



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 231010

Present:

- versus -

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

ORLY VISPERAS y ACOBO,
Accused-Appellant.

Promulgated:
JUN 26 2019

X-----

DECISION

DEL CASTILLO, J.:

Appellant Orly Visperas y Acobo (appellant) appeals from the October 16, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 06149, that affirmed the April 1, 2013 Decision² of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in Criminal Case No. 2010-0518-D, finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

Factual Antecedents

Appellant was charged with violation of Section 5, Article II of RA 9165, the accusatory portion of the Amended Information alleging *viz.*:

That on or about **September 29, 2010**, in the evening in Mapandan, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously, **SELL, TRADE, DELIVERED [sic], DISTRIBUTED [sic], DISPENSED [sic]** to an undercover police officer who acted as poseur-buyer one (1) heat-sealed

* Per Raffle dated October 29, 2018.

¹ CA *rollo*, pp. 85-99; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios.

² Records, pp. 149-155; penned by Presiding Judge Genoveva Coching-Maramba.

transparent plastic sachet of methamphetamine hydrochloride with a weight of 0.028 grams [sic], without necessary permit or authority to sell.

CONTRARY TO Section 5, Article II, of RA 9165.³

During his arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

Version of the Prosecution

On September 29, 2010, SPO1 Roberto Molina (SPO1 Molina) and SPO1 Ronnie Quinto (SPO1 Quinto) relayed to Chief of Police, P/S Insp. Dominick Soriano Poblete (PSI Poblete), a report from a confidential asset that appellant was selling *shabu* in Mapandan, Pangasinan. PSI Poblete ordered them to plan and conduct a buy-bust operation against appellant. SPO1 Molina was designated as the poseur-buyer and to him were delivered three 100-peso bills marked as buy-bust money.

At around 8 p.m. of the same day, the buy-bust team arrived at the house of appellant. SPO1 Quinto occupied a vantage point a short distance away. The confidential asset introduced SPO1 Molina to appellant and a transaction for the sale of *shabu* transpired. SPO1 Molina then gave appellant the buy-bust money. Appellant went inside his house, and, upon his return, handed a plastic sachet of *shabu* to SPO1 Molina. With the *shabu* in his possession, SPO1 Molina signaled SPO1 Quinto that the sale was consummated. SPO1 Quinto rushed toward appellant and arrested him. He also informed appellant of the nature of his arrest and his constitutional rights. SPO1 Molina then conducted a search on the person of appellant and recovered the buy-bust money. After this, SPO1 Molina and SPO1 Quinto proceeded to the police station with appellant.

When they reached the police station, SPO1 Molina turned over the sachet of *shabu* and the marked money to the duty investigator, SPO1 Jeffrey Natividad, who prepared the documents needed for the prosecution of appellant and forwarded the sachet of *shabu* to the police crime laboratory. Forensic Chemist Ma. Theresa Amor C. Manuel performed a chemical examination on the contents of the sachet and the results confirmed that it was indeed *shabu*.

Version of the Defense

Appellant claimed that, on September 29, 2010, he was eating *isaw* with his niece and nephew in front of his house at Brgy. Poblacion, Mapandan, Pangasinan, when SPO1 Molina approached and invited him to the municipal

³ Id. at 33.

hall to answer a complaint against him. He voluntarily accepted the invitation, but, upon his arrival, he was frisked and told to remove his clothes and sit on a couch. Two hours later, he was incarcerated.

Ruling of the Regional Trial Court

In its Decision dated April 1, 2013, the RTC found appellant guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165. The RTC gave short shrift to appellant's account of the case, and sustained the prosecution's evidence that appellant was arrested for selling *shabu* to an undercover police officer during a buy-bust operation over appellant's uncorroborated denial and version of the incident. The RTC, thus, sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Ruling of the Court of Appeals

In its Decision of October 16, 2015, the CA affirmed the RTC's Decision. It held that the prosecution's evidence established the acts constituting the illegal sale of *shabu*. The CA ruled that the prosecution was able to preserve the integrity and evidentiary value of the seized items. It held that appellant failed to show that the police officers who arrested him were impelled by bad faith or ill-intent, or that there had been tampering with the evidence, for which reason the court may safely rely on the presumption that the integrity of the evidence has been properly preserved.

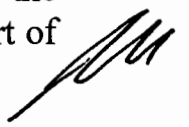
Moreover, the CA ruled that the apparent failure to comply with Section 21, Article II of RA 9165, particularly, the procedure to be observed in the inventory and photographing of the *shabu* seized during the buy-bust operation will not render the same inadmissible in evidence.

Hence, this appeal.

Our Ruling

The appeal is meritorious.

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*.⁴ More than that, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is itself the *corpus delicti* of the case.⁵

Section 21, Article II of RA 9165, sets forth the mandatory procedural safeguards in a buy-bust operation, to wit:

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 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.

The Implementing Rules and Regulations (IRR) further expand on the proper procedure to be followed under Section 21(1), Article II of RA 9165, thus

(a) The apprehending office/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;

⁴ *People v. Caiz*, 790 Phil. 183, 196 (2016).

⁵ *Id.* at 197.

In *People v. Lim*,⁶ the Court stressed the importance of the presence or attendance 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:

(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 proved 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.⁷ (Emphasis in the original)

On top of these, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *People v. Ramos*,⁸ 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 full 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

⁶ G.R. No. 231989, September 4, 2018.

⁷ Id.

⁸ G.R. No. 233744, February 28, 2018. (Citations omitted).

efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁹ (Emphasis in the original)

In other words, jurisprudence requires that, in the event that the presence or attendance of the essential witnesses is not obtained, the prosecution must establish not only the reasons for their absence, but also that earnest efforts were exerted in securing their presence.¹⁰ 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 are or that they even exist.¹¹

In this case, the prosecution failed to prove both requisites. The Court has thoroughly reviewed the records and cannot find any mention at all that the physical inventory and that photographing of the confiscated *shabu* had been done or were done in the presence of an elected public official, a representative from media and the DOJ. None of the signatures of the elected public official, nor of a representative from the media, nor of a representative from the DOJ appear in the Inventory Receipt. And the State has not given any reason for the complete failure of the arresting officers to secure the attendance of these required witnesses. To the foregoing must be added the fact that there is nothing on record to indicate that the arresting team ever exerted an honest-to-goodness attempt to secure their presence.

Given the fact that no elected public official, no representative from the media and no representative from the DOJ was present during the physical inventory and the photographing of the seized *shabu*, the evils of switching of, “planting” or contamination of the evidence create serious lingering doubts as to the integrity of the alleged *corpus delicti*.

WHEREFORE, the appeal is **GRANTED**. The October 16, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06149 is **REVERSED and SET ASIDE**. Appellant Orly Visperas y Acoba is **ACQUITTED** of the indictment against him, his guilt not having been proven beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections. The said Director is **DIRECTED** to report to this Court the action taken within five (5) days from receipt of this Decision.



⁹ Id.

¹⁰ *People v. Pascua*, G.R. No. 227707, October 8, 2018.


¹¹ *People v. Ramos*, supra note 8.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice

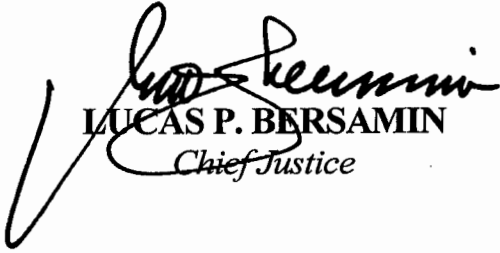

ALEXANDER G. GESMUNDO
Associate Justice


JOSE C. REYES, JR.
Associate Justice


ROSMAR 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