



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

ROLANDO P. DIZON,
 Petitioner,

G.R. No. 239399

Present:

CARPIO, *J.*, Chairperson,
 PERLAS-BERNABE,
 CAGUIOA,
 CARANDANG,* and
 LAZARO-JAVIER, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

25 MAR 2019

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DECISION

CAGUIOA, *J.*:

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition)¹ questioning the Decision² dated November 10, 2017 and Resolution³ 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 Decision⁴ 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. 9165⁵ (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

* Designated additional member per Raffle dated 19 December 2018.

¹ *Rollo*, pp. 12-32.

² *Id.* at 34-45. Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) with Associate Justices Jane Aurora C. Lantion and Pablito A. Perez, concurring.

³ *Id.* at 48-49.

⁴ *Id.* at 69-80. Penned by Presiding Judge Lyn Eborra-Cacha.

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" (2002).

The Facts

An Information⁶ 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

⁶ Records, p. 1.

⁷ Id.

⁸ Rollo, p. 69.



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 placed 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:

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

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

⁹ Id. at 35-38.



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

¹⁰ Id. at 79-80.



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 Reconsideration¹⁴ 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:

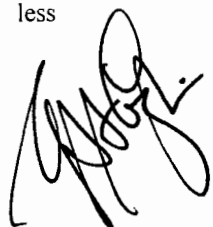
¹¹ Id. at 78-79.

¹² Id. at 45.

¹³ Id. at 44-45.

¹⁴ Id. at 101-112.

¹⁵ Section 21 of R.A. No. 9165 was amended by R.A. No. 10640, 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'." RA 10640, which imposed less stringent requirements in the procedure under Section 21, was approved on July 15, 2014.



SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]** (Emphasis supplied)

The Implementing Rules and Regulations of R.A. No. 9165 (IRR), on the other hand, supplied additional custody requirements and added a “saving clause” in case of non-compliance with such requirements under justifiable grounds. Thus, Section 21(a), Article II of the IRR states:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served;** or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **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[.] (Emphasis supplied)

Thus, while as a rule, strict compliance with the foregoing requirements is mandatory,¹⁶ a deviation may be allowed **only if** the following requisites concur: (1) the existence of “justifiable grounds” allowing departure from the rule on strict compliance; **and** (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.¹⁷ Thus, when there is a showing of lapses in procedure, the prosecution must recognize such and accordingly justify the same in order to warrant the application of the saving mechanism.¹⁸

In this case, the apprehending team plainly failed to comply with the witness requirements under the law, i.e., that the photographing and inventory of the seized items be witnessed by a representative from the media, the Department of Justice (DOJ), and any elected public official. The records are clear: only two (2) barangay officials were present to witness the operation, as observed by the RTC:

x x x 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.¹⁹ (Emphasis supplied)

Worse, there was no indication whatsoever that the apprehending team attempted, at the very least, to secure the presence of the other required witnesses.

Thus, as a result of the foregoing irregularities committed by the government authorities, the conviction of Dizon now hangs in the balance. In this respect, in order not to render void the seizure and custody over the evidence obtained from the latter, the prosecution is thus required, as a matter of law, to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized items were properly preserved.²⁰

The saving clause under the IRR does not apply.

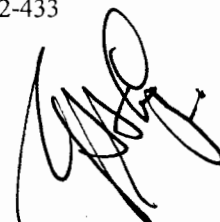
¹⁶ *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 776 Phil. 462, 475 (2016).

¹⁷ R.A. No. 9165, Sec. 21(a), as implemented by its IRR.

¹⁸ *People v. Luna*, G.R. No. 219164, March 21, 2018, p. 10.

¹⁹ *Rollo*, p. 78.

²⁰ See *People v. Capuno*, 655 Phil. 226, 240-241 (2011), citing *People v. Garcia*, 599 Phil. 416, 432-433 (2009); *People v. Reyes*, 797 Phil. 671, 687 (2016).



After a judicious scrutiny of the records of this case, the Court finds that the apprehending officers failed in this regard.

At the outset, the Court finds it brazen of the police officers to recognize their fatal error in procedure and yet at the same time offer no explanation or justification for doing so, which, as stated above, is **required by the law**. What further catches the attention of the Court is the fact that Dizon was apprehended pursuant to a search warrant and therefore with more reason, the police officers could have secured the presence of the other witnesses, *i.e.*, the DOJ representative and media representative.

However, despite the advantage of planning the operation ahead, the apprehending team nonetheless inexplicably failed to comply with the basic requirements of Section 21 of R.A No. 9165. The importance of such witnesses was explained by the Court in *People v. Luna*:²¹

The reason for this is dictated by simple logic: these witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. Hence, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the insulating presence of the witnesses is most needed, as **it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence**. Without the actual presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the confiscated drugs, the evils of switching, planting or contamination of the *corpus delicti* that had tainted the buy-busts conducted under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected.²²

Prescinding from the foregoing, considering that no justifiable grounds for the failure to secure the required witnesses were presented by the prosecution, proving that the integrity and evidentiary value of the seized drugs were preserved becomes inconsequential. Stated differently, the saving clause was not triggered because the first prong was not satisfied in the first place.

In this regard, it was serious error for the CA to apply the two requisites alternatively and not sequentially; that unjustified lapses in procedure could be overcome by proof that the integrity and evidentiary value of the seized items remained intact:

R.A. No. 9165 and its IRR do not require strict compliance or perfect adherence to the procedural aspect of the chain of custody rule. Substantial compliance suffices since what is essential is the

²¹ Supra note 18.

²² Id. at 11.

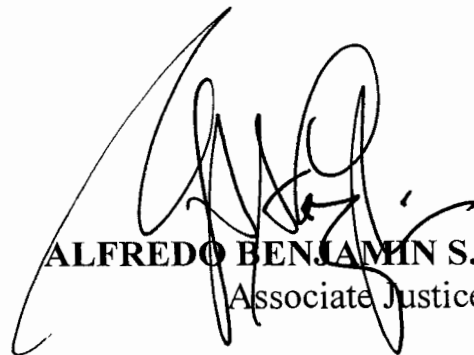
preservation of the integrity since what is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.²³

Such interpretation of the law is simply not discernible from a plain reading thereof. To repeat, the procedural requirements under Section 21 of R.A. No. 9165 are mandatory and may be relaxed only if the following requisites are availing: (1) the departure in procedure is based on “justifiable grounds;” **and** (2) the integrity and the evidentiary value of the seized items are preserved.

The Court has held in previous instances that lapses in the procedure under Section 21 of R.A. No. 9165, when left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* have been compromised.²⁴ All things considered, the acquittal of Dizon has now become inevitable.


WHEREFORE, premises considered, the petition is **GRANTED** and the Decision dated November 10, 2017 and Resolution dated May 9, 2018 of the Court of Appeals in CA-G.R. CR No. 39221 is hereby **REVERSED** and **SET ASIDE**. Petitioner Rolando P. Dizon is hereby **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt. Let an entry of final judgment be issued immediately.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

²³ *Rollo*, p. 44.

²⁴ *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

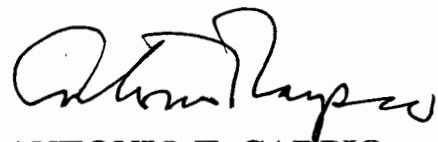

ESTELA M. PERLAS-BERNABE
 Associate Justice


ROSMARI D. CARANDANG
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice

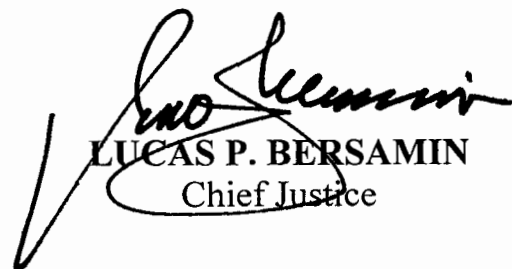
ATTESTATION

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
 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

