



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated March 3, 2021, which reads as follows:

“G.R. No. 228195 (*Sonny Sese y Ocon v. People of the Philippines*). – After a judicious study of the case, the Court resolves to GRANT the Petition for Review on *Certiorari*¹ and reverse and set aside the Decision² dated April 13, 2016 rendered by the Court of Appeals (CA) in CA - G.R. CR No. 36890 which affirmed the Decision³ dated June 30, 2014 of Branch 2, Regional Trial Court (RTC) of Manila in Criminal Case No. 13-296251 finding Sonny Sese y Ocon (petitioner) guilty beyond reasonable doubt of the offense of Illegal Possession of Dangerous Drugs punishable under Section 11 (3), Article II of Republic Act No. (RA) 9165.

Petitioner was charged with the offense of Illegal Sale of Dangerous Drugs punishable under Section 5 in relation to Section 26, Article II of RA 9165. The Information reads:

That on or about April 5, 2013, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name, real identity and present whereabouts are still unknown, and mutually helping each other, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug[s] did then and there willfully, unlawfully and knowingly sell or offer for sale one (1) heat-sealed transparent plastic sachet containing ZERO POINT FOUR THREE FOUR (0.434) gram of white crystalline substance known as Methamphetamine hydrochloride, a dangerous drug.

Contrary to law.⁴

¹ *Rolla*, pp. 11-26.

² *Id.* at 82-92; penned by Associate Justice Edwin D. Sorongon with Associate Justices Jane Aurora C. Lamon and Marie Christine Azcarraga-Jacob, concurring.

³ *Id.* at 39-47; penned by Presiding Judge Sarah Alma M. Lim.

⁴ *Id.* at 83.

The Antecedents

On April 5, 2013, at around 3:10 a.m., the constituents of *Brgy. 19, Zone 2, Tondo, Manila* informed *Barangay Chairman Jesus Fajardo, Jr. (Barangay Chairman Fajardo)* that there would be rampant selling of illegal drugs in the vicinity of *Sta. Barbara St., Tondo, Manila*. The person involved would be petitioner, who was previously detained for a theft incident and was released under probation.⁵

Barangay Chairman Fajardo went to *Sta. Barbara St.* and from a distance of seven to eight meters, he saw an unidentified person handing money to petitioner while the latter was getting something from his pocket. He also saw petitioner heating with a lighter a plastic sachet containing a white crystalline substance. As he walked towards petitioner and the unidentified companion, the latter fled leaving petitioner behind. *Barangay Chairman Fajardo* got hold of petitioner and brought him to the *barangay hall*. There he entered the incident in the *barangay blotter*. He recovered from petitioner a disposable lighter, a container, plastic sachets with *shabu*, and money worth ₱420.00. After which, he turned over the seized items to Senior Police Officer 1 Elymar Garcia (SPO1 Garcia). Thereafter, he brought petitioner to *Gat Andres Hospital* for a medical examination.⁶

In the police station, SPO1 Garcia prepared an inventory of the confiscated items which was signed by *Barangay Chairman Fajardo* as the arresting officer. He also prepared the Request for Laboratory Examination of the seized items which he later delivered to the crime laboratory.⁷

The Ruling of the RTC

On June 30, 2014, the RTC rendered a Decision⁸ finding petitioner guilty beyond reasonable doubt, not of Illegal Sale of Dangerous Drugs defined and punished under Section 5, in relation to Section 26, Article II of RA 9165, but of Illegal Possession of Dangerous Drugs under Section 11 (3), Article II of the same Act.⁹

The RTC ratiocinated that the prosecution failed to prove the elements of the sale or offer to sell illegal drugs considering that the identity of the buyer was not established. The buyer fled before the arresting officer could approach him and petitioner. However, because the sale of dangerous drugs necessarily includes possession of dangerous drugs, it ruled that petitioner should be convicted of possession as the prosecution successfully proved that petitioner was caught *in flagrante*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 84.

⁸ *Id.* at 33-47.

⁹ *Id.* at 47.

delicto in possession of a sachet containing white crystalline substance which, after examination, yielded positive for *shabu*, an illegal drug.¹⁰

The Ruling of the CA

On April 13, 2016, the CA rendered the assailed Decision¹¹ dismissing the appeal.

The CA ruled that all the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 were established. It further ruled that despite the defects in the physical inventory of the seized items, the prosecution was still able to prove the unbroken chain of custody of the items seized; and that the witnesses for the prosecution categorically testified that the dangerous drugs were found in the possession of petitioner during his arrest.¹²

Thus, the petition before the Court.

For the successful prosecution of a violation of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended, the following elements must concur, to wit: (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.¹³

The identity of the dangerous drug must likewise be established with moral certainty.¹⁴ The prosecution must account for each link of the chain of custody from the moment the illicit drugs are seized from the accused up to the time they are presented in court as evidence of the crime.¹⁵ The law further requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation.¹⁶

Likewise, the inventory and photographing must 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 the other insulating witnesses, namely: if the crime was committed prior to the amendment of RA 9165 by RA 10640,¹⁷ (a) a representative from the media and (b) the Department of Justice (DOJ) and (c) any elected public official; and if

¹⁰ *Id.* at 44-45.

¹¹ *Id.* at 82-92.

¹² *Id.* at 86.

¹³ *Sayson v. People*, G.R. No. 249289 (Resolution), September 28, 2020.

¹⁴ *People v. Santos*, G.R. No. 243627, November 27, 2019.

¹⁵ *People v. Año*, 828 Phil. 439 (2018). See also *People v. Viterba*, 739 Phil. 593 (2014) and *People v. Atagarme*, 754 Phil. 449 (2015).

¹⁶ See *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

¹⁷ 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, and effective on August 7, 2014.

after the amendment of RA 9165, (a) an elected public official and (b) a representative of the National Prosecution Service (NPS) or the media.¹⁸ In cases where there is failure to comply with the witness requirement, the prosecution must prove that the apprehending officers exerted reasonable efforts to secure the presence of the required witnesses, regardless if these witnesses appeared or not.¹⁹

As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and susceptible to tampering, alteration or substitution either by accident or otherwise.²⁰ Hence, the presence of the four witnesses mandated by Section 21, Article II of RA 9165 safeguards the accused from any unlawful tampering of the evidence against him.²¹

Needless to say, failure to observe strict compliance with the chain of custody rule will not render the seizure and custody of the seized items void; provided, that the prosecution offers a justifiable ground for non-compliance thereof; and provided further, that the integrity and evidentiary value of the seized items are properly preserved.²²

In the present case, the offense was allegedly committed on April 5, 2013, or prior to the amendment of RA 9165. A perusal of the records shows that there was a failure to comply with the standard procedure laid down in Section 21, Article II of RA 9165. First, no valid explanation was forwarded by the arresting officer why the physical inventory of the seized items was not conducted at the place of arrest, but rather in the police station. Second, there were no insulating witnesses present during the conduct of the inventory.

In fact, on cross-examination, SPO1 Garcia testified that the pieces of evidence were not yet marked when these were turned over to him by *Barangay* Chairman Fajardo, the arresting officer;²³ and that the pieces of evidence were marked and inventoried at the police station only in the presence of petitioner and *Barangay* Chairman Fajardo.²⁴

Moreover, *Barangay* Chairman Fajardo testified that after petitioner's arrest, he brought the latter to the *barangay* hall for blotter, then to Gat Andres Hospital for medical examination and thereafter, to the precinct for the turn over of petitioner and all the evidence seized from him to SPO1 Garcia.²⁵ Notably, during the transport from *barangay* hall to the precinct, *Barangay* Chairman Fajardo was merely holding the

¹⁸ *People v. Santos*, *supra* note 14.

¹⁹ *Id.*

²⁰ *Pados v. People*, G.R. No. 244327, October 14, 2019.

²¹ *Id.*

²² See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

²³ *Rollo*, p. 43.

²⁴ *Id.*

²⁵ *Id.* at 44.

pieces of evidence seized from petitioner without the necessary markings to preserve their identity.²⁶

Evidently, all these circumstances cast doubt as to the integrity and the evidentiary value of the seized illegal drugs and other items from petitioner.

Thus, the CA erred when it concluded that the failure of the police officers to conduct the required physical inventory of the confiscated items does not *ipso facto* render inadmissible the evidence seized,²⁷ considering the proviso in the implementing rules of RA 9165 stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, then the seized items can still be used in determining the guilt or innocence of the accused.²⁸ Records show that the prosecution failed to present justifiable grounds to answer for the issue of non-compliance with the chain of custody rule, particularly the presence of the required witnesses to the inventory.

In view of the foregoing, the Court finds that the integrity and evidentiary value of the items purportedly seized from petitioner that constitute the *corpus delicti* of the offense charged were compromised.²⁹ Well-settled is the rule that if deviations are observed and no justifiable reasons are provided, then conviction must be overturned and the innocence of petitioner be affirmed.³⁰

WHEREFORE, the Petition is **GRANTED**. The Decision dated April 13, 2016 rendered by the Court of Appeals in CA - G.R. CR No. 36890 is **REVERSED** and **SET ASIDE**. Accordingly, petitioner Sonny Sese y Ocon is **ACQUITTED** of the offense charged.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Sonny Sese y Ocon unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

²⁶ *Id.* at 45.

²⁷ *Id.* at 90.

²⁸ *Id.*

²⁹ *Supra* note 13.

³⁰ *People v. Claudel*, G.R. No. 219852, April 3, 2019, 900 SCRA 1, 27-28.

**SO ORDERED.” (LEONEN, J., and LOPEZ, J., on leave.
HERNANDO, J., Acting Chairperson).**

By authority of the Court:

MisproC Bath
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Division Clerk of Court

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