

## SECOND DIVISION

[ G.R. No. 241602, November 20, 2019 ]

**ROMEO ASIS Y BRIONES, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated February 22, 2018 and the Resolution<sup>[3]</sup> dated August 16, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 38783, which affirmed the Judgment<sup>[4]</sup> dated May 18, 2016 of the Regional Trial Court of Daet, Camarines Norte, Branch 41 (RTC) in Crim. Case No. 13693, finding petitioner Romeo Asis y Briones guilty beyond reasonable doubt of violating 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 an Information<sup>[6]</sup> filed before the RTC charging petitioner with the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that after surveillance activities regarding the rampant proliferation of illegal drug activities in Purok 6, Barangay Luklukan Sur, Jose Panganiban, Camarines Norte, operatives of the Philippine Drug Enforcement Agency (PDEA) applied for and obtained a total of four (4) search warrants against, *inter alia*, petitioner. Thus, on February 18, 2009, the PDEA operatives successfully implemented one (1) of the search warrants at petitioner's house in the presence of Barangay Chairman Ranilo Jerez, Sr., Barangay Kagawad Salvador Alvarez, and media representative Jonathan Magistrado<sup>[7]</sup> of ABS-CBN Naga. As the said search yielded a plastic sachet containing white crystalline substance which the PDEA operatives suspected as *shabu*, they arrested petitioner and marked, inventoried,<sup>[8]</sup> and photographed the seized item in the presence of petitioner and the aforementioned witnesses. Thereafter, petitioner and the seized item were brought to the PDEA Regional Office where the required documentations were processed. Finally, the seized item was brought to the crime laboratory where, after examination,<sup>[9]</sup> the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[10]</sup>

In defense, petitioner denied the charges against him, claiming instead that at the time he was arrested, he was just sleeping with his family inside their house when PDEA operatives suddenly arrived and forced themselves therein. They were then instructed to go outside the house while their house was searched. According to petitioner, he did not see where the PDEA operatives supposedly recovered the plastic sachet containing *shabu* as he was sure that he was not keeping any inside their house.<sup>[11]</sup>

In a Judgment<sup>[12]</sup> dated May 18, 2016, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of nineteen (19) years, eleven (11) months, and twenty-nine (29) days, as minimum, to twenty (20) years, as maximum, and to pay a fine in the amount of P300,000.00.<sup>[13]</sup> The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that petitioner indeed kept *shabu* within the confines of his home. Relatedly, the RTC also opined that the integrity and evidentiary value of the *shabu* seized from petitioner's house were preserved.<sup>[14]</sup> Aggrieved, petitioner appealed<sup>[15]</sup> to the CA.

In a Decision<sup>[16]</sup> dated February 22, 2018, the CA affirmed the RTC ruling with modification, adjusting the period of imprisonment imposed on petitioner to twelve (12) years and one (1) day, as minimum, to fourteen (14) years and one (1) day, as maximum.<sup>[17]</sup> It held that the prosecution had proven the existence of all the elements of the crime charged, and that, despite the absence of a Department of Justice (DOJ) representative during the conduct of the search and the eventual inventory and photography of the seized item, its integrity and evidentiary value were nevertheless preserved.<sup>[18]</sup>

Undaunted, petitioner moved for reconsideration<sup>[19]</sup> but was denied in a Resolution<sup>[20]</sup> dated August 16, 2018; hence, this petition seeking that his petition be overturned.

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

The petition is meritorious.

In cases for Illegal Possession of Dangerous Drugs under RA 9165,<sup>[21]</sup> 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>[22]</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 and, hence, warrants an acquittal.<sup>[23]</sup>

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>[24]</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."<sup>[25]</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>[26]</sup>

The law further requires that the said inventory and photography be done 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,<sup>[27]</sup> a representative from the media AND the DOJ, and any elected public official;<sup>[28]</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service<sup>[29]</sup> OR the media.<sup>[30]</sup> The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."<sup>[31]</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.<sup>[32]</sup> This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"<sup>[33]</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>[34]</sup> As such, the failure of the apprehending team to strictly comply with the same would 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 a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>[35]</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>[36]</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>[37]</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>[38]</sup> and 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.<sup>[39]</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>[40]</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>[41]</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>[42]</sup>

Notably, the Court, in *People v. Miranda*,<sup>[43]</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same

in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."<sup>[44]</sup>

In this case, an examination of the Certificate of Inventory<sup>[45]</sup> would show that the inventory of the seized items was not done in the presence of a DOJ representative, as the said inventory only contains the signatures of an elected public official and a media representative.<sup>[46]</sup> This is confirmed by the testimonies of the PDEA operatives who were members of the team that implemented the search warrant on petitioner's house and caused his arrest thereafter, to wit:

### **TESTIMONY OF IO1 JUDITH RIGO (IO1 RIGO)**

[Prosecutor Elvis P. Nonato]: You signed likewise in this Certificate of Inventory?

[IO1 Rigo]: Yes, Sir.

Q: Where in these two copies of the Certificate of Inventory?

A: Here, sir. (witness points to her signature[.]).

x x x x

Q: How about these signatures appearing above these names, whose signatures are those? Inform the Court one by one.

A: The witnesses, Sir.

Q: Who are they?

A: Jonathan Mihistrado (sic) from ABS-CBN, Sir; Barangay Captain Ranilo Jerez[, ] Sr. and Barangay Kagawad Salvador Alvarez, Sir.<sup>[47]</sup>

### **TESTIMONY OF IO1 VIDAL BACOLOD (IO1 BACOLOD)**

[Atty. Lourdes Clarissa Donnatilla K. Cu]: Now, you said that the witness[es] during the search were Jonathan Magistrado and two (2) barangay officials, were there any other witnesses other than those three (3) persons you mentioned?

[IO1 Bacolod]: The suspect, ma'am.

Q: Other than him, no other witnesses?

A: No, ma'am.

**Q: So, there was no DOJ representative?**

**A: No, ma'am.**<sup>[48]</sup>

As the foregoing testimonies have already shown the absence of a DOJ representative during the implementation of the search warrant and the consequent marking, inventory, and photography of the item purportedly seized from petitioner, it became incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor, or at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to