



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 March 2022** which reads as follows:*

“G.R. No. 249975 (*Marciano Rodriguez y Fuentes vs. People of the Philippines*). – Petitioner Marciano Rodriguez y Fuentes (petitioner) assails the May 29, 2019 Decision¹ of the Court of Appeals (CA), affirming his conviction for violation of Section 11, Article II of Republic Act No. (RA) 9165,² and the October 10, 2019 Resolution³ denying reconsideration.

Petitioner was charged with violation of Section 11, Article II of RA 9165, as follows:

That on or about the 25th day of June 2013 in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully and knowingly have in his/her possession and control **0.10 (zero point ten)** gram of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁴

Upon arraignment on September 19, 2013, petitioner pleaded ‘not guilty’ to the charge.⁵ Thereafter, trial ensued.

The prosecution sought to establish that on June 25, 2013, around 2:45 in the afternoon, police officers from the Quezon City Police District (QCPD) composed of Senior Police Officer 1 Renato Cariño (SPO1 Cariño), Police Officer 3 Wilfredo Corona (PO3 Corona) and Police Officer 2 Reynaldy Tagle

¹ *Rollo*, pp. 39-54. Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Manuel M. Barrios and Ruben Reynaldo G. Roxas concurring.

² “*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 January 23, 2002.

³ *Rollo*, 56-59. Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Manuel M. Barrios and Ruben Reynaldo G. Roxas concurring.

⁴ *Id.* at 39.

⁵ *Id.* at 40.

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(PO2 Tagle), were on board a police patrol vehicle plying along Luzon Avenue, Barangay Culiat, Quezon City. While traversing Purok 1 of said place, PO3 Corona saw petitioner coming out from an alley. Petitioner was acting suspiciously and holding a fan knife. PO3 Corona alighted from the mobile patrol vehicle, approached petitioner and introduced himself as a police officer. PO3 Corona confiscated the fan knife and, as a standard operating procedure, frisked petitioner. In the course of the search, PO3 Corona found two small plastic sachets with white crystalline substance in the right front pocket of petitioner's pants.⁶

While still at the place of arrest, PO3 Corona marked the two small plastic sachets as "MR1 6-25-13" and "MR2 6-25-13." Thereafter, the police officers brought petitioner and the confiscated items to Police Station 3 in Talipapa, Quezon City, where an inventory was conducted in the presence of a media representative, but without a representative from the Department of Justice or an elected public official. The police officers allegedly called for an elected public official but no one came to witness the inventory.⁷

When examined by the QCPD Crime Laboratory Office, the contents of the confiscated plastic sachets yielded positive results for the presence of methamphetamine hydrochloride, a dangerous drug.⁸

Petitioner denied the charge and claimed that around 9:30 in the morning of June 23, 2013, while he and his live-in partner, Princess Taylo, were in the market in Purok I, Barangay Culiat, Luzon Avenue, Quezon City, SPO1 Cariño and PO2 Tagle arrested him. They handcuffed and forcibly brought him inside a vehicle and was asked if he knew of persons involved in illegal activities in his barangay. When petitioner said no, the police officers brought him to Police Precinct Block 2 and later to the QCPD Station 3, where he was detained. Petitioner denied ownership of the plastic sachets, contending that he saw them for the first time on June 25, 2013, when he was asked to point to them while being photographed by the police.⁹

In a Decision¹⁰ dated May 10, 2017, the RTC declared that the prosecution's evidence adequately proved the guilt of petitioner beyond reasonable doubt. It relied on the lone testimony of PO3 Corona, who testified that petitioner was validly arrested for carrying a deadly weapon and his arrest led to the recovery from him of two plastic sachets of dangerous drugs. It held that the prosecution sufficiently presented proof of an unbroken chain of custody of the seized items. According to the RTC, the fact that the inventory of the dangerous drugs was witnessed only by a representative from the media

⁶ Id. at 40-41.

⁷ Id. at 40.

⁸ Id. at 41.

⁹ Id. at 42.

¹⁰ Id. at 82-87. Penned by Judge Elvira D.C. Panganiban.

did not render the drugs inadmissible in evidence since the prosecution satisfactorily showed that the integrity and evidentiary value of the seized items were preserved.¹¹ The RTC found petitioner guilty as charged, thus:

WHEREFORE, in light of the foregoing premises, judgment is hereby rendered finding accused MARCIANO RODRIGUEZ y FUENTES **GUILTY BEYOND REASONABLE DOUBT** of the offense charged for Violation of Section 11, Art. II of RA 9165 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment from twelve years and one day as minimum to thirteen years as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) Pesos.

x x x x

SO ORDERED.¹²

On appeal, petitioner faulted the trial court for rendering a conviction despite the prosecution's failure to establish every link in the chain of custody. Petitioner argued that the police officers failed to comply with the requirements prescribed by Section 21 of RA 9165, particularly with respect to the required witnesses during the inventory of the allegedly confiscated items.

In its May 29, 2019 Decision,¹³ the CA upheld the conviction of petitioner, *viz.*:

WHEREFORE, the appeal is **DENIED**. The Decision dated 10 May 2017 of the Regional Trial Court, Branch 227, Quezon City, in Criminal Case No. R-QZN-13-01422-CR, finding accused-appellant Marciano Rodriguez y Fuentes guilty of Violation of Section 11, Article II of Republic Act. No. 9165 is **AFFIRMED**.

SO ORDERED.¹⁴

According to the CA, the absence of a complete set of mandatory witness to the inventory does not by itself entitle petitioner to an acquittal for non-compliance with Section 21 of RA 9165 inasmuch as the presence of the media representative, who signed in the Receipt/Inventory of the Confiscated/Seized Evidence, was substantial compliance with what the law requires.¹⁵

Hence, this petition.

¹¹ Id. at 86.

¹² Id. at 86-87.

¹³ Id. at 39-54.

¹⁴ Id. at 54.

¹⁵ Id. at 51.

Petitioner faults the CA in affirming his conviction. According to him, the police officers' failure to comply with the chain of custody requirements under Section 21 of RA 9165 raises serious doubts on the integrity of the prosecution's evidence and warrants his acquittal.

On the other hand, the Office of the Solicitor General, as counsel for the People, contends that the petition is procedurally infirm for raising factual issues.

We are not unmindful of the rule that questions of fact may no longer be raised in Rule 45 petitions. The Rules of Court requires that only **questions of law** should be raised in petitions filed under Rule 45 since **factual questions** are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.¹⁶

A question of law arises when there is doubt as to what the law is on a certain set of facts; while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, there must be no doubt as to the veracity or falsehood of the facts alleged, but if it involves an examination of the probative value of the evidence presented, then the question posed is one of fact.¹⁷

Among the issues presented by the petition is the credibility of the dangerous drugs. Petitioner questions their integrity because of the absence of a complete set of mandatory witnesses during their inventory. As found by the CA itself, neither a representative from the Department of Justice nor an elected public official attended the inventory of the allegedly seized drugs.¹⁸ The only insulating witness present at that time was the representative from the media.¹⁹ These factual findings are binding and, under Rule 45, We cannot weigh the evidence again but must use these established facts to resolve the issues posed by the petition and determine if the CA erred in convicting the petitioner. Notably however, the petition presents a question of law as it urges Us to determine the **legal consequences** of these **established** set of facts.

After a careful review of the case, We resolve to acquit petitioner for failure of the prosecution to prove that the apprehending team complied with the mandatory requirements of Section 21 of RA 9165 on the custody and handling of confiscated dangerous drugs. This omission affects the identity and integrity of the *corpus delicti* and suffices as a ground for petitioner's acquittal based on reasonable doubt.

¹⁶ *Spouses Miano v. Manila Electric Company*, 800 Phil. 118, 122 (2016).

¹⁷ *Coca-Cola Femsa Philippines, Inc. v. Alpuerto*, G.R. No. 226089, March 4, 2020.

¹⁸ *Rollo*, p. 52.

¹⁹ *Id.*

The elements for Illegal Possession of Dangerous Drugs, as penalized under Section 11 of RA 9165, are: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.²⁰ In this case, the *corpus delicti* is the seized drug itself. The prosecution must satisfy the court, by proving an unbroken chain of custody, that the drug confiscated from the accused is the same drug presented in court as evidence.

Section 21, Article II of R.A. No. 9165,²¹ **prior to its amendment by R.A. No 10640,²² outlines the post-seizure procedure for the custody and disposition of seized drugs. This law, prior to its amendment, is applicable since the commission of the crime in this case happened on June 25, 2013, before the enactment of the amendatory law on July 23, 2014.²³ Said law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof 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),**

²⁰ *Pimentel v. People*, G.R. 239772, January 29, 2020.

²¹ Section 21 of R.A. No. 9165 reads:

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, x x x 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, x x x shall, immediately after seizure and confiscation, physical 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; x x x.

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 which states:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, x x x 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.

x x x x

²² "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002." Approved July 15, 2014.

²³ See OCA Circular No. 77-2015 dated April 23, 2015

and any elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.²⁴ These mandatory witnesses are required to ensure the integrity of the seized evidence. Their presence would also controvert the usual defense of frame-up as the witnesses would be able to testify that the inventory of the seized drugs was done in their presence in accordance with Section 21 of RA 9165.

In this case, the prosecution does not deny and has not provided any justification for the absence of a representative from the Department of Justice. As for the elected public official, the prosecution alleged that the apprehending team called for one but that no such public official was available to witness the inventory. We find this explanation insufficient. In *People vs. Sipin*,²⁵ We have enumerated instances that may justify the absence of the required witnesses, as follows:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) *earnest efforts to secure the presence of a DOJ or media representative* and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention: or (5) time constraints and urgency or the anti-drug operations which often rely on tips or confidential assets, prevented the law enforcers from obtaining the presence the required witnesses even before the offenders could escape.²⁶ (Emphasis Ours)

We do not consider the police officers' act of calling for an elected public official, without more, as earnest effort to secure the presence of the required witness.

It must be stressed that the prosecution has the burden of proving compliance with Section 21 of RA 9165 as well as the duty to provide a sufficient explanation in case of non-compliance. The police officers' breaches of the procedure outlined in Section 21, if left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* has been compromised.²⁷ This is especially so when, as here, only a miniscule amount of illicit drugs (0.10 gram) was seized from the accused.

²⁴ All three insulating witnesses are required under R.A. No. 9165 before its amendment; *People of the Philippines v. Lim*, 839 Phil. 598 (2018), citing *People v. Ocampo*, 838 Phil. 157 (2018); *People v. Allingag*, 837 Phil. 454 (2018); *People v. Sipin*, 833 Phil. 67 (2018); *People v. Reyes*, 830 Phil. 619 (2018); and *People v. Mola*, 830 Phil. 364 (2018).

²⁵ 833 Phil. 67 (2018).

²⁶ *Id.* at 93.

²⁷ *People v. Rubio*, G.R. No. 239887, October 2, 2019, citing *People v. Sumili*, 753 Phil. 342 (2015).

Non-compliance with the rule on the required third-party witnesses during the inventory of the allegedly seized illegal drugs creates a gap in the chain of custody, producing doubt on the integrity of the illicit drugs presented in court.

WHEREFORE, the petition is **GRANTED**. The Court of Appeals' May 29, 2019 Decision and October 10, 2019 Resolution in CA-G.R. CR No. 39924 are hereby **REVERSED** and **SET ASIDE**.

Petitioner Marciano Rodriguez y Fuentes is **ACQUITTED** of the crime charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Furnish the Director of the Bureau of Corrections, Muntinlupa City, with a copy of this Resolution for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to report to this Court, within five (5) working days from receipt of this Resolution, the action thus taken.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

13 JUL 2022

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