



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

SECOND DIVISION

PEOPLE OF THE G.R. No. 243627
PHILIPPINES,

Plaintiff-Appellee, Present:

- versus -

XANDRA SANTOS y
LITTAUA* a.k.a. "XANDRA
SANTOS LITTAUA,"

Accused-Appellant.

PERLAS-BERNABE, J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
ZALAMEDA,** JJ.

Promulgated:

27 NOV 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal¹ is the Decision² dated May 31, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09438, which affirmed the Joint Decision³ dated May 31, 2017 of the Regional Trial Court of Valenzuela City, Branch 172 (RTC) in Crim. Case Nos. 118-V-16 and 119-V-16 finding accused-appellant Xandra Santos y Littaua (accused-appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

* "Littaaau" in some parts of the records.

** Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

¹ See Notice of Appeal dated June 27, 2018; *rollo*, pp. 10-11.

² Id. at 2-9. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Manuel M. Barrios and Jhosep Y. Lopez, concurring.

³ CA *rollo*, pp. 50-56. Penned by Judge Nancy Rivas-Palmones.

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.

The Facts

This case stemmed from two (2) Informations⁵ filed before the RTC charging accused-appellant with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 6:30 in the evening of January 16, 2016, acting on the information received from a confidential informant, operatives from the Station Anti-Illegal Drug – Special Operation Task Group of the Valenzuela City Police successfully conducted a buy-bust operation against accused-appellant along Bisig Street, Valenzuela City, during which one (1) plastic sachet containing 0.20 gram of white crystalline substance was recovered from her. When accused-appellant was searched after her arrest, police officers found one (1) more plastic sachet containing 0.10 gram of the same substance from her possession. As noisy people started to crowd the place of arrest, officers immediately brought accused-appellant back to the police station where they marked, inventoried,⁶ and photographed⁷ the seized items in her presence as well as that of Kagawad Roberto Dawat (Kgd. Dawat) of Barangay Bisig. Subsequently, the seized items were brought to the Philippine National Police – Northern Police District crime laboratory⁸ where, after examination,⁹ their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁰

In defense, accused-appellant denied the charges against her, claiming instead that, at the time of the incident, while waiting for the tricycle that carried the grandchildren of her live-in partner's mother to arrive, she was accosted by several police officers in civilian clothes who forcibly brought her to a police station and falsely made it appear that she had sold *shabu*.¹¹

In a Joint Decision¹² dated May 31, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crimes charged, and accordingly, sentenced her to suffer the following penalties: (a) in Crim. Case No. 118-V-16, for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (b) in Crim. Case No. 119-V-16, for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and

⁵ The Information dated January 18, 2016 in Crim. Case No. 118-V-16 is for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165 (records, p. 1); while the Information dated January 18, 2016 in Crim. Case No. 119-V-16 is for the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165; records, p. 1-A.

⁶ See Inventory of Seized Properties/Items dated January 16, 2016; id. at 14.

⁷ Id. at 25.

⁸ See Request for Laboratory Examination dated January 16, 2016; id. at 18.

⁹ See Chemistry Report No. D-044-16 dated January 17, 2016; id. at 19.

¹⁰ See *rollo*, pp. 2-5. See also *CA rollo*, pp. 53-54.

¹¹ See *rollo*, p. 5. See also *CA rollo*, p. 54.

¹² *CA rollo*, pp. 50-56.

to pay a fine in the amount of ₱300,000.00.¹³ It ruled that the prosecution was able to successfully prove all the respective elements of the crimes charged, and had duly established the chain of custody of the confiscated drugs. Meanwhile, it found accused-appellant's defenses of denial and frame-up untenable for lack of evidence.¹⁴

Aggrieved, accused-appellant appealed¹⁵ to the CA, arguing that she should be acquitted on account of the conflicting testimonies of the prosecution witnesses, as well as non-compliance with the rule on chain of custody, particularly because the marking of the alleged drugs was not immediately done at the place of arrest, nor was the inventory of the same witnessed by a representative of the media or the National Prosecution Service (NPS).¹⁶

In a Decision¹⁷ dated May 31, 2018, the CA **affirmed** the conviction of accused-appellant.¹⁸ It held that the alleged inconsistencies in the testimonies of the prosecution witnesses pertained to insignificant matters not relating to the actual conduct of the buy-bust operation, and that there was substantial compliance with the chain of custody rule considering that the integrity and evidentiary value of the confiscated drugs were properly preserved.¹⁹

Hence, this appeal seeking that accused-appellant'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 9165,²⁰ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself

¹³ Id. at 55-56.

¹⁴ See id. at 54-55.

¹⁵ See Brief for the Accused-Appellant dated October 6, 2017; id. at 28-48.

¹⁶ See id. at 35-47.

¹⁷ *Rollo*, pp. 2-9.

¹⁸ Id. at 9.

¹⁹ See id. at 6-9.

²⁰ 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, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015]; and *People v. Bio*, 753 Phil. 730, 736 [2015]).

forms an integral part of the *corpus delicti* of the crime.²¹ 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.²²

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.²³ 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 station or office of the apprehending team.”²⁴ 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.²⁵

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 10640,²⁶ a representative from the media AND the Department of Justice (DOJ), and any elected public official;²⁷ or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the NPS²⁸ OR

²¹ See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.* at 370; *People v. Miranda*, *id.* at 53; and *People v. Mamangon*, *id.* at 313. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²² See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²³ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, *supra* note 20; *People v. Sanchez*, *supra* note 20; *People v. Magsano*, *supra* note 20, at 153; *People v. Manansala*, *supra* note 20, at 370; *People v. Miranda*, *supra* note 20, at 53; and *People v. Mamangon*, *supra* note 20, at 313. See also *People v. Viterbo*, *supra* note 21.

²⁴ *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).

²⁵ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

²⁶ 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. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” Verily, a copy of the law was published on July 23, 2014 in the respective issues of “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the “Manila Bulletin” (Vol. 499, No. 23; World News section, p. 6); hence, **RA 10640 became effective on August 7, 2014.**

²⁷ Section 21 (1) and (2) Article II of RA 9165.

²⁸ Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT

the media.²⁹ 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.”³⁰

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.³¹ 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.’”³²

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³³ 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.³⁴ The foregoing is based on the saving clause found in Section 21 (a),³⁵ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁶ **It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁷ 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.³⁸**

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

STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010].)

²⁹ Section 21, Article II of RA 9165, as amended by RA 10640.

³⁰ See *People v. Miranda*, supra note 20, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³¹ See *People v. Miranda*, id. at 60-61. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 22, at 1038.

³² See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

³³ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁴ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁵ 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[.]**”

³⁶ 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.**”

³⁷ *People v. Almorfe*, supra note 34.

³⁸ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

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circumstances.³⁹ **Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.**⁴⁰ 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.⁴¹

Notably the Court in *People v. Lim*,⁴² explained that the absence of the required witnesses must be justified based on acceptable reasons such as: “(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ [and] media representative[s] and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.”⁴³

Moreover, the Court, in *People v. Miranda*,⁴⁴ 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, then 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.”⁴⁵

In this case, the arresting officers’ acts of performing the marking, inventory, and photography of the seized items not at the place of arrest but at the police station were justified as a crowd was already forming at the place of arrest. This notwithstanding, the Court observes that there was still a deviation from the witness requirement as the conduct of inventory and

³⁹ See *People v. Manansala*, supra note 20, at 375.

⁴⁰ See *People v. Gamboa*, supra note 22, citing *People v. Umipang*, supra note 22, at 1053.

⁴¹ See *People v. Crispo*, supra note 20, at 376-377.

⁴² See G.R. No. 231989, September 4, 2018.

⁴³ See *id.*, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

⁴⁴ Supra note 20.

⁴⁵ See *id.* at 61.

photography was not witnessed by a representative from the NPS or the media. This may be easily gleaned from the Inventory of Seized Properties/Items⁴⁶ which only confirms the presence of an elected public official, *i.e.*, Kgd. Dawat. Markedly, such finding was also admitted by the poseur-buyer, Police Officer 3 Allan T. Vizconde (PO3 Vizconde), on direct and cross-examination, who explained that despite their efforts at contacting representatives from the DOJ and the media, no one was available, so they decided to proceed with the conduct of inventory and photography without their presence, to wit:

Direct Examination

[Fiscal Benedict Sta. Cruz]: There appears to be no representative from the Media and DOJ, could you tell us why?

[PO3 Vizconde]: Our chief called and after an hour, they told us that there is **no available** representatives, sir.⁴⁷

Cross-Examination

[Atty. Abraham Alipio]: During the inventory, who were then present?

[PO3 Vizconde]: PCI Ruba, Kgd. Dawat and other police officers.

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Q: Isn't it a fact that no representative from the media was present?

A: Our chief was calling for a representative from the media but until the kagawad arrived[,] there was **no representative from the media**, so we decided to conduct drug inventory.

Q: How about the representative from the DOJ?

A: None. They were calling but **no one is answering**.

Q: Did they inform you who were the persons they were trying to call?

A: Major Ruba was not able to tell us.

Q: According to you, this is a planned operation?

A: Yes, sir.

Q: Considering that it was a planned operation, why did you not secure a representative from [the] DOJ and Media before you conduct[ed] the operation?

A: What I know is that Major Ruba has already talked to those persons but during the conduct of inventory **no one arrived**.

Q: Did you not try to call any other person?

A: It was Major Ruba who was in charged (sic).⁴⁸

The Court, however, finds such explanation untenable.

⁴⁶ Dated January 16, 2016. Records, p. 14.


⁴⁷ TSN, August 19, 2016, p. 17; emphasis and underscoring supplied.

⁴⁸ TSN, January 20, 2017, pp. 10-11; emphases supplied.

The sheer statement of PO3 Vizconde that representatives from the DOJ and the media had been contacted but were simply unavailable, without more, cannot be deemed reasonable enough to justify a deviation from the mandatory directives of the law. Indeed, as earlier stated, mere claims of unavailability, absent a showing that actual and serious attempts were employed to contact the required witnesses, are unacceptable as they fail to show that genuine and sufficient efforts were exerted by police officers. In view of the foregoing, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant, which constitute the *corpus delicti* of the crimes charged, have been compromised;⁴⁹ hence, her acquittal is perforce in order.

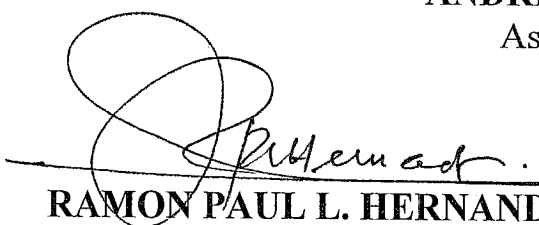
WHEREFORE, the appeal is **GRANTED**. The Decision dated May 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09438 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Xandra Santos y Littaua is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

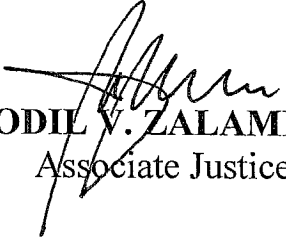

ESTELA M. PERLAS-BERNABE
 Senior Associate Justice

WE CONCUR:


ANDRES B. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice



HENRI JEAN PAUL B. INTING
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice

⁴⁹ See *People v. Patacsil*, G.R. No. 234052, August 6, 2018.

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.


ESTELA M. PERLAS-BERNABE
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.


DIOSDADO M. PERALTA
Chief Justice