

SECOND DIVISION

[G.R. No. 239399, March 25, 2019]

**ROLANDO P. DIZON, PETITIONER, V. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CAGUIOA, J:

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition)^[1] questioning the Decision^[2] dated November 10, 2017 and Resolution^[3] dated May 9, 2018 of the Court of Appeals - Special Third Division (CA) in CA-G.R. CR No. 39221. The Decision dated November 10, 2017 affirmed the Decision^[4] dated June 27, 2016 of the Regional Trial Court of Quezon City, Branch 82 (RTC), which convicted herein petitioner Rolando P. Dizon (Dizon) for violation of Section 11, Article II of Republic Act No. 9165^[5] (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

An Information^[6] was filed against Dizon for violation of Section 11, Article II of R.A. No. 9165, which reads in part:

That on or about the 26th day of November 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there wil[l] fully, unlawfully and knowingly have in his/her possession and control three point zero one nine one (3.0191) grams of white crystalline substance containing [methamphetamine] hydrochloride[,]

a dangerous drug[.]

CONTRARY TO LAW.^[7]

When arraigned, Dizon entered a plea of "not guilty."^[8] Trial on the merits ensued.

As summarized by the CA, the factual antecedents are as follows:

On November 26, 2003, at around 3:00 o'clock in the afternoon, SI Cruz together with team leader SI Arthur Oliveros, SI Sindatuk Ulama, SI Erum and SI Otec implemented a search warrant issued by the RTC of Quezon City to make an immediate search of the residence of accused-appellant Dizon and to seize and take possession of the following articles and bring them to the court:

1. undetermined quantity of Methamphetamine Hydrochloride otherwise known as "shabu";

2. records and proceeds of sale of shabu;
3. weighing scale, plastic sachets, sealers and other articles used or being used in the same and distribution of shabu;
4. tooters, water pipes, burners and other paraphernalia used or being used in the administration of ["]shabu".

When they arrived at accused-appellant's house, SI Cruz and his team noticed that the house was open yet nobody was answering their call. They fetched two (2) barangay officials who informed them that accused-appellant can be found few blocks from his house. Acting on the information, they went back to accused-appellant's residence and entered the gate. At that time, accused-appellant was watching the operation from a parked tricycle about fifteen (15) to twenty (20) meters away from his house. SI Cruz, accompanied by some residents of the house, met accused-appellant outside and told him that they obtained a search warrant and that he has to witness its execution. SI Cruz, his team, accused-appellant and the 2 barangay kagawad namely Nelson C. Alcantara (Kagawad Alcantara) and Elisa S. Lim (Kagawad Lim) went inside the house. When the search began, SI Cruz recovered plastic sachets containing crystalline substance at the nearest bedroom. The plastic sachets were found inside the pocket of a white ladies jacket place on top of the bed. Aware of the absence of accused-appellant's counsel, SI Cruz did not inquire about the owner of the jacket. Thereafter, SI Cruz prepared an inventory and placed markings on the sachet in the presence of accused-appellant, Kagawad Alcantara and Kagawad Lim. Based on the inventory, the items seized from the premises of accused-appellant included a plastic sachet containing seven (7) smaller heat-sealed transparent plastic sachets of white crystalline substance bearing the markings "NC-1", "NC-2", "NC-3", "NC-4", "NC-5", "NC-6", "N[C]-7" and another plastic sachet containing two (2) smaller unsealed Ajinomoto packets of white crystalline substance with the marking "NC-8". SI Cruz also took photographs of the articles seized in the premises. The search team brought accused-appellant and the confiscated articles to the NBI main office in Taft Avenue and continued with the booking procedure.

At the NBI office, SI Cruz submitted the evidence to Forensic Chemist Ilagan. The quantitative and qualitative examinations conducted by Forensic Chemist Ilagan showed:

x x x x

"NC-1" to - POSITIVE for Methamphetamine
 "NC-6" Hydrochloride, a dangerous drug;

"NC-7" & - Negative for the presence of
 "NC-8" Methamphetamine Hydrochloride. Further
 examinations made gave Positive Results
 for the presence of Potassium Aluminium
 Sulfate (TAWAS) and Monosodium
 Glutamte (sic) (VETSIN), respectively.

SI Cruz identified accused-appellant Dizon in open court as well as the plastic sachets through the markings placed on them. He likewise

testified that he executed a joint affidavit of arrest.

For the defense, accused-appellant Dizon testified that on November 26, 2003 at around 1:00 o'clock in the afternoon, he was talking to one of the tricycle drivers at the terminal of Pugong Ginto, Barangay Sta. Monica Novaliches, Quezon City who told him that a number of people were in his house. While on his way home, agents of the NBI approached accused-appellant, arrested him and announced that they had a search warrant. The NBI agents brought him to his house, asked him to take a seat and the barangay officials to come over. Upon Kagawad Lim's arrival, the NBI agents started searching his house without showing him the search warrant nor telling him the subject of the search. After the search, he was brought to the NBI headquarters in Taft Avenue where he was subjected to a drug test and then to the Quezon City Hall where he was presented to the Inquest Prosecutor for the inquest proceeding. Accused-appellant maintained that he was not informed of the violations he committed and why he was brought for inquest. Thereafter, he was detained at the NBI headquarters but was able to post bail the following day.

Accused-appellant Dizon vehemently denied the accusation hurled against him and alleged that he only saw the sachets of shabu when he was at the Fiscal's office. He was surprised to learn that the pieces of evidence against him were obtained from a white jacket because he does not own one.

Simbillo, Soriano, Borero and Salvador all testified that they knew accused-appellant Dizon and that they saw the NBI agents approached and brought him to his house. But they did not witness the events that transpired inside accused-appellant's house as well as the conduct of the search.

Sombillo, a resident of Pugong Ginto, testified that on November 26, 2003 he was at the tricycle terminal with the other members of the tricycle association. At around 2:00 o'clock in the afternoon, NBI agents arrived, arrested accused-appellant and brought him in his house. Sombillo followed them but only stayed outside of the house. He admitted that he did not know what happened while accused-appellant and the agents were inside his house.

Soriano, also a resident of Pugong Ginto, lives ten (10) houses away from accused-appellant and has known him for twenty-five (25) years already. She said that at around 9:00 o'clock in the morning of November 23, Soriano was manning her canteen when she saw NBI agents arrested accused-appellant. She only saw the agents boarded accused-appellant in a van but had no idea where they were going.

Borero, a tricycle driver and a Pugong Ginto resident, recounted that accused-appellant was in a store near the tricycle terminal when the NBI agents approached and invited him. But Borero did not see what transpired next because he had to leave immediately to drive his passenger.

Salvador, also a Pugong Ginto tricycle driver, said that he has been neighbors with accused-appellant for twenty (20) years. He recalled that he was just nearby when he saw five (5) persons entered (sic) accused-appellant's house. He said there were no barangay officials or member of the media in the place. He also professed that he did not see them leave accused-appellant's house because his wife already called him.^[9] (Citations omitted)

Ruling of the RTC

In a Decision, the RTC found Dizon guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **Rolando P. Dizon "Guilty"** beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165.

Accordingly, this Court sentences accused Rolando P. Dizon to suffer the indeterminate penalty of imprisonment of Twelve (12) years and **One (1) Day** as **minimum** to **Fourteen (14) Years** as **maximum** and to pay a **Fine** in the amount of Three Hundred Thousand Pesos (P300,000.00).

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.^[10]

In convicting Dizon, the RTC overlooked the failure of the National Bureau of Investigation (NBI) agents to strictly comply with Section 21 of R.A. No. 9165 (*i.e.*, the only witnesses present were two (2) barangay kagawad) and held that the integrity and evidentiary value of the seized items were preserved due to an unbroken chain of custody:

x x x [T]he Court is also convinced that the prosecution was able to establish the integrity of the *corpus delicti* and the unbroken chain of custody of the seized drug. Records show that the chain of custody over the seized substances was not broken. SI Noel Cruz testified that when they enter (sic) and searched the house of the accused Rolando Dizon they were armed with a search warrant issued by Honorable Natividad A. Giron-Dizon. During the searched (sic), present were the accused and two barangay kagawads (sic) and he was able to recover eight (8) pieces of plastic sachets containing white crystalline substance in a jacket placed on top of the bed of one of the bedrooms of the house of the accused. Thereafter, SI Cruz marked the plastic sachets and conducted an inventory in the presence of barangay Kagawads (sic) Alcantara and Lim. After the conduct of the inventory, they brought the accused and the evidence to the NBI office in Taft Avenue, Manila for the conduct of the booking procedure. Then, SI Cruz submitted the evidence to the NBI Forensic Chemistry Division for the examination on the confiscated evidence. The Forensic Chemist, Filipina V. Ilagan, conducted the requested examination on the marked sachets and found the sachets with markings "NC-1" to "NC-6" positive for methamphetamine

hydrochloride. Finally, during trial, the same marked sachets were identified by SI Noel Cruz.

Thus, the prosecution was able to establish that the evidence recovered from accused Rolando Dizon during the implementation of the search warrant by the NBI agents was the same evidence tested, introduced, and testified on by the prosecution witness in court.

While the NBI agents were not able to strictly comply with Section 21 of R.A. 9165 considering the lack of media and DOJ representatives, case law has it that such non-compliance is not fatal to the case of the prosecution. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.^[11] (Emphasis supplied)

Unsatisfied, Dizon appealed his conviction to the CA.

Ruling of the CA

In a Decision dated November 10, 2017, the CA affirmed the RTC Decision *in toto*, as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated June 27, 2016 of the RTC Branch 82 of Quezon City in Criminal Case No. Q-03-123000 is **AFFIRMED**.

SO ORDERED.^[12]

In affirming the RTC, the CA found that the integrity and evidentiary value of the confiscated dangerous drugs were preserved due to the unbroken chain of custody established by the prosecution.^[13]

A Motion for Reconsideration^[14] filed by Dizon was denied by the CA in a Resolution dated May 9, 2018.

Hence, this petition.

Issue

The principal issue for resolution is whether Dizon is guilty beyond reasonable doubt for the crime of violation of Section 11, Article II of R.A. No. 9165.

The Court's Ruling.

The petition is meritorious.

Non-observance of the procedure under Section 21 of R.A. No. 9165

Under the applicable Section 21,^[15] Article II of R.A. No. 9165, the following procedure must be observed in the seizure, custody, and disposition of dangerous drugs: