

FIRST DIVISION

[G.R. No. 235110, January 08, 2020]

JESUS EDANGALINO Y DIONISIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERALTA, C.J.:

Assailed in this petition for review on *certiorari*^[1] is the Decision^[2] dated March 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 37912 which affirmed *in toto* the Decision^[3] dated May 4, 2015 of the Regional Trial Court (RTC), Branch 263, Marikina City, finding petitioner Jesus Edangalino y Dionisio guilty of violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. Also assailed is the Resolution^[4] dated October 11, 2017 of the CA which denied reconsideration thereof.

In an Information^[5] dated September 12, 2011, petitioner was charged with violation of Section 11, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 8th day of September 2011, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control 0.02 [gram] of Methamphetamine Hydrochloride (shabu), a dangerous drug, in violation of the above-cited law.^[6]

During his arraignment on September 29, 2011, petitioner, duly assisted by his counsel *de oficio*, pleaded not guilty to the charge.^[7] Pre-trial and trial thereafter ensued.

The facts of the case as stated by the CA, thus:

Version of the Prosecution:

The antecedent facts as narrated by the Office of the Solicitor General (OSG) are as follows:

On September 7, 2011, around 11:00 in the evening, an informant arrived at the office of the District Anti-Illegal Drugs Special Operation Task Group (DAID-SOTG) of the Eastern Police District located at Meralco Avenue, Pasig City, and reported that a certain "Amboy" of Barangay Malanday, Marikina City was engaged in illegal drug trade activities. Acting on the said report, P/Supt. Elmer R. Cereno (P/Supt. Cereno) immediately informed (*sic*) a team to conduct a buy-bust operation against "Amboy". The members of the team were subsequently briefed of the plan for the operation, and PO1 Rey Lambino (PO1 Lambino) was assigned as the poseur-buyer while PO1 Yon Enguiio (PO1 Enguiio) was tasked to be a back-up officer together with the members of the team. A five hundred-peso (Php500.00) bill with its serial number RJ697456 was also marked

with "RL" at its upper right corner to serve as the buy-bust money. It was likewise agreed during the briefing that PO1 Lambino will ring the phone of PO1 Enguiio to signify that the sale is consummated and he needs assistance to effect the arrest of "Amboy".

Around 11:45 in the evening, armed with a coordination form from Philippine Drug Enforcement Agency (PDEA) with MMRO Control # 0911-00072, the buy-bust team proceeded to Barangay Malanday, Marikina City where their informant agreed to meet them.

Around 1:40 in the morning of the following day, September 8, 2011, the team together with the informant proceeded to Jocson Street, Barangay Malanday, Marikina City. Thereat, PO1 Lambino and the informant looked for "Amboy" while the rest of the team positioned themselves strategically where they can oversee the transaction and immediately respond.

A few minutes later, PO1 Lambino and the informant saw "Amboy" standing along an alley. When they approached him, the informant introduced PO1 Lambino to "Amboy" as the one who wants to buy shabu. "Amboy" immediately brought one (1) piece of plastic sachet of suspected shabu and said that the same was worth P300.00. Before PO1 Lambino can even respond to "Amboy", someone shouted in background "May mga pulis." Upon hearing the same, "Amboy" attempted to run and flee the area but he was successfully restrained by PO1 Lambino. PO1 Lambino then introduced himself as a police officer, and confiscated from him one (1) plastic sachet of suspected shabu which should have been the subject of the sale between them if not for the interruption. PO1 Lambino then informed "Amboy", later on identified as the appellant, of his violation as well as his constitutional rights while under arrest. While at the place of the arrest and in front of the appellant, the plastic sachet of suspected shabu seized from the appellant was immediately marked by PO1 Lambino with "RL/Amboy 09-08-2011," photographed and inventoried. The certificate of inventory was then signed by the appellant.

The appellant and the seized item were then brought to DAID-SOTG office at the Eastern Police District in Meralco Avenue, Pasig City for investigation. After a request for laboratory examination of the seized specimen was prepared, the seized item was then brought by PO1 Lambino to the EPD Crime Laboratory where the same was received by PCI Cejes. The results of the laboratory examination conducted by PCI Cejes revealed that the contents of the plastic sachet confiscated from the appellant are positive for the presence of methamphetamine hydrochloride, a dangerous drug. The same plastic sachet of shabu was presented during trial and was identified to be the same item seized from the appellant during the operation on September 7-8, 2011.

Version of the Defense:

For its part, the defense [proffered] the sole testimony of the appellant to refute the foregoing accusations and aver a different version of the story.

According to the appellant, he met and brought a certain "Melvin" to his house on 07 September 2011. While inside his house, Melvin asked him if he knew someone selling drugs in the area so he accompanied him to the house of his neighbor, Cedie. At Cedie's house, Melvin immediately consumed the shabu that he bought and left at 11:00 o'clock (*sic*) in the evening.

Thirty (30) minutes later, Melvin returned and asked to be accompanied again to Cedie's house which appellant acceded. Melvin purchased shabu again, used half of it and kept the other half. Sensing Melvin's uneasiness, appellant asked him if he intended to contact his police companions to arrest their target. Melvin then went inside the comfort room to contact the police. Thereafter, he sat by the door and opened it when the police arrived. The policemen searched the house for illegal drugs but were unable to find any. Appellant and three (3) others were thereafter arrested.^[8] (Citations omitted)

On May 4, 2015, the RTC rendered its Decision^[9] finding petitioner guilty of violating Section 11, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, above premises considered, the court finds accused JESUS EDANGALINO y DIONISIO GUILTY of the offense charged against him.

The accused is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS in accordance with par. (3) of Sec. 11 of R. A. No. 9165.

He is also ordered to pay the fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

SO ORDERED.^[10]

The RTC found that while the police failed to strictly follow the requirements of Section 21 of R.A. No. 9165, what is important is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or the innocence of the accused. Police Officer 1 (PO1) Rey Lambino categorically stated that he recovered from petitioner the illegal drugs presented in court; thus, the presumption that the integrity of the evidence has been preserved subsists unless it can be shown that there was bad faith, ill will or tampering with evidence which obligation rests on the accused. The RTC did not give weight to petitioner's denial for being inherently weak and it relied on the presumption of regularity in the official function of the police operatives.

On March 28, 2017, the CA rendered its assailed Decision,^[11] the decretal portion of which reads:

FOR THESE REASONS, the appealed Decision dated 04 May 2015 rendered by Branch 263 of the Regional Trial Court, Marikina City convicting appellant for violation of Section 11, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, in Criminal Case No. 2011-3935-D-MK is AFFIRMED in toto.^[12]

The CA found that all the elements for the prosecution of illegal possession of dangerous drugs, *i.e.*, (1) the accused is in possession of an item or object which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug, had been established. It gave credence to the testimony of the prosecution witness who is a police officer, thus presumed to have performed his duty in a regular manner. It ruled that there was no confusion surrounding the *corpus delicti* in this case since the illegal drug confiscated from petitioner, taken to the police headquarters, subjected to laboratory examination, introduced in evidence and identified in court, was the same illegal drug seized from petitioner during the buy-bust operation. It found petitioner's denial unsubstantiated by any convincing evidence and it cannot prevail against the positive testimony of PO1 Lambino. The CA ruled that non-compliance with the procedural requirements under Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*) is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

Petitioner's motion for reconsideration was denied in a Resolution^[13] dated October 11, 2017.

Petitioner files the instant petition for review on *certiorari* on the lone issue of:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165, DESPITE THE SERIOUS IRREGULARITIES IN THE CONDUCT OF THE POLICE OPERATION AND THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE CORPUS DELICTI OF THE CRIME CHARGED.^[14]

Petitioner claims, among others, that the records failed to show that the police officers complied with the mandatory procedures provided under paragraph 1, Section 21, Article II of R.A. No. 9165; that the prosecution failed to establish the presence of the indispensable witnesses during the conduct of the inventory and the photographing of the seized item; that there was no justifiable ground presented on why the presence of these persons was not secured; and that it was only the CA that acknowledged the supposed preservation of the integrity and evidentiary value of the seized item that, to its opinion, justified non-compliance.

We find the petition meritorious.

To begin with, prosecution for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.^[15] Therefore, it is essential that the identity of the prohibited drug be established beyond doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession under R.A. No. 9165 fails.^[16]

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

(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[.]

And Section 21 (a) of the IRR of R.A. No. 9165 provides:

(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[.]

R.A. No. 10640^[17] amended Section 21 of R.A. No. 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media.

Since the alleged crime was committed in 2011, the old provisions of Section 21 of R.A. No. 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physically inventory and photograph the seized items in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from the Department of Justice (*DOJ*); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame-up, [i.e., they are] necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."^[18]

A review of the records shows that there were no representatives from the media and the DOJ, and an elected public official when the marking, physical inventory and photographing of the seized item were done. PO1 Lambino admitted the absence of the required witnesses in his cross-examination, as follows:

Q: When this operation happened, how long have you been a police officer assigned in Anti-Illegal Drugs?

A: A: Almost six months, sir.

Q: During that time you would agree with me that you are familiar with the provisions of Republic Act 9165?

A: Yes, sir.

Q: You are familiar with Section 21 of that RA 9165, correct?

A: Not really, sir.

Q: Not really?

A: Yes, sir.

Q: Are you saying that you are implementing a law which you are not familiar with?

A: No, sir.

Q: So what does Section 21 states (*sic*)?

A: I did (*sic*) not familiar in (*sic*) Section 21 but I know the other sections of RA 9165, sir.

Q: Because you do not know what is stated in Section 21 of RA 9165, you did not ask any barangay official to witness the preparation of the inventory?

A: Sir, we make (*sic*) an effort.

Q: Please answer yes or no[.]

A: Yes, sir.

Q: You also did not ask any media representative or representative from the DOJ to

witness that inventory?

A: Yes, sir.

Q: No one was also present when you were taking a photograph of the accused and the specimen that you confiscated?

A: Yes, sir.

Q: Where did you mark the evidence?

A: At the place of arrest, sir.

Q: At the place of arrest?

A: Yes, sir.

Q: You also mentioned that you took the photograph of the accused as well as the specimen at the place of arrest, is that right?

A: The photograph of the accused at the office but the evidence our (*sic*) recovered to (*sic*) the suspect at the place of arrest, sir.

Q: The marking?

A: Marking and taking of the photographs of the evidence recovered, sir.

Q: How about the photograph of the accused?

A: At the office, sir.

Q: At the office?

A: Yes, sir.

Q: Why is it that you did not take the photograph of the accused at the area?

A: We don't have the white board, sir.

Q: When you were marking the evidence that you allegedly confiscated there were no representative from media, barangay and DOJ, right?

A: Yes, sir.^[19]

While the failure of the apprehending team to strictly comply with the procedure laid down in Section 21 of R.A. No. 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, the prosecution must satisfactorily prove that (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. 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.^[20] Here, PO1 Lambino's testimony failed to establish any plausible explanation or justification on why the presence of the representatives from the media and the DOJ, and the elective official was not secured, to wit:

Q: Mr. Witness, why is it that you were not able to have barangay official signed (*sic*) the inventory of evidence?

A: Because sometimes, sir...

Q: No, that time, at the time when you had the marking why was there no barangay official?

A: At that time sir, we make (*sic*) effort to coordinate at the barangay but there [was] no available barangay official.

Q: What about the member of the media, why was there no member of media?

COURT:

Was Edwin Moreno not around during that time?

A: He [was] around, sir.

COURT:

He [was] around.

PROSECUTOR ABUAY, JR.:

Q: Why did he not sign the certificate?

COURT:

Answer.

WITNESS:

A: He did not sign, sir.

PROSECUTOR ABUAY, JR.:

Q: Why?

A: Our Chief, DAID, did not sign any...

COURT:

Si Edwin Moreno, sabi mo kasi [kanina] andun siya, ang tanong ni fiscal bakit hindi mo pinapirma?

A: Edwin Moreno?

COURT:

Oo, sabi mo [kanina], he [was] around.

PROSECUTOR ABUAY, JR.:

Why was (*sic*) no media (*sic*) signed?

A: There [was] no media around and also barangay official.^[21]

In *People v. Reyes*,^[22] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125^[23] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

And in *People of the Philippines v. Vicente Sipin y De Castro*,^[24] we held:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (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 official[s] 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 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.

The prosecution's failure to offer any justifiable reason for its non-compliance with Section 21 of R.A. No. 9165 resulted in a substantial gap in the chain of custody of the seized item from petitioner which placed the integrity and evidentiary value of the seized item in question. Therefore, we find petitioner's acquittal of the crime charged in order.

We find no basis on the RTC's and the CA's findings that the police officer regularly performed his official duty. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.^[25] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.^[26]

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED**. The Decision dated March 28, 2017 and the Resolution dated October 11, 2017 of the Court of Appeals in CA-G.R. CR No. 37912 are hereby **REVERSED** and **SET ASIDE**. Petitioner Jesus Edangalino y Dionisio is accordingly **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of petitioner from detention, unless he is being held for some other lawful cause, and to inform this Court his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

*Caguioa, J. Reyes, Jr., and Lazaro-Javier, JJ., concur.
Lopez, J., on wellness leave.*

[1] *Rollo*, pp. 11-28.

[2] *Id.* at 32-44. Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan.

[3] *Id.* at 68-75. Penned by Presiding Judge Armando C. Velasco.

[4] *Id.* at 46-47.

[5] Records, pp. 1-2.

[6] *Id.* at 1.

[7] *Id.* at 25.

[8] *Rollo*, pp. 34-36.

[9] Supra note 3.

[10] *Id.* at 74-75.

[11] Supra note 2.

[12] *Id.* at 43.

[13] Supra note 4.

[14] *Rollo*, p. 17.

[15] *Carino, et al. v. People*, 600 Phil. 433, 444 (2009).

[16] *People of the Philippines v. Rogelio Yagao y Llaban*, G.R. No. 216725, February 18, 2019.

[17] Took effect on July 23, 2014.

Section 1 of Republic Act No. 10640 provides:

Section 1. x x x.

"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 person/s 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."

[18] *People of the Philippines v. Robert D. Duran*, G.R. No. 233251, March 13, 2019.

[19] TSN, February 27, 2013, pp. 12-15.

[20] *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).

[21] TSN, February 27, 2013, pp. 21-23.

[22] G.R. No. 219953, April 23, 2018, 862 SCRA 352, 367-368.

[23] Article 125. *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or

offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

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

[25] *People of the Philippines v. Gerald Arvin Elinto Ramirez and Belinda Galienba Lachica*, G.R. No. 225690, January 17, 2018.

[26] *People of the Philippines v. Dave Claudel y Lucas*, G.R. No. 219852, April 3, 2019.