



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

MACACUNA BADIO y G.R. No. 236023
DICAMPUNG,

Petitioner, Present:

- versus -

CARPIO, J., Chairperson,
 PERLAS-BERNABE,
 CAGUIOA,
 HERNANDO,* and
 CARANDANG,** JJ.

PEOPLE OF THE
PHILIPPINES,

Respondent.

Promulgated:

20 FEB 2019

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DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*¹ filed by petitioner Macacuna Badio y Dicampung (Badio), assailing the Decision² dated April 20, 2017 and Resolution³ dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38542, which affirmed with modification the Decision⁴ dated March 21, 2016 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case No. 13-299331, finding him guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No.

* Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.
 ** Designated Additional Member per Raffle dated January 16, 2019.
¹ *Rollo*, pp. 12-29.
² *Id.* at 35-48. Penned by Associate Justice Jose C. Reyes, Jr. (now a member of this Court) with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela, concurring.
³ *Id.* at 50.
⁴ *Id.* at 75-81. Penned by Presiding Judge Sarah Alma M. Lim.

9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

This case stemmed from an Information⁶ filed before the RTC charging Badio of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that on August 24, 2013, the Station Anti-Illegal Drugs Special Operation Task Unit of the Moriones, Tondo Police Station 2 received a tip that an illegal drug transaction would take place beside a specified vehicle along Antonio Rivera Street corner C.M. Recto Avenue, Manila. Upon receipt of such information, the station commander formed a team to, *inter alia*, conduct a surveillance around the area and effect arrests, if necessary. At around 8:30 in the evening of even date and after the team had established its position about four (4) to five (5) meters from the specified vehicle, the team noticed that a person – later on identified as Badio – approached the vehicle and started conversing with the passengers therein. Shortly after, Police Officer 3 Roman Jimenez (PO3 Jimenez) saw Badio showing two (2) transparent plastic sachets containing white crystalline substance to the passengers and when the team then approached him, Badio threw away the plastic sachets. However, PO3 Jimenez was able to recover the said sachets and arrest Badio, while the other members of the team apprehended the latter’s companions. Subsequently, PO3 Jimenez marked the seized sachets and conducted a body search on Badio from whom he recovered another piece of plastic sachet. Immediately, all three (3) plastic sachets were photographed and inventoried⁷ in the presence of Badio and a media representative. The team then went to the police station where Badio was held for further questioning, while the seized items were turned over to the investigating officer, Senior Police Officer 1 Elymar B. Garcia (SPO1 Garcia), who likewise prepared the necessary paper works therefor. Thereafter, the seized items were brought to the crime laboratory, where, upon examination,⁸ the contents thereof tested positive for the presence of a total of 5.01 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.⁹

In his defense, Badio denied the charges against him, claiming instead that between one (1) to two (2) o’ clock in the afternoon of August 24, 2013, he was inside a vehicle parked at a restaurant in Baclaran, when four (4) unidentified men suddenly arrived and grabbed him. The men then introduced themselves as police officers, handcuffed him, and brought him

⁵ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

⁶ Dated August 27, 2013. Records, p. 1.

⁷ See Receipt/Inventory of Seized Evidence dated August 24, 2013; *id.* at 10.

⁸ See Chemistry Report No. D-269-13 dated August 25, 2013; *id.* at 8.

⁹ See *rollo*, pp. 36-37 and 76-77.

to the Moriones, Tondo Police Station. Later on, he learned that he was being charged of the crime of Illegal Possession of Dangerous Drugs.¹⁰

In a Decision¹¹ dated March 21, 2016, the RTC found Badio guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine in the amount of ₱300,000.00.¹² It found the prosecution to have established with moral certainty that Badio was in possession of *shabu* without any lawful license or authority, and that there was an unbroken chain of custody over the dangerous drugs seized from his possession. Finally, it gave credence to the testimonies of the prosecution witnesses who are presumed to have regularly performed their duties in the absence of proof to the contrary.¹³ Aggrieved, Badio filed an appeal before the CA.

In a Decision¹⁴ dated April 20, 2017, the CA affirmed Badio's conviction with modification, sentencing him to suffer the penalty of imprisonment for a period of twenty (20) years and one (1) day, and to pay a fine in the amount of ₱400,000.00.¹⁵ It found the sole testimony of PO3 Jimenez to be sufficient in convicting Badio of the crime charged. It likewise pointed out that despite the absence of a Department of Justice (DOJ) representative and an elected public official in the inventory and photography of the seized items, the prosecution nonetheless was able to establish that the integrity and evidentiary value of such items were properly preserved, as shown by the following links in the chain of custody, namely: (a) PO3 Jimenez recovered from Badio three (3) heat-sealed plastic sachets containing white crystalline substance, which were subsequently marked, photographed, and inventoried in the presence of a media representative; (b) PO3 Jimenez had been in possession of the seized items from the place of arrest up to the police station where they were turned over to SPO1 Garcia; (c) SPO1 Garcia then handed the seized items to the forensic chemist for laboratory examination; and (d) the same items were thereafter surrendered to the court for identification.¹⁶ Undaunted, Badio filed a motion for reconsideration¹⁷ which was denied in a Resolution¹⁸ dated November 29, 2017.

Hence, this appeal seeking that Badio's conviction be overturned.

¹⁰ See id. at 37-38 and 77-79.

¹¹ Id. at 75-81.

¹² Id. at 81.

¹³ See id. at 79-81.

¹⁴ Id. at 35-48.

¹⁵ Id. at 47-48.

¹⁶ See id. at 42-46.

¹⁷ Dated May 10, 2017. Id. at 51-58.

¹⁸ Id. at 50.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹⁹ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.²⁰ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.²¹

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²² As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”²³ Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.²⁴

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were

¹⁹ The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

²⁰ See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²¹ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²² See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 19; *People v. Sanchez*, *supra* note 19; *People v. Magsano*, *supra* note 19; *People v. Manansala*, *supra* note 19; *People v. Miranda*, *supra* note 19; and *People v. Mamangon*, *supra* note 19. See also *People v. Viterbo*, *supra* note 20.

²³ *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

²⁴ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,²⁵ “a representative from the media **and** the [DOJ], and any elected public official”;²⁶ or (b) if **after** the amendment of RA 9165 by RA 10640, “an elected public official and a representative of the National Prosecution Service **or** the media.”²⁷ The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”²⁸

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”²⁹ This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”³⁰

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³¹ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³² The foregoing is based on the saving clause found in Section 21 (a),³³ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁴ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁵ and that the justifiable ground for non-compliance must be proven as a fact,

²⁵ Entitled “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 on July 15, 2014.

²⁶ Section 21 (1), Article II of RA 9165 and its IRR; emphasis and underscoring supplied.

²⁷ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²⁸ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 19. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁹ See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 21, at 1038.

³⁰ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

³¹ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³² See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³³ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.]**”

³⁴ Section 1 of RA 10640 pertinently states: “**Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**”

³⁵ *People v. Almorfe*, supra note 32.

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because the Court cannot presume what these grounds are or that they even exist.³⁶

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.³⁷ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁸ These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.³⁹

Notably, the Court, in *People v. Miranda*,⁴⁰ issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”⁴¹

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by an elected public official and a DOJ representative. This may be easily gleaned from the Receipt/Inventory of Seized Evidence⁴² which only proves the presence of a media representative. Moreover, records are bereft of any showing that the police officers actually made attempts to secure the presence of the other required witnesses, and merely offered justifiable reasons as to why they failed to contact them. To reiterate, the law requires that the conduct of inventory and photography of the seized items must be witnessed by representatives from the media and the DOJ, and any elected public official, and that the prosecution is bound to account for their absence by presenting

³⁶ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁷ See *People v. Manansala*, supra note 19.

³⁸ See *People v. Gamboa*, supra note 21, citing *People v. Umipang*, supra note 21, at 1053.

³⁹ See *People v. Crispo*, supra note 19.

⁴⁰ Supra note 19.


⁴¹ See *id.*

⁴² Dated August 24, 2013. Records, p. 10.

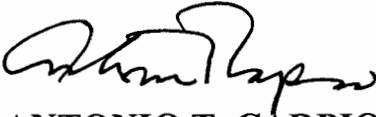
a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. As the Court sees it, the prosecution did not faithfully comply with these standards and unfortunately, failed to justify non-compliance. Thus, in view of these unjustified deviations from the chain of custody rule, the Court is therefore constrained to believe that the integrity and evidentiary value of the items purportedly seized from Badio were compromised, which consequently warrants his acquittal.

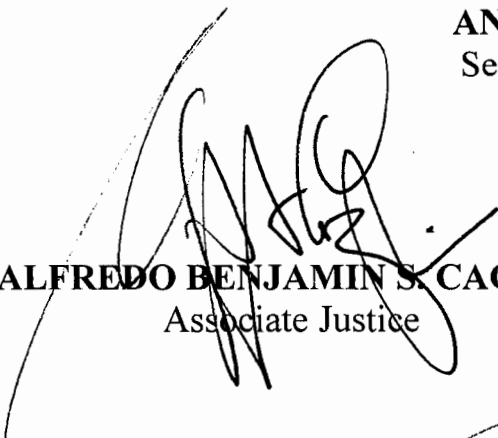
WHEREFORE, the appeal is **GRANTED**. The Decision dated April 20, 2017 and the Resolution dated November 29, 2017 of the Court of Appeals in CA-G.R. CR No. 38542 are hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Macacuna Badio y Dicampung is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

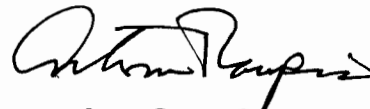

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

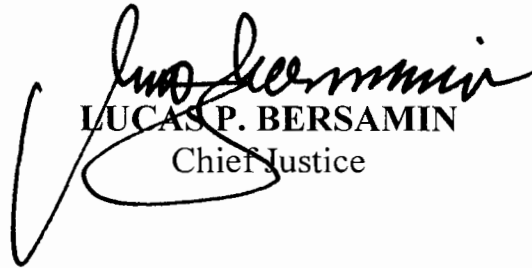
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice