



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 240541
PHILIPPINES,

Plaintiff-Appellee, Present:

- versus -

REY BARRION y SILVA,
Accused-Appellant.

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

Promulgated:

21 JAN 2019

x-----*M. Sabalugo*-----x

DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal¹ is the Decision² dated January 30, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08406, which affirmed the Decision³ dated April 29, 2016 of the Regional Trial Court of Lipa City, Batangas, Branch 12 (RTC) in Criminal Case No. 0453-2011, finding accused-appellant Rey Barrion y Silva (Barrion) 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.”

* Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.
¹ See Notice of Appeal dated February 20, 2018; *rollo*, pp. 19-20.
² Id. at 2-18. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Rosmari D. Carandang (now a member of this Court) and Jane Aurora C. Lantion, concurring.
³ CA *rollo*, pp. 57-64. Penned by Judge Danilo S. Sandoval.
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 Barrion of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that at about seven (7) o' clock in the evening of August 10, 2011, members of the Station Anti-Illegal Drugs – Special Operation Task Group⁶ successfully implemented a buy-bust operation against Barrion, during which one (1) plastic sachet containing white crystalline substance was recovered from him. PO2 Dan Gonzales (PO2 Gonzales) then marked the seized item at the place of arrest, and thereafter, brought it to the police station along with Barrion. Thereat, PO2 Gonzales placed the seized item in a bigger plastic sachet and marked the same accordingly. The seized item was then inventoried⁷ in the presence of Rodel Limbo (Limbo), a Department of Justice (DOJ) representative, and Teresita N. Reyes (Reyes), a barangay councilor.⁸ Finally, the seized item was brought to the crime laboratory, where, upon examination,⁹ the contents thereof tested positive for 0.04 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁰

For his part, Barrion denied the charges against him, claiming instead, that at around seven (7) o' clock in the evening of August 10, 2011, he was already detained at the police headquarters, and thus, the testimony of the prosecution that he was apprehended at that time was not true. He likewise averred that at past four (4) o' clock in the afternoon of even date, he was onboard a tricycle when police officers blocked his way, pointed guns at him, ordered him to alight from the vehicle, put him in handcuffs, and asked him where he gets *shabu*. When he denied any knowledge about the matter, he was brought to the police station.¹¹

In a Decision¹² dated April 29, 2016, the RTC found Barrion 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 all the elements of the crime charged, as well as the identity and integrity of the *corpus delicti*. Finally, it gave credence to the positive identification of the police officers who enjoy the presumption of regularity in the performance of their official duties, and hence, should prevail over Barrion's defense of denial.¹³ Aggrieved, Barrion appealed¹⁴ to the CA.

⁵ Dated August 11, 2011. Records, p. 1-2.

⁶ Id. at 5.

⁷ See undated Inventory of Confiscated/Seized Items; id. at 140.

⁸ *Rollo*, p. 4. See also TSN, January 22, 2013, p. 19.

⁹ See Chemistry Report No. BD-198-2011 dated August 10, 2011; records, p. 144.

¹⁰ See *rollo*, pp. 3-6. See also *CA rollo*, pp. 59-61.

¹¹ See *rollo*, pp. 6-7. See also *CA rollo*, pp. 61-62.

¹² *CA rollo*, pp. 57-64.

¹³ See id. at 63-64.

¹⁴ See Notice of Appeal dated May 12, 2016; id. at 15.

In a Decision¹⁵ dated January 30, 2018, the CA affirmed the RTC ruling. It held that all the elements of the crime charged were duly established, considering that Barrion was caught *in flagrante delicto* selling *shabu* during a buy-bust operation conducted by the police officers. Finally, it ruled that the prosecution was able to prove the integrity and evidentiary value of the seized item.¹⁶

Hence, this appeal seeking that Barrion'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 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

¹⁵ *Rollo*, pp. 2-18.

¹⁶ See *id.* at 10-17.

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.

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 [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-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

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

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

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

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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

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 a media representative. This may be gleaned from the Inventory of Confiscated/Seized Items⁴⁰ which only shows the presence of Limbo, a DOJ representative, and Reyes, an elected public official, *i.e.*, a barangay councilor. Such finding is confirmed by the testimony of the team leader, SPO1⁴¹ Emmanuel Angelo Umali (SPO1 Umali), to wit:

[Atty. Ismael Macasaet]: Who prepared the inventory in relation to this case?

[SPO1 Umali]: I, sir, as the team leader.

Q: Was there any representative of the DOJ available at the police station when you arrived from the operation?

A: Yes, sir.

Q: When did you see the representative of the DOJ for the first time?

A: When we were already in the police station, he arrived, sir.

Q: You called him or somebody called him?

A: Somebody called him, sir.

Q: How long after you arrived from the police station did the representative of the DOJ arrive?

A: More or less thirty (30) minutes, sir.

Q: How about the elected official? When did the elected official arrive at the police station? After your arrival from the operation?

A: He was with us, sir.

Q: There was no media representative who arrived?

A: None, sir.

Q: So you were not able to contact the media?

A: We called, sir.⁴²

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 SPO1 Umali acknowledged the absence of a media representative during the conduct of inventory, he failed to offer any reasonable justification for the same. As already discussed, mere statements claiming that they tried to call the media representative, without, however, showing that they exerted earnest efforts to secure his presence, are insufficient to trigger the operation of the saving clause. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and

⁴⁰ Records, p. 140.


⁴¹ "PO3" in some parts of the records.

⁴² TSN, January 27, 2014, pp. 17-18.


evidentiary value of the item purportedly seized from Barrion was compromised, which consequently warrants his acquittal.

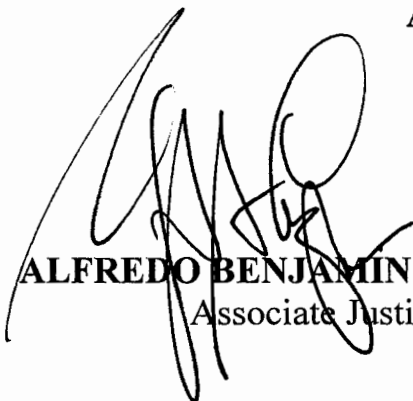
WHEREFORE, the appeal is **GRANTED**. The Decision dated January 30, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08406 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rey Barrion y Silva is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

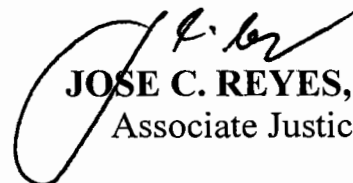
SO ORDERED.



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

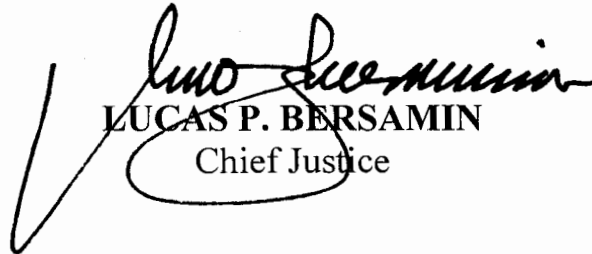
ATTESTATION

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