

SECOND DIVISION

[G.R. No. 233325, April 16, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
PASTORLITO V. DELA VICTORIA, ACCUSED-APPELLANT.**

DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Pastorlito V. Dela Victoria (Dela Victoria) assailing the Decision^[2] dated April 7, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01428-MIN, which affirmed the Decision^[3] dated March 25, 2014 of the Regional Trial Court of Butuan City, Branch 4 (RTC) in Crim. Case No. 13139, finding Dela Victoria guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[5] filed before the RTC charging Dela Victoria with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, the accusatory portion of which state:

Crim. Case No. 13139

That on or about 10:35 o'clock [sic] in the morning of October 9, 2008 at Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully[,] and feloniously sell and deliver to a [poseur-buyer] for a consideration of P500.00 marked money[,] one (1) small sachet of white crystalline [*methamphetamine hydrochloride*] otherwise known as ["*shabu*"] weighing zero point zero one zero six (0.0106) gram, which is a dangerous drug.

CONTRARY TO LAW.^[6]

The prosecution alleged that on October 8, 2008, a police asset informed the Philippine Drug Enforcement Agency (PDEA) Regional Office that Dela Victoria, who is on the PDEA's watchlist of drug personalities, was selling drugs at Langihan Road comer Ong Yiu Road, Brgy. San Ignacio, Butuan City.^[7] After conducting surveillance, a buy-bust team was formed, which was composed of PDEA Operatives Investigation Officer (IO) I Sotero B. Ibarra, Jr. (IO1 Ibarra), as the designated poseur-buyer,^[8] and IO1 Rodelio M. Daguman, Jr. (IO1 Daguman), as the arresting officer,^[9] among others. On October 9, 2008, the buy-bust team, together with the asset, proceeded to the target area. As soon as Dela Victoria saw them, he approached the asset and the latter introduced IO1 Ibarra as a cousin interested in buying *shabu*. Dela Victoria asked if he had money and IO1 Ibarra replied, "*aw-matic*," giving the marked P500.00 bill, while Dela Victoria simultaneously handed over one (1) plastic sachet of suspected *shabu*. After inspecting the same, IO1 Ibarra made a "missed call" to IO1 Daguman, the pre-arranged signal, by which time, Dela Victoria started to walk away. However, the operatives caught up and arrested Dela Victoria in front of a tinsmith's shop.^[10] They then

brought Dela Victoria inside the PDEA vehicle where an initial search was conducted, and the marked money was recovered. Thereafter, they went to the PDEA - Regional Office XIII (Libertad, Butuan City) where IO1 Ibarra marked the confiscated sachet, prepared the inventory,^[11] and took pictures,^[12] while Dela Victoria remained inside the car until Barangay Captain Florencio M. Cañete arrived.^[13] After securing the necessary letter-request,^[14] IO1 Ibarra delivered the sachet to the PNP Crime Laboratory where it was received by Police Chief Inspector Cramwell T. Banogon, who confirmed that the substance inside the seized sachet tested positive for the presence of *methamphetamine hydrochloride*, a dangerous drug.^[15]

For his part, Dela Victoria denied the charges against him, claiming that at 10:30 in the morning of October 9, 2008, he was making a "*taho*" container in their family-owned tin shop, when a person approached, pointed a gun, and arrested him for allegedly selling drugs. He averred that he was forced to board a PDEA motor vehicle, where he was repeatedly asked questions. When they arrived at the PDEA Office, he was shown a P500.00 bill and a small cellophane, both of which, he claimed were merely planted by the PDEA operatives in order to charge him with the said crime.^[16]

The RTC Ruling

In a Decision^[17] dated March 25, 2014, the RTC found Dela Victoria guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency.^[18]

The RTC held that the prosecution sufficiently established all the elements of illegal sale of dangerous drugs as it was able to prove that: (a) one (1) sachet of *shabu* was sold during the buy-bust operation; (b) Dela Victoria was positively identified as the seller of the said dangerous drug; and (c) the dangerous drug was in the custody of IO1 Ibarra from the time of the sale until it was marked by him.^[19] Moreover, the RTC ruled that there was substantial compliance with the procedure under Section 21, Article II of RA 9165 even if the marking and inventory were done at the PDEA Office.^[20]

Aggrieved, Dela Victoria appealed^[21] to the CA.

The CA Ruling

In a Decision^[22] dated April 7, 2017, the CA affirmed Dela Victoria's conviction for the crime charged.^[23] It found the presence of all the elements of illegal sale of dangerous drugs through IO1 Ibarra's testimony. On the other hand, it did not find Dela Victoria's defense of planting of evidence substantiated. Further, the CA held that while the requirements under Section 21, Article II of RA 9165 were not perfectly adhered to by the PDEA operatives, since the marking of the sachet was done at the PDEA Office and not in the presence of Dela Victoria, the integrity and evidentiary value of the same were shown to have been duly preserved. It noted that IO1 Ibarra's marking on the confiscated sachet was clearly indicated on the Certificate of Inventory, Letter-Request for Examinations, and Chemistry Report submitted.^[24]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Dela Victoria's conviction for illegal sale of dangerous drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, 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.^[25] "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."^[26]

In this case, Dela Victoria was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. Notably, 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.^[27]

Case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[28]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.^[29]

Under the said section, prior to its amendment by RA 10640,^[30] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 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.^[31] In the case of *People v. Mendoza*,^[32] the Court stressed that "**[w]ithout the insulating presence of the representative from the media [and] the [DOJ], [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."^[33]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.^[34] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640^[35] – 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.**^[36] 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.^[37] In *People v. Almorfe*,^[38] **the Court**

explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.^[39] Also, in *People v. De Guzman*,^[40] it was emphasized that 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.^[41]

In this case, the Court finds that the PDEA operatives committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Dela Victoria.

First, records show that IO1 Ibarra failed to mark the confiscated sachet in the presence of the accused, Dela Victoria. During trial, IO1 Ibarra testified that:

[Prosecutor Felixberto L. Guiritan] Q: How about that sachet of shabu you brought on buy-bust? What did you do to it?

[IO1 Ibarra] A: It was in my possession, sir.

Q: What did you do to it?

x x x x

A: I just got hold of it and when we arrived in the office I placed marking on it.^[42]

x x x x

[Defense Counsel Atty. Jesus A. Tantay] Q: It seemed that the barangay captain arrived first in your office before the accused was photographed? **Or that Mr. Witness the accused arrived first but he was not taken out of the vehicle not unless the barangay captain would arrive**, correct?

[IO1 Ibarra] A: **We did not let the accused disembark from the vehicle until the arrival of the barangay captain because we immediately fetched the barangay captain** x x x.

Q: So it means that you really had enough time to do anything to the accused while he was confined and away from the public inside the vehicle?

A: We were just talking to him inside the vehicle, sir. xxxx

Q: So everything from photographing of the alleged evidence; marked money, *shabu* and the making of the certificate of inventory, making of the request for laboratory examination, *etc.* were done in the office?

A: Yes, sir.

x x x x^[43] (Emphases and underscoring supplied)

As may be gleaned above, IO1 Ibarra marked the seized sachet and prepared the certificate of inventory at the PDEA Office. Notably, these were not done in the presence of Dela Victoria since at that time, he was being held inside the PDEA vehicle while waiting for the barangay captain to arrive.

In this relation, it deserves pointing out that the said marking and preparation of inventory were not even done at the place of arrest or at the nearest police station. While Section 21, Article II of RA 9165 allows the same to be conducted at the nearest office of the apprehending team, if practicable, the prosecution in this case, did not even claim that the PDEA Office was the

nearest office from the tinsmith's shop where the drugs were seized. When cross-examined on this point, IO1 Ibarra stated that:

[Defense Counsel Atty. Jesus A. Tantay] Q: I noticed that, and this is a public knowledge, that the tinsmith's shop that we are referring to is just very near the Langihan Police Station than your office which is just around six kilometers from the scene, is not that correct?

[SO2 Ibarra] A: Yes, sir, that is true.

Q: But you did not bother to refer first, out of some respect to that office which has jurisdiction over the place, to report the incident and where you could properly or conveniently mark the *shabu* or other evidence, Mr. Witness?

A: We no longer stopped by their office, sir.

Q: But if you chose to do it you could have done it Mr. Witness?

A: It is not our practice to stop by the police station, sir.

Q: But it could have been the practice of your office to go to the barangay hall, which has jurisdiction over the crime scene Mr. Witness, where you could make the inventory or perhaps photographing of the evidence and where you could summon or request the barangay officials to sign the inventory, is that correct?

A: We just called up the barangay captain and requested him to proceed to our office because he was already in his house, sir.

x x x x^[44] (Emphasis and underscoring supplied)

As mentioned above, the Langihan Police Station and the San Ignacio Barangay Hall have a closer proximity to the place of arrest than the PDEA Office. IO1 Ibarra's explanation that it is "not [their] practice to pass by the police station" hardly justifies a deviation from the rule. In fact, contrary to IO1 Ibarra's claim, the barangay captain admitted that he was actually at the barangay hall when he was summoned by the PDEA operatives on the date of the incident.^[45] Thus, transporting the seized items all the way to the PDEA Office for marking and inventory, when the same could have been immediately done at the Langihan Police Station or at the San Ignacio Barangay Hall, casts serious doubts on the integrity of the confiscated drug. In *People v. Dahil*,^[46] the Court explained that:

Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti*.^[47]

Second, there was no DOJ representative during the conduct of the inventory and no justification given for the absence.^[48] Records show that it was only the barangay captain and the media representative who signed the inventory when they separately arrived and were shown the confiscated items and the inventory only after affixing their signatures:

[Defense Counsel Atty. Jesus A. Tantay] Q: The only one who was able to sign the inventory Mr. Witness was the barangay captain?

[SO2 Ibarra] A: There was also one member of the press who was able to sign the inventory.

Q: Of course the barangay captain and the media man did not go together to your office, they arrived alternately?

A: Yes, sir.

Q: There was no representative from the DOJ at that time, correct?

A: **Yes, sir, there was none.**^[49] (Emphasis and underscoring supplied)

The mere marking of the seized drugs, as well as the conduct of an inventory, in violation of the strict procedure requiring the presence of the accused, the media, and responsible government functionaries, fails to approximate compliance with Section 21, Article II of RA 9165.^[50] The presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in **full view of the accused and the required witnesses** cannot be brushed aside as a simple procedural technicality.^[51] While non-compliance is allowed, the same ought to be justified. Case law states that the prosecution must show that earnest efforts were exerted by the PDEA operatives to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised.^[52] Consequently, Dela Victoria'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,] order is too high a price for the loss of liberty. x x x.^[53]

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] 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."^[54]

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 7, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01428-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Pastorlito V. Dela Victoria 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.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] See Notice of Appeal dated April 20, 2017; *rollo*, pp. 19-20.

[2] *Id.* at 3-18. Penned by Associate Justice Perpetua Atal-Paño with Associate Justices Edgardo T. Lloren and Oscar V. Badelles, concurring.

[3] CA *rollo*, pp. 29-42. Penned by Judge Godofredo B. Abul, Jr.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT No. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Dated October 22, 2008. See records, p. 1.

[6] See *id.*

[7] See *rollo*, p. 4 and CA *rollo*, p. 30. See also records, p. 19.

[8] See Affidavit of Poseur-Buyer; records, pp. 7-8.

[9] See Affidavit of Arresting Officer; *id.* at 5-6.

[10] See *rollo*, p. 5 and CA *rollo*, pp. 30-31.

[11] See Certificate of Inventory; records, p. 17.

[12] See TSN, December 12, 2013, p. 10.

[13] See TSN June 3, 2010, pp. 29-30 and TSN December 12, 2013, p. 29.

[14] See records, p. 18.

[15] See Chemistry Report No. DT-077-2008 dated October 9, 2008; records, p. 14. See also *rollo*, p. 5.

[16] See *rollo*, pp. 7-9.

[17] CA *rollo*, pp. 29-42.

[18] *Id.* at 41.

[19] See *id.* at 36-38.

[20] See *id.* at 39-41.

[21] *Id.* at 10-11.

[22] *Rollo*, pp. 3-18.

[23] See *id.* at 17.

[24] See *id.* at 14-17.

[25] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[26] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[27] *People v. Sumili*, 753 Phil. 342, 348 (2015).

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

[29] *People v. Sumili*, *supra* note 27, at 349-350.

[30] 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, 20 14.

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

[32] 736 Phil. 749 (2014).

[33] *Id.* at 764; emphases and underscoring supplied.

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

[35] 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 x"

[36] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[37] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[38] 631 Phil. 51 (2010).

[39] *Id.* at 60.

[40] 630 Phil. 637 (2010).

[41] *Id.* at 649.

[42] TSN, June 3, 2010, p. 13.

[43] TSN, June 3, 2010, pp. 29-31.

[44] TSN, June 3, 2010, pp. 30-32.

[45] TSN, May 27, 2013, p. 9.

[46] *Supra* note 25.

[47] *Id.* at 232; emphasis and underscoring supplied.

[48] See TSN, June 3, 2010, p. 32.

[49] TSN, June 3, 2010, pp. 32.

[50] See *Lescano v. People*, G.R. No. 214490, January 13, 2016, 781 SCRA 73, 88.

[51] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[52] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

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

[54] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

