



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 1, 2023 which reads as follows:

“G.R. No. 254487 (Paul Perez y Flores and Raymond Ryan Pabayo v. People of the Philippines).—This is a Petition for Review on *Certiorari*¹ filed by Paul Perez y Flores (Perez) and Raymond Ryan Pabayo (Pabayo) (collectively, petitioners) questioning the January 27, 2020 Decision² and the September 29, 2020 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 11783. The CA Decision affirmed the April 12, 2018 Decision⁴ of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 27, convicting petitioners for violation of Section 5, and Perez, of Sec. 11, Article II of Republic Act No. (RA) 9165⁵, also known as the Comprehensive Dangerous Drugs Act of 2002. Meanwhile, the CA Resolution denied their Motion for Reconsideration⁶ and affirmed the CA Decision.

Version of the Prosecution

On August 12, 2015, the members of the Anti-Illegal Drugs Task Force Group (Task Force) of the Philippine National Police (PNP) in San Fernando City, La Union, were visited by one of their regular confidential informants (CI).⁷ The CI reported to Senior Police Officer 1 Gilbert S. Andulay (SPO1 Andulay) that a certain Paul Perez was engaged in selling illegal drugs in Brgy. Sagayad Relocation, San Fernando City.⁸

¹ *Rollo*, pp. 8-36.

² *Id.* at 42-66. Penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (now a retired Member of the Court) and Ruben Reynaldo G. Roxas.

³ *Id.* at 38-40. Penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) and concurred in by Associate Justices Ramon A. Cruz and Ruben Reynaldo G. Roxas.

⁴ *CA rollo*, pp. 47-55. Penned by Pairing Judge Caroline Soriano Rojas.

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.” [COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002] Approved: June 7, 2002.

⁶ *Rollo*, p. 38.

⁷ *Id.* at 43.

⁸ *Id.*

Upon verification, SPO1 Andulay confirmed that a certain “Paul Perez” (Perez) was indeed included on their drugs watchlist, which he relayed to his senior officers.⁹ Pursuant to this, a buy-bust team was organized with SPO1 Andulay designated as the poseur-buyer.¹⁰ Police Officer 1 Gerry Orfano (PO1 Orfano) was assigned as perimeter security while the other members were designated as back-up.

The CI was then instructed to call Perez and order drugs worth ₱1,000.00¹¹ The CI told Perez about a buyer and passed the phone to SPO1 Andulay, who expressed his intention to purchase, with a request to taste-test the drugs before buying it.¹² After this conversation, the buy-bust team prepared the Coordination and Pre-Operation Reports which they submitted to the Philippine Drug Enforcement Agency (PDEA), and then proceeded to the meet-up area.¹³

When they arrived outside Perez’s house, a man came out and invited them to come inside. This person was later on identified as Pabayo, one of the petitioners.¹⁴ Once inside, SPO1 Andulay introduced himself to Perez and asked where the drugs were. Almost simultaneously, SPO1 Andulay handed the marked ₱1,000.00 bill to Perez, while the latter instructed Pabayo to give to the former the shabu.¹⁵ After having determined that the contents of the sachet given to him by Pabayo were indeed shabu, SPO1 Andulay performed the pre-arranged signal by calling PO1 Orfano’s cellphone.¹⁶

Upon receiving the call, PO1 Orfano and the rest of the team rushed into the house. SPO1 Andulay introduced himself to Perez and Pabayo, and informed the two that they were being arrested for selling illegal drugs. A search on Perez’s person further yielded another sachet containing what was later verified to be shabu hidden in a small purse tucked in his waist.¹⁷ However, a similar search on Pabayo yielded nothing.¹⁸

Witnessed by a representative from the Department of Justice (DOJ) and a barangay chairman,¹⁹ SPO1 Andulay immediately proceeded with the inventory and photograph of the seized items, which included a cellphone, the buy-bust money, one plastic sachet and one coin purse containing another plastic sachet. He marked the sachet sold to him with “GSA-1; 8-12-2015;

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 44.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

SOLD,” and the sachet taken from Perez with “GSA-2; 8-12-2015; RECOVERED.”²⁰ The witnesses then signed the Inventory Report.²¹

The buy-bust team then brought Perez and Pabayo to the city hall for examination by a medico-legal officer. Afterwards, they proceeded to the San Fernando Police Station where their identities were verified while the buy-bust money, coin purse, and mobile phone were turned-over to the Collecting Officer, Buenafe Balcita (Balcita). SPO1 Andulay, who retained possession of the two plastic sachets, then prepared the Chain of Custody Form and the laboratory requests for the examination of the contents of the plastic sachets. He then brought these to the Crime Laboratory and were received by the Duty Officer.²²

An examination of the contents of the sachets by Police Senior Inspector Roanalaine B. Baligod (PSI Baligod) gave the following results:

SPECIMEN SUBMITTED:

A1 and A2 – two (2) heat-sealed transparent plastic sachets each [containing] white crystalline substance with the following markings (date and signature) and recorded weights:

A1 (GSA-1; SOLD) = 0.1545 gram
A2 (GSA-2; RECOVERED) = 8.0070 grams

PURPOSE OF EXAMINATION:

To determine the presence of dangerous drugs. [x x x]

FINDINGS:

Qualitative examination conducted on specimens A1 and A2 gave POSTIIVE result to the tests for the presence of **Methamphetamine hydrochloride**, a dangerous drug.

x x x x

TIME AND DATE COMPLETED: 2011H 12 August 2015.²³

After examination, the two sachets were turned over to Police Officer 3 Jose Bucasas (PO3 Bucasas) of the Crime Laboratory for safekeeping until presentation in court.²⁴ PO3 Bucasas took the witness stand and testified that upon receipt of the Chain of Custody Form, the examination request, the examination results, and the brown envelope sealed with masking tape and

²⁰ Id.

²¹ Id.

²² Id.

²³ Id. at 44-45.

²⁴ Id. at 45.

signed by PSI Baligod, he immediately placed the same into the evidence room.²⁵

Meanwhile, the urine examination on the samples taken from Perez gave a positive result for the presence of methamphetamine hydrochloride while that taken from Pabayoy yielded negative findings.²⁶

Version of the Defense

Perez, however, gave a different version of the incident. He narrated that it was about 1:00 p.m. that day when he arrived home from purchasing materials needed for his house repair. He was starting to prepare snacks for his workers when two unidentified individuals in civilian clothes suddenly arrived.²⁷ They were asking for his brothers-in-law, Atong and Amboy, but the two were not there. The individuals held him instead and told him to produce ₱20,000.00.²⁸ However, he told them he did not have the money. Upon hearing that, one of the men proceeded to place him in handcuffs, while the other started searching the house.²⁹ Perez added that his laborers were not able to witness these events since they were working outside.³⁰

Moments later, the men allegedly brought in Pabayoy, also in handcuffs, from the back of the house.³¹ SPO1 Andulay arrived shortly after. Afterwards, Perez was allegedly brought into one of the bedrooms where one of the men suddenly started kicking him, demanding that he produce “something.”³² Perez however failed to elaborate what this “something” meant.

Perez also recalled that another civilian entered the room holding two plastic sachets.³³ He and Pabayoy were then instructed by SPO1 Andulay to admit that the plastic sachets belong to them.³⁴ He claimed that they both refused, as they did not know what the contents of the sachets were.³⁵

Sometime later, the unidentified men took pictures of the sachets and began writing on a piece of paper. After around 10 minutes, the *barangay* captain arrived accompanied by a *kagawad*. Perez saw the *barangay* captain sign the paper before he and Pabayoy were carted off in a patrol car. They were then brought to the Marcos Building for medical examination before finally being taken to the police station.³⁶

²⁵ Id.

²⁶ Id. at 456-46.

²⁷ Id. at 46.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id. at 47.

For his part, Pabayo told the court that on the day of the arrest, he was working as a laborer at Perez's house. While in there, PO1 Orfano arrived and asked him if he was "Atong," to which he answered no. At this point, Pabayo claimed that another police officer named Bautista arrived,³⁷ who told PO1 Orfano to bring him (Pabayo) inside the house. As they entered, Pabayo saw Perez in handcuffs while the police officers were searching the house.³⁸ He asked PO1 Orfano why they were searching the house, but the latter did not answer. Instead, Bautista frisked him and took his wallet containing ₱11,000.00, a cellphone, and a watch.³⁹ After that, Bautista allegedly informed them that if they each produce ₱20,000.00, they would not be jailed.⁴⁰ However, they refused.

Thereafter, SPO1 Andulay arrived to supposedly inform his companions that a mistake had been made in the conduct of the buy-bust operation, but they should still proceed with it since they were already committed.⁴¹ SPO1 Andulay then approached Perez and Pabayo, showed them the two plastic sachets and demanded that they admit to owning them, to which they refused.⁴²

Another witness testified in favor of petitioners, in the person of Richard Abelon (Abelon), one of Perez's laborers. He claimed that on that afternoon, he and the other workers were in front of the house working when two police officers arrived looking for a certain "Atong" and "Amboy."⁴³ When the police did not see the persons they were looking for, they proceeded to enter the house where a commotion was later heard. Some men in civilian clothing then appeared and went directly inside Perez's house as well. Abelon and the other workers did not intervene in any way and left as soon as their work was done.⁴⁴

Ruling of the Regional Trial Court

In its April 12, 2018 Decision, the RTC of San Fernando City, La Union convicted petitioners of violating Sec. 5, Art. II of RA 9165. Moreover, Perez was further convicted of violating Sec. 11 of the same law. The dispositive portion reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered in the following manner:

³⁷ Id.
³⁸ Id.
³⁹ Id.
⁴⁰ Id.
⁴¹ Id.
⁴² Id.
⁴³ Id. at 48.
⁴⁴ Id.

(1) Accused Paul Perez y Flores and Accused Raymond Ryan Pabayo are found GUILTY beyond reasonable doubt in Criminal Case No. 11129 for Violation of Section 5 Article II of Republic Act No. 9165 and are each sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) each; and

(2) Accused Paul Perez y Flores is found GUILTY beyond reasonable doubt in Criminal Case No. 11131 for Violation of Section 11, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of imprisonment [of] Twenty (20) Years and One (1) Day to Life Imprisonment and to pay a Fine in the amount of Four Hundred Thousand Pesos (P400,000.00).

The subject items are declared forfeited in favor of the government and to be disposed of in accordance with R.A. No. 9165 and related rules and regulations.

SO ORDERED.⁴⁵

In convicting petitioners, the RTC found that they conspired together in the sale of illegal drugs during the buy-bust operation conducted by the police officers. Further, the chain of custody requirement has been complied with, and that “no lapses could be ascribed against their [police officers’] safekeeping of the seized drugs which could present a ground for their inadmissibility.”⁴⁶

Displeased, petitioners filed a Notice of Appeal⁴⁷ before the CA after their Motion for Reconsideration was denied by the RTC.

Ruling of the Court of Appeals

In its January 27, 2020 Decision, the CA affirmed the RTC’s finding. The dispositive portion reads:

WHEREFORE, the Decision dated 12 April 2018 of the Regional Trial Court, Branch 27, of San Fernando City, La Union [1] in Crim. Case No. 11129 finding Accused-Appellants Paul Perez y Flores and Raymond Ryan Pabayo, guilty beyond reasonable doubt for violation of Section 5, Article II, of Republic Act No. 9165 and [2] in Crim. Case No. 11131 finding Accused-Appellant Paul Perez y Perez [sic] guilty beyond reasonable doubt for violation of Section 11, Article II of the same law are hereby AFFIRMED.

SO ORDERED.⁴⁸

In sustaining petitioners’ conviction, the CA echoed the findings of the RTC and upheld the validity of the buy-bust operation. The appellate court

⁴⁵ CA *rollo*, pp. 54-55.

⁴⁶ Id. at 52-53.

⁴⁷ Id. at 17-18.

⁴⁸ *Rollo*, pp. 63-64.

further held that the chain of custody rule was fully complied with and remained unbroken, preserving the integrity of the seized contraband.

Petitioners sought for reconsideration, but the same was denied by the CA in a Resolution⁴⁹ dated September 29, 2020.

Hence, the present appeal *via* a petition for review on *certiorari*.

Issue

Did the CA err in affirming the RTC decision convicting petitioners?

Our Ruling

The petition is denied.

Petitioners improperly used their choice of remedy. As held in *People v. Olpindo*:⁵⁰

Notably, Sec. 3(e), Rule 122; Sec. 13(c), Rule 124; Sec. 9, Rule 45; and Sec. 3, Rule 56 of the Rules of Court do not categorically prevent the accused, who was convicted, from filing a petition for review on *certiorari* under Rule 45 based purely on questions of law. Instead, these provisions proscribed the said petition for review on *certiorari* if it raises a question of fact. In such situation, the proper mode of appeal is an ordinary appeal which will throw the whole case open for review by the Court, including questions of fact.

Corollary to this is Section 3(c), Rule 122 of the Rules of Court, which provides:

Section 3. How appeal taken. –

x x x x

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, *reclusion perpetua*, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

An examination of the petition reveals that petitioners raise the following arguments: (1) there was failure to strictly follow the chain of custody requirements;⁵¹ (2) there was failure to comply with the requirements of Sec.

⁴⁹ Id. at 38-40.

⁵⁰ G.R. No. 252861, February 15, 2022.

⁵¹ Id. at 14-17.

21 on the required witnesses;⁵² (3) the lower court erred in saying that the police officers have no ill motive against petitioners;⁵³ (4) the lower court erred in disregarding the testimony of Abelon;⁵⁴ and (5) it is impossible for the petitioners to have sold drugs to persons who they know are police officers.

As correctly pointed out by the Office of the Solicitor General (OSG), petitioners raise pure questions of fact, which are not the proper subjects of an appeal by *certiorari*. In *Kumar v. People*,⁵⁵ the Court held:

The remedy facilitated by Rule 45 of the Rules of Court is appeal by *certiorari*. For any petition for review on *certiorari* to prosper and warrant attention by this Court, **it must satisfy the basic procedural requisites imposed by Rule 45. Among others, it must not only raise pure questions of law but also questions of such substance** as to be of distinctly significant consequence and value. A Rule 45 petition that fails to readily demonstrate “special and important reasons[,]” as required by Rule 45, Section 6, may be denied due course, and disposed without further action by this Court.⁵⁶

In *Velayo-Fong v. Sps. Velayo*,⁵⁷ the Court differentiated a question of law from a question of fact:

A question of law arises when there is doubt as to what the law is on a certain state 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, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.⁵⁸

Applying the foregoing to the present case, petitioners’ contentions are undoubtedly questions of fact for they require the Court to re-examine the evidence presented by the parties. The compliance with the chain of custody rule, the presence of the required witnesses, the fact of petitioners selling drugs to the police officers, and the allegation of frame-up are all factual issues that have already been resolved by the RTC and affirmed by the CA, and which this Court cannot review through an appeal by *certiorari*. In other

⁵² Id. at 20-30.

⁵³ Id. at 31.

⁵⁴ Id. at 32.

⁵⁵ G.R. No. 247661, June 15, 2020.

⁵⁶ Emphasis supplied.

⁵⁷ 539 Phil. 377 (2006).

⁵⁸ Id. at 386-387.

words, petitioners should have filed a notice of appeal instead, considering that they raise questions of fact.

Time and again, We have reminded parties and litigants that this Court is not a trier of facts. In *Diokno v. Cacdac*,⁵⁹ the Court held:

It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.⁶⁰

Moreover, in *Vda. De Dayao v. Heirs of Gavino Robles*,⁶¹ the Court elaborated on the nature of the review it conducts:

Settled is the rule that factual questions are not the proper subject of an appeal by *certiorari*, as a petition for review under Rule 45 is limited only to questions of law. Moreover, it is settled doctrine that the “errors” which may be reviewed by this Court in a petition for *certiorari* are those of the Court of Appeals, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.⁶²

In light of the foregoing, Section 5, Rule 45 provides:

Section 5. Dismissal or denial of petition. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are to unsubstantial to require consideration.

Lastly, it is settled principle that findings of fact of the RTC, when affirmed by the CA, deserve great weight and are generally binding and conclusive upon this Court.⁶³ Such is the case in this matter before us.

Despite the foregoing however, and even if the Court treats the present petition as a notice of appeal in the interest of substantial justice, denial of the same must still follow for lack of merit.

Contrary to petitioners’ position, the integrity of the seized drugs remain intact for the prosecution was able to clearly record and establish its

⁵⁹ 553 Phil. 405 (2007).

⁶⁰ Id. at 428.

⁶¹ 612 Phil. 137 (2009).

⁶² Id. at 144.

⁶³ *Mendoza vs. People*, G.R. No. 239756, September 14, 2020.

movements from seizure to presentation in court. As narrated by SPO1 Andulay:

Q: Mr. Witness, from the time that the plastic sachet was sold to you and from the time that [it was] recovered from Paul Perez another plastic sachet containing white crystalline substance and the buy-bust money and the cellphone who was in possession of the items?

A: Me, ma'am.

Q: During the conduct of the medical examination of Raymond Pabayo and Paul Perez who was in possession with [sic] the items?

A: Me, ma'am.

Q: From the City Health Office to the Police Station who was in possession of the items?

A: Me, ma'am.

Q: During the preparation of the documents needed for the filing of the case who was in possession of the items?

A: Me, ma'am.

Q: And Mr. Witness, from the Police Station to the PNP [Crime] Laboratory who was in possession of the items?

A: Me, ma'am.

Q: And when you reached the Crime Laboratory to whom did you submit the items?

A: The duty officer of the Crime Laboratory Office, ma'am.

Q: And what was the purpose for submitting the items to the Crime Laboratory, Mr. Witness?

A: For laboratory examination, ma'am.⁶⁴

From the Crime Laboratory, where it was examined by PO3 Marie Jane Milo, the contraband was then turned over to PSI Baligod who issued the chemistry report confirming the presence of *shabu*. Thereafter, records show that the same was turned over to PO3 Bucasas, the evidence custodian, who finally presented them to court. Clearly, the movements of the seized drugs are duly recorded. Indeed, the chain of custody requirement, "as a method of authentication, ensures that unnecessary doubts involving the identity of the seized drugs are removed."⁶⁵

In *People v. Malabanan*,⁶⁶ the Court reiterated that perfect compliance with Sec. 21 of RA 9165 is extremely difficult, if not impossible, thus:

The Court recognizes that strict compliance with the requirements of Section 21 of R.A. No. 9165, is not always possible as actual ground

⁶⁴ TSN, January 31, 2018, p. 9.

⁶⁵ *Tumabini vs. People*, G.R. No. 224495, February 19, 2020.

⁶⁶ G.R. No. 241950, April 10, 2019.

conditions may render its compliance impractical or place the success of the entire operation in jeopardy. The IRR of R.A. No. 9162 [sic], which had been incorporated in R.A. No. 10640, provides that non-compliance of the procedure for justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team shall not render void and invalid the seizure of drugs and custody over them.

As a final note, the Court reiterates the holding of the CA:


It is a well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect. Since prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation, reliance may be made on the findings of fact of the trial court, which is established to be in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial. There is also no trace of misappreciation of facts that would show that the court *a quo* overlooked facts of substance and value which could affect the outcome of this appeal. Perforce, in view of the clear and straightforward evidence of the prosecution *vis-à-vis* appellant's unsubstantiated defenses, this Court shall accord a high degree of respect to the factual findings of the court *a quo*.⁶⁷ (Citations omitted.)

WHEREFORE, the petition is **DENIED**. The January 27, 2020 Decision of the Court of Appeals and the September 29, 2020 Resolution in CA-G.R. CR-HC No. 11783 are **AFFIRMED**.

The petitioners' Reply to the comment on the petition is **NOTED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court⁶⁷

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁶⁷ CA rollo, p. 121.

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