



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 12, 2023 which reads as follows:*

“**G.R. No. 223436 (*Lim Ting Chong v. People of the Philippines*)**. – This Petition for Review on *Certiorari*<sup>1</sup> (Petition) under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision<sup>2</sup> dated 13 May 2015 and Resolution<sup>3</sup> dated 03 March 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05394. The CA affirmed the Decision<sup>4</sup> dated 16 May 2011 rendered by Branch 116, Regional Trial Court (RTC) of Pasay City which found petitioner Lim Ting Chong (petitioner) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>5</sup> or the “Comprehensive Dangerous Drugs Act of 2002.”

**Antecedents**

Petitioner, a Malaysian national, was charged with illegal transportation of dangerous drugs, approximating 14 kilos (kgs.) of *shabu*, under Section 5, Art. II of RA 9165.<sup>6</sup> The accusatory portion of the Information<sup>7</sup> reads:

“That on or about the 14th day of April 2010, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **LIM TIN [sic] CHONG**, an arriving passenger from Malaysia via **Malaysian Airlines flight MH 704**, without authority of law and with intent to possess, did then and there willfully, unlawfully

<sup>1</sup> *Rollo*, pp. 26-78.

<sup>2</sup> *Id.* at 8-19. Penned by Associate Justice Edwin D. Sorongon, and concurred in by Associate Justices Andres B. Reyes, Jr. (Retired Member of this Court) and Ricardo R. Rosario (now a Member of this Court).

<sup>3</sup> *Id.* at 21-22. Penned by Associate Justice Edwin D. Sorongon, and concurred in by Associate Justices Andres B. Reyes, Jr. (Retired Member of this Court) and Ricardo R. Rosario (now a Member of this Court).

<sup>4</sup> *CA rollo*, pp. 16- 32.

<sup>5</sup> 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: 07 June 2002.

<sup>6</sup> *Rollo*, p. 8.

<sup>7</sup> Records, p. 1.

and feloniously transport approximately 13,996.9 grams of **METHAMPHETAMINE HYDROCHLORIDE (shabu)**, a dangerous drug.

Contrary to law.”<sup>8</sup>

During arraignment, the Information was read to petitioner, translated in Fokien, a language known to him.<sup>9</sup> Thereafter, petitioner, assisted by counsel, pleaded not guilty to the charge.<sup>10</sup> During the pre-trial, the parties agreed to stipulate on the following, among others: (1) the jurisdiction of the court over the person of petitioner and over this case; (2) the identity of petitioner and his nationality; (3) his arrival at the Ninoy Aquino International Airport (NAIA) on 14 April 2010; (4) the competence, qualification, and expertise of the forensic chemist who conducted the laboratory examination of the subject specimen; (5) the findings of the forensic chemist embodied in Chemistry Report No. PDEA-DD010-240; (6) the actual subject packages will no longer be presented as they have already agreed or admitted as to the weight, specific quantity, and appearance thereof; and (7) the persons who signed the packages will be able to identify their signatures or initials affixed/made thereon, among others.<sup>11</sup>

The parties also agreed to dispense with the testimony of the prosecution witnesses Nelson Lavilles (Lavilles) of the Baggage Assistance Division, Special Agent I Rogelio Cunanan (SA I Cunanan) of the Investigation Division, and Julie Fabroa (Fabroa) of the Airport Press. They stipulated that these witnesses had seen the turn-over of the confiscated drugs to Chemist V Severino Uy, Jr. (Uy) of Philippine Drug Enforcement Agency (PDEA) on 14 April 2010, as indicated in the Turned-Over Receipt issued by the Enforcement and Security Service, Customs Police Division.<sup>12</sup>

### **Version of the Prosecution**

The prosecution presented two witnesses, namely: Investigation Agent III Rogelio P. Lagran (IA III Lagran) and Special Agent II Sherwin Fredrick A. Andrada (SA II Andrada).<sup>13</sup>

IA III Lagran testified that he is the Chief Supervisor of the Airport Interdiction Unit of the PDEA assigned at the ramp area, NAIA Terminal 1, Pasay City. In the morning of 14 April 2010,<sup>14</sup> while on duty, he received a text message from Major Ferdinand Marcelino (Major Marcelino), Director of Special Enforcement Service of PDEA, that an airline passenger named Lim

<sup>8</sup> Id. at 10.

<sup>9</sup> Id. at p. 52, see Order dated 19 July 2010.

<sup>10</sup> Id.

<sup>11</sup> Id. at 68-71, see Pre-Trial Order dated 23 August 2010.

<sup>12</sup> *Rollo*, p. 9.

<sup>13</sup> Id. at 153-157.

<sup>14</sup> TSN dated 15 September 2010, IA III Lagran, p. 6.

Ting Chong, identified as petitioner herein, is expected to arrive at NAIA Terminal 1 at 2:00 p.m. on that day on board Malaysian Airlines Flight MH 704, with an undetermined quantity of *shabu*.<sup>15</sup> IA III Lagran immediately called SA II Andrada, the team leader of the Bureau of Customs (BOC) Task Force on Dangerous Drugs, and relayed said information.<sup>16</sup> The two officials agreed to meet at the arrival area of NAIA Terminal 1 between 11:00 a.m. to 12:00 p.m. of the same day.<sup>17</sup>

For his part, SA II Andrada testified that as Area Supervisor at NAIA Terminal 1, he supervises all personnel under his unit that are assigned to different warehouses and terminals in NAIA to implement the Tariff and Customs Code and to intercept all dangerous drugs within their jurisdiction.<sup>18</sup> He confirmed IA III Lagran's call on 14 April 2010,<sup>19</sup> at around 10:00 a.m. or 11:00 a.m.,<sup>20</sup> regarding the arrival of a certain Lim Ting Chong, herein petitioner, at 2:00 p.m. on the same day via Malaysian Airlines Flight MH 704 who was carrying an undetermined volume of illegal drugs.<sup>21</sup> He mobilized his men and the PDEA agents under Major Marcelino.<sup>22</sup> They held a meeting to discuss the operational procedures, coordinated with the immigration personnel to help them identify the incoming suspect, and posted themselves, at the arrival section of the Customs Area.<sup>23</sup> When almost all passengers of flight MH 704 had left the Customs Area, the immigration officer informed them that Lim Ting Chong is still being processed and questioned at the Immigration Area.<sup>24</sup>

At the Customs Area, before the Carousel Section, SA II Andrada approached petitioner and requested to check his passport and airline ticket. He gave his passport bearing the name "Lim Ting Chong" and an e-ticket also under the same name. After his identity was verified, SA II Andrada invited him to the exclusion room for questioning. SA II Andrada asked him if he can understand and speak English, and the latter replied that he understands English but could not speak it fluently. SA II Andrada then called BOC Examiner Mangagao Salik (Salik) to inspect petitioner's hand carry bag, to which petitioner acquiesced. Salik inspected said bag in the presence of petitioner, another BOC agent, and a PDEA agent. However, no illegal drugs were found.<sup>25</sup>

This prompted SA II Andrada to coordinate with IA III Lagran, who informed him that the Malaysian Airlines office confirmed that petitioner has

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<sup>15</sup> *Rollo*, pp. 153-154.

<sup>16</sup> *Id.* at 154.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 174, TSN, 29 September 2010, A/SA II Andrada.

<sup>20</sup> TSN, 15 December 2010, IA III Lagran, p. 228.

<sup>21</sup> *Rollo*, p. 154.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 154-155.

<sup>24</sup> *Id.* at 155.

<sup>25</sup> *Id.*

a checked-in baggage.<sup>26</sup> As part of their procedure, the unclaimed baggage in the carousel was brought by the airline personnel to the Interline Section of the BOC, and only the baggage owner may claim the same. The duty collector at the Interline Section confirmed that the unclaimed luggage with an MH bag tag under the name of "Lim Ting Chong" was already in their custody. As such, SA II Andrada accompanied petitioner to the Interline Section and asked him to personally claim his checked-in luggage. However, petitioner did not confirm whether he owns the unclaimed baggage. Nonetheless, when the personnel assigned at the Interline Section informed petitioner that he must sign a waiver before he can claim his baggage, he signed said waiver. The checked-in baggage was later brought to the exclusion room.<sup>27</sup>

Inside the exclusion room, petitioner refused to open the luggage so SA II Andrada invoked the pertinent provision of the Tariff and Customs Code authorizing customs officials to conduct a search without a warrant and to proceed with the opening of the luggage. SA II Andrada requested Salik to inspect the baggage in the presence of petitioner and several witnesses, namely: (1) Deputy Collector Teresita Roque (Deputy Collector Roque), Manila International Airport Administration (MIAA) General Manager Atty. Melvin Matibag (MIAA General Manager Matibag), Agent Michael Mesina, SA I Mark Moreno, and SA II Esmeraldo Moralde of the Customs Police. Using a ballpen, Salik opened the zipper of the luggage where they found six (6) foil packs of Fern Leaf Milk and one (1) Milo foil pack, about 12 inches in size. Photographs of the seven (7) foil packs were then taken. Salik opened the same which were found to contain white crystalline substances.<sup>28</sup>

In the presence of everyone in the room, SA II Andrada used a test kit for dangerous drug containing a reagent called *sodium nitroprusside* to conduct a field test on the representative sample of the suspected drugs. The test indicated the presence of *methamphetamine hydrochloride* inside the seven (7) foil packs. Immediately, petitioner was informed of his offense and apprised of his constitutional rights before placing him under arrest. An inventory of the seized items was prepared in the presence of the same witnesses.<sup>29</sup>

SA II Andrada testified that they were not able to secure the presence of a DOJ representative and an elective official, but explained that this is due to the very strict airport security.<sup>30</sup> For them to be allowed inside the arrival area of the airport, said officers would need to first present an ID or stick on-pass to be requested through the MIAA Management, and the processing for said requirement takes at least one (1) day.<sup>31</sup> SA II Andrada further elucidated

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<sup>26</sup> Id.

<sup>27</sup> Records (Vol. III), pp. 59-60 (TSN dated 29 September 2010 on the testimony of A/SAII Andrada).

<sup>28</sup> *Rollo*, p. 156.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Records (Vol. III), p. 206.

that they had to immediately transfer petitioner and the evidence to the PDEA.<sup>32</sup>

### Version of the Defense

Petitioner interposed the defense of denial. He claimed that he only brought with him a hand carry sports bag containing his Malaysian Passport, Malaysian Airline e-Ticket No. 232970-362, wallet, two (2) cellphones, and his Malaysian Identification card, all of which are in the custody of the PDEA. He did not have any checked-in luggage because he planned to stay in Manila for only a few days. He arrived on 14 April 2010 to gamble and play in the casinos. He speaks Mandarin, Chinese, and Fookien, and only understands a little English. Upon arrival at the NAIA, he went through the regular immigration process and claimed that he passed through the Immigration Counter and got cleared. However, after passing through the Immigration Area, he was approached by three men, one of whom was the Immigration Officer who earlier checked his hand carry bag at the Immigration Counter. Upon questioning by the said Immigration Officer, he confirmed that he only had one hand carry bag. Then one of the men started to frisk him prompting him to ask them if he did something wrong but nobody replied. The men then led him to a room and frisked him for the second time. He once more inquired why he is being subjected to bodily search but again his query elicited no answer.<sup>33</sup>

He was later brought to another room where several individuals were waiting for him. Accused was shown a big suitcase and was asked if it belonged to him. He denied ownership thereof saying that he only brought one small hand-carry sports bag. When asked to unlock the suitcase, petitioner insisted that he does not know the number combination since he is not its owner. Another man asked him to take the suitcase to which he initially refused but he was forced to bring it to the scanner just outside the room, where pictures of him with the suitcase were taken.<sup>34</sup>

Petitioner was again brought to another room where the suitcase was forced open by the same person who forced him to take the suitcase to the scanner. Upon opening of the suitcase, they saw clothes, six (6) Fernleaf Milk packs, and one (1) Milo pack inside. After the contents of the packs were examined, he was immediately placed in handcuffs. He asked the reason for his arrest but he did not understand the language of the person who handcuffed him. The remaining six (6) packs were brought out of the suitcase and spread out on the table together with the Milo pack and the suitcase. He was asked to stand beside the table and was photographed together with these items. He was brought to another room where passports of two men with the

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<sup>32</sup> *Rollo*, p. 156.

<sup>33</sup> *Id.* at 12.

<sup>34</sup> *Id.* at 12-13.

surname "Lim" was shown to him. When he was asked whether he knew these men, he denied knowing them and said that he came to Manila all by himself.<sup>35</sup>

He was brought to the PDEA Office where he was detained overnight. The following day, 15 April 2010, the Booking Sheet/Arrest Report was prepared and in the afternoon of the same day he was brought to the Crime Laboratory for routine medical examination. Petitioner was later brought to the office of Prosecutor Josefina Muego for inquest proceedings. His Malaysian uncle, Tim Tek Wan, assisted him in preparing his affidavit.<sup>36</sup>

Petitioner insisted that his rights were violated. He also asserted that the pieces of evidence against him are inadmissible since they were obtained through an invalid arrest and seizure.<sup>37</sup>

### **Ruling of the RTC**

On 16 May 2011, the RTC found petitioner guilty beyond reasonable doubt.<sup>38</sup> The *fallo* reads:

**WHEREFORE**, premises considered, the prosecution having discharged its bounden duty to prove the guilt of the accused beyond reasonable doubt, the accused, **LIM TING CHONG**, is hereby found **GUILTY** of the offense as charged and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)**.

The Branch Officer-in-Charge is hereby directed to coordinate with, and transmit to the PDEA, the representative samples of *methamphetamine hydrochloride* earlier extracted from the specimens for its proper disposition.

Furnish the Legal and Prosecution Service of the PDEA, accused and his counsel, copies of this decision.<sup>39</sup> (Emphasis supplied.)

At the outset, the RTC discussed that any person wanting to enter the Philippines should comply with the administrative procedures required by the Philippine government. The right to refuse entry of aliens into Philippine territory is an absolute right of the government.<sup>40</sup>

The court upheld the validity of the search and arrest of petitioner inside the airport premises as it falls under the following exceptions: (1) administrative/airport searches; (2) warrantless search and seizure under

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<sup>35</sup> Id. at 13.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id. at 167-168.

<sup>39</sup> Id. at 167-168.

<sup>40</sup> Id. at 160-168.

special laws; and (3) arrest in *flagrante delicto*. The court explained that searches done inside the airport premises fall under consented search, which does not require a search warrant. The procedure is more stringent in cases of arriving passengers to ensure that contrabands are not being brought into the country, as well as to prevent smuggling into the country goods that are subject to taxation. In view of the proliferation of drug activities, particularly the use of airline travelers as drug couriers, the purpose of airport searches extended to the detection of illegal drugs.<sup>41</sup>

Further, under Section 2205 of the Tariff and Customs Code, customs officials are authorized to search any vessel, aircraft, cargo, article, animal or other movable property when the same is subject to the forfeiture or liable for any fine imposed under the Tariff and Customs laws, rules, and regulations. He was also caught in *flagrante delicto* at the time of his arrest since he had already committed the crime of transporting illegal drugs.<sup>42</sup>

Notwithstanding petitioner's denial, the RTC was convinced that he owned the luggage containing the dangerous drugs. The prosecution presented the check-in luggage with Malaysian Airlines luggage tag bearing the printed name of petitioner. The Malaysian Airline office also confirmed that accused has a check-in luggage. Even if the luggage was not taken from his immediate and actual physical possession, the court considered that there was no passenger who claimed it at the carousel, which bolsters that it is owned by petitioner. Moreover, his denial of ownership is inconsistent with his defense of invalid warrantless search. It is well-settled that the legality of the search can only be contested by the party whose rights have been impaired thereby.<sup>43</sup>

As regards petitioner's contention that he was not apprised of his rights in a language that he understands, the court considered his own admission that he understands English, although he does not speak it fluently. It must be clarified that his constitutional right was not necessarily violated because it was said to him in a language that he does not speak the language fluently; it is enough that he understands it. There is also evidence presented that he was a graduate of mechanical engineering and English was taught in his school. Further, the court considered that his plane e-ticket (time and date of arrival, gate number) and some personal data in his passport were printed in English.<sup>44</sup>

On petitioner's contention that there was non-compliance with Section 21, Article II of RA 9165, the law permits exceptions under justifiable grounds, such as in this case. In lieu of the DOJ representative and an elective public official, airport and customs officials witnessed the inventory

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<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Id.

proceedings. Ultimately, the RTC found that there was an unbroken chain of custody of the dangerous drugs.<sup>45</sup>

### **Ruling of the CA**

On 13 May 2015, the CA issued the assailed Decision affirming the ruling of the RTC. The dispositive portion reads:

**WHEREFORE**, the present appeal is **DISMISSED** for lack of merit. Accordingly, the assailed decision of the Pasay City Regional Trial Court, Branch 116 in Criminal Case No. *R-PSY-10-01851-CR* is hereby **AFFIRMED** in toto.

**SO ORDERED.**<sup>46</sup>

The CA found petitioner's arguments untenable. The appellate court held that the search of his luggage for illegal contraband was justified and permissible under prevailing jurisprudence. It considered the case similar to *People v. Esparas*,<sup>47</sup> which involves a checked-in baggage from Hong Kong containing *shabu*, where We concluded that appellant was in possession of the *shabu* since the checked-in baggage was in her name, as evidenced by the baggage claim tags attached to her plane ticket.<sup>48</sup>

There was also no merit to his contention that prosecution was unable to establish a perfect chain of custody. The appellate court considered that the drug specimens were retrieved from petitioner's luggage under his watch and in the presence of several witnesses, which included airport officials, members of the media, and drug enforcement officers. The seized drugs were then photographed, examined, tested for presence of prohibited drugs, resealed, taped, and marked in the presence of said witnesses. The CA was convinced that the prosecution has sufficiently established that the integrity and evidentiary value of the seized items were properly preserved.<sup>49</sup> Petitioner filed a motion for reconsideration, but it was likewise denied for lack of merit.<sup>50</sup>

Before Us, petitioner argues that the lower courts erred in finding that he was in constructive possession of the checked-in luggage containing the dangerous drugs. Further, he raised the following violations of his due process rights: (1) invalid warrantless search and arrest; and (2) broken the chain of custody of the dangerous drugs.<sup>51</sup>

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<sup>45</sup> Id. at 160-167.

<sup>46</sup> Id. at 99-100.

<sup>47</sup> 354 Phil. 342 (1998).

<sup>48</sup> Id.

<sup>49</sup> Id. at 14-19.

<sup>50</sup> Id. at 21-22.

<sup>51</sup> Id. at 37.



### Issue

Whether petitioner is guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

### Ruling of the Court

We affirm petitioner's conviction.

*Petitioner resorted to the wrong mode of appeal*

As We explained in *Macad v. People*, in cases where the CA imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.<sup>52</sup> Hence, an accused, upon whom the penalty of *reclusion perpetua* or life imprisonment had been imposed by the CA, can simply file a notice of appeal to allow him to pursue an appeal as a matter of right before the Court, which opens the entire case for review on any question including one not raised by the parties.<sup>52</sup>

On the other hand, an accused may also resort to an appeal by *certiorari* to the Court via Rule 45 under the Rules of Court. An appeal to this Court by petition for review on *certiorari* shall raise only questions of law. Moreover, such review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons.<sup>53</sup>

In other words, when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Section 13 (c), Rule 124 to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.<sup>54</sup>

In this case, the CA affirmed the RTC Decision imposing the penalty of life imprisonment to petitioner. While a petition for review on *certiorari* under Rule 45 is limited to questions of law, the present petition raises questions of fact because it essentially assails the appreciation of the testimonial and documentary evidence by the CA and the RTC. As a rule, these questions of fact cannot be entertained by the Court under Rule 45. Thus, the Petition is procedurally infirm.

<sup>52</sup>*Macad v. People*, 838 Phil. 102, 117 (2018).

<sup>53</sup>*Id.* at 118.

<sup>54</sup>*Id.*

Nonetheless, even if We relax the rules in the interest of justice, the petition must still fail.

*The warrantless search and subsequent warrantless arrest were valid*

What constitutes a reasonable or unreasonable search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.<sup>55</sup>

There are several instances when a warrantless search is permissible. However, contrary to the findings of the RTC, the warrantless search of petitioner's hand carry bag and checked-in luggage was neither pursuant to a reasonable administrative or routine airport search, nor incidental to an arrest in *flagrante delicto*.

As We exhaustively explained in *People v. O'Coirlain*,<sup>56</sup> a routine airport search is deemed reasonable when the discovery of a prohibited drug was made by chance, and not by deliberate and conscious effort to find it pursuant to an information or tip that the accused is possibly in possession of dangerous drugs, *viz.*:

As a permissible administrative search, the scope of airport routine check is not limitless. Airport screening procedures are conducted for two primary reasons: first, to prevent passengers from carrying weapons or explosives onto the aircraft; and second, to deter passengers from even attempting to do so. x x x

x x x x

Hence, an airport search remains a valid administrative search only so long as the scope of the administrative search exception is not exceeded; "once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale." Where an action is taken that cannot serve the administrative purpose, either because the threat necessitating the administrative search has been dismissed or because the action is simply unrelated to the administrative goal, the action clearly exceeds the scope of the permissible search. To the extent that airport administrative searches are used for purposes other than screening luggage and passengers for weapons or explosives, they fall outside the rationale by which they have been approved as an exception to the warrant requirement, and the evidence obtained during such a search should be excluded.

<sup>55</sup> *Dacanay v. People*, 818 Phil. 885, 910 (2017), citing *Esquillo v. People*, 643 Phil. 577, 589-593 (2010).

<sup>56</sup> *People v. O'Coirlain*, 845 Phil. 150 (2018).

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It is in the context of air safety-related justifications, therefore, that routine airport security searches and seizures are considered as permissible under Section 2, Article III of the Constitution.

In this case, what was seized from Eanna were two rolled sticks of dried marijuana leaves. Obviously, they are not explosive, flammable, corrosive or poisonous substances or materials, or dangerous elements or devices that may be used to commit hijacking or acts of terrorism. More importantly, the illegal drugs were discovered only during the final security checkpoint, after a pat down search was conducted by SSO Suguitan, who did not act based on personal knowledge but merely relied on an information given by CSI Tamayo that Eanna was possibly in possession of marijuana. In marked contrast, the illegal drugs confiscated from the accused in *Johnson* and the subsequent cases of *People v. Canton*, *People v. Suzuki*, *Sales v. People*, and *People v. Cadidia*, where incidentally uncovered during the initial security check, in the course of the routine airport screening, after the defendants were frisked and/or the alarm of the metal detector was triggered.

**Airport search is reasonable when limited in scope to the object of the Anti-Hijacking program, not the war on illegal drugs. Unlike a routine search where a prohibited drug was found by chance, a search on the person of the passenger or on his personal belongings in a deliberate and conscious effort to discover an illegal drug is not authorized under the exception to the warrant and probable cause requirement.** The Court is not empowered to suspend constitutional guarantees so that the government may more effectively wage a “war on drugs.” If that war is to be fought, those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime.<sup>57</sup> (Emphasis supplied.)

In this case, the Customs officers discovered the dangerous drugs inside the checked-in luggage of petitioner, not through routine check, but only after a deliberate and conscious search in his belongings. It was also made pursuant to an information or tip received from Major Marcelino that petitioner will be arriving in the Philippines with an undetermined quantity of *shabu*. Thus, it does not fall under the exception to the requirement of a search warrant on account of routine airport search.

As mentioned, the RTC also erroneously found that it was incidental to an arrest in *flagrante delicto*. In instances of warrantless search incidental to a lawful arrest, the law requires that there be first lawful arrest before a search can be made. The process cannot be reversed. For a warrantless arrest of an accused caught in *flagrante delicto* to be valid, the following requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the

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<sup>57</sup> Id. at 175-189.

arresting officer. On the other hand, the elements of an arrest effected in hot pursuit under paragraph (b) of Section 5 (arrest effected in hot pursuit) are: (1) an offense has just been committed; and (2) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.<sup>58</sup>

Here, however, petitioner was merely going through routine check with the Immigration and Customs and there was no outward indication that called for his arrest. Without the tip provided by Major Marcelino, petitioner could not be said to have executed any overt act in the presence or within the view of the arresting officers which would indicate that he was committing the crime of illegal transportation of dangerous drugs. Neither did the Customs officers have personal knowledge of facts indicating that petitioner had just committed an offense. Again, without the tipped information, petitioner would just have been any other airline passenger arriving at the NAIA Terminal 1.

Nonetheless, We affirm the validity of the search on petitioner's hand carry bag and checked-in luggage as these were made pursuant to a valid consented warrantless search and customs search, respectively.

Consistent with *People v. O'Cocharin*, whether a consent to a search was "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances, taking the following matters into account: (1) the age of accused; (2) whether accused was in a public or a secluded location; (3) whether accused objected to the search or passively looked on; (4) the education and intelligence of accused; (5) the presence of coercive police procedures; (6) the accused's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting.<sup>59</sup>

In this case, petitioner was invited by SA II Andrada to the exclusion room, to which the former acceded. He also readily acquiesced to Salik's search of his hand carry bag. He was well-educated and intelligent, being a graduate of mechanical engineering. While petitioner asserts that he is not fluent in English, We agree with the RTC that it is sufficient that petitioner understands it. It was proven that he understood English since it was taught in his school. Thus, the totality of circumstances reveals that petitioner's consent to the search was voluntary, and not a product of duress or coercion.

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<sup>58</sup> *People v. Comprado*, 829 Phil. 229, 244 (2018).

<sup>59</sup> *Supra* note 55 at 190, citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), *Luz v. People*, 683 Phil. 399, 411 (2012) and *Valdez v. People*, 563 Phil. 934, 950 (2007).

Meanwhile, customs search, which is one of the recognized instances of permissible warrantless search,<sup>60</sup> applies in the search of petitioner's checked-in luggage. Under the Tariff and Customs Code of the Philippines (TCCP), customs officials are authorized to search any vessel, aircraft, cargo, article, animal or other movable property when the same is subject to the forfeiture or liable for any fine imposed under the Tariff and Customs laws, rules, and regulations.<sup>61</sup> Dangerous drugs are among the articles of prohibited importation, and may thus be subject to forfeiture,<sup>62</sup> under Section 101(i) of TCCP.

We may apply, by analogy, Our ruling in *Salvador v. People*,<sup>63</sup> where We upheld the validity of a customs search pursuant to the conduct of a surveillance operation to verify reports of drug trafficking and smuggling. As We declared in said case, the team properly effected the search and seizure without a warrant since it exercised police authority under the customs law.

As regards the questioned warrantless arrest, We have repeatedly held that objections against the lawfulness of an arrest which are not raised through a motion to quash before the accused enters his or her plea are deemed waived, for the voluntary submission of an accused to the jurisdiction of the court and his or her active participation during the trial cures any defect or irregularity that may have attended an arrest.<sup>64</sup> Here, petitioner is considered to have waived this defense because he failed to raise it in a motion to quash before entering his plea. Moreover, during the pre-trial conference at the RTC, petitioner agreed to stipulate that the court has acquired jurisdiction over his person.

*All elements of illegal transporting of dangerous drugs were established by the prosecution*

Petitioner is charged with illegal transporting of dangerous drugs, which is punishable under Section 5, Article II of RA 9165, viz.:

**Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or **transport** any dangerous drug, including any and all species of

<sup>60</sup> *People v. Cogaed*, 740 Phil. 212, 228 (2014).

<sup>61</sup> Section 2205, TCCP.

<sup>62</sup> Section 2530, TCCP.

<sup>63</sup> 502 Phil. 60 (2005).

<sup>64</sup> *People v. Estabillo*, G.R. No. 252902, 16 June 2021; *Mendoza v. People*, G.R. No. 248350, 05 December 2022.

opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphasis supplied.)

To establish the guilt of the accused, it must be proved that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists.<sup>65</sup> The term “transport” means “to carry or convey from one place to another.”<sup>66</sup>

Both elements exist in this case. There was a transportation or conveyance of dangerous drugs from Malaysia to the Philippines via Malaysian Airlines flight MH704. The prohibited drugs exist, as found inside petitioner’s checked-in luggage. In fact, during the pre-trial conference, petitioner admitted the dangerous drugs’ weight, specific quantity, and appearance.

While the dangerous drugs were not in petitioner’s actual or physical possession, it must be recalled that in *People v. Noah*, We have recognized that in the ordinary course of business, check-in officers attach airline bag tags to owner’s check-in luggage at the airport of origin.<sup>67</sup> Moreover, in *People v. Estabillo*, We elucidated the concept of constructive possession of dangerous drugs, which exists when the object is under the dominion and control of accused, viz.:

x x x Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate possession or control of the accused. On the other hand, **constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.** Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.<sup>68</sup> (Emphasis supplied.)

Here, as discussed, the bag tag in the checked-in luggage clearly reflects petitioner’s name. The Malaysian Airlines office also confirmed that petitioner has a checked-in baggage. Though he did not have immediate possession of the same, it was under his dominion and control as he is the only one who may claim his checked-in luggage. In fact, his execution of the waiver and submission of the same at the Interline Section constitutes as an acknowledgment of his ownership and possession over it.<sup>69</sup> Significantly, the

<sup>65</sup> *People v. Baterina*, G.R. No. 236259, 16 September 2020.

<sup>66</sup> *People v. Macaspac*, G.R. No. 246165, 28 November 2019, citing *People v. Mariacos*, 635 Phil. 315, 333-334 (2010).

<sup>67</sup> *People v. Noah*, G.R. No. 228880, 06 March 2019.

<sup>68</sup> *People v. Estabillo*, G.R. No. 252902, 16 June 2021, citing *People v. Santos*, 823 Phil. 1162, 1176-1177 (2018) and *People v. Lagman*, 593 Phil. 617, 625 (2008).

<sup>69</sup> Records (Vol. III), p. 180 (TSN dated 15 December 2010 on the testimony of A/SA II Andrada).

prosecution adequately established that the customs officers did not force or coerce petitioner to sign said waiver.<sup>70</sup>

*There was compliance with the chain of custody rule*

In *Macad v. People*,<sup>71</sup> We explained that 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 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.<sup>72</sup> To ensure the establishment of the chain of custody, Section 21 (1), Article II of RA 9165 specifies that:

(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.

Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 supplements Section 21 (1) of the said law, *viz.*:

(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[.]

<sup>70</sup> Records (Vol. III), p. 59 (TSN dated 29 September 2010 on the testimony of A/SA II Andrada).

<sup>71</sup> Supra note 51.

<sup>72</sup> Id. at 127-128

Based on the foregoing, Section 21, Article II of RA 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory; and photograph the same in the presence of (1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media, (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.<sup>73</sup>

In the amendment of RA 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in (1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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.<sup>74</sup> In the present case, as the alleged crimes were committed on 14 April 2010, then the provisions of Section 21, Article II of RA 9165 and its IRR shall apply.

Notably, Section 21 of the IRR provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.<sup>75</sup>

The exception found in the IRR of RA 9165 comes into play when strict compliance with the prescribed procedures is not observed. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.<sup>76</sup>

#### *A. Three (3)-witness rule*

As discussed above, applying Section 21, Article II of RA 9165 and its IRR the physical inventory and taking of photographs must be witnessed by the following insulating witnesses: media representative, DOJ representative, and an elected official.

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<sup>73</sup> Id. at 127-129.

<sup>74</sup> Id. at 129.

<sup>75</sup> Id.

<sup>76</sup> Id. at 129-130.



We do not lose sight of the fact that under various field conditions, compliance with said requirement may not always be possible. Thus, while the presence of all these witnesses is ordinarily required, non-compliance may be excused, such as in this case. In *People v. Lim*, We recognized the following justifiable reasons for failure to secure the presence of the three witnesses, *viz.*:

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(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 of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**<sup>77</sup>

Here, the prosecution admitted that there were no representatives from the DOJ and an elected official. Nonetheless, SA II Andrada explained that the security inside the arrival area is very strict. They must have an ID issued or a stick on-pass to be requested through the MIAA Management, and it will take at least one day to process said request.<sup>78</sup> Given that SA II Andrada only received the tip in the morning of 14 April 2010, at around 11:00 A.M.,<sup>79</sup> and petitioner was bound to arrive by 2:00 P.M., there is clearly insufficient time for SA II Andrada to secure said ID or stick on-pass. Following *People v. Lim*, the explanation given by SA II Andrada is justified because it is rooted on time constraints and urgency of their anti-drug operations. If they waited to secure the airport requirements, petitioner would have already left the airport and escaped the law enforcers.

Moreover, in Our view, the absence of a DOJ representative and an elected official did not affect the integrity and evidentiary value of the evidence seized in this case for the following reasons:

*First*, as discussed above, airport security inside the arrival area is very strict. Only authorized personnel were inside the exclusion room. Petitioner was inside the exclusion room the entire time that Malik found the seven foil

<sup>77</sup> *People v. Lim*, 839 Phil. 598, 621-622 (2018).

<sup>78</sup> *Rollo*, pp. 193-194; Records (Vol. III), p. 206.

<sup>79</sup> Records (Vol. III), p. 50 (TSN dated 29 September 2010 on the testimony of A/SA II Andrada).

packs inside the checked-in luggage until SA II Andrada informed petitioner of his offense and caused his arrest.

*Second*, a field test was conducted by SA II Andrada immediately after the discovery of the white crystalline substances and in the presence of petitioner, MIAA General Manager, and customs officers. Using the reagent *sodium nitroprusside*, SA II Andrada performed a field test to a representative sample of the specimen. The mixture turned to dark blue, which indicates the presence of *methamphetamine hydrochloride*.<sup>80</sup> This positive result was later confirmed in the Chemistry Report No. PDEA-DDD010-140.

*Third*, there were other insulating witnesses. As testified by SA II Andrada, Deputy Collector Roque and MIAA General Manager Matibag were present in the exclusion room.

Considering that the prosecution adequately explained the absence of a DOJ representative and an elected official, and the evidence seized remained intact, as will be further explained below, the saving clause under Section 21 of the IRR applies in this case.

*B. Four links in the chain of custody*

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: (1) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.<sup>81</sup>

As found by the CA, the prosecution has clearly established the drug specimens were retrieved from petitioner's check-in luggage under his watch and in the presence of several witnesses which included airport officials, member of the media, and the drug enforcement officers. The seized contrabands were then photographed, examined, tested for presence of prohibited drugs, resealed, taped, and marked in the presence of the abovementioned witnesses.<sup>82</sup> Afterwards, the apprehending officer turned over the seized items to the investigating officer.<sup>83</sup>

On the same day, the seized items were turned over to the forensic chemist. This was witnessed by representatives from the Baggage Assistance Division, BOC Investigation Division, and Airport Press, as shown in the

<sup>80</sup> *Rollo*, pp. 165-166.

<sup>81</sup> *People v. Estabillo*, G.R. No. 252902, 16 June 2021, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

<sup>82</sup> *Rollo*, p. 17.

<sup>83</sup> Records (Vol. III), pp. 64-71 (TSN dated 29 September 2010 on the testimony of A/SA II Andrada).

Turned-Over Receipt.<sup>84</sup> The Chemistry Report No. PDEA-DDD010-140 dated 15 April 2010 revealed that the seized items contain *methamphetamine hydrochloride*.<sup>85</sup> During the proceedings in the trial court, the forensic chemist led the PDEA team and submitted the seized items to the court.<sup>86</sup>

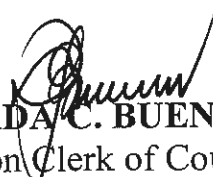
Moreover, We echo the observations of the RTC on the implausibility of petitioner's purported reason for arrival in the Philippines. While he claimed that he intended to gamble in casinos, he was unable to identify the casino where he was supposed to gamble or show his financial capacity to do so. He also failed to make any hotel reservations for his stay. His only contact person in the Philippines was his uncle Lim Pek Wan, yet he could not provide his contact details. Being a first-time traveler to the Philippines, it is very unusual for him not to get the home address or even the phone number of his supposed uncle in the Philippines.

Finally, under Section 5, Article II of RA 9165, the penalty of life imprisonment and fine of ₱500,000.00, which was imposed by the RTC and affirmed by the CA, were proper.

**WHEREFORE**, the Petition is **DENIED**. The Decision dated 13 May 2015 and Resolution dated 3 March 2016 of the Court of Appeals in CA-G.R. CR-HC No. 05394 are hereby **AFFIRMED**.

**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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<sup>84</sup> Records (Vol. II), p. 17 (Turned-Over Receipt dated 14 April 2010).

<sup>85</sup> Id. at 114 (Chemistry Report No. PDEA-DD010-140 dated 15 April 2010).

<sup>86</sup> Id. at 62a (Minutes dated 12 August 2010).

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