



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 229669

Present:

- versus -

LEONEN, J., Chairperson,
GESMUNDO,*
CARANDANG,
LAZARO-JAVIER,** and
ZALAMEDA, JJ.

ESRAFEL DAYON y MALI @
“BONG,”
Accused-Appellant.

Promulgated:

November 27, 2019

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DECISION

ZALAMEDA, J.:

This appeal¹ assails the Decision² promulgated on 14 December 2015 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 07178, which affirmed the Decision³ rendered on 11 December 2014 by Branch 2, Regional Trial Court (RTC) of Manila, in Criminal Case No. 13-299147, finding accused-appellant Esrafel Dayon y Mali @ “Bong” (accused-appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

* On Leave.

** Designated as Additional Member of the Third Division per Special Order No. 2728.

¹ *Rollo*, pp. 20-22.

² *Id.* at 2-19.

³ *CA rollo*, pp. 55-59.

Antecedents

On 14 August 2013, an Information was filed charging accused-appellant with illegal sale of *shabu*, defined and punished under Section 5, Article II of RA 9165, to wit:

That on or about **August 06, 2013**, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, trade, deliver, transport or distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer / poseur[-]buyer **one (1) heat-sealed transparent plastic sachet marked as “BONG” containing ZERO POINT ZERO FOUR ZERO (0.040) gram of white crystalline substance** commonly known as *Shabu*, containing Metamphetamine Hydrochloride, a dangerous drug.

Contrary to law.⁴ (Emphasis in the original)

Upon arraignment, accused-appellant pleaded “not guilty.” After the termination of pre-trial, trial on the merits ensued.

Version of the Prosecution

On 06 August 2013, a team from the Philippine National Police Moriones Tondo Police Station 2, in coordination with the Philippine Drug Enforcement Agency, conducted a buy-bust operation in Tondo, Manila, against a certain “Bong,” which they later identified as accused-appellant. During the buy-bust, accused-appellant sold and handed to the poseur-buyer one (1) heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu*. The team photographed, marked, and inventoried the seized item at the place of arrest in the presence of accused-appellant, as well as a member of the media, and claimed efforts were made to summon *barangay* officials, but the latter refused due to fear of reprisal and notoriety of the place of arrest.⁵ Thereafter, the seized item was brought to the crime laboratory, which confirmed that the plastic sachet contained 0.040 gram of metamphetamine hydrochloride, a dangerous drug.⁶

⁴ Records, p. 1.

⁵ *Id.* at 4-5.

⁶ *Id.* at 7.



Version of the Defense

Accused-appellant denied the charges against him and averred he was arrested on 05 August 2013 while on his way to 168 Mall in Divisoria. He was approached by three (3) men in civilian clothing, and frisked. One of the men said, "*isama na rin yan,*" (include him also). He saw that there was another man, already handcuffed, in the *kuliglig*, a motorized pedicab, he was made to board. When accused-appellant asked the other man where they were going, the latter replied, "*sa prisinto,*" (to the precinct). He found out later that the man with him in the *kuliglig* was named Bong. When confronted with the marked photograph of his arrest with another man, accused-appellant explained that the photograph was taken at the precinct where the police officers just placed evidence on his lap, and the name of the other man in the photograph was Bong. Accused-appellant insisted his nickname was "*Piyel.*"⁷ Accused-appellant further claimed the police officers demanded ₱100,000.00 from him in exchange for his release. He told them it was impossible for him to come up with that amount as he was jobless and his wife earned only ₱170.00 per day. They told him, "*kayang-kaya mo, tawagan mo yung magulang mo,*" (you can afford it, call your parents).⁸

Ruling of the RTC

On 11 December 2014, the RTC convicted accused-appellant of the crime charged. The RTC disposed:

WHEREFORE, judgment is hereby rendered finding accused Esrafel Dayon y Mali GUILTY beyond reasonable doubt of the crime charged in Crim. Case No. 13-299147 and is hereby sentenced to life imprisonment and to pay a fine of P500,000.00.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal and in accordance with the law and rules.

SO ORDERED.⁹

⁷ *Rollo*, pp. 7-8.

⁸ *Id.* at 8.

⁹ *CA rollo*, p. 59.



Ruling of the CA

On 14 December 2015, the CA promulgated its assailed Decision affirming accused-appellant's conviction, thus:

WHEREFORE, the appeal is **DENIED**. The December 11, 2014 *Decision* of the Regional Trial Court, Branch 2, Manila, in Criminal Case No. 13-299147 convicting appellant for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.¹⁰ (Emphasis in the original)

Hence, this appeal.¹¹

Issues

Accused-appellant claims the court *a quo*:

I

X X X GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE A VALID BUY-BUST OPERATION.

II

X X X GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE INTEGRITY AND IDENTITY OF THE SEIZED PLASTIC [SACHET] OF METAMPHETAMINE HYDROCHLORIDE.¹²

¹⁰ *Rollo*, pp. 18-19.

¹¹ *Id.* at 20-21.

¹² *CA rollo*, p. 27.



Ultimately, the controversy boils down to whether or not the court *a quo* correctly convicted accused-appellant for the crime of illegal sale of dangerous drugs.

Ruling of the Court

We find merit in the appeal.

To ensure conviction for illegal sale of dangerous drugs, the following elements constituting the crime must be present: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. The presentation of the seized drugs as evidence in court is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs seized are the *corpus delicti* of the crime. As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence were the same substances bought during the buy-bust operation. This requirement is complied with by ensuring that the custody of the seized drugs from the time of confiscation until presentation is safeguarded under what is referred to as the chain of custody by RA 9165, whose objective is to remove unnecessary doubts concerning the identity of the evidence.¹³

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and photographing 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 10640,¹⁴ “a representative from the media AND the Department of Justice (DOJ), and any elected public official”; 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.” The law requires the presence of these witnesses

¹³ *People v. Angngao*, G.R. No. 189296, 11 March 2015, 752 SCRA 531, 541.

¹⁴ 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 15 July 2014.



primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”¹⁵

The Information charges accused-appellant of committing the crime on 06 August 2013, prior to the effectivity of the amendatory law, RA 10640.¹⁶ Section 21 of RA 9165, as complemented by Section 21 (a) of Article II of its Implementing Rules and Regulations (IRR), requires that immediately after seizure and confiscation of the suspected drug, it should be physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel; (b) a representative from the media AND the Department of Justice (DOJ); and (c) any elected public official.

The marking, inventory, and photographing of the seized items in this case were conducted immediately at the place of the seizure and arrest. But the prosecution failed to establish the crucial presence of ALL witnesses required by RA 9165. As testified to by prosecution witness SPO1 Joel Sta. Maria, only a representative from the media was present out of the required third-party witnesses:

- Q Now, Mr. Witness, did you take pictures at the place of the arrest?
A PO3 Jimenez took the picture while I made the marking and the inventory, sir.
- Q But this picture was taken where, Mr. Witness?
A At the place of the arrest, sir, Purok 2, Isla Puting Bato, sir.
- Q At the presence of whom, Mr. Witness?
A Both accused, sir.
- Q No one else?
A The media, sir.
- Q Media was here?
A Yes, sir.
- Q During the time of the arrest?
A Yes, sir.

¹⁵ *People v. Bangalan*, G.R. No. 232249, 03 September 2018.

¹⁶ In *People v. Gutierrez* (G.R. No. 236304, 05 November 2018), this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter or on 07 August 2014, pursuant to Section 5 of the law. *See also People v. Bangalan, id.*



XXXX

Q He was at the place of the arrest, Mr. Witness? Are you sure?

A He was being called by us, sir.

Q Is he also at (sic) the picture?

A No, sir.¹⁷

Clearly, not all the witnesses required by RA 9165 were present during the marking, inventory and photographing of the items allegedly seized from accused-appellant.

Section 21(a), Article II of the IRR of RA 9165 contains this *proviso*:

xxxx Provided, further, that non-compliance with these requirements [the presence of the required witnesses, and the time and place of inventory and photographing] under justifiable grounds, as long as the integrity and 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; xxx¹⁸

The applicability of this saving mechanism, however, is conditioned upon the apprehending team rendering a justification for such non-compliance. Failure to tender justification will create doubt as to the identity and evidentiary value of the drugs presented as evidence in court.¹⁹ For this saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.²⁰

Thus, the absence of the witnesses required by law does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses, must be adduced. The prosecution must show that earnest efforts were employed in contacting the witnesses enumerated in the law. Mere statements of unavailability, absent actual

¹⁷ Records, TSN dated 09 September 2014, pp. 20-21.

¹⁸ See also *Casona v. People*, G.R. No. 179757, 13 September 2017, 839 SCRA 448.

¹⁹ *People v. Velasco*, G.R. No. 219174, 21 February 2018, 856 SCRA 303, 314.

²⁰ *People v. Alagarme*, G.R. No. 184789, 23 February 2015, 751 SCRA 317, 329.

serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance. Police officers are compelled not only to state the reasons for their non-compliance but must also convince the Court that they exerted earnest efforts to comply with the mandated procedures and that, under the given circumstances, their actions were reasonable.²¹

We have carefully reviewed the records and can find no justification by the arresting team for their procedural lapses. The prosecution witnesses did not provide in their testimonies any acknowledgment or explanation for the lack of a DOJ representative and an elected public official. There was no statement of any earnest efforts by the arresting team to contact the required witnesses.

The Joint Affidavit of Apprehension²² by the police officers state in part:

xxxx That effort made in summoning [the] Barangay officials to witness the inventory failed in vain due to the notoriety of the place[,] they refuses (sic) to be part of the incident for fear of reprisal, thus suspects and evidences was (sic) immediately brought at (sic) [the] Police Station, SAID office and turned over for investigation.²³

The Court finds this statement in the affidavit flimsy and insufficient to explain the procedural lapse. First, it fails to establish that an actual serious attempt to contact the required witnesses was made by the apprehending officers. Second, it only mentions an effort to summon *barangay* officials, but the law then prevailing also required the presence of a DOJ representative during the inventory and photographing. Finally, the justifiable ground for non-compliance must be proved as a fact because the Court cannot presume what these grounds are or that they even exist.²⁴

The purpose of the law in requiring the presence of certain witnesses at the time of the seizure and inventory of the seized items is to insulate the seizure from any taint of illegitimacy or irregularity.²⁵ Their insulating

²¹ *Ramos v. People*, G.R. No. 233572, 30 July 2018.

²² Records, pp. 4-5.

²³ *Id.* at 5.

²⁴ *Supra* at note 22.

²⁵ *People v. Maganon*, G.R. No. 234040, 26 June 2019.



presence during the inventory and photographing was specifically designed to obviate switching, 'planting' or contamination of evidence.²⁶

In this case, the arresting officers failed to secure the presence of a DOJ representative and an elected public official without providing any justifiable reason and without proving that they exerted earnest efforts to do so. This failure adversely affected the integrity and credibility of the seized sachet of *shabu*. The prosecution had sufficient opportunity during trial to explain the procedural lapses but glaringly left the same unacknowledged and unjustified. Such omission casts suspicion on the *corpus delicti* of the offense charged, thereby creating reasonable doubt.

While We support the government's efforts to combat the proliferation of illegal drugs in Philippine society, the Court maintains the importance of the procedural safeguards in all drug-related cases. Vigilance in eradicating illegal drugs must not come at the expense of disregarding the law, rules and established jurisprudence on the matter.

WHEREFORE, the Appeal is hereby **GRANTED**. The Decision dated 14 December 2015 by the Court of Appeals in CA-G.R. CR-HC No. 07178 is **REVERSED and SET ASIDE**. Accordingly, accused-appellant **ESRAFEL DAYON y MALI @ "BONG"** is **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED to IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

²⁶ *Id.*

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

(On Leave)
ALEXANDER G. GESMUNDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusion 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.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson



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

