



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CHARBEN DUARTE y G.R. No. 238971
OLIVEROS,

Petitioner, Present:

- versus -

BERSAMIN, C.J., Chairperson,
PERLAS-BERNABE,
JARDELEZA,
GESMUNDO, and
CARANDANG, JJ.

PEOPLE OF THE
PHILIPPINES,

Respondent. Promulgated:

AUG 28 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated September 7, 2017 and the Resolution³ dated April 4, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39090 which affirmed the Joint Decision⁴ dated September 15, 2016 of the Regional Trial Court of Calocan City, Branch 127 (RTC) in Crim. Case Nos. C-91394-95 finding petitioner Charben Duarte y Oliveros (Duarte) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

¹ Rollo, pp. 11-32.

² Id. at 36-50. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Elihu A. Ybañez and Samuel H. Gaerlan, concurring.

³ Id. at 52-54.

⁴ Id. at 75-96. Penned by Presiding 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.

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The Facts

This case stemmed from two (2) separate Informations⁶ filed before the RTC charging Duarte of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia. The prosecution alleged that at around five (5) o' clock in the morning of January 20, 2014, a concerned citizen went to the Police Community Precinct Zone 3-Caloocan City Police Station to report a shooting incident along Don Jose Street, Caloocan City. Pursuant thereto, PO2 Wilson P. Tan, Jr. and PO1 Willy P. Galauran (PO1 Galauran) went to the said area and upon arrival thereat, they saw a man lying on the ground with a gunshot wound, later identified as Duarte. As the police officers approached Duarte, they noticed that a gun was tucked on the right side of his waist. PO1 Galauran then took the gun and asked Duarte if he had the requisite authority to possess the gun. Since Duarte failed to answer or show a license to carry said gun, PO1 Galauran conducted a body search on him and took a black sling bag from his shoulder. Upon opening said bag, PO1 Galauran discovered a grenade, a plastic sachet containing white crystalline substance, and various drug paraphernalia. The police officers then seized Duarte's belongings, marked the same, informed him of his constitutional rights, and took him to the hospital for the treatment of his gunshot wound. Thereafter, the police officers went back to their office and, *inter alia*, turned over the seized sachet and paraphernalia to the Station of Anti-Illegal Drugs – Special Operation Unit (SAID). At the SAID, they conducted a physical inventory⁷ in the presence of PO1 Galauran, Barangay Kagawad Rendon Ulderico (Kgd. Ulderico), and Duarte. Finally, the seized sachet and paraphernalia were brought to the crime laboratory where, upon examination,⁸ such items yielded positive for the presence of *shabu*.⁹

For his part, Duarte denied the charges against him and narrated his own version of the events. He said that on that fateful day, he went to his friend, Bart, in order to extend a loan to him in the amount of ₱5,000.00. Thereafter, Bart asked that he join his group to go to Barangay 21, Francisco Street to meet a certain person, to which Duarte reluctantly agreed. While they were cruising the streets on board single motorcycles, Duarte heard gunshots and felt that he was hit at the back. This prompted him to intentionally crash his motorcycle, run away towards the highway, and thereafter hail a tricycle which took him to the hospital. However, while fleeing, he noticed that it was Bart who fired at him, but did not know why his friend would do such a thing to him.¹⁰

⁶ The Information dated January 22, 2014 in Crim. Case No. C-91394 was for violation of Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs), while the Information of even date in Crim. Case No. C-91395 for Section 12, Article II of RA 9165 (Illegal Possession of Drug Paraphernalia); see records, pp. 2-3 and 17-18.

⁷ See Receipt of Physical Inventory dated January 20, 2014; *id.* at 14.

⁸ See Chemistry Report No. D-37-14 dated January 20, 2014; *id.* at 10.

⁹ See *rollo*, pp. 39-40 and 77-83.

¹⁰ See *id.* at 40-41 and 85-86.

In a Joint Decision¹¹ dated September 15, 2016, the RTC found Duarte guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period 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 in the amount of ₱300,000.00.¹² The RTC, however, acquitted Duarte for violation of Section 12, Article II of RA 9165 for failure of the prosecution to identify the *corpus delicti* of the crime.¹³ The RTC found that the prosecution established all the elements of Illegal Possession of Dangerous Drugs since a plastic sachet containing *shabu* was found in Duarte's sling bag. In this regard, the RTC noted that since PO1 Galauran saw a gun tucked at Duarte's waist and that the latter failed to show that he was authorized to carry the same, PO1 Galauran was authorized to arrest Duarte and conduct a search incidental thereto, which in turn, yielded the said plastic sachet.¹⁴ Aggrieved, Duarte appealed¹⁵ to the CA.

In a Decision¹⁶ dated September 7, 2017, the CA affirmed the RTC ruling.¹⁷ It held that all the elements of violation of Section 11, Article II of RA 9165 are present as it was shown that Duarte freely possessed a plastic sachet containing *shabu* despite his lack of authority therefor. The CA also ruled that the police officers substantially complied with the chain of custody rule, further opining that the absence of the DOJ and media representatives during inventory is forgivable, so long as the integrity and evidentiary value of the seized items are preserved.¹⁸

Undaunted, Duarte moved for reconsideration¹⁹ which was, however, denied in a Resolution²⁰ dated April 4, 2018; hence, this petition seeking that his conviction for violation of Section 11, Article II of RA 9165 be overturned.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Possession of Dangerous Drugs under RA 9165,²¹ it is essential that the identity of the dangerous drug be established with

¹¹ Id. at 75-96.

¹² Id. at 95.

¹³ See id. at 93-94.

¹⁴ See id. at 86-93.

¹⁵ See Notice of Appeal dated September 16, 2016; records, p. 168.

¹⁶ *Rollo*, pp. 36-50.

¹⁷ Id. at 50.

¹⁸ See id. at 44-49.

¹⁹ See motion for reconsideration dated October 11, 2017; CA *rollo*, pp. 126-129.

²⁰ *Rollo*, pp. 52-54.

²¹ The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such

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moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.²² 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.²³

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.²⁴ 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.”²⁵ 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.²⁶

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 10640,²⁷ a representative from the media **and** the Department of Justice (DOJ), and any elected public official;²⁸ or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service **or** the media.²⁹ The law requires the presence of these

possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015]; and *People v. Bio*, 753 Phil. 730, 736 [2015]).

²² See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.* at 53; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²³ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²⁴ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 21; *People v. Sanchez*, *supra* note 21; *People v. Magsano*, *supra* note 21; *People v. Manansala*, *supra* note 21; *People v. Miranda*, *supra* note 21, at 53; and *People v. Mamangon*, *supra* note 21. See also *People v. Viterbo*, *supra* note 21.

²⁵ *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

²⁶ See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 356-357 (2015).

²⁷ 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.

²⁸ See Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

²⁹ See Section 21 (1), Article II of RA 9165, as amended by RA 10640.

witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”³⁰

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.³¹ 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.’”³²

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³³ 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.³⁴ The foregoing is based on the saving clause found in Section 21 (a),³⁵ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁶ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁷ 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.³⁸

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.³⁹ Thus, mere statements of unavailability, absent actual

³⁰ See *People v. Miranda*, supra note 21, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³¹ See *People v. Miranda*, id. at 60-61. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 23, at 1038.

³² See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

³³ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁴ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁵ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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[.]**”

³⁶ Section 1 of RA 10640 pertinently states: “**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.**”

³⁷ *People v. Almorfe*, supra note 34.

³⁸ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁹ See *People v. Manansala*, supra note 21.

serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.⁴⁰ 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.⁴¹

Notably, the Court, in *People v. Miranda*,⁴² 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, then 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.”⁴³

In this case, it appears that the inventory and photography of the items seized from Duarte were not conducted in the presence of representatives from the DOJ and the media, as evinced from the Receipt of Physical Inventory,⁴⁴ which only showed a signature from an elected public official, *i.e.*, Kgd. Ulderico, contrary to the mandatory procedure laid down in RA 9165. This is confirmed by the testimony of PO1 Galauran on cross-examination, the pertinent portions of which show:

[Atty. Margie Joy F. Lucas (Atty. Lucas)]: So, were the pieces of evidence inventoried there at SAID?

[PO1 Galauran]: Yes, ma’am, something like that, ma’am.

Q: I’m showing to you the receipt of physical inventory bearing your signature, there appears to be a name and a signature on the left bottom portion of the page[. D]id you witness the signing of this document by this person[,] Kagawad Rendon, Ulderyco (*sic*)?

A: Yes, ma’am.

Q: So, you saw him actually signing the document?

A: Yes, ma’am.

[Interpreter]: Witness identifying Exhibit “G” – Receipt of Physical [I]nventory.

⁴⁰ See *People v. Gamboa*, supra note 23, citing *People v. Umipang*, supra note 23, at 1053.

⁴¹ See *People v. Crispo*, supra note 21.

⁴² Supra note 21.

⁴³ See *id.* at 61.

⁴⁴ Dated January 20, 2014. Records, p. 14

[Atty. Lucas]: There also appears to be a name and address on the bottom right portion of the page under owner of seized property or suspect, who wrote this?

[PO1 Galauran]: PO2 Wilson Tan wrote that[,] ma'am.

Q: But this was not signed by accused Charben Duarte?

A: Yes, ma'am.

[Atty: Lucas]: Nothing further, your Honor.

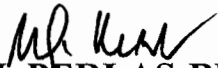
[Court]: Any re-direct, Fiscal?

[Assistant City Prosecutor Albert T. Cansino]: No re-direct[,] your Honor.⁴⁵

As earlier stated, it is incumbent upon the prosecution to account for the aforesaid witnesses' absence 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 secure their presence. Here, the defense lawyer, through the cross-examination of PO1 Galauran, had already pointed out that only an elected public official was present during the inventory and photography of the seized items. At this point, the prosecution should have already noted the absence of the representatives from the DOJ and the media and interrogated PO1 Galauran, or any other witness for that matter, on whether or not earnest efforts were exerted in ensuring the presence of all the required witnesses during the conduct of the inventory and photography. Absent any determination of earnest efforts, the Court is constrained to hold that there was an unjustified deviation from the chain of custody rule, resulting in the conclusion that the integrity and evidentiary value of the items purportedly seized from Duarte were compromised. Perforce, his acquittal is warranted under these circumstances.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 7, 2017 and the Resolution dated April 4, 2018 of the Court of Appeals in CA-G.R. CR No. 39090 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Charben Duarte y Oliveros is **ACQUITTED** of the crime of violation of Section 11, Article II of Republic Act No. 9165. 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.

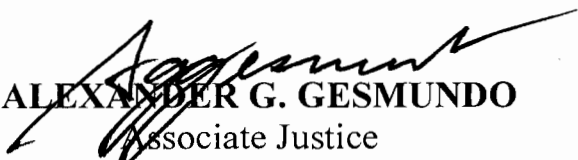

ESTELA M. PERLAS-BERNABE
Associate Justice

⁴⁵ TSN, September 2, 2014, pp. 18-19.

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice
Chairperson

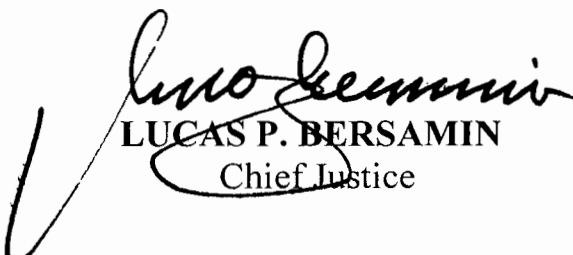

FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ROMARI D. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice