



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 27, 2022 which reads as follows:

“G.R. No. 244039 (*Marco C. Sy v. People of the Philippines*). — This is a Petition for Review on *Certiorari*¹ assailing the May 30, 2018 Decision² and the December 17, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 39542, which affirmed the December 9, 2016 Decision⁴ of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Crim. Case No. 15840. The RTC found petitioner Marco C. Sy (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165⁵ (RA 9165), and sentenced him to suffer the penalty of twelve (12) years and one (1) day to fourteen (14) years imprisonment, and ordered him to pay a fine amounting to ₱300,000.00.

In an Information⁶ dated February 11, 2014, petitioner was charged with violation of Section 11, Article II of RA 9165. The accusatory portion reads:

That on or about February 10, 2014, at Brgy. 2, Anao, municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his possession, control and custody three (3) pieces small

- over – nine (9) pages ...

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¹ *Rollo*, pp. 7-41.

² CA *rollo*, pp. 91-105. Penned by Associate Justice Pablito A. Perez and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz.

³ *Id.* at 122-124.

⁴ Records, pp. 110-121.

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 Records, pp. 1-2.

heat-sealed transparent plastic sachets containing 0.0405 gram, 0.0488 gram[,] and 0.415 gram, respectively or a total of 0.1308 gram, of methamphetamine hydrochloride, commonly known as “shabu[,]” a dangerous drug, without the necessary authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.⁷

Version of the Prosecution

The case stemmed from a search warrant⁸ issued on February 7, 2014 by the RTC of Laoag City, Branch 13, directing law enforcers to search the home of petitioner for a suspected violation of the provisions of RA 9165. Thus, a team composed of Police Senior Inspector Don Abrilla Acacio (PSI Acacio), Police Officer 1 Dennis Catolico (PO1 Catolico), Police Officer 3 Jefferson Sulmerin (PO3 Sulmerin), Senior Police Officer 1 Ronald Luna, Police Officer 1 Nestor Cacapal, Police Officer 1 Wilmer Biado, and Senior Police Officer 1 Edgar Leaño, was formed to implement the same.

Acting on the search warrant, the team proceeded to the house of petitioner, described as a “bungalow” located in *Barangay 2, Anao, Piddig, Ilocos Norte*, in the morning of February 10, 2014. PO1 Catolico testified that before proceeding to petitioner’s house, the search team summoned three *barangay* officials to act as witnesses.⁹ Upon arriving, PSI Acacio, PO3 Sulmerin, and PO1 Catolico approached petitioner who at the time was at the back of the house.¹⁰ Petitioner requested to frisk the police officers before allowing them to enter.¹¹

Thereafter, PSI Acacio, PO3 Sulmerin, PO1 Catolico, and the *barangay* officials entered petitioner’s house. The team conducted the search and recovered the following items: (a) three pieces small heat-sealed plastic sachets containing white crystalline substance; (b) two pieces small open transparent plastic sachets containing white residue; (c) an improvised straw scoop; (d) a broken glass tube; (e) pieces of aluminum foil with white residue; (f) a cigarette foil; and (g) a crumpled black cloth. The seizure of these items is evidenced by a document entitled “Receipt of Properties/Articles Seized.”¹² After the

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⁷ Id. at 1.

⁸ Id. at 6.

⁹ TSN, July 16, 2014, p. 10.

¹⁰ Id. at 12.

¹¹ Id.

¹² Records, p. 14.

search, PO1 Catolico placed the recovered items inside a resealable plastic bag and the team went outside the house, where PO1 Catolico marked the three plastic sachets containing white crystalline substance with “MS/DC,” “MS/DC1,” and “MS/DC2” in the presence of the *barangay* officials and petitioner.¹³ Petitioner likewise signed a document entitled “Certification in The Conduct of Orderly Search.”¹⁴ The contents of the three plastic sachets were subjected to testing and yielded a positive result¹⁵ for the presence of methamphetamine hydrochloride, also known as “*shabu*,” a dangerous drug.¹⁶

Version of the Defense

In his defense, petitioner alleged that the dangerous drugs found on his property were planted. PO1 Catolico went outside and brought with him a trash can to search its contents, and when he went back to continue the search, they found a used foil in the kitchen area. He signed a document pertaining to the recovered items without reading its contents. Lastly, PO1 Catolico had motive to frame him, as he is now the live-in partner of his ex-girlfriend.¹⁷

Ruling of the Regional Trial Court

In its Decision¹⁸ dated December 9, 2016, the RTC found petitioner guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered finding accused Marco Sy y Campos GUILTY as charged of illegal possession of shabu weighing 0.1308 gram and is accordingly sentenced 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 of Three Hundred Thousand Pesos (Php300,000.00).

The shabu subject hereof is confiscated for proper disposal as the law prescribes.

SO ORDERED.¹⁹

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¹³ Id. at 33.

¹⁴ Id. at 15.

¹⁵ Id. at 18.

¹⁶ Id.

¹⁷ *Rollo*, pp. 24-25.

¹⁸ Records, pp. 110-121.

¹⁹ Id. at 121.

The trial court found the execution of the search warrant to be proper, and held that “the defenses of the accused are simply bare and self-serving.”²⁰ The prosecution was able to establish all the elements of the crime charged; there was sufficient compliance with the rule on chain of custody; and dismissed the “incredible defenses” forwarded by petitioner.²¹

Aggrieved, petitioner elevated the case to the CA by filing a Notice of Appeal²² dated December 14, 2016.

Ruling of the Court of Appeals

In its Decision²³ dated May 30, 2018, the CA denied petitioner’s appeal and affirmed *in toto* the findings of the RTC. The dispositive portion of the CA Decision reads:

WHEREFORE, the Appeal is **DENIED**. The Decision dated dated (*sic*) December 9, 2016 of the Regional Trial Court, Branch 13, Laoag City in Criminal Case No. 15840 is **AFFIRMED**.

SO ORDERED.²⁴

The CA made a similar finding that the prosecution was able to establish the elements of the crime, thus:

Here, the prosecution was able to establish these elements. First, PO1 Catolico seized three (3) small heated-sealed plastic sachets containing white crystalline substance which yielded positive results for methamphetamine hydrochloride in the implementation of a valid search warrant. Second, Sy is not authorized by law to possess the seized *shabu*. Third, he has constructive possession or he has the right to exercise dominion and control over the place where the seized items were found. Lastly, as to the last element, mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession.²⁵

As to the chain of custody requirement, the CA held that the same was duly established, thus:

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²⁰ Id. at 117.

²¹ Id. at 113-120.

²² CA *rollo*, pp. 123-124.

²³ Id. at 91-105.

²⁴ Id. at 104.

²⁵ Id. at 96.

Applying the foregoing statutory and jurisprudential parameters in this case, We are convinced that the chain of custody was duly established. PO1 Catolico and PO3 Sulmerin, having custody over the seized items, were able to testify and corroborate each other's testimony on material points, regarding the facts surrounding the chain of custody of the items, from the time it was found and seized by PO1 Catolico up to its subsequent turnover to the Ilocos Norte Provincial Crime Laboratory Office for laboratory examination.²⁶

Petitioner filed a Motion for Reconsideration,²⁷ but this was likewise denied in a Resolution²⁸ dated December 17, 2018.

Undeterred, petitioner elevated the case to this Court by filing this Petition for Review on *Certiorari*.

Issue

Did the CA err in affirming the RTC Decision which convicted petitioner?

Our Ruling

Petitioner mainly argues that the prosecution failed to establish compliance with the chain of custody rule under Section 21, Article II of RA 9165. Given this, petitioner concludes that doubt is created as to the integrity and evidentiary value of the seized items.

The Court grants the petition.

We find that petitioner's acquittal is warranted for failure of the law enforcers to comply with the chain of custody rule.

The original provision of Section 21,²⁹ Article II of RA 9165

²⁶ Id. at 98-99.

²⁷ Id. at 112-116.

²⁸ Id. at 122-124.

²⁹ 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:

(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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be

and its accompanying Implementing Rules and Regulations (IRR),³⁰

submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

³⁰ 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;

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(d) After the filing of the criminal case, the court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall, within twenty-four (24) hours thereafter, proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, that those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes; *Provided, further*, that a representative sample, duly weighed and recorded is retained;

(e) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In cases of seizures where no person is apprehended and no criminal case is filed, the PDEA may order the immediate destruction or burning of seized dangerous drugs and controlled precursors and essential chemicals under guidelines set by the Board. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(f) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(g) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(h) Transitory Provision:

h.1) Within twenty-four (24) hours from the effectivity of the Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel; and

which are the applicable provisions in this case, were not complied with.

Records show that no representatives from the media or the Department of Justice (DOJ) witnessed the conduct of the inventory and photography of the seized dangerous drugs and paraphernalia. The prosecution did not even attempt to offer an explanation or justification for their absence. Admittedly, three *barangay* officials were present during the conduct of the inventory and taking of photographs. However, their mere presence and number could not substitute for the required attendance of representatives from the media and the DOJ.

Consequently, the unexplained absence of these insulating witnesses casted doubt on the integrity and evidentiary value of the seized items thereby warranting the acquittal of petitioner.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision of the Court of Appeals dated May 30, 2018 is **REVERSED** and **SET ASIDE**. Petitioner Marco C. Sy is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let entry of judgment be issued immediately.

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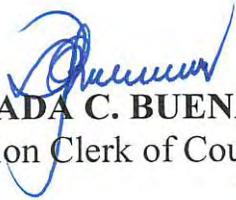
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h.2) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

In the meantime that the PDEA has no forensic laboratories and/or evidence rooms, as well as the necessary personnel of its own in any area of its jurisdiction, the existing National Bureau of Investigation (NBI) and Philippine National Police (PNP) forensic laboratories shall continue to examine or conduct screening and confirmatory tests on the seized/surrendered evidence whether these be dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and/or laboratory equipment; and the NBI and the PNP shall continue to have custody of such evidence for use in court and until disposed of, burned or destroyed in accordance with the foregoing rules: *Provided*, that pending appointment/designation of the full complement of the representatives from the media, DOJ, or elected public official, the inventory of the said evidence shall continue to be conducted by the arresting NBI and PNP operatives under their existing procedures unless otherwise directed in writing by the DOH or PDEA, as the case may be.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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AUG 17 2022

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