

SECOND DIVISION

[G.R. No. 229212, September 04, 2019]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERARDO LABINI Y GRAJO @ "JERRY," APPELLANT.

DECISION

CARPIO, J.:

The Case

Before the Court is an appeal from the 2 December 2015 Decision^[1] of the Court of Appeals in CA-G.R. CR-HC No. 06978. The Court of Appeals affirmed the 5 May 2014 Decision^[2] of the Regional Trial Court of Makati City, Branch 64 (trial court), finding appellant Gerardo Labini y Grajo @ Jerry guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165).^[3]

The Antecedent Facts

Appellant was charged with violation of Sections 5, 11 and 15, Article II of RA 9165 in three separate Informations, as follows:

Criminal Case No. 11-2601

On the 19th day of August 2011, in the City of Makati, the Philippines, accused, not being authorized by law, and without the corresponding license or prescription, did then and there willfully, unlawfully, and feloniously sell, deliver, and distribute zero point zero three (0.03) gram of methamphetamine hydrochloride, a dangerous drug, in consideration of Php300.

CONTRARY TO LAW.

Criminal Case No. 11-2602

On the 19th day of August 2011, in the City of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody and control a total of zero point zero two (0.02) gram of methamphetamine hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.

Criminal Case No. 11-2603

On the 19th day of August 2011, in the City of Makati, the Philippines, accused, not being lawfully authorized by law to possess or use dangerous drug, and without the corresponding prescription, did then and there willfully, unlawfully, and feloniously use methamphetamine (sic), a dangerous drug, as shown in a confirmatory test

conducted on him after he was arrested, in violation of the above-cited law.

CONTRARY TO LAW.^[4]

Appellant filed a Motion for Judicial Determination of Probable Cause dated 9 January 2012. The trial court denied the motion in its Order of even date. Upon arraignment, appellant entered separate pleas of not guilty to the charges against him.

The facts are as follows:

Gary M. Pagaduan (Pagaduan), an Operative of the Makati Anti-Drug Abuse Council (MADAC), testified that MADAC assisted the Philippine Drug Enforcement Agency (PDEA) and the Station Anti-Illegal Drugs Special Operations Task Group (SAIDSOTG) (collectively referred to as the team) in a buy-bust operation they conducted against appellant on 19 August 2011. Pagaduan was assigned as the poseur-buyer, with PO1 Michelle Gimena (Gimena) as his back-up companion.

On 19 August 2011 at around 4:45 p.m., the team arrived at Kasoy Street, Barangay Rizal, Makati City. The team was accompanied by a confidential informant who introduced Pagaduan to appellant. The confidential informant asked appellant, "meron ba?" Appellant asked for P300.00. Pagaduan gave the money to appellant. In turn, appellant gave Pagaduan a sachet containing *shabu*. Pagaduan gave the pre-arranged signal to the team. Gimena, together with the MADAC operatives, rushed to the scene. Pagaduan held appellant to prevent him from escaping and asked him to sit down. Pagaduan ordered appellant to empty his pockets. Appellant took from his pocket a red toothbrush case which contained two sachets of *shabu*.

Pagaduan testified that a lot of people started swarming the street because of the commotion. The team secured the specimens and took appellant to the barangay hall which was about 30 meters away from Kasoy Street. The inventory of the items seized took place in the barangay hall, witnessed by Chairperson Wenefreda Ureña (Ureña). From the barangay hall, the team went back to their office for the preparation of the request for laboratory examination of the sachets seized and for the medical and urine testing of appellant. PS/Insp. Anamelisa Bacani (Bacani) received the three sachets, conducted a laboratory examination, and issued a Physical Science Report that the specimens contained in the three sachets tested positive for the presence of methamphetamine hydrochloride (*shabu*). The parties stipulated on and dispensed with the testimony of Bacani.

For the defense, appellant claimed that between 4:00 p.m. to 5:00 p.m. of 19 August 2011, he was inside his house watching a television show. The only person with him was his sleeping seven-year old niece. Appellant heard a commotion outside his house. He turned off the television and went outside. He saw a person wearing a civilian attire and carrying a firearm standing inside their terrace, accompanied by one female and two male persons. The person in civilian attire asked him where his companion ran. Appellant answered that his niece was his only companion in the house. The two male persons handcuffed appellant, while the person wearing civilian attire and his female companion entered his house.

These four persons brought appellant to the barangay hall. Ureña, who was surprised to see him at the barangay hall, asked him what happened. Appellant could not give any explanation. Appellant alleged one of the persons placed a toothbrush (case) and two sachets on the table. He asked appellant to face the items and took his picture.

Mark Jonil Aquino^[5] (Aquino), appellant's nephew, testified that he was inside his room at the second floor of the house when he heard a commotion. He peeked through the window and saw his uncle with four persons. His uncle was handcuffed. One of the four persons looked up and saw him. Fearing that he would be pursued, Aquino went to his grandmother's house.

The Decision of the Trial Court

In its 5 May 2014 Decision, the trial court found appellant guilty of violation of Sections 5 and 11, Article II of RA 9165 but acquitted him for violation of Section 15 thereof.

The trial court ruled that the prosecution was able to establish all the elements of illegal possession of dangerous drugs, *i.e.*, that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug. The trial court held that the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from appellant. The trial court rejected appellant's defense of *alibi* as a common and standard defense ploy in most cases involving violation of RA 9165.

The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 11-2601, finding the accused Gerardo Labini y Grajo, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and
2. In Criminal Case No. 11-2602, finding the accused Gerardo Labini y Grajo, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing him to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (Php400,000.00) without subsidiary imprisonment in case of insolvency.
3. In Criminal Case No. 11-2603, finding the accused Gerardo Labini y Grajo NOT GUILTY of the charge for violation of Section 15 of RA 9165.

SO ORDERED.^[6]

Appellant filed a notice of appeal from the trial court's decision.

The Decision of the Court of Appeals

In its 2 December 2015 Decision, the Court of Appeals denied the appeal for lack of merit and affirmed the trial court's decision.

The Court of Appeals ruled that the prosecution was able to establish the chain of custody. The Court of Appeals ruled that while a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain, what is important is the preservation of the integrity and evidentiary value of the items seized. In this case, the prosecution sufficiently established the evidentiary value of the *corpus delicti* and proved that the sachets containing *shabu* that were bought and recovered from appellant were the same ones presented before the trial court.

The Court of Appeals ruled that the prosecution explained why the inventory of the items seized was not done in the place where the buy-bust operation took place. The Court of Appeals ruled that Kasoy Street is an *eskinita* or a secondary road, and a lot of people congregated in the area when the buy-bust operation took place. According to the Court of Appeals, the fact that the marking of the evidence seized was done in the barangay hall did not affect their admissibility. The Court of Appeals further ruled that the inventory was made in the presence of the appellant and Chairperson Ureña.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The Decision dated 05 May 2014 of the Regional Trial Court of Makati City, Branch 64 finding accused-appellant Gerardo Labini y Grajo @ Jerry guilty beyond reasonable doubt for violations of Sections 5 and 11, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of Php500,000.00 without subsidiary imprisonment in case of insolvency in *Criminal Case No. 11-2601*, and the indeterminate penalty of imprisonment of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of Php400,000.00 without subsidiary imprisonment in case of insolvency in *Criminal Case No. 11-2602* are AFFIRMED.

SO ORDERED.^[7] (Italicization in the original)

Appellant appealed from the Court of Appeals' decision.

The Issue

The only issue in this case is whether the guilt of appellant has been proven beyond reasonable doubt.

The Ruling of this Court

The appeal has merit.

At the time of the commission of the alleged crime on 19 August 2011, the prevailing law that enumerates the requirements of the *chain of custody rule* was Section 21 of RA 9165. Prior to its amendment by Republic Act No. 10640^[8] (RA 10640) on 15 July 2014, Section 21 of RA 9165 provides:

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 x (Emphasis supplied)

The implementing rule for Section 21 of RA 9165 states:

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 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 the disposition in the following manner:

- (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;

x x x x

On 15 July 2014, RA 10640 amended Section 21 of RA 9165, as follows:

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 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 [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 and custody over said items.

x x x x (Emphasis supplied)

Since the alleged commission of the offense took place on 19 August 2011, the applicable

provision is Section 21 of RA 9165. Section 21 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. Under the IRR, if the immediate physical inventory and photographing are not practicable, the buy-bust team should conduct the same as soon as it reaches the nearest police station, or the nearest office of the apprehending officer or team. The inventory must be done in the presence of the accused or his representative or counsel, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. Clearly, the three required witnesses should be physically present at the time of the apprehension of the accused or immediately thereafter, a requirement that the buy-bust team can easily comply with because a buy-bust operation, by its nature, is a planned activity.^[9] This means that the buy-bust team has enough time and opportunity to bring with them, or immediately after the buy-bust operation, the said witnesses.^[10]

In *People v. Lim*,^[11] this Court enumerated the mandatory policy to prove chain of custody under Section 21 of RA 9165, as amended, as follows:

1. In the sworn statement/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR;
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items;
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

In *People v. Sipin*,^[12] this Court ruled that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165, and its failure to follow the mandated procedure must be adequately explained and must be proven as a fact under the rules.^[13] In *Sipin*, the Court ruled what constitutes justifiable reasons for the absence of any of the three witnesses, thus:

(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 officials] 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 futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and the 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.^[14]

In this case, the prosecution only explained why the apprehending officers failed to mark the seized evidence and conduct the inventory of the items at the place where the buy-bust

operation took place. The prosecution explained that the side street where the buy-bust operation took place was quickly filled by people after the incident, and the team needed to secure the items they seized from appellant. The prosecution also explained that the barangay hall where they took appellant was just 30 meters away from the street where the buy-bust operation transpired. However, there was no explanation why only Chairperson Ureña was present during the inventory, which constitutes non-compliance with the three-witness rule.

The Court has ruled that it is a grave error to trivialize the necessity of the number and identity of the witnesses enumerated in the law.^[15] The police officers' cavalier attitude towards adherence to procedure and protection of the rights of the accused is contrary to what is expected from our servants and protectors.^[16] The non-observance of the three-witness rule, coupled with the prosecution's failure to offer any explanation or justification for its non-compliance, is a clear violation of Section 21 of RA 9165, as amended, and its implementing rules and warrants the acquittal of appellant from the offenses charged for failure to prove his guilt beyond reasonable doubt.

WHEREFORE, we **GRANT** the appeal. The 2 December 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06978, which affirmed the 5 May 2014 Decision of the Regional Trial Court of Makati City, Branch 64 in Criminal Case No. 11-2601 and in Criminal Case No. 11-2602, finding appellant Gerardo Labini y Grajo @ Jerry guilty beyond reasonable doubt for violation, respectively, of Sections 5 and 11, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Gerardo Labini y Grajo @ Jerry is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Bureau of Corrections in Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

*Leonen, * Caguioa, Reyes, J., Jr., and Zalameda, JJ.*, concur.

* Designated additional member per Raffle dated 2 September 2019.

[1] *Rollo*, pp. 2-24. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Melchor Q.C. Sadang concurring.

[2] CA *rollo*, pp. 63-69. Penned by Judge Gina M. Bibat-Palamos.

[3] Comprehensive Dangerous Drugs Act of 2002.

[4] *Rollo*, pp. 3-4.

[5] Also referred to in the records as Mark Jonel Aquino.

[6] CA *rollo*, p. 69.

[7] *Rollo*, p. 23.

[8]

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."

[9] *People v. Cadungog*, G.R. No. 229926, 3 April 2019.

[10] Id.

[11] G.R. No. 231989, 4 September 2018.

[12] G.R. No. 224290, 11 June 2018.

[13] *People v. Cadungog*, supra note 9.

[14] *People v. Orcullo*, G.R. No. 229675, 8 July 2019.

[15] *People v. Tampus*, G.R. No. 221434, 6 February 2019.

[16] Id.