



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 10, 2021** which reads as follows:

**“G.R. No. 240260 (*Roseller Guerrero y Ruizo v. People of the Philippines*).** - Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision<sup>1</sup> of the Court of Appeals (*CA*) dated March 21, 2018 and the Resolution<sup>2</sup> dated June 14, 2018 in CA-G.R. CR No. 38659. The assailed Decision affirmed the Decision<sup>3</sup> dated April 4, 2016 of the Regional Trial Court (*RTC*), Branch 120, Caloocan City, while the assailed Resolution denied petitioner's Motion for Reconsideration.

The facts are as follows:

On March 25, 2013 at around 3:00 p.m., PO1 Emmanuel Bautista (*PO1 Bautista*) and PO1 Gaudencio Vallejo (*PO1 Vallejo*) were on duty at the Police Community Precinct (*PCP*) of *Barangay* 185, Caloocan City Police Station. Thereafter, a certain Emily Nasul reported that the short pants and bonnet of her son were stolen the night before and that she saw the culprit at a billiard hall in Tala, Caloocan City. Acting on the said information, PO1 Bautista and PO1 Vallejo proceeded to the said billiard hall of *Barangay* 185 Caloocan City, together with the complainant. There they found the culprit, later identified as the petitioner, Roseller Guerrero y Ruizo (*Guerrero*), wearing the short pants and bonnet allegedly stolen by him. Afterwards, they invited Guerrero to the *barangay* hall.

At the *barangay* hall, Guerrero was informed of the complaint against him. As part of their standard operating procedure, PO1

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<sup>1</sup> Penned by Associate Justice Carmelita Salandanan Manahan, with Presiding Justice Romeo F. Barza and Associate Justice Stephen C. Cruz concurring; *rollo*, pp. 38-62.

<sup>2</sup> *Id.* at 64-65.

<sup>3</sup> *Id.* at 92-103.

Bautista frisked Guerrero and asked him to empty his pockets. When Guerrero emptied his right front pocket, it yielded a small blue jewelry box. PO1 Bautista then asked Guerrero to open the box. When Guerrero opened the box, PO1 Bautista saw three (3) small plastic sachets containing white crystalline substance. Guerrero attempted to hide the contents of the box by intentionally dropping them on the ground, but PO1 Bautista saw it and ordered Guerrero to pick them up. PO1 Bautista then confiscated the small plastic sachets and returned them inside the box.

After taking custody of the jewelry box and informing Guerrero of his constitutional rights, PO1 Bautista then brought Guerrero, together with the confiscated items, to the Police Sub-Station 4 for investigation of the complaint for theft filed against Guerrero. Subsequently, Guerrero was brought to the Station Anti-Illegal Drugs-Special Operation Unit (*SAID-SOU*) for investigation as regards the three (3) plastic sachets of suspected *shabu*. At the SAID-SOU, PO1 Bautista marked and signed the seized blue jewelry box with the markings "RG/EB 3-25-13" as well as the three (3) plastic sachet inside the box with the markings "RG/EB-1 3-25-13," "RG/EB-2 3-25-13," and "RG/EB-3 3-25-13." After marking the confiscated items, PO1 Bautista then turned-over the pieces of evidence to the duty investigator, PO1 Jerome Pascual (*PO1 Pascual*), who, in turn, prepared the Chain of Custody Form, Evidence Acknowledgment Receipt, Physical Inventory of Evidence and Request for Laboratory Examination. Thereafter, PO1 Pascual turned-over the pieces of evidence, together with the request for laboratory examination to the Northern Police District Crime Laboratory. Police Chief Inspector Richard Allan Mangalip (*PCI Mangalip*), forensic chemical officer at the Northern Police District Crime Laboratory, conducted the laboratory examination on the specimens. After performing qualitative examination on the plastic sachets, he found the specimens to contain methamphetamine hydrochloride, a dangerous drug.

Guerrero was charged with violation of Section 11, Article II of R.A. 9165, also known as the *Comprehensive Dangerous Drug Act of 2002*, in an Information dated April 1, 2013, which read as follows:

That on or about the 25<sup>th</sup> day of March, 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Three (3) small heat-sealed transparent plastic sachets each later marked as markings "RG/EB-1 3-25-13 with signature,["] "RG/EB-2 3-25-13" with signature,"

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and “RG/EB-3 3-25-13 with signature[”] containing METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.02 gram, 0.02 gram & 0.02 gram, which when subjected to laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law

CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, Guerrero pleaded not guilty to the offense charged.

The prosecution presented a total of four (4) witnesses, namely, PCI Mangalip, PO1 Bautista, PO1 Vallejo, and PO1 Pascual.

On the other hand, petitioner Guerrero vehemently denied the charge. He testified that while he was playing at a computer shop, in the afternoon of March 25, 2013, a woman approached him, asked him if he knew a certain “Batang,” and questioned him about the shorts he was wearing. After telling the woman that the shorts was pawned to him for gasoline expenses, two (2) uniformed policemen suddenly arrived and arrested him. He resisted and asked help from the *barangay*. As such, he was brought to the *barangay* hall where he was constrained to just remove the shorts and hand the same to the woman, which shorts was later searched by the police officers after also passing through the hands of the *barangay* tanod. The police officers then allegedly found drugs on the shorts he was wearing. After being detained, Guerrero was brought to Tala Hospital for medical examination. While on board the mobile car, two policemen tried to extort money from him in exchange for his liberty.

The defense for its part presented the lone testimony of the petitioner Guerrero.

On April 4, 2016, the trial court rendered a Decision finding Guerrero guilty beyond reasonable doubt of the offense charged. The dispositive portion of the Decision reads as follows:

Premises considered, this court finds accused Roseller Guerrero y Ruizo GUILTY beyond reasonable doubt of Violation of Section 11, Article II of Republic Act No. 9165 and hereby imposes upon him the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,000.00).

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<sup>4</sup> *Id.* at. 92.

The drug subject matter of this case is hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.<sup>5</sup>

Aggrieved, the petitioner filed an appeal to the CA raising the following issues claiming that the court *a quo* erred in convicting Guerrero of the offense charged: (1) despite the inadmissibility of the seized items being a product of an illegal arrest; (2) despite the procedural lapses on the part of the police officers in the custody of the seized illegal drugs; (3) despite the broken chain of custody of the alleged confiscated *shabu*; and (4) disregarding Guerrero's defense of denial.

On March 21, 2018, the CA affirmed the ruling of the RTC, the dispositive portion which provides:

WHEREFORE, the Appeal is DENIED. The April 4, 2016 Decision of the Regional Trial Court, Branch 120, Caloocan City in Criminal Case No. C-89711 is hereby AFFIRMED.

SO ORDERED.<sup>6</sup>

Unfazed, the petitioner filed a Motion for Reconsideration<sup>7</sup> on April 20, 2018, to which the Office of the Solicitor General (*OSG*) filed a Comment (on the Motion for Reconsideration).<sup>8</sup> On June 14, 2018, the CA denied the petitioner's Motion for Reconsideration.

Hence, this Petition.

The lone issue presented by the petitioner for resolution:

WHETHER THE CA GRAVELY ERRED IN AFFIRMING THE ASSAILED DECISION DATED APRIL 4, 2016 OF THE RTC OF CALOOCAN CITY, BRANCH 120, WHICH FOUND THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

Petitioner insists that the CA gravely erred in affirming his conviction due to the fact that the items seized are inadmissible being a product of an illegal arrest and the broken chain of custody of the alleged confiscated *shabu* which are sufficient to negate his guilt

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<sup>5</sup> *Id.* at 103.

<sup>6</sup> *Id.* at 61.

<sup>7</sup> *Id.* at 124-135.

<sup>8</sup> *Id.* at 137-138.

beyond reasonable doubt. Thus, he claimed that the Decision and Resolution sought to be reviewed, if not corrected, will certainly cause great injustice to his meritorious case.

The OSG, in its Manifestation and Motion (In Lieu of Comment)<sup>9</sup> dated December 12, 2018, manifested that it would no longer file a Comment, for the reason that it had amply discussed its staunch position on the petitioner's guilt in its Brief for the Appellee dated March 21, 2017. Essentially, the OSG adopts and repleads said Brief in lieu of Comment.

The Court finds the appeal meritorious.

Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*:

Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

As an exception to the rule, questions of fact may be raised in a Rule 45 petition if any of the following is present:

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.<sup>10</sup>

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<sup>9</sup> *Id.* at 142-143.

<sup>10</sup> *Alburo v. People*, 792 Phil. 876, 889 (2016).

A question of fact exists “when the doubt or difference arises as to the truth or the falsehood of alleged facts.” On the other hand, a question of law exists “when the doubt or difference arises as to what the law is on a certain state of facts.”<sup>11</sup>

It is admitted by the petitioner that the present petition involves mixed questions of facts and law. However, this Court still deems it proper to consider this petition as the factual findings of the lower courts do not conform to the evidence on record.

To begin with, prosecution for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Therefore, it is essential that the identity of the prohibited drug be established beyond doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession under R.A. No. 9165 fails.<sup>12</sup>

The prosecution failed to establish the chain of custody of the seized *shabu* from the time they were recovered from accused-appellant up to the time they were presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,<sup>13</sup> which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary

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<sup>11</sup> *Id.*

<sup>12</sup> *People of the Philippines v. Rogelio Yagao y Llaban*, G.R. No. 216725, February 18, 2019.

<sup>13</sup> *Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.*

custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies:

(1) 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.

In the present case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule; thus, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from the petitioner.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "*Marking*" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.<sup>14</sup>

Here, the marking of the seized *shabu* was done directly at the SAID-SOU, and not immediately after they were allegedly seized

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<sup>14</sup> *People v. Diputado*, 813 Phil. 160, 171 (2017)

from the petitioner. For this reason, in the initial step of the chain of custody, a gap already occurred. The seized items were not marked immediately at the *barangay* hall where the seized items were allegedly discovered. Despite the presence of the *barangay* council members when the *shabu* was confiscated, the arresting officers still failed to mark the same in the *barangay* hall. Hence, the integrity and evidentiary value of the seized items was already compromised making it susceptible to alteration, substitution or contamination during the time that the police officers were in transit from the *barangay* hall to SAID-SOU.

R.A. No. 10640<sup>15</sup> amended Section 21 of R.A. No. 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media.

Since the alleged crime was committed in 2013, the old provisions of Section 21 of R.A. No. 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the seized items in the presence of (1) the accused or the person/s from whom such items were confiscated

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<sup>15</sup> Took effect on July 23, 2014.  
Section 1 of Republic Act No. 10640 provides:  
Section 1. x x x. —

"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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, 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."



and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) from the Department of Justice (DOJ); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee “against planting of evidence and frame-up, [*i.e.*, they are] necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>16</sup>

In the present case, the required witnesses were not present at the time of the physical inventory of the allegedly seized items. The arresting officers failed to conduct a physical inventory and photographing of the alleged seized *shabu* in the presence of the petitioner, an elected official, a representative of the DOJ and the media. Worse, there was not even a single witness mandated by law present during the physical inventory. Hence, the mandate of Section 21 (1) of R.A. 9165 was not complied. The prosecution did not even bother to explain the non-compliance with the required number of witnesses.

Verily, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the Rules on Evidence. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.<sup>17</sup> It must be noted in this case that the quantity of the drug seized for each of the three (3) sachets was 0.02 gram of *shabu*.

The Court does not lose sight of the fact that under various field conditions, compliance with the requirements under Section 21 of R.A. 9165 may not always be possible. In fact, the IRR of R.A. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. However, in this case, the prosecution did not even bother to offer any explanation at all from the blatant non-compliance.

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<sup>16</sup> *Edangalino y Dionisio v. People*, G.R. No. 235110, January 8, 2020


<sup>17</sup> *People v. Allingag y Torres*, G.R. No. 233477, July 30, 2018, 874 SCRA 573, 593.

The prosecution's unjustified non-compliance with the required procedures under Section 21 of R.A. No. 9165, resulted in a substantial gap in the chain of custody of the seized items from Guerrero; thus, the integrity and evidentiary value of the drugs seized are put in question. Hence, this Court finds it necessary to acquit Guerrero for failure of the prosecution to prove his guilt beyond reasonable doubt.

**WHEREFORE**, premises considered, the petition for review on *certiorari* is **GRANTED**. The Decision dated March 21, 2018 and the Resolution dated June 14, 2018 of the Court of Appeals in CA-G.R. CR No. 38659 are hereby **REVERSED and SET ASIDE**. Petitioner Roseller Guerrero y Ruizo is accordingly **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of petitioner from detention, unless he is being held for some other lawful cause, and to inform this Court of his/her action hereon within five (5) days from receipt of this Resolution.

**SO ORDERED.”**

By authority of the Court:

  
**LIBRADA C. BUENA**  
Division Clerk of Court *off. 2/12*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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