

## SECOND DIVISION

[ G.R. No. 247589, August 24, 2020 ]

**ROBERT PLAN, JR. Y BELONCIO @ "JUN", AND MARK OLIVER ENOLVA Y DICTADO @ "MARK", PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### RESOLUTION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated December 12, 2018 and the Resolution<sup>[3]</sup> dated May 24, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 41149, which affirmed with modification the Joint Decision<sup>[4]</sup> dated December 27, 2017 of the Regional Trial Court of Quezon City, Branch 81 (RTC) in Crim. Case Nos. QZN-17-04462-63, finding petitioners Robert Plan, Jr. y Beloncio @ "Jun" (Plan) and Mark Oliver Enolva y Dictado @ "Mark" (Enolva; collectively, petitioners), guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. (RA) 9165,<sup>[5]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

### The Facts

This case stemmed from two (2) separate Informations<sup>[6]</sup> filed before the RTC charging petitioners with the crime of Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings, as defined and penalized under Section 13,<sup>[7]</sup> Article II of RA 9165.

The prosecution alleged that on March 31, 2017, members of the Philippine National Police, Police Station 7, Cubao, Quezon City, were dispatched to conduct Oplan Galugad at 33 1<sup>st</sup> Palanas St., Bo. Camp Panopio Compound, Brgy. Kaunlaran, Quezon City, after receiving information about persons playing *cara y cruz* where wagers supposedly included illegal drugs. Upon arrival thereat, they saw five (5) male persons playing *cara y cruz* and immediately arrested said persons for violation of Presidential Decree No. (PD) 1602 (Illegal Gambling).<sup>[8]</sup> Arresting officer PO1 Stanley de Guzman (PO1 de Guzman) frisked petitioners and recovered from each of them a plastic sachet containing white crystalline substance, as well as two (2) cellphones purportedly containing messages about drug transactions. Thereafter, the seized items were marked, inventoried, and photographed at the place of arrest in the presence of Barangay Kagawad Nenita Dordas (Kgd. Dordas), and media representatives Earlo Bringas<sup>[9]</sup> of Net 25 (Bringas), Jopel Pelenio of DWIZ (Pelenio), and Bam Alegre of GMA 7<sup>[10]</sup> (Alegre). Petitioners and the other suspects,<sup>[11]</sup> together with the seized items, were brought to the police station. Subsequently, the seized sachets from petitioners bearing the markings "SDG/RP 3/31/17" and "SDG/ME 3/31/17"<sup>[12]</sup> were brought to the crime laboratory,<sup>[13]</sup>

where, after examination,<sup>[14]</sup> the contents tested positive for 6.10 grams and 0.71 gram, respectively, of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[15]</sup>

In defense, petitioners denied the charges against them, claiming that on March 31, 2017, Enolva was on his way home to Bulacan when the gear of his motorcycle became loose. Unable to find an auto repair shop (*talyer*), he went to the house of his *kumpare*, Plan, to have his motorcycle fixed. While they were repairing the motorcycle outside Plan's house, several persons wearing civilian clothes suddenly appeared, poked their guns at them, ordered them to raise their hands, and frisked them. While nothing was found on their persons, they were arrested and brought to the police station along with three (3) other persons they did not know.<sup>[16]</sup>

In a Joint Decision<sup>[17]</sup> dated December 27, 2017, the RTC found petitioners guilty beyond reasonable doubt of violating Section 13, Article II of RA 9165, sentencing Plan to a term of twenty (20) years and one (1) day, and a fine of P400,000.00, and Enolva to a term of twelve (12) years and one (1) day, and a fine of P300,000.00.<sup>[18]</sup> It gave credence to the positive testimonies of the prosecution witnesses over petitioners' defense of denial,<sup>[19]</sup> and found the prosecution to have ensured the security and integrity of the police operations and of the seized items.<sup>[20]</sup>

In a Decision<sup>[21]</sup> dated December 12, 2018, the CA affirmed the RTC ruling with the modification: (a) finding petitioners guilty beyond reasonable doubt, instead, of violating Section 11, Article II of RA 9165; and (b) applying the Indeterminate Sentence Law (ISL) in imposing the penalty of imprisonment on Enolva.<sup>[22]</sup> It observed that the prosecution was able to establish the integrity of the seized items via sufficient compliance with the chain of custody rule concerning the handling of the confiscated illegal drugs from the time of their seizure from petitioners until their presentation in court.<sup>[23]</sup> However, it ruled that the prosecution failed to establish the necessary element to qualify petitioners' Illegal Possession of Dangerous Drugs to the imposition of the maximum penalties pursuant to Section 13, Article II of RA 9165, *i.e.*, when possessed during a party, social gathering or meeting, or in the proximate company of at least two (2) persons, considering that they were arrested while playing *cara y cruz* with three (3) other persons, and were not shown to have intended to use the illegal drugs while playing.<sup>[24]</sup> It likewise applied the ISL in imposing the penalty of imprisonment on Enolva for his possession of less than five (5) grams of *shabu*, which is punishable with imprisonment of twelve (12) years and one (1) day to twenty (20) years, and accordingly, imposed on him imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.<sup>[25]</sup>

Petitioners moved for reconsideration which was denied in a Resolution<sup>[26]</sup> dated May 24, 2019. Hence, this appeal seeking that their conviction be overturned.

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

The petition is without merit.

"At the outset, it must be stressed that in criminal cases, an appeal throws the

entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. 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>[27]</sup> Guided by this consideration, the Court modifies the conviction of both petitioners to violation of Illegal Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings, as defined and penalized under Section 13, Article II of RA 9165, as will be explained hereunder.

## I.

To convict an accused for Illegal Possession of Dangerous Drugs, the prosecution must establish the necessary elements thereof, to wit: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>[28]</sup>

Here, the courts *a quo* correctly ruled that the prosecution was able to establish with moral certainty all the foregoing elements, considering that: (a) by virtue of petitioners' arrest for playing *cara y cruz*, the police officers recovered, among others, two (2) plastic sachets of *shabu* from their possession; (b) petitioners failed to prove that their possession of the seized items was authorized by law; and (c) petitioners freely and consciously possessed the same. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.<sup>[29]</sup> Hence, since there is no indication that the said court overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from its factual findings.

Further, the Court notes that the police officers sufficiently complied with the chain of custody rule under Section 21, Article II of RA9165, as amended by RA 10640.<sup>[30]</sup>

To be sure, in cases for Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>[31]</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt which therefore warrants an acquittal.<sup>[32]</sup>

Notably, to establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[33]</sup> Thus, as part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media AND the Department of Justice (DOJ),

AND any elected public official;<sup>[34]</sup> or (b) if after the amendment of RA 9165 by RA 10640<sup>[35]</sup> an elected public official AND a representative of the National Prosecution Service<sup>[36]</sup> OR the media.<sup>[37]</sup> The presence of these witnesses safeguards the establishment of the chain of custody and removes any suspicion of switching, planting, or contamination of evidence.<sup>[38]</sup>

Records show that after petitioners were arrested on March 31, 2017 - or after RA 10640 took effect - PO1 de Guzman immediately took custody of the illegal drugs from petitioners' possession, and conducted the requisite marking, inventory, and photography thereof, in the presence of an elected public official, Kgd. Dordas, and media representatives, Bringas, Pelenio, and Alegre, right at the place where petitioners were arrested. He retained custody while petitioners, together with the seized items, were brought to the police station,<sup>[39]</sup> until he brought the seized items to the crime laboratory, and personally turned them over to Police Chief Inspector Bernardo Roque who performed the necessary examination<sup>[40]</sup> thereon. During the trial, he also positively identified the seized items<sup>[41]</sup> bearing his initials "SDG/RP 3/31/17" and "SDG/ME 3/31/17."<sup>[42]</sup> In light of the foregoing, the Court holds that the chain of custody over the seized dangerous drugs remained unbroken, and that the integrity and evidentiary value of the *corpus delicti* have been properly preserved. Perforce, petitioners' conviction must stand.

## II.

However, the Court finds that the CA erred in finding petitioners guilty of only Section 11,<sup>[43]</sup> and not Section 13, Article II of RA 9165, on the notion that while they were playing *cara y cruz* "in the proximate company of at least two (2) persons," it was not shown that such occasion was meant for using drugs, as in a pot session.

Section 13, Article II of RA 9165 reads:

Section 13. *Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.* - Any person found possessing any dangerous drug **during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons**, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs. (Emphasis supplied)

Thus, to qualify possession of illegal drugs as warranting the imposition of stiffer penalties pursuant to Section 13, Article II of RA 9165, with which petitioners were charged, such possession must have occurred: (a) during a party; or (b) at a social gathering or meeting; or (c) in the proximate company of at least two (2) persons.<sup>[44]</sup>

As may be gleaned from the explicit wording of the provision, nowhere does the law qualify that the above-stated instances must have been intended for the purpose of using illegal drugs. In fact, under Section 13, Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the phrase "**company of at least two (2) persons**" was defined to "mean the accused or suspect plus at least two (2) others, who may or may not be in possession of any dangerous drug." This means that the