



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE G.R. No. 238117
 PHILIPPINES, Plaintiff-Appellee, Present:

- versus -

EDWIN ALCONDE y MADLA
 and JULIUS QUERUELA* y
 REBACA,
 Accused-Appellants.

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

Promulgated:

04 FEB 2019

W. Cabalof

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DECISION

PERLAS-BERNABE, J.:

This is an ordinary appeal¹ filed by accused-appellants Edwin Alconde y Madla (Alconde) and Julius Queruela y Rebaca (Queruela; collectively, accused-appellants) assailing the Decision² dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01578-MIN, which affirmed the Decision³ dated November 10, 2016 of the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 23 (RTC) in Crim. Case Nos. CR-DRG-2015-414 and CR-DRG-2015-415, finding: (a) Alconde guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of

* “Queruela” and “Queruela” in some parts of the records and the TSN.

** On official leave.

*** Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

¹ See Notice of Appeal dated December 21, 2017; *rollo*, pp. 18-19.

² *Id.* at 3-17. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas, concurring.

³ *CA rollo*, pp. 46-64. Penned by Presiding Judge Vincent F. B. Rosales.

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 THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

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2002;” and (b) accused-appellants guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of the same Act.

The Facts

This case stemmed from two (2) separate Informations⁵ filed before the RTC, respectively charging Alconde of Illegal Possession of Dangerous Drugs and accused-appellants of Illegal Sale of Dangerous Drugs. The prosecution alleged that on August 9, 2015, the members of the Puerto Police Station 6 arrested a certain Angkie⁶ for violation of RA 9165 and held him for further questioning. In the course thereof, Angkie revealed that Alconde was his source of *shabu*, prompting Police Officer 3 Armando Occeña Agravante (PO3 Agravante) to arrange a meet-up with the latter in Purok 7, Balubal, Cagayan de Oro City. Accordingly, a buy-bust operation was conducted, and the team proceeded to the said area.⁷ When accused-appellants arrived, PO3 Agravante immediately handed over the ₱1,000.00 worth of marked money to Querquela; in exchange, Alconde gave the two (2) sachets containing a total of 0.1903 gram of *shabu* to PO3 Agravante.⁸ Shortly thereafter, PO3 Agravante executed the pre-arranged signal, prompting Senior Police Officer 1 Rey Abecia to rush towards the scene and restrain Alconde. Meanwhile, PO3 Agravante frisked Querquela and recovered from him the marked money. He likewise performed a body search on Alconde, from whom he recovered one (1) sachet containing 1.2347 grams of marijuana fruit tops.⁹ Subsequently, the seized items were photographed only in the presence of accused-appellants.¹⁰ Not long after, accused-appellants were brought to the police station where the requisite marking and inventory were conducted by PO3 Agravante in the presence of accused-appellants and Barangay Captain Vivian Malingin (Brgy. Capt. Malingin).¹¹ The seized items were then delivered to the PNP Crime Laboratory in Puerto, Cagayan de Oro City wherein upon examination, tested positive for the presence of methamphetamine hydrochloride or *shabu* and marijuana, both dangerous drugs.¹²

In his defense, Querquela denied the allegations against him, claiming that at around 9:00 o'clock in the evening of August 9, 2015, three (3) unidentified persons suddenly flagged him down and accosted him while he was on his way to the *habal-habal* terminal. Subsequently, the said men,

⁵ Crim. Case No. CR-DRG-2015-414 is for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs (records [Crim. Case No. CR-DRG-2015-414], pp. 2-3), while Crim. Case No. CR-DRG-2015-415 is for violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs (records [Crim. Case No. CR-DRG-2015-415], pp. 2-3).

⁶ “Angke,” “Aki,” and “Akie” in some parts of the TSN.

⁷ See *rollo*, p. 4.

⁸ See *id.* See also TSN, September 16, 2015, pp. 11-13.

⁹ See *id.* See also TSN, October 8, 2015, p. 12.

¹⁰ See *id.* at 4-5. See also TSN, September 16, 2015, pp. 17-18.

¹¹ See *id.* See also Property Receipt dated August 10, 2015; records (Crim. Case No. CR-DRG-2015-414), p. 7.

¹² See Chemistry Report No. D-591-2015 dated August 10, 2015; *id.* at 10.

who later on identified themselves as police officers, instructed him to bring them to his hut where Alconde was being interrogated. Afterwards, accused-appellants were brought to the Puerto Police Station.¹³

For his part, Alconde averred that at the time of the incident, he was simply sleeping in the hut of Querquela when an unknown person kicked the door open, pointed a gun at him, tied his hands with a rope, and brought him outside the hut. Thereafter, accused-appellants were brought to the police station, where Alconde was directed to hold one (1) small sachet of marijuana while a police officer took pictures of the same.¹⁴

In a Decision¹⁵ dated November 10, 2016, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged: (a) in Crim. Case No. CR-DRG-2015-414 for the crime of Illegal Possession of Dangerous Drugs, Alconde was sentenced to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and ordered to pay a fine of ₱300,000.00; and (b) in Crim. Case No. CR-DRG-2015-415 for the crime of Illegal Sale of Dangerous Drugs, accused-appellants were sentenced to suffer the penalty of life imprisonment and ordered to pay the amount of ₱500,000.00 each as fine.¹⁶ The RTC found the elements of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs to be present, as the same were duly proved in light of the positive testimonies of the prosecution witnesses.¹⁷ On the other hand, it rejected accused-appellants' defense of denial, for it failed to prevail over the positive testimonies of the prosecution witnesses.¹⁸ Aggrieved, accused-appellants appealed¹⁹ to the CA.

In a Decision²⁰ dated November 29, 2017, the CA affirmed *in toto* the RTC's ruling that accused-appellants are guilty of the crimes charged.²¹ It ruled that the prosecution competently established all the elements of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs. It likewise held that the chain of custody over the seized dangerous drugs was substantially complied with, as it was shown that the integrity and evidentiary value of the seized drugs had been preserved.²² Meanwhile, it found that the inconsistencies in the testimonies of the police officers did not actually detract from the truth and were thus too trivial to affect what was already proven by the prosecution, *i.e.*, the fact that accused-appellants acted in concert in selling *shabu* to PO3 Agravante.²³

¹³ See *rollo*, pp. 6-7.

¹⁴ See *id.* at 7.

¹⁵ CA *rollo*, pp. 46-64.

¹⁶ See *id.* at 63.

¹⁷ See *id.* at 57-63.

¹⁸ See *id.* at 63.

¹⁹ See Notice of Appeal dated December 21, 2017; *rollo*, pp. 18-19.

²⁰ *Id.* at 3-17.

²¹ *Id.* at 17.

²² See *id.* at 13-14.

²³ See *id.* at 15-17.

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Hence, this appeal.

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 crimes charged.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,²⁴ 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.²⁵ 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.²⁶

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.²⁷ 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, although jurisprudence recognized that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."²⁸

²⁴ The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (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; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

²⁵ See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²⁶ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²⁷ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 24; *People v. Miranda*, *supra* note 24; and *People v. Mamangon*, *supra* note 24. See also *People v. Viterbo*, *supra* note 25.

²⁸ *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

Pertinent to this case, 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 10640,²⁹ a representative from the media AND the Department of Justice, and any elected public official;³⁰ 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.³¹ 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.”³²

In this case, the inventory and photography of the seized items were not conducted in the presence of the required witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media. As the records show, the taking of photographs was immediately done upon the arrest but only in the presence of accused-appellants. It was only later when the police officers proceeded to the police precinct that a singular witness, Brgy. Capt. Malingin (an elected public official), was called to attend the marking and inventory of the confiscated items. Evidently, this procedure veers away from what is prescribed by law.

At this juncture, it is important to note that 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.”³³ 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.”³⁴ This notwithstanding, the Court has recognized that strict compliance with the chain of custody procedure may not always be possible due to varying field conditions.³⁵ 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.³⁶ The foregoing is based on the saving clause found in Section 21 (a),³⁷ Article II of the

²⁹ 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.

³⁰ Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

³¹ Section 21, Article II of RA 9165, as amended by RA 10640.

³² See *People v. Miranda*, supra note 24. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³³ See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 26, at 1038.

³⁴ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

³⁵ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁶ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁷ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**Provided, further, that non-compliance with 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 of and custody over said items.**”


Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁸

Anent the witness requirement, it is settled that 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.³⁹ In this case, however, no plausible explanation was given by the police officers as to why all the required witnesses were not around during the conduct of inventory and photography of the confiscated items. Neither was it shown that genuine and sufficient efforts were made to secure the presence of all the witnesses, as in fact, it was only “after the consummation of the buy-bust operation” when PO3 Agravante called Brgy. Capt. Malingin to witness the marking and inventory of the confiscated items.⁴⁰


Thus, in view of this unjustified deviation from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellants had been compromised, which consequently warrants their acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01578-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Edwin Alconde y Madla and Julius Querquela y Rebaca are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

³⁸ Section 1 of RA 10640 pertinently states: “*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.*”

³⁹ See *People v. Manansala*, supra note 24.

⁴⁰ See TSN, September 16, 2015, p. 35



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


On official leave
JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

I attest 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
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.



LUCAS P. BERSAMIN
Chief Justice