



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 JUN 25 2019
 BY: *YSG*
 TIME: 3:06 pm

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 228255

Present:

- versus -

BERSAMIN, C.J.,
DEL CASTILLO,
JARDELEZA,
GESMUNDO, and
CARANDANG,* JJ.

MARY JANE CADIENTE y
QUINDO @ JANE,
Accused-Appellant.

Promulgated:
JUN 10 2019

X-----

DECISION

DEL CASTILLO, J.:

Appellant Mary Jane Cadiente y Quindo @ Jane appeals from the April 29, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07261 that affirmed the December 10, 2014 Decision² of the Regional Trial Court (RTC) of Makati City, Branch 135, in Criminal Case No. 14-1089, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

Factual Antecedents

Appellant was charged with violation of Sections 5 and 11, Article II of RA 9165. The accusatory portions of the Informations are quoted as follows:

Criminal Case No. 14-1089:
Violation of Section 5, Article II of RA 9165

On the 11th day of July 2014, in the city of Makati, Philippines, accused, without the necessary license or prescription and without being

* On leave.

¹ CA *rollo*, pp. 111-124; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Romeo F. Barza and Danton Q. Bueser.

² Records, pp. 173-179; penned by Presiding Judge Josephine M. Advento-Vito Cruz.

authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away one (1) plastic sachet weighing zero point zero eight [0.08] gram of white crystalline substance containing Methylamphetamine Hydrochloride (Shabu), a dangerous drug, in consideration of Php500.00.

CONTRARY TO LAW.³

Criminal Case No. 14-1090:

Violation of Section 11, Article II of RA 9165

On the 9th day of July 2014, in the city of Makati, Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously have in [her] direct custody and possession one (1) piece of small heat sealed transparent plastic sachet weighing zero point one four [0.14] gram of white crystalline substance presented and marked as "RAG-1", containing of [sic] Methylamphetamine Hydrochloride (Shabu) a dangerous drug.

CONTRARY TO LAW.⁴

During her arraignment, appellant pleaded not guilty to both offenses. Thereafter, trial ensued.

Version of the Prosecution

On July 9, 2014, a confidential informant reported to the office of the Station Anti-Illegal Drugs Special Operations Task Group of the Makati police that appellant and her husband were peddling prohibited drugs in *Barangay Rizal*, Makati. Acting on said information, P/Chief Insp. Gaylord Tamayo formed a team and held a briefing for the conduct of a buy-bust operation. PO2 Rexell Gabelo (PO2 Gabelo) was designated as poseur-buyer and given a 500-peso bill as marked money. The planned buy-bust operation was coordinated with the Southern Police District and the Philippine Drug Enforcement Agency (PDEA).

Upon the arrival of the buy-bust team at the target area, PO2 Gabelo and the confidential informant saw the appellant standing along a street. They approached and talked with appellant for the sale of ₱500.00 worth of *shabu*. PO2 Gabelo gave the first pre-arranged signal to the other members of the buy-bust team watching from their vantage points that he had identified their target. He then handed appellant the marked money as payment for a sachet of *shabu*, which appellant took from her wallet; PO2

³ Id. at 2.

⁴ Id. at 6.

Gabelo thereafter gave the second pre-arranged signal that the transaction had been consummated. SPO1 Randy L. Obedoza (SPO1 Obedoza), who was assigned as a back-up in the buy-bust operation, rushed toward the scene of the crime and assisted PO2 Gabelo in arresting appellant. Recovered from appellant was the marked money, a one hundred peso bill, another sachet of *shabu* and a disposable lighter. When a crowd started to gather, the buy-bust team decided to conduct the inventory of the seized items at the nearest *barangay* hall of Rizal, Makati. However, they transferred to the *barangay* hall of Pembo, Makati after waiting in vain for five hours for the arrival of an elected public official. The marking and inventory of the seized items were then conducted in the presence of appellant and the *barangay* captain of Brgy. Pembo. Photographs were also taken during the inventory.

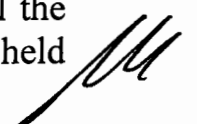
The buy-bust team then proceeded to the police office and turned over the custody of appellant and the seized items to the duty investigator, PO3 Laurence Charmino (PO3 Charmino). In turn, PO3 Charmino prepared the letter-request for the drug test of the seized *shabu*, which SPO1 Obedoza brought to the police crime laboratory together with the seized *shabu*. The forensic chemist, P/Sr. Insp. Rendielyn L. Sahagun, received the same and conducted laboratory examinations, and confirmed that the sachet sold by appellant during the buy-bust operation, marked with the initials "RAG", and the sachet recovered from appellant's possession during the lawful search of her body and marked as "RAG-1", with a weight of 0.08 gram and 0.14 gram, respectively, were positive for, and indeed contained *shabu*.

Version of the Defense

At around 1 a.m. of July 7, 2014, appellant was inside her house with her husband and her four-year-old daughter, when five armed men suddenly barged inside and ransacked the same. She did not resist their illegal act for fear of physical abuse. The armed men then took her and her family to the police office where they were detained for two days, and not given food. Her husband and her daughter were later released and told to return with ₱50,000.00 as payment for her freedom. When her husband failed to bring the money, false charges were filed against her.

Ruling of the Regional Trial Court

On December 10, 2014, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165. It ruled that the State had succeeded in establishing all the elements of the offense for illegal sale of *shabu*. However, the RTC held



that there was reasonable doubt to acquit appellant for violation of Section 11, Article II of RA 9165 because SPO1 Obedoza, who allegedly recovered the sachet of *shabu* from appellant's possession, failed to identify the same during his cross-examination.

Thus, the dispositive portion of the Decision of the RTC reads:

WHEREFORE, judgment is hereby rendered:

1. In Criminal Case No. 14-1089, finding the accused MARY JANE CADIENTE y QUINDO @ "Jane", GUILTY BEYOND REASONABLE DOUBT for Violation of Section 5 of Article II of R.A. 9165, judgment is hereby rendered sentencing her to suffer life imprisonment and to pay a fine of P500,000.00;

2. In Criminal Case No. 14-1090, there being reasonable doubt, accused MARY JANE CADIENTE y QUINDO @ "Jane" is hereby ACQUITTED for Violation of Section 11[,] Article II of R.A. 9165; and

Let the zero point zero eight (0.08) gram and zero point fourteen (0.14) gram of methylamphetamine hydrochloride (*shabu*) be turned over to the PDEA for proper disposition.

SO ORDERED.⁵

Ruling of the Court of Appeals

On April 29, 2016, the CA affirmed the RTC's Decision. Rejecting appellant's plea that the prosecution did not adduce evidence that the requirements of Section 21, Article II of RA 9165 had been met, the CA declared that the failure of the buy-bust team to comply strictly with the procedure mandated by Section 21, Article II of RA 9165, particularly, in ensuring the presence of a representative from the media and the Department of Justice (DOJ) during the physical inventory and the photographing of the confiscated *shabu*, did not render the arrest of appellant illegal or make the *shabu* inadmissible in evidence. The CA held that the buy-bust team had substantially complied with this procedural requisite as it was able to preserve the integrity and evidentiary value of the seized *shabu* by establishing an unbroken link in the chain of custody of evidence.

Thus, the CA disposed of the appeal in the following manner:



⁵ Records, p. 179.

WHEREFORE, premises considered, the Decision dated December 10, 2014 of the Regional Trial Court, Branch 135 of Makati City finding accused-appellant Mary Jane Cadiente y Quindo @ Jane GUILTY BEYOND REASONABLE DOUBT for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED.

SO ORDERED.⁶

Hence, this appeal, which is prosecuted chiefly upon appellant's postulation that the buy-bust team failed to comply with the procedural requirements under Section 21, Article II of RA 9165, particularly in regard to the non-attendance of a representative from the media and the DOJ at the time of the physical inventory and the photographing of the seized *shabu*. In consequence, the State has miserably failed to establish the integrity of the dangerous drug itself. Hence, it is appellant's constitutional right to be acquitted of the indictment against her.

Our Ruling

There is merit in the appeal.

In a successful prosecution for violation of Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is proof that the transaction actually occurred, coupled with the presentation before the court of the *corpus delicti*.⁷ What is more, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is the very *corpus delicti* of the case.⁸

Section 21, Article II of RA 9165 spells out the mandatory procedural safeguards in a buy-bust operation, thus —

Section 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



⁶ CA rollo, p. 123.

⁷ *People v. Caiz*, G.R. No. 215340, July 13, 2016, 797 SCRA 26, 40-41.

⁸ *Id.* at 41.

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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or 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 thereof;

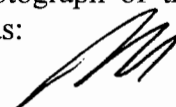
X X X X.

Moreover, the Implementing Rules and Regulations (IRR) have further marked out in detail the proper procedure to be observed by the PDEA relating to the custody and disposition of confiscated, seized and/or surrendered dangerous drugs under Section 21(1), Article II of RA 9165, thus —

- (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or 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 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, 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;

In *People v. Lim*,⁹ the Court stressed the importance of the three witnesses, namely, any elected public official, the representative from the media, and the DOJ representative, at the time of the physical inventory and photograph of the seized items. In the event of their absence, the Court held:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

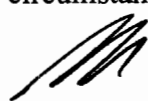


⁹ G.R. No. 231989, September 4, 2018.

(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 or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] 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.**¹⁰ (Emphasis in the original)

More than that, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *People v. Ramos*,¹¹ the Court ruled:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. 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 set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.¹² (Emphasis in the original)



¹⁰ Id.

¹¹ G.R. No. 233744, February 28, 2018.

¹² Id.

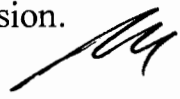
In other words, jurisprudence requires that, in the event that the presence of the essential witnesses was not obtained, the prosecution must establish not only the reasons for their absence, but also that earnest efforts had been exerted in securing their presence.¹³ The prosecution must explain the reasons for the procedural lapses, and the justifiable grounds for failure to comply must be proven, since the Court cannot presume what these grounds were or whether they even existed.¹⁴

In this case, the prosecution failed to prove both requisites. While the inventory and photograph of the seized *shabu* were done in the presence of a *barangay* captain, who is an elected public official, there was no mention that the same was conducted in the presence of a representative from media and the DOJ. The signatures of the representative from the media and the representative from the DOJ do not even appear in the Inventory Receipt. And no reason at all has been advanced for the complete failure of the arresting officers to secure the attendance of these required witnesses. On top of these, there is nothing on record to indicate that the arresting team exerted a genuine and sufficient attempt to secure their presence.

In the absence of the representative from the media and from the DOJ during the physical inventory and the photographing of the seized *shabu*, the evils of switching, “planting” or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. In the context of these circumstances, the conviction of the appellant cannot be upheld.

WHEREFORE, the appeal is **GRANTED**. The April 29, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07261 is **REVERSED and SET ASIDE**. Appellant Mary Jane Cadiente y Quindo @ Jane is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent, Correctional Institute for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Decision.



¹³ *People v. Pascua*, G.R. No. 227707, October 8, 2018.

¹⁴ *People v. Ramos*, supra note 11.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

(On leave)
ROSMARI D. CARANDANG
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.


LUCAS P. BERSAMIN
Chief Justice