



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

SECOND DIVISION

EMMANUELITO LIMBO y G.R. No. 238299
PAGUIO,

Petitioner, Present:

- versus -

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER., JJ.

PEOPLE OF THE
PHILIPPINES,

Respondent. Promulgated:

01 JUL 2019

X-----*[Signature]*-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated May 22, 2017 and the Resolution³ dated March 20, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 37091, which affirmed the Decision⁴ dated October 14, 2014 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC) in Crim. Case No. 10-559 finding petitioner Emmanuelito Limbo y Paguio (petitioner) 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. 14-33.
² Id. at 45-60. Penned by Associate Justice Maria Filomena D. Singh with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring.
³ Id. at 38-43.
⁴ Id. at 61-74. Penned by Presiding Judge Myra B. Quiambao
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.

The Facts

This case stemmed from an Information⁶ filed before the RTC accusing petitioner of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that at around 4:30 in the afternoon of August 30, 2010, acting on a tip about the purported drug activities at Mendiola Street, Barangay Alabang, Muntinlupa City, Police Officer (PO) 3 Manuel Amodia, Jr. (PO3 Amodia), PO2 Mark Sherwin Forastero (PO2 Forastero), and PO2 Alfredo Andes (PO2 Andes) conducted monitoring and surveillance at the said place. In an alley in front of San Roque Church, PO3 Amodia saw petitioner talking to an unidentified person. Growing suspicious, he approached them and noticed that petitioner was holding two (2) transparent plastic sachets containing white crystalline substance on his palm and was showing it to his companion. Convinced that these were prohibited drugs, PO3 Amodia immediately arrested petitioner and seized the sachets from him, then proceeded to inform him of his rights under the law and the reason for his arrest, while the other person was able to evade the authorities. Immediately thereafter, they decided to return to their office because petitioner was trying to break free (“*nagpupumiglas siya*”). Thereat, the arresting officers allegedly placed calls to certain persons who are representatives from the media, the Department of Justice (DOJ) and local elected officials urging them to come; however, after more or less two (2) hours of waiting, they decided to proceed without their presence, and instead, called upon a certain Ely Diang, a local government employee of Muntinlupa City. They then conducted an inventory,⁷ marked the evidence, took photographs,⁸ and prepared other relevant documents. They also prepared a Request for Laboratory Examination on Seized Evidence⁹ which was forwarded to the Southern Police District Crime Laboratory (Crime Laboratory) together with the two (2) sachets containing white crystalline substance. Later, upon laboratory examination,¹⁰ the substance was identified as metamphetamine hydrochloride or *shabu*, a dangerous drug.¹¹

For his part, petitioner denied the charges against him and claimed that he was framed by the police officers. He explained that he was simply riding his motorcycle traversing the corner of Mendiola Street when he was accosted and grabbed by PO3 Amodia, PO2 Forastero, and PO2 Andes. PO2 Andes told him that he had managed to procure evidence against him (“*[e]to may ebidensya na ako sa iyo*”), showing him two (2) sachets containing white crystalline substance.¹²

⁶ Dated August 31, 2010. *Id.* at 75-76.

⁷ See Receipt/Inventory of Property Seized dated August 30, 2010; records, p. 11.

⁸ See *id.* at 120.

⁹ *Id.* at 122.

¹⁰ See Physical Science Report No. D-315-10S signed by Police Chief Inspector Abraham Verde Tecson; *id.* at 123.

¹¹ See *rollo*, pp. 45-47 and 62-64.

¹² See *id.* at 64-66.

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In a Decision¹³ dated October 14, 2014, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment 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 ₱300,000.00.¹⁴ It found the prosecution to have sufficiently proved all the elements of the crime based on the testimony of PO3 Amodia, which was shown to be credible. It also found that the failure to physically inventory and photograph the sachets seized from petitioner in the manner prescribed by Section 21, Article II of RA 9165 was justified considering the attempt to comply with the same and that the integrity and evidentiary value of the evidence had been properly preserved.¹⁵ Aggrieved, petitioner appealed¹⁶ to the CA.

In a Decision¹⁷ dated May 22, 2017, the CA affirmed the RTC ruling.¹⁸ It likewise found that all the elements of the crime charged were proven beyond reasonable doubt and that the deviation from the requirements under Section 21, Article II of RA 9165 was justified.¹⁹

Dissatisfied, petitioner moved for reconsideration,²⁰ which was, however, denied in a Resolution²¹ dated March 20, 2018; hence, this petition.

The Court's Ruling

The petition is meritorious.

In cases of Illegal Possession of Dangerous Drugs under RA 9165,²² 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.²³ Failing to prove the integrity of the *corpus*

¹³ Id. at 61-74.

¹⁴ Id. at 74.

¹⁵ Id. at 67-74.

¹⁶ See Notice of Appeal dated October 27, 2014; id. at 89-90.

¹⁷ Id. at 45-60.

¹⁸ Id. at 60.

¹⁹ See id. at 49-59.

²⁰ See Motion for Reconsideration (Re: Decision dated May 22, 2017) dated June 17, 2017; CA *rollo*, pp. 129-141.

²¹ *Rollo*, pp. 38-43.

²² 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 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; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

²³ See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

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delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.²⁴

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.²⁵ 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.”²⁶ 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.²⁷

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 10640,²⁸ a representative from the media AND the Department of Justice (DOJ), and any elected public official;²⁹ 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.³⁰ 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.”³¹

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.”³² This is because “[t]he law has been ‘crafted by Congress as safety precautions to address potential police

²⁴ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²⁵ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 22; *People v. Sanchez*, supra note 22; *People v. Magsano*, supra note 22; *People v. Manansala*, supra note 22; *People v. Miranda*, supra note 22; and *People v. Mamangon*, supra note 22. See also *People v. Viterbo*, supra note 23.

²⁶ *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

²⁷ See *People v. Tumilak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

²⁸ 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.

²⁹ See Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

³⁰ See Section 21 (1), Article II of RA 9165, as amended by RA 10640.

³¹ See *People v. Miranda*, supra note 22. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³² See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 24, at 1038.

abuses, especially considering that the penalty imposed may be life imprisonment.”³³

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³⁴ 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.³⁵ The foregoing is based on the saving clause found in Section 21 (a),³⁶ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁷ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁸ 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.³⁹

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.⁴⁰ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.⁴¹ 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.⁴²

³³ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, *id.*

³⁴ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁵ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁶ 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.**”

³⁷ 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.**”

³⁸ *People v. Almorfe*, *supra* note 35.

³⁹ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

⁴⁰ See *People v. Manansala*, *supra* note 22.

⁴¹ See *People v. Gamboa*, *supra* note 24, citing *People v. Umipang*, *supra* note 24, at 1053.

⁴² See *People v. Crispo*, *supra* note 22.

Notably, the Court, in *People v. Miranda*,⁴³ 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, 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.”⁴⁴

In the present case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by a member of the media, a representative from the DOJ, and an elective public official. This may be easily gathered from the Receipt/Inventory of Property Seized⁴⁵ which only confirms the presence of an employee of the local government of Muntinlupa City, *i.e.* Ely Diang. Such finding is confirmed by the testimony of PO3 Amodia on direct and cross-examination, to wit:

Direct Examination

[Fiscal Tomas Ken Romaquin, Jr.]: Are you familiar with the rule that when you conduct inventory, you must request for the presence of several witnesses, among them should be representative from the Department of Justice and elected local official and representative from the media and so on?

[PO3 Amodia]: Yes, sir.

Q: How come it appears from this Receipt/Inventory that there’s nobody from the media, there’s no signature by a local government official?

A: I was calling representative from the media and from the local government and we’ve been waiting for a long time and nobody came, so we decided to call for one local government employee because we might suffer some technicality in our documentation, sir.⁴⁶

Cross-Examination

[Atty. John Michael Zambales]: And also in your direct examination Mr. Witness, you also said that you tried to call those needed in order for the markings like media, elected officials, is that right?

[PO3 Amodia]: Yes, sir.

x x x x

Q: And no one answer?

A: There was but nobody arrived, sir.

Q: And how long did you wait?

⁴³ Supra note 22.

⁴⁴ See *id.*

⁴⁵ Records, p. 11.

⁴⁶ TSN, September 18, 2012, p. 11.

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A: More or less two (2) hours, sir.

Q: Two (2) hours from?

A: From the time we called, sir.

Q: And what time is that when you called?

A: 4:30 when we arrested him, may be 5:00 p.m., sir.

Q: And that is already in your office?

A: Yes, sir.⁴⁷

To justify this deviation, PO3 Amodia explained that despite their efforts in contacting the required witnesses, none of them came to their office within a period of more or less two (2) hours; hence, they decided to proceed without their presence in order to obviate any technicalities in their documentation.⁴⁸

The Court finds this explanation untenable.

In *People v. Umipang*,⁴⁹ the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “[a] sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be regarded as a flimsy excuse.”⁵⁰ Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. 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 full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁵¹

Pertinently, the Court in *People v. Lim*,⁵² explained that the absence of the required witnesses must be justified based on acceptable 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

⁴⁷ TSN, September 18, 2012, p. 27.

⁴⁸ See *rollo*, pp. 63-64.

⁴⁹ *Supra* note 24.

⁵⁰ *Id.* at 1053.

⁵¹ *People v. Crispo*, *supra* note 22.

⁵² See G.R. No. 231989, September 4, 2018.

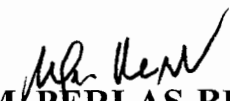
was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) *earnest efforts to secure the presence of a DOJ [and] media representative[s] and 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.”⁵³

However, none of these circumstances exist in this case. The mere fact that the witnesses contacted by the police officers failed to appear at their office within a brief period of two (2) hours is not reasonable enough to justify non-compliance with the requirements of the law. Indeed, the police officers did not even bother to follow up on the persons they contacted, thus, it cannot be said that genuine and sufficient efforts were exerted to comply with the witness requirement.


In view of the foregoing, the Court is therefore impelled to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner – which constitute the *corpus delicti* of the crimes charged – have been compromised.⁵⁴ As such, petitioner’s acquittal is in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 22, 2017 and the Resolution dated March 20, 2018 of the Court of Appeals in CA-G.R. CR No. 37091 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Emmanuelito Limbo y Paguio is **ACQUITTED** of the crime charged. 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.

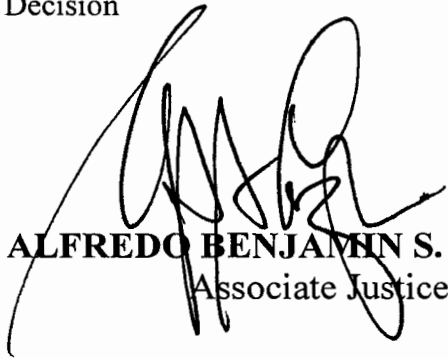

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

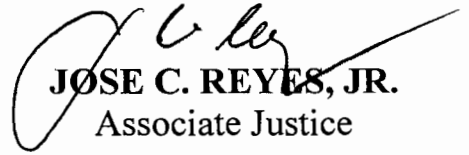

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

⁵³ See *id.*, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

⁵⁴ See *People v. Patacsil*, G.R. No. 234052, August 6, 2018.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

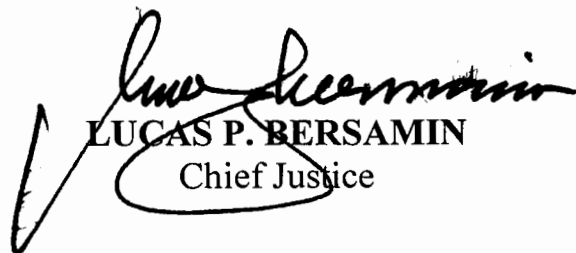
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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