



SUPREME COURT OF THE PHILIPPINES
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RECORDED
AUG 07 2019
BY: *KG*
TIME: 4:04

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 241081

Plaintiff-Appellee, Present:

- versus -

BERNIDO ACABO y AYENTO,*
Accused-Appellant.

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

Promulgated:

11 FEB 2019 *[Signature]*

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal¹ is the Decision² dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-HC No. 02396, which affirmed the Decision³ dated October 19, 2016 of the Regional Trial Court of Loay, Bohol, Branch 50 (RTC) in Crim. Case No. 1417, finding accused-appellant Bernido Acabo y Ayento (Acabo) 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) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

* “Bernido Acabo y Ayento alias ‘Bidok’” in some parts of the records.

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

¹ See Notice of Appeal dated January 24, 2018; *rollo*, pp. 22-23.

² *Id.* at 4-21. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Gabriel T. Robeniol, concurring.

³ CA *rollo*, pp. 44-56. Penned by Executive Presiding Judge Dionisio R. Calibo, Jr.

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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The Facts

This case stemmed from an Information⁵ filed before the RTC charging Acabo of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that on September 12, 2009, members of the Provincial Mobile Group, Tagbilaran City successfully implemented a buy-bust operation against Acabo, during which two (2) plastic sachets containing white crystalline substance were recovered from him. Thereafter, Acabo and the seized items were brought to the Garcia-Hernandez Police Station, where the inventory was conducted in the presence of two (2) elected public officials, Barangay Kagawads Servidia Cuadra (Cuadra) and Alberto Ladaga (Ladaga), and a PDEA representative, IO1 John Carlo Daquiado (IO1 Daquiado). Afterwards, they went to the Bohol Provincial Police Office, where Media Representative Dave Charles Responde (Media Representative Responde) signed⁶ the Inventory of Property Seized/Confiscated⁷ and the Certificate of Inventory.⁸ The seized items were then brought to the crime laboratory, where, after examination,⁹ the contents thereof yielded positive for 0.08 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁰

In defense, Acabo denied the charges against him, and instead, claimed that on September 12, 2009, he was on his way to his old house to get some snacks when he noticed three (3) armed men by the road riding a motorcycle. Upon asking their purpose, they responded that they would be arresting him for selling *shabu*. He then ran off because he was afraid of being arrested without committing a crime, but eventually stopped when he heard a gunshot fired. He was then handcuffed and brought to the police station, where he saw items that were listed in the inventory sheet. He likewise saw two (2) barangay kagawads who signed the document. He averred that he was framed because he had a minor conflict with a certain PO3 Elvan Cadiz in a previous motorcycle accident.¹¹

In a Decision¹² dated October 19, 2016, the RTC found Acabo guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000.00. It ruled that the prosecution was able to establish that Acabo was arrested during a buy-bust operation wherein two (2) sachets

⁵ Dated September 28, 2009. Records, pp. 17-18.

⁶ Although it appears from the Inventory of Property Seized/Confiscated that it was signed by a media representative, elected public officials, and a PDEA representative, the cross-examination of the poseur-buyer, PO2 Rolex Tamara, reveals that only the elected public officials and PDEA representative were actually present during the said inventory. The media representative only signed the same, as well as the Certificate of Inventory, at the Bohol Provincial Police Office. (See TSN, September 6, 2011, p. 13-14.)

⁷ Dated September 12, 2009. Records, p. 9.

⁸ Dated September 12, 2009. Id. at 8.

⁹ See Chemistry Report No. D-76-2009 dated September 13, 2009; id. at 4.

¹⁰ See *rollo*, pp. 6-8. See also CA *rollo*, pp. 44-51.

¹¹ See *rollo*, pp. 8-9. See also CA *rollo*, pp. 54-55.

¹² CA *rollo*, pp. 44-56.

containing a total of 0.08 gram of white crystalline substance were recovered from him. It likewise did not give credence to Acabo's defense of denial since he failed to show any ill motive on the part of the police officers to impute such crime to him.¹³ Aggrieved, Acabo appealed¹⁴ to the CA.

In a Decision¹⁵ dated November 29, 2017, the CA affirmed the RTC ruling. It held that the prosecution was able to establish all the elements of the crime charged, and that the integrity of the seized items was preserved.¹⁶

Hence, this appeal seeking that Acabo'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 9165,¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of

¹³ See *id.* at 56.

¹⁴ See Notice of Appeal dated October 25, 2016; records, p. 198.

¹⁵ *Rollo*, pp. 4-21.

¹⁶ See *id.* at 15-20.

¹⁷ 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].)

¹⁸ 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).

¹⁹ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²⁰ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 17; *People v. Sanchez*, *supra* note 17; *People v. Magsano*, *supra* note 17; *People v. Manansala*, *supra* note 17; *People v. Miranda*, *supra* note 17; and *People v. Mamangon*, *supra* note 17. See also *People v. Viterbo*, *supra* note 18.

the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”²¹ 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.²²

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 10640,²³ “a representative from the media **and** the Department of Justice (DOJ), and any elected public official”;²⁴ 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.”²⁵ 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.”²⁶

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.”²⁷ 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.”²⁸

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁹ 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-

²¹ *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).

²² See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

²³ 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.

²⁴ Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

²⁵ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²⁶ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁷ 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 19, at 1038.

²⁸ *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, id.

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

compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³⁰ The foregoing is based on the saving clause found in Section 21 (a),³¹ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³² It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³³ 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.³⁴

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.³⁵ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁶ 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.³⁷

Notably, the Court, in *People v. Miranda*,³⁸ 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.”³⁹

³⁰ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³¹ 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[.]**”

³² 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.**”

³³ *People v. Almorfe*, supra note 30.

³⁴ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁵ See *People v. Manansala*, supra note 17.

³⁶ See *People v. Gamboa*, supra note 19, citing *People v. Umipang*, supra note 19, at 1053.

³⁷ See *People v. Crispo*, supra note 17.

³⁸ Supra note 17.

³⁹ See id.

In this case, there was a deviation from the witness requirement as the conduct of the inventory and photography was not witnessed by the DOJ and media representatives. The absence of the DOJ representative is evident from the Certificate of Inventory,⁴⁰ which only shows the signatures of Media Representative Responde, Barangay Kagawads Cuadra and Ladaga, and IO1 Daquiado as witnesses. Such finding is confirmed by the testimony of the poseur buyer, PO2 Rolex Tamara⁴¹ (PO2 Tamara), on direct examination, to wit:

[Assistant Provincial Prosecutor Aida Langcamon (APP Langcamon)]: How about the signatures below the phrase, "Witness in the conduct of inventory", whose signatures are these?

[PO2 Tamara]: **These are the signatures of Dave Charles Responde from DYTR, the barangay kagawads of their barangay Manaba, Servidia Cuadra, and Alberto Ladaga, and IO1 John Carlo Daquiado.**

Q: How do you know that these are the signatures of the persons, which were named?

A: I was present during the Inventory.

Q: Did you request them to sign on this Inventory?

A: Yes Maam.⁴²

x x x x

Q: Attached to the record and marked as Exhibit E is a Certificate of Inventory, what relation that document has to the one you mentioned having prepared?

A: This is the document that I mentioned.

Q: And will you please identify the signatures appearing on the lower most portion of that document?

A: **This is the signature of PCI Nicomedes Olaivar, Jr. as team leader; the signature of Dave Charles Responde; signature of Servidia Cuadra; Kagawad Alberto Ladaga, and IO1 John Carlo Daquiado, their signatures.**⁴³

x x x x

Q: What about this space provided for Department of Justice, will you explain before this Honorable Court why this is blank or why there is no signature on that space provided for?

A: **When we went to the Provincial Fiscal's Office, there was no available representative who will sign.**⁴⁴

⁴⁰ Dated September 12, 2009. Records, p. 8.

⁴¹ "Tamarra" in some parts of the records.

⁴² See TSN, June 28, 2011, p. 8; emphasis supplied.

⁴³ Id. at 12; emphasis supplied.

⁴⁴ See TSN, July 26, 2011, p. 9; emphasis supplied.

Moreover, although Media Representative Responde signed the Inventory of Property Seized/Confiscated and the Certificate of Inventory, he did not actually witness the conduct of the inventory and photography of the seized items at the Garcia-Hernandez Police Station. As the records show, PO2 Tamara testified on cross-examination that the police officers only contacted the media representative upon reaching Tagbilaran, particularly at the Bohol Provincial Police Office,⁴⁵ where Media Representative Responde apparently signed the said certification, *viz.*:

Q: So this means that that (sic) Certificate of Inventory and Receipt of Property Seized would be prepared and signed by persons who were not present during the inventory, because you attempted to go to the Fiscal's office to have the Fiscal sign in the space provided for the Department of Justice?

A: Based on our operation, if we have to serve a search warrant, all those persons mentioned in the inventory are together with us, but since this is a buy bust operation, usually, the one who will sign is the barangay official only. **Like in this case, there is no media representative in Garcia-Hernandez so only the PDEA and the barangay officials.**

Q: What I am emphasizing Mr. Witness is that, in order to have that space signed or somebody will sign on that space, you will have to go to other place to look for representative like this one, the representative of the Department of Justice?

A: **We have to have it signed but since there is no media representative who will always be going with us, so like this case, upon reaching Tagbilaran, we have to call up a media representative.**

COURT: What are the wordings of that document to be signed by the media? Does it say that they are signing because they saw the items found by the search team or they just sign that these are the items.

[Atty. Jesus Bautista, Jr.]: According to the document, Certificate of Inventory and the Receipt of Property Seized, they are witnesses.

[APP Langcamon]: Witnesses in the conduct of inventory, insofar as inventory of property seized and confiscated.⁴⁶

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. Here, while PO2 Tamara acknowledged the absence of the DOJ and media representatives during the aforementioned conduct, he failed to provide any justifiable reason for said absence. Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, cannot be considered as a justifiable reason for non-compliance. In view of this unjustified deviation

⁴⁵ See *rollo*, p. 7

⁴⁶ TSN, September 6, 2011, pp. 13-14; emphases supplied.

from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Acabo were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CEB-HC No. 02396 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Bernido Acabo y Ayento is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

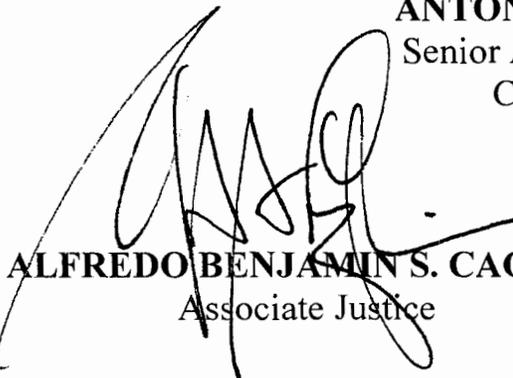
SO ORDERED.

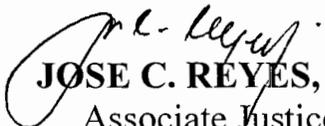

ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
 Senior Associate Justice
 Chairperson


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice

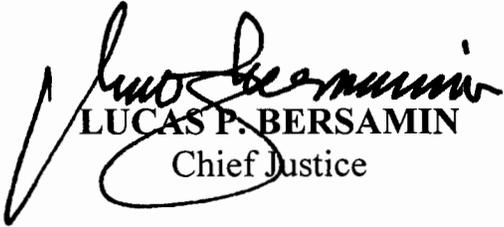
ATTESTATION

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
 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