



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 June 2020** which reads as follows:*

“G.R. No. 205531 (Manuel Amago y Parpan alias “Buwa” v. People of the Philippines) . - This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the September 25, 2012 Decision² and January 18, 2013 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 33458, which affirmed the June 8, 2010 Judgment⁴ of the Regional Trial Court (RTC), Branch 31 of San Pedro, Laguna, in Criminal Case No. 6241-SPL. The RTC Judgment found petitioner Manuel Amago y Parpan alias “Buwa” (Amago) guilty beyond reasonable doubt of possession of dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On August 23, 2007, Amago was charged with violation of Section 11, Article II of RA 9165 in an Information which alleged:

That on or about August 21, 2007, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused, without any legal authority, did then and there willfully, unlawfully and feloniously have in his possession, control, and custody, two (2) heat-sealed plastic sachet[s] containing METHAMPHETAMINE HYDROCHLORIDE commonly known as “shabu”, a dangerous drug, with a total weight of zero point zero seven (0.07) gram.

¹ *Rollo*, pp. 10-38.

² *Id.* at 40-51; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

³ *Id.* at 53-54.

⁴ *Id.* at 74-77; penned by Judge Sonia T. Yu-Casano.

CONTRARY TO LAW.⁵

Upon arraignment, Amago pleaded not guilty. During the Pre-Trial Conference, the prosecution marked the following documents: (1) *Pinagsamang Sinumpaang Salaysay* of PO1 Jay B. Sayson (PO1 Sayson) and PO1 Sonny Xyrus de Leon (PO1 de Leon); (2) Request for Laboratory Examination; (3) Chemistry Report No. D-412-07; and (4) Reserved marking for the two plastic sachets. The defense did not mark any documentary exhibits.⁶

Trial ensued thereafter. The prosecution presented two witnesses: PO1 Sayson and PO1 de Leon, both members of the Philippine National Police assigned as intelligence operatives at the San Pedro Municipal Police Station. The defense also presented two witnesses: petitioner Amago and his wife, Emily Amago (Emily).

Version of the Prosecution

The version of prosecution, as summarized by the respondent in its Brief, is as follows:

On August 21, 2007 at around 4:30 p.m., PO1 Jay Sayson, PO1 Sonny Xyrus de Leon and Police Inspector Antonio Gutierrez proceeded to Barangay Cuyab, San Pedro, Laguna to serve a warrant of arrest issued by the Regional Trial Court of San Pedro, Laguna, Branch 93, against Fortunato Aniciete, Jr. y Lacap in Criminal Case No. 3866-SPL.

When the arresting officers reached Brgy. Cuyab, they chanced upon Fortunato in an alley while he was at that time talking and handing something to a man, later identified as herein accused-appellant, who received the same. As they were arresting Fortunato, PO1 Sayson held accused-appellant's hands because they (the arresting officers) noticed that he was holding in his palms two small plastic sachets which he tried to hide the same at his back.

After PO1 Sayson held accused-appellant's hands, he asked the latter to open his palms, to which accused-appellant complied by opening his palms revealing two (2) heat-sealed plastic sachets containing powder like an alum.

PO1 Sayson seized the said items and put the markings "MPA-1" and "MPA-2" on each of the plastic sachets. Thereafter, the apprehending officers brought accused-appellant and Fortunato to the PNP San Pedro, Laguna Police Station.

Upon arrival at the police station, the police officers turned over accused-appellant to the police investigator and Fortunato to the warrant officer. Also, PO1 Sayson turned over the seized items to the

⁵ CA rollo, p. 12.

⁶ Id. at 14.

police investigator who, upon examining the items, prepared a request for laboratory examination.

PO1 Sayson and PO1 De Leon brought the request and the seized items to the crime laboratory for qualitative examination.

Chemistry Report No. D-472-07 (Exhibit "C") showed that, as examined by Police Chief Inspector Lorna Ravales Tria, Chief of the Chemistry Section, both specimens A ("MPA-1") and B ("MPA-2") requested for qualitative examination, yielded positive for metamphetamine hydrochloride, a dangerous drug.⁷

Version of the Defense

Petitioner Amago interposed the defenses of denial and alibi. His Brief alleged that:

On August 22, 2007, at about 12:30 o'clock in the afternoon, MANUEL AMAGO was inside their house, together with his wife and children, when suddenly, armed men barged inside the house. When he inquired as to what was their purpose, they merely replied that they are police officers. They then searched the entire house without telling him what they were looking for. Surprised and afraid, he could not resist the illegal intrusion.

The search lasted for about twenty (20) minutes. When the police officers could not find something illegal in his house, one of them frisked him. When he again asked why, they did not utter any word. The police officers did not find anything from him and he was surprised when they handcuffed him. He was then brought to the police station. He denied the charge as it was merely fabricated.

EMILY AMAGO corroborated the accounts of Manuel Amago. On the day her husband was arrested, two police officers suddenly barged inside their house and arrested him without any reason. Fortunato Anicete was not in their house at that time. She was shocked and afraid as her husband was arrested without any valid reason.⁸

Ruling of the RTC

The RTC accorded full faith and credence to the prosecution witnesses' categorical and positive testimonies pointing to Amago as the possessor of the two plastic sachets of *shabu*. It held that Amago and his wife's defenses of denial and alibi were weak, particularly because the defenses were not substantiated by clear and convincing evidence. The dispositive portion of the RTC Judgment dated June 8, 2010 reads as follows:

WHEREFORE, foregoing considered, judgment is hereby rendered finding MANUEL AMAGO y PARPAN GUILTY beyond

⁷ *Rollo*, pp. 84-86.

⁸ *Id.* at 60-61.

reasonable doubt of violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer the penalty of imprisonment of 12 years and one day as minimum to 14 years and eight months as maximum and to pay a fine of ₱300,000.00.

The bail bond posted by the accused for his temporary liberty is hereby ordered cancelled and let the illegal drugs subject of these cases (sic) be transmitted to the Philippine Drug Enforcement Agency for their proper disposition.

SO ORDERED.⁹

Aggrieved, Amago appealed to the CA.

Ruling of the CA

The CA found no reason to reverse the RTC Judgment. It sustained the trial court's ruling that the elements for prosecution of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 were duly established and proven by the prosecution.¹⁰

The CA also reiterated the settled rule that findings and conclusions of the trial court on witnesses' credibility are entitled to great respect because trial courts have the advantage of observing the demeanor of witnesses as they testify.¹¹ There being no material inconsistencies in the testimonies of the witnesses in this case, the CA did not disturb the findings of the RTC.¹² It found that the prosecution witnesses' categorical statements prevail over Amago's bare denial.¹³

Lastly, the CA disregarded Amago's contention concerning the issue of disposition and preservation of the subject drugs and drug paraphernalia for the first time on appeal. It held that the police officers substantially complied with the law, and the integrity of the drugs seized was properly preserved. The CA upheld the police officers' presumption of regularity in the performance of their official duties.¹⁴

The dispositive portion of the CA Decision dated September 25, 2012 reads:

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The assailed *judgment* of the Regional Trial Court of San Pedro, Laguna, Branch 31 in Criminal Case No. 6241-SPL dated June 8, 2010 is **AFFIRMED**.

⁹ Id. at 77.

¹⁰ Id. at 45.

¹¹ Id.

¹² Id. at 46.

¹³ Id. at 49.

¹⁴ Id. at 48-50.

SO ORDERED.¹⁵ (Emphasis in the original)

On January 18, 2013, the CA denied petitioner Amago's Motion for Reconsideration¹⁶ in a Resolution that reads:

There being no new matters raised in the *Motion for Reconsideration* of our *Decision* dated September 25, 2012, to overcome the dismissal of his appeal, and considering that the issues advanced have been duly addressed and judiciously resolved by the Court in the aforementioned *Decision*, the *Motion for Reconsideration* is **DENIED** for utter lack of merit.

SO ORDERED.¹⁷ (Emphasis in the original)

Thus, this Petition for Review on *Certiorari* by Amago before the Court.

The Issue

Whether the CA erred in affirming the judgment of conviction despite the prosecution's failure to prove Amago's guilt beyond reasonable doubt.

The Court's Ruling

The Petition is meritorious. The Court therefore reverses the CA's judgment of conviction against Amago.

First of all, the Court agrees with Amago that it can revisit the factual findings of the CA, as an exception to the general rule that only questions of law may be raised in a petition for review on *certiorari*. The Court has recognized 10 exceptions to this general rule, and the Court agrees that two of the 10 exceptions apply to the case at bar, to wit:

x x x x

(6) When the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;¹⁸

¹⁵ Id. at 50.

¹⁶ Id. at 104-109.

¹⁷ Id. at 53.

¹⁸ *Treñas v. People*, 680 Phil. 368, 378 (2012) enumerates the 10 recognized exceptions to the rule that only questions of law may be raised in a petition for review on *certiorari*:

- (1) When the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible;
- (4) When there is grave abuse of discretion in the appreciation of facts;
- (5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

x x x x

In this case, Amago was charged with illegal possession of dangerous drugs defined and penalized under Section 11, Article II of RA 9165.¹⁹ To warrant a conviction, the prosecution must establish the following elements: (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.²⁰

In addition, the prosecution must likewise establish with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drug and account for each link, from the moment the drug is seized up to its presentation in court as evidence of the crime.²¹

This is clear under the original provision of Section 21(1), Article II of RA 9165, prior to its amendment, which is the applicable rule at the time Amago allegedly committed the crime charged. Section 21(1) provides:

Section 21. x x x. The PDEA [Philippine Drug Enforcement Agency] 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 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

(6) x x x x

(7) x x x x

(8) When the findings of facts themselves are conflicting;

(9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

¹⁹ The applicable paragraph of Section 11, Article II of RA 9165 provides:

Section 11. *Possession of Dangerous Drugs.* – x x x.

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x;

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

²⁰ *People v. Cabrellos*, G.R. No. 229826, July 30, 2018 citing *People v. Bio*, 753 Phil. 730, 736 (2015).

²¹ *Id.* citing *People v. Manansala*, 856 SCRA 359, 370 (2018).

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;

x x x x

While Section 21(1), Rule II of RA 9165 outlines the procedure and three-witness requirement needed in handling the seized drugs, Section 21(a) of the Implementing Rules and Regulations (IRR) filled in the details as to where the inventory and photographing of the seized drugs have to be done, and most importantly, added a saving clause in case the procedure is not strictly followed, to wit:²²

Section 21. x x x.

- (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 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;*

x x x x (Emphasis supplied)

The burden is on the prosecution in proving that justifiable grounds exist for non-compliance with Section 21 of RA 9165. The prosecution's failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. It must be highlighted that **the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity and evidentiary value of the seized items.**²³ Strict adherence to Section 21 of RA 9165 is required where the

²² *People v. Sipin*, G.R. No. 224290, June 11, 2018.

²³ *Id.* citing *People v. Saragena*, 817 Phil. 117, 144 (2017).

quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.²⁴

After a judicious perusal of the records of the case, the Court finds that the apprehending team did not act in accordance with the procedure outlined in RA 9165 and its IRR, thereby putting into question the integrity and evidentiary value of the seized drugs from Amago.

At the outset, the apprehending officers in this case, after seizure and confiscation, failed to physically inventory and photograph the seized drugs in the presence of the three witnesses required under Section 21, Rule II of RA 9165, namely: (1) a representative from the media; (2) a representative from the DOJ; and (3) any elected public official who shall be required to sign copies of the inventory and be given a copy thereof. The RTC, which had the opportunity of hearing the parties' testimonies first hand, failed to notice that Section 21 of RA 9165 and its IRR were not complied with. The RTC Judgment laid down the process by which Amago was arrested, a process clearly in violation of Section 21:

At about a distance of one meter, they saw Fortunato talking to the accused and handed something to him which the accused received. Suspecting it to be shabu as it looked like grounded alum, they immediately approached the two. SPO1 de Leon introduced himself as a police officer, informed Fortunato of his warrant of arrest and arrested him while PO Sayson held the hand of the accused which he tried to conceal behind him and asked him to open his palms. When opened, it yielded two plastic sachets of shabu. PO Sayson marked the items "MPA-1" and "MPA-2". Both persons were brought to the police station. The accused was turned over to the police investigator while Fortunato was turned over to the warrant officer. The seized items which were in possession of PO Sayson from the place of arrest up to the police station were likewise turned over to the police investigator who prepared a request for laboratory examination. PO Sayson and SPO1 de Leon then brought the seized items to the crime laboratory for examination. x x x.²⁵

As gleaned from the RTC Judgment, the seized drugs were merely marked, but were not subjected to physical inventory nor photographed in the nearest police station or nearest office of the apprehending officer/team, as required by the law.

The records also show that the three-witness requirement was not complied with, as PO1 Sayson admitted that it was only him who marked the seized drugs.²⁶ The requirement that the three witnesses sign the copies of the inventory and be given a copy of the same, before the seized drugs

²⁴ Id.

²⁵ *Rollo*, p. 75.

²⁶ TSN, November 20, 2007, p. 6.

were turned over to the PDEA Forensic Laboratory within 24 hours from confiscation for examination, was likewise not complied with.²⁷

In the end, the prosecution also failed to take advantage of the saving clause found in Section 21(a) of the IRR. The prosecution gave no justifiable reason why the apprehending team dispensed with the requirements of conducting a physical inventory and taking photographs of the seized drugs in the presence of the three witnesses, not just at the location of the crime but also at the nearest police station or office. There was no sworn affidavit stating the reasons for non-compliance nor was there a supplemental statement regarding the steps the apprehending team took to preserve the integrity and evidentiary value of the seized items.

The Court disagrees with the ruling of the CA that disallowed Amago to question and challenge the disposition and preservation of the seized drugs for the first time on appeal. Recent jurisprudence has repeatedly pronounced that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.²⁸ The Court cannot uphold the police officers' presumption of regularity in the performance of their official duties since they failed to provide justifiable grounds for non-compliance with Section 21. Thus, Amago's acquittal is in order.

The Court reiterates that in a prosecution for illegal possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt.²⁹ When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown.³⁰ For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from Amago, and to prove as a fact any justifiable reason for non-compliance with Section 21 of RA 9165 and its IRR, Amago must be acquitted of the crime charged.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The September 25, 2012 Decision and January 18, 2013 Resolution of the Court of Appeals in CA-G.R. CR No. 33458 which affirmed the June 8, 2010 Judgment of the Regional Trial Court, Branch 31 of San Pedro, Laguna, in Criminal Case No. 6241-SPL, are **REVERSED** and **SET ASIDE**. Accordingly, petitioner Manuel Amago y Parpan is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY**

²⁷ See Section 21(2), Rule II of RA 9165.

²⁸ *People v. Cabrellos*, supra note 20, citing *People v. Macapundag*, 807 Phil. 234, 244 (2017).

²⁹ Id. citing *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

³⁰ *Zafra v. People*, 686 Phil. 1095, 1109 (2012).

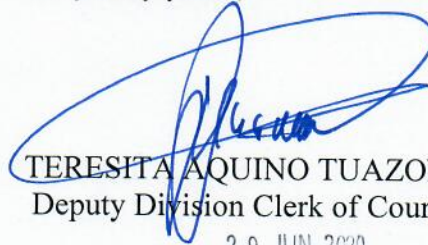
RELEASED from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Director of Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five days from receipt of this Resolution the action he has taken.

Let copies of this Resolution be furnished the Department of Justice and the Philippine National Police for their information and guidance.

SO ORDERED.”

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *6/29*
29 JUN 2020

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

MANUEL AMAGO y PARPAN alias "BUWA" (x)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 31
San Pedro City, Laguna
(Crim. Case No. 6241-SPL)

PHILIPPINE NATIONAL POLICE (reg)
Camp Crame, 1100 Quezon City

HON. SECRETARY (x)
Department of Justice
P. Faura Street
Ermita, Manila

JUDGMENT DIVISION (x)
Supreme Court, Manila

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OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 33458

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