

## SECOND DIVISION

[ G.R. No. 232950, August 13, 2018 ]

**KENNETH SANTOS Y ITALIG, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated August 30, 2016 and Resolution<sup>[3]</sup> dated July 10, 2017 rendered by the Court of Appeals (CA) in CA-G.R. CR No. 37743 affirming with modification the Decision<sup>[4]</sup> dated June 10, 2015 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case No. 88635 finding petitioner Kenneth Santos y Italig (petitioner) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (RA) No. 9165<sup>[5]</sup> and sentencing him to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of P300,000.00.

#### The Facts

This case stemmed from an Information<sup>[6]</sup> dated September 13, 2012 charging petitioner with violation of Section 11, Article II of RA 9165, to wit:

That on or about the 11<sup>th</sup> day of September, 2012 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control [t]hirteen (13) heat-sealed transparent plastic sachets each containing MARIJUANA leaves and fruiting tops weighing 0.39 gram, 0.36 gram, 0.34 gram, 0.35 gram, 0.34 gram, 0.39 gram, 0.37 gram, 0.38 gram, 0.37 gram, 0.39 gram, 0.38 gram, 0.38 gram & 1.24 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Marijuana, a dangerous drug, in gross violation of the above-cited law[.]

Contrary to law.<sup>[7]</sup>

The prosecution alleges that on September 11, 2012, at around 5:30 in the afternoon, the team of police officers led by one Police Chief Inspector Mendoza and consisting of Police Officer (PO) 3 Jeffred Pacis (PO3 Pacis), Senior Police Officer (SPO) 1 John Bombase (SPO1 Bombase), a certain PO3 Ablaza, and PO2 Joel Rosales (PO2 Rosales) conducted a routine patrol along Libis Talisay, Barangay 12, Caloocan City. Thereafter, PO3 Pacis and SPO1 Bombase rested for a while in front of a store.<sup>[8]</sup>

While there, at a distance of about five (5) meters, PO3 Pacis noticed petitioner, standing at a street corner and removing something from his pocket. PO3 Pacis saw that it was a plastic sachet, prompting him to alert SPO1 Bombase. Discreetly, they approached petitioner to further scrutinize what he was holding in his hands. At a distance of an arm's length, PO3 Pacis saw that petitioner was holding a plastic sachet containing *marijuana*. When PO3 Pacis and SPO1 Bombase introduced themselves as police officers, petitioner attempted to run. However, PO3 Pacis was able to immediately grab petitioner's hands and recover the plastic sachet from

him.<sup>[9]</sup>

Thereafter, SPO1 Bombase apprised petitioner of his rights, while PO3 Pacis conducted a search on the body of petitioner. The search yielded another twelve (12) plastic sachets of *marijuana* from petitioner's pocket. PO3 Pacis marked the seized plastic sachets with "KSI/JP-1" to "KSI/JP-14" and the date 09-11-12; after which, they returned to the Station Anti-Illegal Drugs, Samson Road, Caloocan City, and turned over the confiscated plastic sachets and the person of petitioner to the investigator. Subsequently, petitioner and the confiscated sachets were brought to the crime laboratory for examination. While petitioner tested negative<sup>[10]</sup> for drug use, the specimens found in the plastic sachets tested positive<sup>[11]</sup> for *marijuana*, a dangerous drug.<sup>[12]</sup>

For his defense, petitioner claimed that on September 11, 2012, between 5:00 to 6:00 o'clock in the afternoon, he was watching a basketball game at Orcania Street, Caloocan City when five (5) men approached him and invited him to the police station. When he asked what his violation was, they merely told him to go with them. He was first brought to the Diosdado Macapagal Medical Center (now Caloocan City Medical Center) where he was examined and thereafter, to the police station where he was frisked and the police recovered his cellphone and wallet. Subsequently, two (2) persons, who introduced themselves as "Tanod" and "Ex-O," arrived and claimed to be the victims of a robbery-snatching incident. However, they denied that petitioner was the perpetrator thereof. After they left, the police asked petitioner for P10,000.00; otherwise, they would file a criminal case against him. When petitioner replied that he had no money, they showed him an ice bag containing dried *marijuana* leaves, which they threatened to use as evidence against him. The following day, he was subjected to inquest proceedings.<sup>[13]</sup>

### **The RTC Ruling**

In a Decision<sup>[14]</sup> dated June 10, 2015, the RTC found petitioner guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and accordingly, sentenced him to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine of P300,000.00.<sup>[15]</sup>

In convicting petitioner, the RTC found that the prosecution was able to prove all the elements of the offense charged, to wit: (1) petitioner was in possession of dried leaves of *marijuana*, a dangerous drug, after a valid warrantless arrest by PO3 Pacis; (2) petitioner was not authorized by law to possess said *marijuana*; and (3) petitioner freely and consciously possessed the same.<sup>[16]</sup> Moreover, the prosecution was able to establish the identity of the seized drugs in accordance with the requirements of Section 21, Article II of RA 9165 notwithstanding the absence of a representative from the media and the Department of Justice (DOJ), or an elected public official during the inventory of the seized items. As the integrity and evidentiary value thereof were preserved by the arresting officers, the RTC ruled that the chain of custody of the seized items had been satisfactorily established.<sup>[17]</sup> In contrast, it rejected petitioner's defenses of denial and alibi, as the latter failed to prove the same with convincing evidence.<sup>[18]</sup>

Aggrieved, petitioner appealed<sup>[19]</sup> his conviction to the CA.

### **The CA Ruling**

In a Decision<sup>[20]</sup> dated August 30, 2016, the CA affirmed petitioner's conviction with the modification decreasing the maximum penalty to fourteen (14) years and eight (8) months.

Concurring with the RTC, the CA found that petitioner knowingly possessed and had under his control *marijuana* without legal authority to do so, and that he was arrested *in flagrante delicto*, which is justified under Section 5 (a), Rule 113 of the Rules of Court. Furthermore, the CA

held that there was substantial compliance with the procedure set forth under Section 21, Article II of RA 9165 regarding the custody and handling of the seized items, considering that the integrity and evidentiary value thereof had been preserved by the apprehending officers. On this score, the CA posited that the links in the chain of custody of the seized items were all established by the prosecution.<sup>[21]</sup>

However, considering that petitioner had in his possession a total of 5.68 grams of *marijuana*, the CA ruled that the maximum term of imprisonment in this case should be fourteen (14) years and eight (8) months, in accordance with the ruling in *People v. Simon*.<sup>[22]</sup>

Petitioner moved for reconsideration,<sup>[23]</sup> but was denied in a Resolution<sup>[24]</sup> dated July 10, 2017; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for violation of Section 11, Article II of RA 9165.

In his petition, petitioner insists that his conviction was erroneous considering the illegality of his warrantless arrest, the non-compliance with the requirements of Section 21 of RA 9165, as well as its Implementing Rules and Regulations (IRR), and the broken chain of custody of the allegedly confiscated plastic sachets containing *marijuana*. On the other hand, the Office of the Solicitor General, on behalf of respondent People of the Philippines, maintains that his *in flagrante delicto* arrest was valid, that there was substantial compliance with Section 21 of RA 9165 and its IRR, and that the prosecution had established the unbroken chain of custody of the seized items.

### **The Court's Ruling**

The appeal is partly meritorious.

At the outset, it must be emphasized that an appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned.<sup>[25]</sup> 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.<sup>[26]</sup>

A lawful arrest without a warrant may be made by a peace officer or a private individual under the circumstances set forth in Section 5, Rule 113 of the Rules of Court, *viz.*:

*Section 5. Arrest Without Warrant; When Lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5 (a) above-cited speaks of an *in flagrante delicto* arrest, where the concurrence of two

(2) elements is necessary, to wit: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done *in the presence or within the view* of the arresting officer.<sup>[27]</sup> Non-confluence of these elements renders an *in flagrante delicto* arrest constitutionally infirm.

In this case, records show that petitioner was *actually committing* a crime when he was arrested. A cursory examination of the testimony given by PO3 Pacis before the RTC will show that at the time of his arrest, petitioner had in his possession a plastic sachet containing *marijuana*, to wit:

PROS. GALLO – And you said that you saw this male person in red shirt, what was he doing at that time?

PO3 PACIS – He was standing at the corner street and then he drew out something from his right pocket, Ma'am.

Q – So what now if he draw out something from his pocket?

A – Then I take a look at him and I saw him examining a plastic sachet, Ma'am.

COURT – This person that you saw, was he walking or sitting?

A – He was standing at the corner, your Honor.

PROS. GALLO – Was there anybody near him at that time?

A – None, ma'am.

Q – And you said that you were at the distance of five (5) meters, were you able to see the contents of that plastic sachet?

A – Not yet, Ma'am.

Q – So what now?

A – I informed SPO1 Bombase about what I saw and then we discreetly approached that male person, Ma'am.

Q – What was the reason why you have to approach that person?

A – Because I want to know what he was looking at on his hands. Ma'am.

Q – So what did you see?

A – When I approached him I saw a plastic sachet of marijuana from his hands. Ma'am.

Q – How far were you already from that person when you saw the plastic sachet of *marijuana*?

A – About a tapping distance. Ma'am.

Q – You want to tell the Honorable Court that at that tapping distance the person did not notice you?

A – Yes, Ma'am.

Q – Why?

A – Because he was busy looking at the plastic sachet, Ma'am. x x x x [28] (Emphases and underscoring supplied)

Records reveal that when PO3 Pacis and SPO1 Bombase approached petitioner, they were not effecting a warrantless arrest just yet; hence, there was no intrusion into the person of petitioner. Their purpose was merely to *investigate* into what appeared to be suspicious actuations of the latter. It was only upon closer scrutiny that they were able to discern exactly what the plastic sachet contained; hence, the warrantless arrest that they effected. immediately thereafter is clearly justified under Section 5 (a) above-quoted, it having been established that petitioner was actually committing a crime, *i.e.*, having in his possession *marijuana*, a dangerous drug, without legal authority to do so, in the presence of the arresting officers, and which personal knowledge they obtained in the performance of their investigative duties as police officers.

Notwithstanding the validity of petitioner's warrantless arrest, however, the Court is wont to acquit him on the basis of the non-observance of the stringent requirements under the IRR of RA 9165, [29] Section 21 of which partly 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 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:

- (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 (Emphases and underscoring supplied)

As a general rule, the apprehending team must strictly comply with the foregoing procedure. However, failure to do so will not *ipso facto* render the seizure and custody over the items as void and invalid *provided*: **(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.** [30] For the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been preserved. [31] Further, the justifiable ground for non-compliance must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist. [32] Notably, these rules have been effectively set into law with the passage of RA 10640.

As the records disclose, there were unjustified deviations committed. by the police officers in the handling of the confiscated items after petitioner's arrest in breach of the chain of custody procedure as discussed above. *First*, while it is true that a physical inventory [33] of the seized items was prepared by the investigating officer, SPO3 Fernando Moran (SPO3 Moran), no

photographs thereof were taken. *Second*, although it appears that the physical inventory had been prepared in the presence of petitioner who merely refused to sign,<sup>[34]</sup> it was not shown that a representative from the media and the Department of Justice (DOJ), as well as an elected public official had been present during the inventory. If any of them had been present, they should have signed the physical inventory itself and been given a copy thereof.

The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, as in this case, fails to approximate compliance with the mandatory procedure under Section 21 of RA 9165.<sup>[35]</sup> In *People v. Mendoza*,<sup>[36]</sup> the Court stressed that "[w]ithout the insulating presence of the representative from the media or the [DOJ], or 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 presence of such witnesses would have preserved an unbroken chain of custody."<sup>[37]</sup>

To make matters worse, no practicable reasons were given by the arresting officers, such as a threat to their safety and security or the time and distance which the other witnesses might need to consider,<sup>[38]</sup> for such non-compliance. It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances.<sup>[39]</sup> Evidently, such is not the case here, thereby leading to no other conclusion than that there was an unjustified breach of procedure rendering the integrity and evidentiary value of the *corpus delicti* in this case highly suspect. Consequently, petitioner'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.<sup>[40]</sup>

"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."<sup>[41]</sup>

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated August 30, 2016 and the Resolution dated July 10, 2017 of the Court of Appeals in CA-G.R. CR No. 37743 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Kenneth Santos y Italig 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),<sup>[\*]</sup> Tijam,<sup>[\*\*]</sup> and Reyes, Jr., JJ., concur.  
Caguioa, J., on official leave.*

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September 17, 2018

**NOTICE OF JUDGMENT**

Sir/Madam:

Please take notice that on **August 13, 2018** a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 17, 2018 at 1:18 p.m.

Very truly yours,

**(SGD.) MA. LOURDES C.  
PERFECTO**  
Division Clerk of Court

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<sup>[\*]</sup> Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended)

<sup>[\*\*]</sup> Designated Additional Member per Special Order No. 2580 dated August 8, 2018.

[1] *Rollo*, pp. 12-36.

[2] Id. at 38-51. Penned by Associate Justice Renato C. Francisco with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser concurring.

[3] Id. at 53-54.

[4] Id. at 78-93. Penned by Judge Victoriano B. Cabanos.

[5] 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.

[6] Records, pp. 2-3.

[7] Id. at 2.

[8] See *rollo*, p. 134.

[9] See id. at 134-135.

[10] See Physical Science Report No. DT-233-12 dated September 12, 2012; records, p. 8.

[11] See Physical Science Report No. D-261-12 dated September 11, 2012; id. at 9.

[12] See *rollo*, p. 135.

[13] See id. at 136-137.

[14] Id. at 78-93.

[15] Id. at 146.

[16] See id. at 84-92.

[17] See id. at 89-91.

[18] See id. at 92.

[19] See Brief for the Accused-Appellant dated January 29, 2016; id. at 56-76.

[20] Id. at 38-51.

[21] See *rollo*, pp. 43-49.

[22] 234 Phil. 555 (1994).

[23] See motion for reconsideration dated October 4, 2016, *rollo*, pp. 111-123.

[24] Id. at 53-54.

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

[26] 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.

[27] See *Dacanay v. People*, G.R. No. 199018, September 27, 2017.

[28] TSN, August 1, 2013, pp. 6-7.

[29] The IRR of RA 9165 is now crystallized into statutory law with the passage of RA 10640, 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 x "

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

[31] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[32] See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[33] See Physical Inventory of Seized Evidence Form dated September 11, 2012; folder of exhibits, p. 7.

[34] TSN, August 1, 2013, p. 11.

[35] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

[36] 736 Phil. 749 (2014).

[37] Id. at 764; emphases and underscoring supplied.

[38] Cf. *People v. Belmonte*, G.R. No. 224143, June 28, 2017.

[39] See *People v. Manansala*, supra note 35.

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

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

