

**EDWIN FUENTES Y GARCIA @ “KANYOD,” PETITIONER,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. 228718. January 07, 2019*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for review on certiorari[1] are the Decision[2] dated April 15, 2016 and the Resolution[3] dated December 9, 2016 of the Court of Appeals (CA) in CA G.R. CR No. 36556, which affirmed the Judgment[4] dated March 13, 2014 of the Regional Trial Court of Muntinlupa City, Branch 204 (RTC) in Criminal Case Nos. 06-789 and 06-790 finding petitioner Edwin Fuentes y Garcia @ "Kanyod" (petitioner) and Nicky Calotes y Valenzuela @ "Jojo" (Calotes) 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."

The Facts

This case stemmed from two (2) Informations[6] filed before the RTC separately charging petitioner and Calotes with Illegal Possession of Dangerous Drugs.[7]

The prosecution alleged that at around 2:30 in the afternoon of August 25, 2006, Police Officer 1 Mark Sherwin Forastero (PO1 Forastero), Senior Police Officer 1 Benjamin Madriaga (SPO1 Madriaga), and several other members[8] of the Station Anti-Illegal Drugs-Special Operations Task Force (SAID-SOTF) of the Philippine National Police (PNP), after coordination with the Philippine Drug Enforcement Agency,[9] went to Barangay Bayanan, Muntinlupa to conduct a surveillance on certain persons suspected of illegal drug peddling, including herein petitioner.[10] Upon arrival at the area, PO1 Forastero and SPO1 Madriaga entered an alley near the Philippine National Railways (PNR) site, where they saw Calotes in the act of handing petitioner what appeared to be a plastic sachet containing white crystalline substance. Immediately, PO1 Forastero grabbed Calotes and confiscated a plastic sachet from him while SPO1 Madriaga apprehended petitioner from whom he recovered two (2) more plastic sachets. They then proceeded to the SAID-SOTF headquarters in Muntinlupa City,[11] where PO1 Forastero and SPO1 Madriaga marked the seized plastic sachets, and conducted an inventory thereof in the presence of Nestor T. Gianan (Gianan), the City Architect of Muntinlupa City.[12] After preparing a request for laboratory examination[13] of the seized items, PO1 Forastero together with SPO1 Madriaga[14] brought the said request and the seized items to the crime laboratory,[15] where a qualitative examination conducted by Police Inspector May Andrea A. Bonifacio (P/Insp. Bonifacio) on the specimens yielded positive for methamphetamine hydrochloride or "shabu," a dangerous drug.[16]

In defense, petitioner and Calotes denied the charges against them and claimed that the seized drugs were planted evidence. Although they admitted being at the PNR site at the time and date alleged by the arresting officers, they, however, denied engaging in any illegal activity and instead, averred that petitioner was merely paying off his debt to Calotes when the police apprehended them. They maintained that the police recovered nothing from them when they were bodily searched. Nonetheless, they were brought to the police station, made to undergo a drug

test, and charged with violation of Section 11, Article II of RA 9165.[17]

The RTC Ruling

In a Judgment[18] dated March 13, 2014, the RTC found petitioner and Calotes guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165 and sentenced each of them to suffer the penalty of imprisonment for twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine in the amount of P300,000.00.[19] Citing Section 5 (a),[20] Rule 113 of the Rules of Court, the RTC found that the warrantless arrest of petitioner and Calotes was valid, and as such, the plastic sachets seized from them were admissible in evidence.[21] Further, the RTC held that the prosecution was able to establish all the elements of the crime charged, and the arresting officers - pursuant to Section 21 (a) of RA 9165, and its Implementing Rules and Regulations (IRR) - took the necessary steps to preserve the integrity of the seized items.[22] Aggrieved, petitioner and Calotes appealed to the CA.

The CA Ruling

In a Decision[23] dated April 15, 2016, the CA denied petitioner and Calotes' appeal and affirmed their conviction,[24] sustaining the RTC's finding that all the elements of the crime charged had been established by the prosecution. It likewise upheld the validity of their warrantless arrest, and further found that the integrity of the seized items had been preserved as the chain of custody thereof had been observed despite their marking at the police station. Likewise, the specimens were brought to the crime laboratory and examined on the same date.[25]

Dissatisfied, petitioner and Calotes moved for reconsideration,[26] which was, however, denied in a Resolution[27] dated December 9, 2016; hence, this petition filed only by petitioner.[28]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for the crime of Illegal Possession of Dangerous Drugs.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,[29] 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.[30] Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[31]

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.[32] As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items 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, "a representative from the media AND the Department of Justice (DOJ), and any elected public official";[33] or (b) if after the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service OR the media." [34] 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." [35]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[36] As such, deviations from the procedure may be allowed, 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.[37] The foregoing is based on the saving clause found in Section 21 (a),[38] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[39]

At this juncture, the Court takes this opportunity to clarify that compliance with the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax. In the first place, the chain of custody procedure is embodied in statutory provisions which were "crafted by Congress as safety precautions to address potential police abuses [in drugs cases], especially considering that the penalty imposed may be life imprisonment." [40] It is not a Supreme Court - issued rule of procedure created under its constitutional authority to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts." Rather, it is an administrative protocol that law enforcement officers and operatives are enjoined to implement as part of their police functions. Indeed, while the chain of custody rule is "procedural" in the sense that it sets a step-by-step process that must be followed, it is by no means remedial in nature since it is not, properly speaking, a requirement or process that pertains to court litigation.

At most, insofar as an actual court proceeding is concerned, it is the compliance with the chain of custody procedure, or the presence of justifiable reasons for non-compliance, which must be proved; in this relation, it is the procedure of proving the same which is prescribed in the ordinary rules of evidence, which is, on the other hand, what our courts have discretion over. Thus, when a court finds that non-compliance with the chain of custody rule is allowable, it does not exercise its discretion to relax a Court-issued rule; rather, it determines that the prosecution was able to prove that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[41] In so doing, the court only applies the saving - clause found in the law.[42]

It deserves pointing out that the mandatory nature of the chain of custody rule traces its roots to, as earlier stated, the peculiarity of drugs cases in that the seized drugs constitute the "body of the crime." The chain of custody rule is the administrative mechanism established by legislature to ensure an acceptable level of certainty with respect to the drugs' integrity and evidentiary value. Hence, failure to comply or failure to justify non-compliance means that this level of certainty has not been satisfied, and as a result, conjures reasonable doubt on an indispensable element of the crime. This is the reason why the law states "non-compliance with the 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," which inversely stated, effectively means that the seizure and custody over the items are rendered void and invalid by the non-compliance with these requirements, unless the non-compliance is under justifiable grounds, and that the integrity and the evidentiary value of the seized items are properly preserved. Overall, it may therefore be said that the foundational bearings of the chain of custody rule, owing to the peculiar treatment of the corpus delicti in drugs cases, hearken to the accused's presumption of innocence,[43] and thus, flesh out safeguards therefor. It is this signification that firmly confirms the nature of the chain of custody rule as a matter of substantive law, and not a mere technical rule of court procedure.

In this case, petitioner is charged with Illegal Possession of Dangerous Drugs. However, records disclose glaring and unjustifiable deviations from the chain of custody procedure, as follows:

First, prosecution witnesses PO1 Forastero[44] and SPO1 Madriaga[45] both testified that they were in possession of the plastic sachets confiscated from petitioner and Calotes, with SPO1 Madriaga keeping in his possession the

two (2) plastic sachets seized from petitioner. They likewise testified^[46] that they marked the seized items in the police station and after a request for laboratory examination had been prepared, both of them went to the PNP Crime Laboratory to deliver the said request and the seized items.

Unfortunately, PO1 Forastero and SPO1 Madriaga failed to identify who received the request for laboratory examination and the seized items at the crime laboratory. Records show that before the specimens were handled by and subjected to qualitative examination by P/Insp. Bonifacio, the forensic chemist, the items were received by a certain "Relos," as clearly reflected on the lower left hand portion^[47] of the request for laboratory examination. Neither has it been established who handled the same before and after P/Insp. Bonifacio rendered her findings until the same had been presented in court as evidence for purposes of identification.

Second, although the arresting officers prepared a Certificate of Inventory at the police station immediately after the arrest, the records are bereft of evidence showing that the seized items were photographed, much more in the presence of petitioner, or his representative or counsel, as well as the witnesses required by law.

And finally, there was also a deviation from the witness requirement as the conduct of inventory was not witnessed by an elected public official, a DOJ representative, and a media representative. This may be gleaned from the Certificate of Inventory which shows that the same was witnessed only by City Architect Gianan, who is not considered as an elected public official. This fact is further confirmed by SPO1 Madriaga, who testified that:

[Atty. Balbague]: Did you conduct an inventory, Mr. Witness?

[SPO1 Madriaga]: Yes, ma'am

Q: Who were present?

A: The accused, the witness and other operatives.

Q: There was no elected official present?

A: None, ma'am.

x x x x

[Fiscal Baybay]: What about the inventory[,], why did you not have it signed by a barangay official or elected official?

[SPO1 Madriaga]: No available official at that time only the city architect of the City Government of Muntinlupa.

x x x x^[48]

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence.^[49] As the Court sees it, the prosecution did not faithfully comply with these standards and unfortunately, failed to justify non-compliance. As such, the Court is constrained to conclude that the integrity and evidentiary value of the seized drugs have been compromised, which perforce warrants petitioner's acquittal.

As a final note, it must be pointed out that although petitioner's co-accused, Calotes, no longer joined in filing the instant petition, the Court nevertheless deems it proper to likewise acquit him of the crime charged. This is because the criminal case against Calotes arose from the same set of facts as the case against petitioner and that such acquittal is definitely favorable and beneficial to him.^[50] Section 11 (a), Rule 122 of the Revised Rules on

Criminal Procedure states that:

Section II. Effect Of appeal by any of several accused. -

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter. (Emphasis supplied)

WHEREFORE, the petition is GRANTED. The Decision dated April 15, 2016 and the Resolution dated December 9, 2016 of the Court of Appeals in CA G.R. CR No. 36556 are hereby REVERSED and SET ASIDE. Accordingly, petitioner Edwin Fuentes y Garcia @ "Kanyod" and Nicky Calotes y Valenzuela @ "Jojo" are ACQUITTED of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Carpio,[*] Acting Chief Justice, (Chairperson), Caguioa, J. Reyes, Jr., and Hernando,**] JJ., concur.

[*] Designated Acting Chief Justice per Special Order No. 2631 dated December 28, 2018

**] Designated Additional Member per Special Order No. 2629 dated December 18, 2018.

[1] Dated February 3, 2017. Rollo, pp. 10-31.

[2] Id. at 33-45. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.

[3] Id. at 47-50.

[4] Id. at 65-76. Penned by Presiding Judge Juanita T. Guerrero.

[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.

[6] See Informations in Criminal Case No. 06-789 charging petitioner with violation of Section 11, Article II of RA 9165 (records, p. 1) and in Criminal Case No. 06-780 charging Calotes with violation of Section 11, Article II of RA 9165 (id. at 2).

[7] See rollo, pp. 34-35.

[8] The other members were: SPO1 Joel DelaVega as the team leader, PO3 Felix Paor, PO3 Marimel Tan, PO1 Nomer Mendoza, PO1 Joey Tan, PO1 Rondivar Hernaez, and PO1 Glen Gonzalez (see Pre-Operation Report/Coordination Sheet dated August 25, 2006; records, p. 8).

[9] See Certificate of Coordination dated August 25, 2006; records, p. 9.

[10] See rollo, p. 35.

[11] See rollo, pp. 35-36.

[12] See Certificate of Inventory dated August 25, 2006; records, p. 7.

[13] Dated August 25, 2006. Id. at 12.

[14] See TSN, March 22, 2007, p. 14 and TSN, September 20, 2007, p. 20.

[15] See rollo, p. 36.

[16] See Physical Science Report No. D-577-06S dated August 25, 2006; records, p. 11. The contents of the marked plastic sachets are as follows: "EF-1" contained 0.02 gram; "EF-2" contained 0.03 gram; and "NC" contained 0.03 gram.

[17] See *id.* at 36-37.

[18] *Id.* at 65-76.

[19] *Id.* at 76.

[20] Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure reads:

Section 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.]

[21] See rollo, pp. 72-74.

[22] See *id.* at 74-76.

[23] *Id.* at 33-45.

[24] *Id.* at 44.

[25] See *id.* at 41-43,

[26] Dated May 13, 2016; *id.* at 87-96.

[27] *Id.* at 47-50.

[28] *Id.* at 10-31.

[29] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object; and the consideration; and (b) the delivery of the thing sold and the payment; while 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. 2290921 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]).

[30] 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).

[31] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012). See also *People v. Manansala*, *id.*

[32] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 29; *People v. Sanchez*, *supra* note 29; *People v. Magsano*, *supra* note 29; *People v. Manansala*, *supra* note 29; *People v. Miranda*, *supra*

note 29; and *People v. Mamangon*, supra note 29. See also *People v. Viterbo*, supra note 31.

[33] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[34] Section 21, Article II of RA 9165, as amended by RA 10640.

[35] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[36] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[37] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[38] 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."

[39] Section 1 of RA 10640 pertinently states: "Provided, finally, That non-compliance 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."

[40] *People v. Umipang*, supra note 31, at 1038.

[41] See *People v. Almorfe*, supra note 37, at 59-60.

[42] Notably, RA 9165 did not originally contain the above-stated saving clause (see supra note 38) as the same was only introduced in Section 21 (a), Article II of RA 9165's IRR. Nevertheless, it is well-settled that "[a]dministrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself" (*ABAKADA Guro Party List v. Purisima*, 584 Phil. 246, 283 [2008]). As it now stands, however, the saving-clause has been crystallized into statutory law when it was adopted into the text of RA 9165 pursuant to its amendment by RA 10640.

[43] Section 14 (2), Article III of the 1987 Constitution states:

Section 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[44] See TSN, March 22, 2007, pp. 9-10.

[45] See TSN, September 20, 2007, p. 13.

[46] See TSN, March 22, 2007, p. 11 and TSN, September 20, 2007, pp. 15-17.

[47] Records, p. 12.

[48] TSN, February 14, 2008, pp. 8-9.

[49] see *People v. Bangalan*, G.R. No. 232249, September 3, 2018.

[50] See *People v. Lidasan*, G.R. No. 227425, citing *People v. Valdez*, 703 Phil. 519, 528-530 (2013).

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