



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 28, 2021 which reads as follows:

“G.R. No. 231512 (*Rico De Asis y Dado v. People of the Philippines*). — In this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, petitioner Rico De Asis y Dado assails his conviction for violation of Section 5,² Article II of Republic Act (RA) No. 9165,³ which is penalized with life imprisonment, in CA-G.R. CR HC No. 07283 rendered by the Court of Appeals (CA) in a Decision dated⁴ April 11, 2017.

Foremost, the petitioner availed of the wrong mode of appeal. As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari*, except when the penalty imposed is *reclusion perpetua* or life imprisonment, in which case, the appeal shall be undertaken through a notice of appeal filed before the CA.⁵ Nevertheless, in the interest of substantial justice, we will treat this petition as an ordinary appeal to resolve the issue with

- over – seven (7) pages ...

131

¹ *Rollo*, pp. 30-47.

² SEC. 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 (P500,000.00) to Ten million pesos (P10,000,000.00) 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 opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x

³ 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.

⁴ *Rollo*, pp. 50-69. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court), with the concurrence Associate Justices Ramon R. Garcia and Victoria Isabel A. Paredes.

⁵ Rules of Court, Rule 45, Section 9 in relation to Rule 122, Section 3.

finality.⁶ Likewise, the Comment⁷ and the Reply⁸ shall be treated as the parties' respective Supplemental Briefs.⁹

We acquit.

The following elements must be proven in the prosecution for illegal sale of dangerous drugs: (1) the identities of the buyer and the seller; (2) the transaction or sale of the illegal drug; and (3) the existence of the *corpus delicti*.¹⁰ The *corpus delicti* is the dangerous drug itself. Proof beyond reasonable doubt is necessary to prove that the seized item is the very same object tested to be positive for dangerous drugs and presented in court. Since the existence of the dangerous drug is crucial to a judgment of conviction, it is indispensable that the identity of the prohibited drug be established with the same unwavering exactitude as that required to make a finding of guilt. To this end, the prosecution must establish an unbroken chain of custody.¹¹

To ensure that the drug specimen presented in court as evidence against the petitioner is the same drug seized from him, Section 21, Article II of RA No. 9165 outlines the post-seizure procedure to be observed by the apprehending officers for the custody and disposition of the seized drugs, to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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

- over -

131

⁶ See *Perpuse v. People*, G.R. No. 229797 (Notice), January 8, 2020; *People v. Bermejo*, G.R. No. 199813, June 26, 2019; *Ramos v. People*, 803 Phil. 775, 783 (2017).

⁷ *Rollo*, pp. 79-90.

⁸ *Id.* at 103-114.

⁹ See *People v. Bermejo*, *supra*.

¹⁰ *People v. De Guzman*, 825 Phil. 43, 54 (2018); *People v. Que*, 824 Phil. 882, 893 (2018); *People v. Ismael*, 806 Phil. 21, 29 (2017); and *People v. Morales*, 630 Phil. 215, 227-234 (2010).

¹¹ *People v. Enad*, 780 Phil. 346, 367-368 (2016); and *People v. Quebral*, 621 Phil. 226, 233 (2009).

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;

x x x x.¹²

This is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of RA No. 9165, which reads as follows:

SEC. 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, and/or surrendered, for proper disposition in the following manner:

(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[.]

- over -

131

¹² See RA No. 10640 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. RA No. 10640 states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2014 in the respective issue of *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6); hence, RA No. 10640 Became effective on August 7, 2014. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s 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 sign the copies of inventory and be given a copy thereof.

Accordingly, the movement and custody of the drug must be shown through the following linkages: *first*, the confiscation and marking of the drug seized from the accused by the apprehending officer; *second*, the turnover of the seized drug by the apprehending officer to the investigating officer; *third*, the investigating officer's turnover of the specimen to the forensic chemist for examination; and *fourth*, the submission of the specimen by the forensic chemist to the court.¹³ Here, we find that the identity of the *corpus delicti* had been compromised.

Evident in this case is a breach in the **third link** or the turnover of the dangerous drug to the crime laboratory. On December 1, 2011, after Agent Arnel Estrellado (Agent Estrellado) conducted the inventory of the seized item at the Philippine Drug Enforcement Agency (PDEA) office, Agent Estrellado brought the petitioner to Bicol Regional Training and Teaching Hospital for medical examination.¹⁴ The following day, or on December 2, 2011, Agent Estrellado and Police Officer 1 Ricardo Bolaños (PO1 Bolaños) delivered the item to PDEA Regional Office V where it was received by forensic chemist Reynalyn Barbacena (Barbacena) for qualitative examination.¹⁵ However, the prosecution did not clarify how the drug was handled after it was inventoried. There were no details of custody during the interim period when Agent Estrellado took the petitioner to the hospital, and before the drug was delivered to the crime laboratory. Notably, there was no testimony as to how Agent Estrellado preserved the drug while it was in his custody, *i.e.*, whether he had sole custody of the drug from the PDEA office to the hospital until its transfer to the crime laboratory, as well as the condition in which it was turned over to the forensic chemist. Neither was there any evidence to show if PO1 Bolaños had custody of the seized item en route to the crime laboratory. We are left to surmise on whether the mandated procedure was followed during the intervening period, thus, creating a substantial gap in the chain of custody that was left unacknowledged and unexplained by the prosecution. Considering the miniscule amount of 0.025 gram of *shabu* supposedly taken from the petitioner, the threat of tampering, alteration, or substitution of the *corpus delicti* remains.

In *People v. Del Rosario*,¹⁶ two police officers delivered the drugs to the crime laboratory, but no details were provided as to how, and at what point, the seized items were handled by the officers.

- over -

131

¹³ *People v. Bugtong*, 806 Phil. 628, 638-639 (2018).

¹⁴ *Rollo*, p. 82.

¹⁵ *Id.* at 54.

¹⁶ G.R. No. 235658, June 22, 2020.

Likewise, in *People v. Wisco*,¹⁷ there was no stipulation on how the arresting officer preserved the drug in his custody before turning them over to the forensic chemist. As in this case, the prosecution failed to account for the manner by which the apprehending officers handled and preserved the drug from the PDEA office to the crime laboratory.

Moreover, the **fourth link** in the chain is also tainted with infirmity. The prosecution established that after the qualitative examination, forensic chemist Barbacena placed her own markings on the specimen and kept it in the evidence cabinet. Later, the drug was submitted to the trial court.¹⁸ Nothing in the records, however, would show how the drug passed from the custody of the forensic chemist to the trial court. The prosecution did not disclose the identities of the persons who retrieved the drug from the evidence cabinet, and who delivered it to the trial court. In addition, the forensic chemist failed to testify on the details regarding the turnover of the drug to the trial court, nor did the prosecution propose a stipulation of facts on the substance of her testimony.¹⁹ Clearly, we cannot ascertain whether the drug presented in court is the same drug recovered from the petitioner when he was arrested, absent a showing that the integrity and evidentiary value of the seized drug was safeguarded.

In all criminal prosecutions, the accused is presumed innocent of the charge laid, unless the contrary is proven beyond reasonable doubt. The burden of proof lies with the prosecution. In drug cases, the prosecution has the burden of establishing the identity of the confiscated item.²⁰ Indeed, the accused's conviction for violation of dangerous drugs law cannot depend on a guessing game where the illicit drug is the very *corpus delicti* of the offense. A unique characteristic of narcotic substances is that they are not readily identifiable as they are subject to scientific analysis to determine their composition and nature. The risk of tampering, loss, or mistake is greatest.²¹

- over -

131

¹⁷ G.R. No. 237977, August 19, 2019.

¹⁸ *Rollo*, pp. 65-66.

¹⁹ See *People v. Plaza*, G.R. No. 235467, August 20, 2018; *People v. Veedor, Jr.*, 834 Phil. 88, 104-105 (2018); *People v. Mola*, 830 Phil. 364, 380-381 (2018); and *People v. De Guzman*, *supra* note 10, at 59.

²⁰ *People v. Sagana*, 815 Phil. 356, 366 (2017).

²¹ *Carino v. People*, 600 Phil. 433, 446-447 (2009); and *Mallillin v. People*, 576 Phil. 576, 588-589 (2008).

We stress, while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.²² It is effectively destroyed when the performance of duty is tainted with irregularities.²³ Accordingly, the petitioner Rico De Asis y Dado must be acquitted.

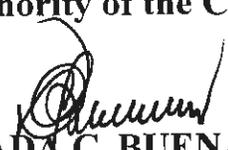
FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated April 11, 2017 in CA-G.R. CR HC No. 07283 is **REVERSED**. Rico De Asis y Dado is **ACQUITTED** and is hereby **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Director of the facility where the petitioner is detained, for immediate implementation. The Director is directed to report to this Court the action taken within five (5) days from receipt of this Resolution.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *Librada C. Buena*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

131

- over -

²² *Mallillin v. People*, *supra* at 593 (2008); and *People v. Cañete*, 433 Phil. 781, 794 (2002).

²³ *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

Librada C. Buena

Atty. Juan D. Peralta
Counsel for Petitioner
San Lorenzo Street, Guildid
4504 Ligao City

Mr. Rico D. De Asis (x)
Petitioner
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 07283)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 3
4500 Legazpi City
(Crim. Case No. 12026)

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court

NAT