated January 7, 2016; *rollo*, pp. 14-15.

² *Rollo*, pp. 2-13. Penned by Associate Justice Noel G. Tijam (now a member of the Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.

³ CA *rollo*, pp. 45-53. Penned by Judge Josephine Zarate Fernandez.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFORE, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

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The Facts

This case stemmed from an Information⁵ filed before the RTC, charging Año with violation of Section 5, Article II of RA 9165, the accusatory portion of which reads:

Criminal Case No. 11427

That on or about the 3rd day of August 2009 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to poseur buyer, PO2 Ruel T. Ayad, 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which substance was found positive to the tests for Methamphetamine Hydrochloride, also known as “shabu”, a dangerous drug, in consideration of the amount of Php.200.00, in violation of the above-cited law.

CONTRARY TO LAW.⁶

The prosecution alleged that at around five (5) o'clock in the afternoon of August 3, 2005 and after receiving information about Año's drug activities at Daangbakal, Guitnangbayan II, Police Officer (PO) 2 Ruel T. Ayad (PO2 Ayad), PO1 Aldwin Ortila (PO1 Ortila), and PO1 Jenesis A. Acuin⁷ (PO1 Acuin) formed a buy-bust team designating PO2 Ayad as the poseur-buyer, with PO1 Ortila and PO1 Acuin as back-ups, and marked two (2) ₱100.00 bills to be used in the operation.⁸ Thereafter, the team headed to the house of Año where PO2 Ayad knocked on the door and upon seeing Año, whispered that he “wants to score” worth ₱200.00. Año replied that he has drugs with him and gave PO2 Ayad a transparent plastic sachet, while the latter simultaneously handed the marked money as payment. As Año placed the money inside his pocket, PO2 Ayad introduced himself as a policeman, causing Año to flee. Fortunately, PO2 Ayad caught Año and asked him to empty his pockets which produced the two (2) ₱100.00 bills. Due to the commotion caused by Año's relatives who were preventing his arrest, the team moved at a distance of around 100 meters from the place of arrest, marked the confiscated sachet, and completed the inventory thereat. Barangay Captain Leo S. Buenviaje (Brgy. Captain Buenviaje) witnessed and signed the Inventory of Seized/Confiscated Items,⁹ photographs were also taken in the presence of Año, PO2 Ayad, and PO1 Acuin.¹⁰ On the same day, PO2 Ayad delivered the seized sachet to the Crime Laboratory where it was turned over to Police Inspector Forensic Chemist Beaune V. Villaraza

⁵ Records, pp. 1-2.

⁶ Id. at 1.

⁷ “PO2 Jenesis Acuin” in some parts of the records.

⁸ See *rollo*, pp. 3-4.

⁹ See Inventory of Seized/Confiscated Items dated August 3, 2009; records, p. 14.

¹⁰ See id. at 17 and 48.

(FC Villaraza) for examination. In Laboratory Report No. D-198-09,¹¹ FC Villaraza confirmed that the seized sachet was positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹²

Upon arraignment, Año pleaded not guilty and denied the charges leveled against him. He claimed that on said date, he was at home celebrating the 4th birthday of his nephew when suddenly, three police officers whom he identified to be PO2 Ayad, PO1 Ortilla, and PO1 Acuin, forcibly arrested him and brought him to the police station for inquiry. The following day, he learned that he was being charged of drug pushing.¹³

The RTC Ruling

In a Decision¹⁴ dated October 1, 2012, the RTC found Año guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5 of RA 9165, sentencing him to suffer the penalty of life imprisonment and a fine of ₱500,000.00.¹⁵

The RTC found all the elements for the prosecution of sale of dangerous drugs present, noting that the identity of Año as the seller of the illegal drug was clearly established when he was arrested *in flagrante delicto* during a buy-bust operation.¹⁶

Aggrieved, Año elevated his conviction before the Court of Appeals (CA).¹⁷

The CA Ruling

In a Decision¹⁸ dated December 4, 2015, the CA upheld the RTC ruling,¹⁹ likewise finding that all the elements constituting the crime of Illegal Sale of Dangerous Drugs were present. Moreover, it ruled that the apprehending officers duly complied with the chain of custody rule under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, as PO2 Ayad testified in detail the links in the chain of custody of the seized drug from the time of its confiscation until its presentation in court as evidence.

¹¹ Id. at 65.

¹² See id. See also *rollo*, pp. 3-5.

¹³ See *rollo*, pp. 3 and 5-6.

¹⁴ CA *rollo*, pp. 45-53.

¹⁵ Id. at 53.

¹⁶ See id. at 51-53.

¹⁷ See Notice of Appeal dated November 14, 2012; records, p. 175.

¹⁸ *Rollo*, pp. 2-13.

¹⁹ Id. at 12.

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Año is guilty beyond reasonable doubt of Section 5, Article II of RA 9165.

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.²⁰ "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."²¹

Here, Año was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to 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.²² It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.²³

In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved.²⁴ Under the said section, prior to its amendment by RA 10640,²⁵ the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items **in the presence of the accused or the**

²⁰ See *People v. Dahil*, 750 Phil. 212, 225 (2015).

²¹ *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

²² *People v. Sumili*, 753 Phil. 342, 348 (2015).

²³ See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alagarme*, 754 Phil. 449, 459-460 (2015).

²⁴ See *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

²⁵ Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" approved on July 15, 2014.

person from whom such 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 then 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 purposes.²⁶ In the case of *People v. Mendoza*,²⁷ the Court stressed that **“[w]ithout the insulating presence of the representative from the media or the [DOJ], 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.”²⁸

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.²⁹ In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640³⁰ – provide that **non-compliance with the requirements of Section**

²⁶ See Section 21 (1) and (2), Article II of RA 9165.

²⁷ 736 Phil. 749 (2014).

²⁸ Id. at 764; emphases and underscoring supplied.

²⁹ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁰ Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”, is hereby amended to read as follows:

“SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

“(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 persons 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.

x x x x”

21, Article II of RA 9165 – under justifiable grounds – will not automatically 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.³¹ In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 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.³² In *People v. Almorfe*,³³ **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.**³⁴ Also, in *People v. De Guzman*,³⁵ 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.**³⁶

After a judicious study of the case, the Court finds that there are substantial gaps in the chain of custody of the seized items from Año which were unfortunately, left unjustified, thereby putting into question their integrity and evidentiary value.

As the prosecution submits, upon Año's arrest, PO1 Ortilla called Brgy. Captain Buenviaje to witness the marking and to sign the inventory. After which, PO2 Ayad marked the sachet of *shabu* subject of the sale with Año's initials, "NDRA," while PO1 Ortilla prepared an inventory of the seized items, which was signed by Brgy. Captain Buenviaje as witness, and had them photographed. Thereafter, the buy-bust team escorted Año to the police station and turned over the sachet for examination to FC Villaraza.

While the fact of marking and inventory of the seized item was established by the attached Inventory of Seized/Confiscated Items,³⁷ the records are glaringly silent as to the presence of the required witnesses, namely, the representatives from the media and the DOJ. To reiterate, Section 21 (1) of RA 9165, prior to its amendment by RA 10640, as well as its IRR requires the presence of the following witnesses during the conduct of inventory and photography of the seized items: (a) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (b) any elected public official; and (c) a

³¹ See Section 21 (a), Article II, of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

³² See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

³³ 631 Phil. 51 (2010).

³⁴ See *id.* at 60.

³⁵ 630 Phil. 637 (2010).

³⁶ *Id.* at 649.

³⁷ Records, p. 14.

representative from the media and the DOJ.³⁸ In their absence, the prosecution must provide a credible explanation justifying the non-compliance with the rule; otherwise, the saving clause under the IRR of RA 9165 (and now, the amended Section 21, Article II of RA 9165) would not apply.

Here, no such explanation was proffered by the prosecution to justify the procedural lapse. It then follows that there are unjustified gaps in the chain of custody of the items seized from Año, thereby militating against a finding of guilt beyond reasonable doubt, which resultantly warrants his acquittal.³⁹ It is well-settled that the procedure under Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse ignored as an impediment to the conviction of illegal drug suspects.⁴⁰

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.⁴¹

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no

³⁸ See Section 21 (1), Article II of RA 9165 and Section 21 (a), Article II of its IRR.

³⁹ *People v. Lintag*, G.R. No. 219855, September 6, 2016, 802 SCRA 257, 267.

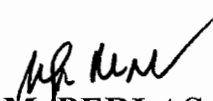
⁴⁰ See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 486 Phil. 1024, 1038 (2012).

⁴¹ *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).


such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

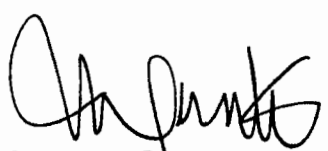
WHEREFORE, the appeal is **GRANTED**. The Decision dated December 4, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06127 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Nestor Año y Del Remedios is **ACQUITTED** of the crime charged. The Director of Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

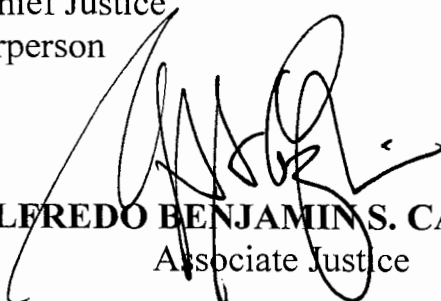
SO ORDERED.

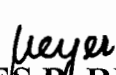

ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Acting Chief Justice
 Chairperson

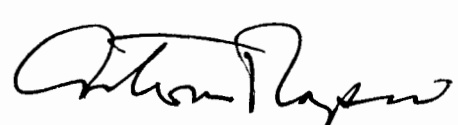

DIOSDADO M. PERALTA
 Associate Justice


ALFREDO BENJAMINS S. CAGUIOA
 Associate Justice


ANDRES B. REYES, JR.
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Acting Chief Justice