



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 233480

Plaintiff-Appellee, Present:

- versus -

MELANIE B. MERCADER,
Accused-Appellant.

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

Promulgated:

20 JUN 2018 [Signature]

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DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Melanie B. Mercader (Mercader) assailing the Decision² dated March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08110, which affirmed the Decision³ dated October 3, 2015 of the Regional Trial Court of Antipolo City, Branch 73 (RTC) in Crim. Case Nos. 03-26511 and 03-26512 finding Mercader 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."

¹ See Compliance with Notice of Appeal dated March 31, 2017; *rollo*, pp.16-17.

² Id. at 2-15. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela concurring.

³ CA *rollo*, pp. 51-60. Penned by Acting Presiding Judge Leli C. Suarez.

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

The instant case stemmed from two (2) Informations⁵ filed before the RTC charging Mercader of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, the accusatory portions of which state:

Crim. Case No. 03-26511

That on or about the 8th day of September 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Christopher Anos, who acted as a poseur buyer, One (1) heat sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, for and in the (sic) consideration of the sum of P 200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for *Methamphetamine Hydrochloride*, also known as “*shabu*”, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁶

Crim. Case No. 03-26512

That on or about the 8th day of September 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in her possession, custody and control Two (2) heat sealed transparent plastic sachets containing 0.02 gram and 0.02 gram respectively and/or with total weight of 0.04 gram of white crystalline substance, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory both gave positive results to the test for *Methamphetamine Hydrochloride*, also known as “*shabu*”, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁷

The prosecution alleged that at around five (5) o'clock in the afternoon of September 8, 2003, the Philippine National Police (PNP) of Marikina City received a report from a confidential informant that Mercader and her husband, alias “*Tisoy*,” were selling drugs at their house located in Corazon Compound, Cogeo, Antipolo City. Acting upon this report, a buy-bust team was formed headed by Police Officer 2 Edwin Daño (PO2 Daño), together with Police Officer 1 (PO1) Christopher Anos (PO1 Anos) who was designated as the poseur-buyer, with PO1 Roberto Muega and PO1 Richie

⁵ Both dated September 10, 2003. Records, pp. 1-2 and 21-22.

⁶ Id. at 1.

⁷ Id. at 21.

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Gaerlan as back-ups. After conducting a pre-operation procedure and coordinating with the Philippine Drug Enforcement Agency (PDEA) and the PNP of Antipolo, the buy-bust team together with the confidential informant, proceeded to the target area. As soon as the informant saw Mercader, he approached her, introduced PO1 Anos as a buyer from Marikina, and asked if the latter could purchase *shabu*. Mercader asked how much PO1 Anos wanted and the latter replied “*Dos lang, pang-gamit namin*” as he handed to her the marked money. In turn, Mercader took from her right pocket a plastic sachet of suspected *shabu*. Upon receipt of the same, PO1 Anos tied his shoe lace, which was the pre-arranged signal, and the other police officers rushed in to arrest Mercader. At that point, *Tisoy* tried to come near them, but was warned by Mercader to run away. Subsequently, a preventive search was conducted on Mercader which yielded two (2) more plastic sachets of suspected *shabu*. Upon confiscation, PO1 Anos marked the items at the place of arrest with “LBM-CA BUY BUST,” “LBM-CA POSS I,” and “LBM-CA POSS II.” Thereafter, the police officers brought her to the Marikina Police Station where they made a request for laboratory examination of the seized items. After securing the letter-request, PO1 Anos delivered the said items to the PNP Crime Laboratory Service where they were examined by Forensic Chemical Officer-Police Senior Inspector Annalee R. Forro who confirmed that they tested positive for the presence of *methamphetamine hydrochloride*, a dangerous drug.⁸

For her part, Mercader denied the charges against her, claiming that at around seven (7) o’clock in the evening of September 8, 2003, she was on her way home with her two (2) children when a police officer suddenly held her hand and accused her of selling drugs. Despite not finding drugs on her, she was forcibly taken to the police station of Marikina City where the police officers extorted money from her.⁹

The RTC Ruling

In a Decision¹⁰ dated October 3, 2015, the RTC ruled as follows: (a) in Crim. Case No. 03-26511, Mercader was found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (b) in Crim. Case No. 03-26512, Mercader was likewise found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of imprisonment for twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of ₱300,000.00.¹¹

⁸ See CA *rollo*, pp. 53-55; and *rollo*, pp. 3-5. See also Physical Science Report No. D-1731-03E dated September 9, 2003; records, p. 9.

⁹ See CA *rollo*, pp. 55-56; and *rollo*, pp. 5-6.

¹⁰ CA *rollo*, pp. 51-60.

¹¹ *Id.* at 59-60.

The RTC held that the prosecution sufficiently established all the elements of both illegal sale and possession of dangerous drugs, through the testimonies of the police officers, showing that Mercader sold *shabu* to PO1 Anos during the buy-bust operation and had in her possession two (2) more plastic sachets containing the same. On the other hand, the RTC did not give credence to Mercader's defenses of denial and extortion for lack of substance. Moreover, the RTC ruled that the lack of prior surveillance and the failure to offer the marked monies as evidence, do not invalidate the buy-bust operation, since the integrity and evidentiary value of the confiscated items were properly preserved and the chain of custody sufficiently established to convict Mercader.¹²

Aggrieved, Mercader appealed¹³ to the CA.

The CA Ruling

In a Decision¹⁴ dated March 17, 2017, the CA affirmed Mercader's conviction for the crimes charged.¹⁵ It ruled that Mercader was validly arrested and that all the elements of the crimes of illegal sale and possession of dangerous drugs were duly proven by the prosecution.¹⁶ Moreover, the CA found that there was an unbroken chain of custody since PO1 Anos had in his possession the subject sachets from the time of their seizure until their turnover to the crime laboratory.¹⁷

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Mercader's conviction for illegal sale and illegal possession of dangerous drugs.

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

¹² See *id.* at 56-59.

¹³ See Notice of Appeal dated February 11, 2016; records, p. 240.

¹⁴ *Rollo*, pp. 2-15.

¹⁵ *Id.* at 15.

¹⁶ See *id.* at 8-12.

¹⁷ See *id.* at 13-15.

correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.¹⁸ “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.”¹⁹

In this case, Mercader was charged 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. Notably, in order to properly 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.²⁰ Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his/her conviction: (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.²¹

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.²²

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.²³ Under the said section, prior to its amendment by RA 10640,²⁴ the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to 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

¹⁸ See *People v. Dahil*, 750 Phil. 212, 225 (2015).

¹⁹ *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

²⁰ *People v. Sumili*, 753 Phil. 342, 348 (2015).

²¹ *People v. Bio*, 753 Phil. 730, 736 (2015).

²² See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²³ *People v. Sumili*, supra note 20, at 349-350.

²⁴ 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.

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twenty-four (24) hours from confiscation for examination.²⁵ In the case of *People v. Mendoza*,²⁶ the Court stressed that “**[w]ithout the insulating presence of the representative from the media or the Department of Justice, 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.”²⁷

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.²⁸ In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640²⁹ – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable**

²⁵ See Section 21 (1) and (2), Article II of RA 9165.

²⁶ 736 Phil. 749 (2014).

²⁷ Id. at 764; emphases and underscoring supplied.

²⁸ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁹ 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”

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grounds – will not 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.³⁰ In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II 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.³¹ In *People v. Almorfe*,³² **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.**³³ Also, in *People v. De Guzman*,³⁴ 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.**³⁵

Guided by the foregoing, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Mercader.

First, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the DOJ and the media. Despite the failure to observe this requirement, no justifiable ground was given to explain such lapse. In fact, there is actually no mention of these required witnesses in this case.

Second, no physical inventory, as well as photography, of the seized items were taken. PO1 Anos admitted the lack of inventory when he testified that:

[Atty. Vilma Mendoza]: But you did not prepare any inventory during that time?

[PO1 Anos]: No, Ma'am.

Q: You did no take any list of the confiscated items from the suspect?

A: No, Ma'am.

³⁰ See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

³¹ See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

³² 631 Phil. 51 (2010).

³³ Id. at 60.

³⁴ 630 Phil. 637 (2010).

³⁵ Id. at 649.

Q: It was not recorded in the police blotter?

A: No, Ma'am.

x x x x³⁶ (Underscoring supplied)

Notably, PO2 Daño contradictorily testified that PO1 Anos prepared a written inventory which Mercader signed. He likewise stated that photographs were taken of the items and existed in the file.³⁷ Despite the seemingly conflicting statements made by the police officers, it remains that nothing on the record shows that the required inventory or photography of the seized items was conducted. Besides, neither of the said documents mentioned by PO2 Daño were offered in evidence before the trial court.³⁸

Case law states that the mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Section 21, Article II of RA 9165.³⁹ It is well-settled that **the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.**⁴⁰ Compliance under the rule ensures the integrity of the confiscated drug and clearly establishes the *corpus delicti*, failing in which, indicates the absence of an element of the crimes of illegal sale and illegal possession of dangerous drugs.⁴¹ “In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug x x x [which] must be established with moral certainty.”⁴² Consequently, the non-compliance with the chain of custody rule under the procedure set forth by law is a sufficient ground to acquit Mercader altogether.

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

³⁶ TSN, September 19, 2007, pp. 10-11.

³⁷ See TSN, November 24, 2010, pp. 11-12.

³⁸ See CA rollo, p. 52.

³⁹ See *Lescano v. People*, 778 Phil. 460, 476 (2016), citing, *People v. Garcia*, 599 Phil. 416, 429 (2009). See also *People v. Pagaduan*, 641 Phil. 432, 448-449 (2010).

⁴⁰ See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

⁴¹ See *Lescano v. People*, supra note 39, at 472.

⁴² Id., citing *People v. Lorenzo*, 633 Phil. 393, 403 (2010).


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.⁴³

“In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] 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 such reasons exist, then it is the appellate court’s bounden duty to acquit the accused, and perforce, overturn a conviction.”⁴⁴

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08110 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Melanie B. Mercader 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
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

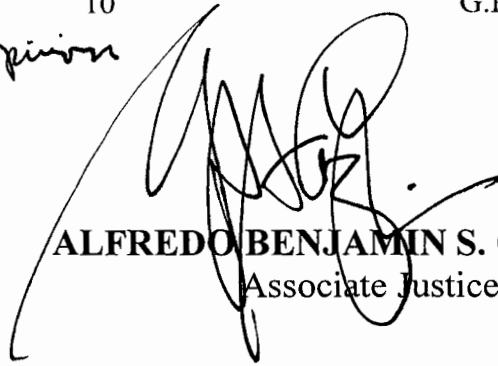
⁴³ *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

⁴⁴ See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

pl. see separate concurring opinion



DIOSDADO M. PERALTA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Reyes

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
Senior Associate Justice
(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, as amended)