Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 29, 2020**, *which reads as follows:*

"G.R. No. 238999 ***(People of the Philippines, Plaintiff-Appellee, v. Roel Laroga y Pareja @ "Siopao," Accused-Appellant).*** - This Appeal[1] assails the Decision[2] promulgated on 23 June 2017 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08378, which affirmed the Decision[3] rendered on 02 February 2016 by Branch 53 of the Regional Trial Court (RTC) of Sorsogon City in Criminal Case No. 2010-7711, finding accused-appellant Roel Laroga y Pareja @ "Siopao" (accused-appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

Antecedents

On 09 March 2010, the Office of the City Prosecutor of Sorsogon filed an Information charging accused-appellant with illegal sale of marijuana, defined and penalized under Section 5, Article II of RA 9165, to wit:

> That on or about the 7th day of March, 2010 at about 12:10 in the afternoon at Pier Site, Talisay, Sorsogon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did[,] then and there, willfully, unlawfully and criminally[,] sell, dispense and deliver four (4) medium heat-sealed transparent plastic sachet[s] containing dried marijuana leaves weighing 2.434 grams, to [the] PDEA agent poseur[-]buyer, in exchange for two hundred pesos, to the damage and prejudice of the state.

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1 *Rollo*, pp. 24-25.

2 *Id.* at 2-23; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes of the Fifth Division, Court of Appeals, Manila.

3 CA *rollo*, pp. 46-53; penned by RTC Presiding Judge Rofebar F. Gerona.

The commission of the offense is aggravated by the circumstance of selling within 50 meters of a school, the Sorsogon Pilot Elementary School.

CONTRARY TO LAW.[4]

Upon arraignment, accused-appellant pleaded not guilty to the charge filed against him. After termination of pre-trial, trial on the merits ensued.

Version of the Prosecution

On 06 March 2010, a team from the Philippine Drug Enforcement Agency (PDEA) began an anti-narcotics operation against accused-appellant at Pier Site, Talisay, Sorsogon City. After introduction by the confidential informant, PDEA Intelligence Officer 1 Arnel Estrellado (IO1 Estrellado) ordered four (4) sachets of marijuana from accused-appellant but was told to return the next day because accused-appellant ran out of supply.[5]

The following day, joint forces from Sorsogon City Police and PDEA planned a buy-bust operation against accused-appellant. The team designated IO1 Estrellado as poseur-buyer who marked two (2) One Hundred Peso bills with his initials, "AEE."[6]

During the buy-bust, accused-appellant sold and handed IO1 Estrellado four (4) transparent plastic sachets containing dried leaves suspected to be marijuana. Once the transaction was completed, IO1 Estrellado gave the pre-arranged signal to arrest accused-appellant. He resisted and attempted to flee but the arresting team successfully subdued and apprehended him. IO1 Estrellado marked the seized plastic sachets and had the same photographed at the place of the arrest. Thereafter, the police team brought accused-appellant to Compac I Police Station, Talisay, Sorsogon where an inventory of the seized items was done in the presence of two (2) *barangay* officials and a media representative.[7] Finally, the seized items were brought by IO1 Estrellado to the crime laboratory where an examination confirmed that the plastic sachets contained marijuana, a dangerous drug.[8]

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4 Records, p. 1.
5 *Id.* at 5.
6 *Id.*
7 *Id.* at 6.
8 *Id.*

Version of the Defense

Accused-appellant denied the charge filed against him. According to him, on 07 March 2010 at around 12:10 p.m., he was at the jeepney parking area along de Vera Street near Robertson Department Store waiting for his cousin. A stranger unexpectedly told him that a man was looking for him. When accused-appellant approached said man, the latter suddenly put his arm around his shoulder and said, "[d]on't run away x x x I'll shoot you." Then, another man came and held accused-appellant's hands at his back. Accused-appellant was ordered to lie down with his face on the ground. The men then put out money and four (4) small sachets before taking pictures of accused-appellant and the items. Accused-appellant was thereafter brought to Police Precinct 1 at *Barangay* Sirangan where he was made to sign papers before he was brought to the BLMP in Balogo, Sorsogon City.[9]

Ruling of the RTC

On 02 February 2016, the RTC convicted accused-appellant of the crime charged. The RTC disposed:

> WHEREFORE, premises considered judgment is hereby rendered finding the accused, ROEL LAROGA y PAREJA @ "Siopao"[,] GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of RA 9165 and is accordingly sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (Php 500,000.00).
>
> SO ORDERED.[10]

Ruling of the CA

On 23 June 2017, the CA promulgated its assailed Decision[11] affirming appellant's conviction, thus:

> **WHEREFORE**, the Decision dated February 2, 2016 of the trial court is **AFFIRMED**, subject to the increase of the fine to P10,000,000.00.
>
> **SO ORDERED.**[12]

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[9] *Rollo,* pp. 5-6.
[10] CA *rollo*, p. 53.
[11] *Rollo*, pp. 2-23.
[12] *Id.* at 23.

Hence, this appeal.[13]

Issues

Accused-appellant claims:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PAUCITY OF EVIDENCE PROVING THAT AN ACTUAL BUY BUST OPERATION WAS CARRIED OUT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY IN HANDLING THE ALLEGEDLY SEIZED ILLEGAL DRUGS.[14]

Ultimately, accused-appellant insists the courts *a quo* gravely erred in convicting him for the crime of illegal sale of dangerous drugs.

Ruling of the Court

We find merit in the appeal.

In cases for Illegal Sale of Dangerous Drugs under RA 9165, 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.[15] *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. Consequently, the State must present the seized drugs, along with proof that there were no substantial gaps in the chain of custody thereof as to raise doubts about the authenticity of the evidence presented in court.[16]

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[13] *Id.* at 24-26.
[14] CA *rollo*, p. 28.
[15] *Fuentes v. People*, G.R. No. 228718, 07 January 2019.
[16] *People v. Peromingan*, G.R. No. 218401, 24 September 2018.

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photography of the seized items be conducted immediately after the seizure and confiscation of the same. The law further requires that the inventory and photography be done in the presence of the accused or the person from whom the items were 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,[17] "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a] elected public official and a representative of the National Prosecution Service *OR* the media." 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."[18]

The Information charges accused-appellant of committing the crime on 07 March 2010 or prior to effectivity of the amendatory RA 10640.[19] Hence, the suspected drugs should be physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel; (b) a representative from the media AND the Department of Justice (DOJ); and (c) any elected public official.

Here, the prosecution failed to establish the crucial presence of ALL witnesses required by RA 9165. As testified on by prosecution witness IO1 Estrellado, no DOJ representative was present during inventory at the police station:

> [Pros. Perez]
> Q: Upon reaching Compac I, what transpired?
> [IO1 Estrellado]
> A: Inventory happen[ed] in the presence of witnesses.
>
> Q: Who were the witnesses present?
> A: The Brgy. Chairman, Brgy. Kagawad and media representative.
>
> Q: How about DOJ representative, was there any present?
> A: There was no DOJ representative during that time because it was a Sunday.[20]

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[17] *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 15 July 2014.

[18] *People v. Bangalan*, G.R. No. 232249, 03 September 2018.

[19] *Id.*; in *People v. Gutierrez,* G.R. No. 236304, 05 November 2018, this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter or on 07 August 2014, pursuant to Section 5 of the law.

[20] TSN, 23 May 2011, pp. 23-24.

If the required witnesses were not present during inventory, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 contains a saving mechanism to maintain and uphold the seizure of suspected drugs:

> xxx Provided, further, that non-compliance with these requirements [the presence of the required witnesses, and the time and place of inventory and photography] under justifiable grounds, as long as the integrity and 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; xxx[21]

The applicability of this saving mechanism, however, is conditioned upon the apprehending team rendering a justification for such non-compliance. Failure to provide justification will create doubt as to the identity and evidentiary value of the seized items when presented in court.[22] For this saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.[23]

The absence of the witnesses required by law does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses, must be adduced. The prosecution must show that earnest efforts were employed in contacting the witnesses enumerated in the law. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance. Police officers are compelled not only to state the reasons for their non-compliance but must also convince the Court that they exerted earnest efforts to comply with the mandated procedures and that, under the given circumstances, their actions were reasonable.[24]

After a judicious review of the records of this case, the Court finds no compelling justification for the arresting team's failure to secure the presence of a DOJ representative. Likewise, no earnest efforts by the arresting team were made to fully comply with the provisions of RA 9165.

To recall, IO1 Estrellado attempted to explain that no DOJ representative was available "because it was a Sunday."[25] We find the excuse flimsy and insufficient to justify their procedural lapse. A bare assertion claiming it was a Sunday shows the arresting team's lack of any serious attempt to secure the presence of all witnesses required under RA 9165.

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[21] *See Casona v. People*, 818 Phil. 76-91 (2017); G.R. No. 179757, 13 September 2017, 839 SCRA 448.
[22] *People v. Velasco*, G.R. No. 219174, 21 February 2018, 856 SCRA 303.
[23] *People v. Alagarme*, 754 Phil 449, 462 (2015); G.R. No. 184789, 23 February 2015, 751 SCRA 317.
[24] *Ramos v. People*, G.R. No. 233572, 30 July 2018.
[25] TSN, 23 May 2011, p. 24.

Moreover, the prosecution failed to explain why only the DOJ representative was not present during the inventory taking, while other witnesses were readily available during that time, notwithstanding the common circumstance of the date falling on a Sunday.

The purpose of the law in requiring the presence of certain witnesses during inventory of the seized items is to insulate the seizure from any taint of illegitimacy or irregularity.[26] Their insulating presence during inventory and taking of photographs was specifically designed to obviate switching, 'planting' or contamination of evidence.[27] Here, the arresting officers failed to secure the presence of a DOJ representative without providing any justifiable reason and without showing that they exerted earnest efforts to secure said witness. Such failure adversely affected the integrity and credibility of the seized items.

Further, the Court notes the discrepancy between the certificate of inventory[28] and the chemistry report.[29] The certificate of inventory indicated the plastic sachets were marked "AEE 06/07/10 A-D" while the chemistry report recorded the markings as "A (AEE A 03/07/10) = 0.623 gram, B (AEE B 03/07/10) = 0.554 gram, C (AEE C 03/07/10) = 0.677 gram, [and] D (AEE D 03/07/10) = 0.580 gram."[30]

While the difference of a single digit may appear trivial, the Court cannot simply ignore the discrepancy since marking is the starting point of the custodial link.[31] It is first among the procedural safeguards decisive in proving that the dangerous drug confiscated from the accused-appellant was the very same substance delivered to and presented before the trial court. Given its significance, any deviation must not be lightly dismissed as inconsequential.[32] We cannot dismiss the discrepancies between the inventory and the chemistry report as mere "clerical error." Such irregularities in the markings cast serious doubts on the origin of the items supposedly confiscated from accused-appellant. The discrepancies adversely affect the integrity and evidentiary value of the seized drugs.[33]

Finally, IO1 Estrellado's act of placing the seized drugs "in [his] pants"[34] before proceeding to the police station is indicative of the absence or lack of caution in handling the *corpus delicti*. During trial, he admitted handling the plastic sachets containing suspected marijuana in the following manner:

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[26] *People v. Maganon*, G.R No. 234040, 26 June 2019.
[27] *Id.*
[28] Records, p. 8.
[29] *Id.* at 11.
[30] *Id.*
[31] *People v. Bermejo*, G.R. No. 199813, 26 June 2019.
[32] *People v. Yagao*, G.R. No. 216725, 18 February 2019.
[33] *People v. Banding*, G.R. No. 233470, 14 August 2019.
[34] TSN, 23 May 2011, p. 23.

[Pros. Perez]
Q: How about the sachets?
[IO1 Estrellado]
A: I conducted an inventory at Compac I.

Q: Before proceeding to Compac I, who took the sachets?
A: It was with me going to Compac I.

Q: Where did you place the sachets?
A: In my pants.[35]

In *People v. Dela Cruz*,[36] the Court found the act of keeping seized narcotics in the pockets of the arresting officer as a doubtful and suspicious way of ensuring the integrity of the items:

> The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.
>
> The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such *close proximity* to him that they had been nowhere else but in his own pockets.
>
> Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.
>
> Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.[37]

A careful rumination on the: (i) lack of caution in handling the *corpus delicti*; (ii) non-compliance with the three-witness rule under RA 9165; and (iii) material discrepancy between the certificate of inventory and chemistry report, highlights the apprehending team's failure to preserve the chain of custody. These procedural irregularities cast serious suspicion on the *corpus*

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[35] *Id.*
[36] *People v. Dela Cruz*, 744 Phil. 816-837 (2014); G.R. No. 205821, 01 October 2014, 737 SCRA 486, 504.
[37] *Id.* at 834-835.

delicti of the offense charged, thereby creating reasonable doubt warranting accused-appellant's acquittal.

WHEREFORE, the Appeal is hereby **GRANTED**. The Decision dated 23 June 2017 by the Court of Appeals in CA-G.R. CR-HC No. 08378 finding accused-appellant **Roel Laroga y Pareja @ "Siopao"** guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 is **REVERSED and SET ASIDE**. Accordingly, accused-appellant is **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to implement this resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED."

Very truly yours,

MisDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
1/10/20

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OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 53, 4700 Sorsogon City
(Criminal Case No. 2010-7711)

The Director
Bureau of Corrections
1770 Muntinlupa City

The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Roel P. Laroga
c/o The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 238999

-versus-

ROEL LAROGA y PAREJA @ "SIOPAO,"
Accused-Appellant.
x- /

ORDER OF RELEASE

TO: The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **The Superintendent**
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on **January 29, 2020** promulgated a **Resolution** in the above-entitled case, the dispositive portion of which reads:

> "**WHEREFORE**, the Appeal is hereby **GRANTED**. The Decision dated 23 June 2017 by the Court of Appeals in CA-G.R. CR-HC No. 08378 finding accused-appellant **Roel Laroga y Pareja @ "Siopao"** guilty beyond reasonable doubt

- over -

of violating Section 5, Article II of RA 9165 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant is **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to implement this resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED."

NOW, THEREFORE, You are hereby ordered to immediately release **ROEL LAROGA y PAREJA @ "SIOPAO",** unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN,** Chairperson of the Third Division of the Supreme Court of the Philippines, this **29th** day of **January 2020**.

Very truly yours,

MisDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
7/10/20

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 53, 4700 Sorsogon City
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