

SECOND DIVISION

[G.R. No. 231792, January 29, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ALVIN
JUGO Y VILLANUEVA, ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal^[1] is the Decision^[2] dated September 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06927, which affirmed the Decision^[3] dated June 27, 2014 of the Regional Trial Court of Dagupan City, Branch 44 (RTC) in Criminal Case No. 2011-0398-D, finding accused Alvin Jugo y Villanueva (Jugo) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[4] filed before the RTC charging Jugo of violation of Section 5, Article II of RA 9165, the accusatory portion of which states:

That on or about August 5, 2011 in the afternoon, in Primicias St., corner 4th Block, Sagud Bahley, San Fabian, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously SELL, TRADE, and DELIVERED (sic) one (1) transparent plastic sachet of methamphetamine hydrochloride, commonly known as shabu, weighing 0.101 gram to an undercover police officer of PNP San Fabian during a buy-bust operation, without any permit or license to do so.

CONTRARY TO Section 5, Art. II of RA 9165.^[5]

The prosecution alleged that sometime in 2011, members of the San Fabian Police Station conducted surveillance for three (3) months to verify the reports that Jugo was engaged in illegal drug activities.^[6] In the morning of August 5, 2011, a team composed of Police Officer 2 Fernando Romero, Jr. (PO2 Romero) as the poseur-buyer, Senior Police Officer 1 Ariel Villegas (SPO1 Villegas), Police Officer 3 Edmund Disu^[7] (PO3 Disu), Police Officer 3 Cristobal Eslabra, and Police Officer 1 Fernando Berongoy, Jr., prepared for a buy-bust operation to be conducted at Primicias St., corner 4th Block, Barangay Sagud Bahley, San Fabian, Pangasinan.^[8] At around 2:00 o'clock in the afternoon, PO2 Romero and the civilian informant met with Jugo and his two (2) companions, Amor Lomibao (Lomibao) and Marvin Zamudio (Zamudio), in front of a *carinderia*.^[9] The civilian informant first approached Jugo, followed by PO2 Romero. Afterwards, Jugo, Lomibao, and Zamudio executed the transaction with PO2 Romero, who then gave the marked money to Jugo; in turn, Jugo handed to PO2 Romero one (1) heat-sealed plastic sachet containing white crystalline substance.^[10] After the civilian asset left, PO2 Romero performed the pre-arranged signal, prompting the rest of the team to approach them and arrest Jugo and his two (2) companions. SPO1 Villegas conducted a body search on Jugo and recovered the marked money.^[11] PO2 Romero retained possession of

the subject plastic sachet containing white crystalline substance.^[12]

After the buy-bust operation, the team returned to the police station with the confiscated sachet to avoid any untoward incident as people were approaching the team.^[13] Thereat, PO2 Romero marked the subject plastic sachet with "FMR,"^[14] took photographs of the drug and motorcycle, and prepared the request for laboratory examination, Joint Affidavit of Arrest, and Confiscation Receipt.^[15] Together with Jugo, PO2 Romero and PO3 Disu went to the barangay hall and asked Barangay Captain Alvin Fajardo (Brgy. Capt. Fajardo) to sign the Confiscation Receipt.^[16] Thereafter, PO2 Romero and PO3 Disu brought the suspected sachet of drug, with a request for laboratory examination from Police Chief Inspector (PCI) Domingo Soriano, to the PNP Crime Laboratory for examination by PCI Emelda Roderos.^[17] The laboratory examination yielded positive results for the presence of *methamphetamine hydrochloride*, a dangerous drug.^[18]

In his defense, Jugo testified that on August 5, 2011, he went with Lomibao and Zamudio to Barangay Cayanga to borrow money from his uncle for his wife's delivery.^[19] While onboard the motorcycle going back to Barangay Sagud Bahley, they were flagged down by PO2 Romero and were subsequently brought to the police station for interrogation. Later on, Lomibao and Zamudio were released, while Jugo remained in detention.^[20]

The RTC Ruling

In a Decision^[21] dated June 27, 2014, the RTC found Jugo liable for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165.^[22] Accordingly, Jugo was sentenced to suffer the penalty of the life imprisonment and ordered to pay a fine of P500,000.00.^[23]

The RTC found that the prosecution was able to establish all the elements of illegal sale of *shabu* during a valid buy-bust operation.^[24] In this regard, the RTC ruled that PO2 Romero's testimony positively identified Jugo as the seller of the dangerous drug, which was presented and duly identified in court. Further, the RTC did not give weight to Jugo's bare denial that he was merely flagged down by PO2 Romero.^[25]

Aggrieved by his conviction, Jugo appealed^[26] to the CA, contending, among others, that there were various deviations from the chain of custody rule.^[27] Particularly, he pointed out that: (a) the marking of the drug was not immediately conducted upon arrest and confiscation; (b) the marking, taking of photographs, and physical inventory were not done in the presence of a representative from the media, the Department of Justice, and an elected public official; and (c) there were discrepancies between the testimony of PO2 Romero and the Confiscation Receipt and Request for Laboratory Examination, as the documents state that the one (1) plastic sachet of *shabu* was seized from all three, namely, Jugo, Lomibao, and Zamudio, while PO2 Romero testified that the same drug was only confiscated from Jugo.^[28]

The CA Ruling

In a Decision^[29] dated September 27, 2016, the CA affirmed Jugo's conviction.^[30] It held that the testimonies of the police officers were sufficient to prove that Jugo committed the crime of illegal sale of *shabu* and that PO2 Romero's testimony satisfactorily established the elements of illegal sale of prohibited drugs, identifying PO2 Romero as the poseur-buyer and Jugo as the seller of one (1) plastic sachet of *shabu* for the price of P300.00.^[31] Moreover, the CA remarked that the warrantless arrest of Jugo was legal; hence, the seized items are admissible in evidence.^[32] Lastly, the CA observed that the chain of custody was sufficiently established as the handling of the seized items was substantially compliant with the legal requirements of

Section 21, Article II of the Implementing Rules and Regulations (IRR) of RA 9165.^[33]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Jugo's conviction for violation of Section 5, Article II of RA 9165 must be upheld.

The Court's Ruling

The appeal is meritorious.

Preliminarily, 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 correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. 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.^[34]

Here, Jugo was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. 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.^[35] In such a crime, it is essential that the identity of the prohibited drug be established with moral certainty. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.^[36]

While not specifically defined in RA 9165, Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002^[37] defined the term "chain of custody" as the duly recorded authorized movements and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination, until it is presented in court. In this relation, Section 21, Article II of RA 9165 outlines the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved.^[38] Under the said section, the apprehending team shall, among others, immediately after seizure and confiscation, conduct a physical inventory and take photographs of the seized items **in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media or the Department of Justice, and any elected public official** who shall then 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 twenty-four (24) hours from confiscation for examination purposes.^[39] Case law stresses that **"[w]ithout the insulating presence of the representative from the media or the Department of Justice, [and] 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."^[40]

Nonetheless, it has been clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.^[41] In fact, the

IRR of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640^[42] - provides 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 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.** ^[43] 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.^[44] However, prevailing jurisprudence instructs that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, 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.^[45]

After a judicious study of the case, the Court finds that there are substantial gaps in the chain of custody which were unjustified, thereby putting into question the identity, integrity, and evidentiary value of the seized items from Jugo.

At the outset, the Court notes SPO1 Villegas's testimony on re-direct examination where he essentially testified that while he was present at the police station when PO2 Romero prepared the Confiscation Receipt^[46] - which the prosecution claims to be the physical inventory of the seized item - he nevertheless admitted that he never saw PO2 Romero make such preparation, and also claimed lack of knowledge as to the other details of the preparation of said receipt despite him and PO2 Romero being in the same office:

Pros. Lopez: By the way, where were you when PO2 Romero was already preparing this confiscation receipt?

SPO1 Villegas: I am in the office, ma'am.

Q: What about PO2 Romero, do you know where did he prepare this confiscation receipt?

A: In the office also, ma'am.

Q: And did you see him prepared [sic] this confiscation receipt?

A: No, ma'am.

Q: So you did not know what point in time exactly PO2 Romero prepared this Confiscation Receipt?

A: Yes, ma'am.

Q: You also do not know who signed this Confiscation Receipt as you say you do not know when this Confiscation receipt was prepared and who signed the same, correct?

A . Yes, ma'am.^[47]

Verily, the aforesaid testimony raises questions as to whether or not the Confiscation Receipt was prepared in an orderly manner. More importantly, a plain examination of the Confiscation Receipt shows that it was not prepared in the presence of any representative from either the media or the DOJ. Furthermore, the prosecution's claim that an elected public official attended

the preparation of the Confiscation Receipt was belied by no less than PO2 Romero, who explicitly testified that they merely went to the office of Brgy. Capt. Fajardo to have the Confiscation Receipt signed after the same was already prepared and after the photographs were already taken:

Pros. Lopez: What about the signature on top of the name Alvin Fajardo, do you know whose signature is this?

PO2 Romero: That is the signature of Brgy. Captain Alvin Fajardo, ma'am.

Q: Can you tell us who asked Alvin Fajardo to sign this Confiscation Receipt?

A: It's me, ma'am.

Q: Where did you ask him to sign this Confiscation Receipt?

A: At the barangay hall, ma'am.^[48]

Notably, such testimony was corroborated by that of SPO1 Villegas on cross-examination, to wit:

Q: Did you contact any barangay official when the confiscation receipt was prepared because you said you saw the preparation of the same?

A: That's the job of the MAIDSOTG, PNCO, ma'am.

Q: You said you saw the preparation of the confiscation receipt, was there any barangay official at your office who witnessed the preparation of the confiscation receipt and also the signing of the same?

A: None, ma'am.

Q: So Punong Barangay Alvin Fajardo was not there?

A. Yes, ma'am.

Q: Did he sign this confiscation receipt or not?

A: I don't know because it was the job of the MAIDSOTG to prepare that document.

Q: And there was no picture taken to show the signing of the confiscation receipt?

A: None, ma'am.^[49] (Emphases and underscoring supplied)

As may be gleaned from the foregoing, the preparation of the inventory, *i.e.*, Confiscation Receipt, and taking of photographs were **NOT** done in the presence of: (a) the accused or his representative; (b) an elected public official; and (c) a representative from the DOJ or the media, contrary to the express provisions of Section 21, Article II of RA 9165, as amended by RA 10640. In such instances, the prosecution must provide a credible explanation justifying the non-compliance with the rule as the presence of these individuals is not just a matter of procedure. Rather, the rule exists to ensure that protection is given to the innocent whose life and liberty are put at risk. Unfortunately, no such explanation was proffered by the prosecution to justify the procedural lapse.

By and large, the breaches of procedure committed by the police officers militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.^[50] It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as

a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.^[51] Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR, Jugo's acquittal is in order.

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 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. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.^[52]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 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.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06927 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Alvin Jugo y Villanueva is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

^[1] See Notice of Appeal dated October 19, 2016; *rollo*, p. 17-18.

^[2] Id. at 2-16. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Rodil V. Zalameda and Samuel H. Gaerlan concurring.

^[3] CA *rollo*, pp. 48-53. Penned by Judge Genoveva Coching-Maramba.

^[4] Records, p. 1.

^[5] Id.

^[6] CA *rollo*, p. 49.

[7] "Dizu" in some parts of the records.

[8] CA *rollo*, p. 49. See also Joint Affidavit of Arrest dated August 8, 2011; records, p. 5.

[9] See *id.*

[10] See *id.* See also records, p. 5.

[11] See *id.* at 49-50. See also records, p. 5.

[12] See *id.* at 50.

[13] See *rollo*, p. 9. See also CA *rollo*, p. 50.

[14] TSN, May 6, 2013, pp. 6 and 8.

[15] See CA *rollo*, p. 50.

[16] *Id.*

[17] *Id.* at 48.

[18] *Id.* at 48-49. See also Chemistry Report No. D-101-2011-U examined by Police Chief Inspector and Forensic Chemist Emelda Besarra Roderos; records p. 85.

[19] *Id.* at 50.

[20] See *id.* at 50-51.

[21] *Id.* at 48-53.

[22] *Id.* at 53.

[23] *Id.*

[24] See *id.* at 51-52.

[25] *Id.* at 52.

[26] See Notice of Appeal dated July 3, 2014; records, pp. 157-158.

[27] See CA *rollo*, p. 38.

[28] *Id.* at 40-42.

[29] *Rollo*, pp. 2-16.

[30] *Id.* at 15.

[31] See *id.* at 6-10.

[32] See *id.* at 11-12.

[33] Id. 12-14.

[34] See *People v. Ceralde*, G.R. No. 228894, August 7, 2017, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[35] See *id.*, citing *People v. Sumili*, 753 Phil. 342, 348 (2015).

[36] See *id.*, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[37] Entitled "GUIDELINES ON THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS, CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS, AND LABORATORY EQUIPMENT," approved on October 18, 2002.

[38] See *People v. Ceralde*, *supra* note 34, citing *People v. Sumili*, *supra* note 35 at 349-350.

[39] See Section 21 (1) and (2), Article II of RA 9165.

[40] See *People v. Ceralde*, *supra* note 34, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[41] See *id.*, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[42] 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, Section 1 of which 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"

[43] See Section 21 (a), Article II of the IRR of RA 9165.

[44] See *People v. Ceralde*, supra note 34, citing *People v. Goco*, G.R. No. 219584, October 17, 2016.

[45] See *id.*; citations omitted.

[46] See Confiscation Receipt dated August 5, 2011; records, p. 11.

[47] TSN, August 23, 2012, pp. 15-16.

[48] TSN, May 23, 2013, p. 7.

[49] TSN, August 23, 2012, p. 14.

[50] See *People v. Sumili*, supra note 35 at 352.

[51] See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

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