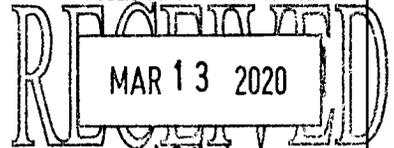




Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: JOHN
TIME: 11:40

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 15, 2020** which reads as follows:*

“G.R. No. 242873 - Arwin Sioco y Daniel @ “Kawing” v. People of the Philippines

Once again, the Court acquits an accused for violation of drugs law for failure of the apprehending officers to comply with the three-witnesses rule.

The Case

This petition for review on *certiorari* under Rule 45 assails the June 28, 2018 Decision¹ and October 16, 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 40409, which affirmed with modification the May 30, 2017 Regional Trial Court (RTC) Decision² of Batangas, Branch 4 in Criminal Case 18261. The RTC convicted the petitioner Arwin Sioco y Daniel (Sioco) of illegal possession of *shabu* under Section 11, Article II of Republic Act No. 9165 (R.A. No. 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In the August 13, 2013 Information,³ Sioco was charged with violation of Sec. 11, Article II of R.A. No. 9165, thus:

- over – ten (10) pages ...

296

¹ Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Pablito A. Perez and Rafael Antonio M. Santos, concurring; *rollo*, pp. 33-51.

² Penned by Judge Albert A. Kalalo; *id.* at 139-143.

³ *Id.* at 57.

That on or about August 12, 2013 at around 8:00 in the morning at Barangay Kumintang Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally possess or have under his custody and control three (3) heat sealed transparent plastic sachets containing an aggregate weight of 0.30 gram of Methamphetamine Hydrochloride, commonly known as "Shabu", a dangerous drug, which is a clear violation of the above-cited law.

CONTRARY TO LAW.

He pleaded not guilty during arraignment. Thereafter, pre-trial and trial ensued. The prosecution presented four witnesses: (1) Senior Police Officer 2 Candidato Arobinto (SPO2 Arobinto); (2) SPO1 Pepito Adelantar (SPO1 Adelantar); (3) Police Officer 1 Alberto De Lara Bombales (PO1 Bombales); and (4) Police Senior Inspector Herminia C. Llacuna (PSI Llacuna).⁴

The parties stipulated on the testimony of the forensic chemist, PSI Llacuna, as follows:

1. She is a member of the Philippine National Police (PNP) and assigned in Batangas Provincial Crime Laboratory Office (BPCLO) as a forensic chemist.
2. On August 12, 2013, she received a request letter from SPO1 Adelantar for laboratory examination of three heat sealed transparent sachets containing white crystalline substance, marked as "ADB 1 08-12-13 to ADB 3 08-12-13." She can identify the supporting documents relative to this request.
3. She conducted a qualitative examination of the specimen and reduced her findings in Chemistry Report BD-438-2013.
4. She placed her own markings on the plastic sachets to identify them, and thereafter, put them in a bigger plastic sachet. She sealed it, marked it, and placed her signature to identify it. She turned over the specimen to SPO3 Agustin of the BPCLO, with a supporting document that she can identify.
5. On the same date, she received Sioco's urine sample and conducted a drug test, the result of which was reflected in Chemistry Report BCRIMDT-418-2013.

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⁴ Id. at 35, CA Decision.

6. She has no personal knowledge as to the source or origin of the specimen she examined.⁵

According to the prosecution, at about 7:30 a.m. of August 12, 2013, the Intelligence Section of the Batangas City Police Station received a tip from an informant that he arranged a sale of *shabu* with Sioco, alias *Kawing*, at the back of the former Supreme Bus terminal, near the Lion's marker at Barangay Kumintang Ibaba, Batangas City.⁶

The police officers and the informant proceeded to the location. When Sioco arrived, the informant introduced PO1 Bombales to him as the buyer. The informant asked to test the merchandise; thus, Sioco took out three heat sealed transparent sachets containing suspected *shabu*. PO1 Bombales introduced himself as a policeman and arrested Sioco. He confiscated the sachets and marked them as "ADB 1 08-12-13," "ADB 2 08-12-13," and "ADB 3 08-12-13." He also frisked Sioco but did not find other illegal item.⁷

Sioco and the confiscated sachets were taken to the *barangay* hall of Kumintang Ibaba, Batangas City for blotter and inventory. Public Prosecutor Maria Socorro Godoy of Batangas City Prosecutor's Office and *Barangay Kagawad* Serafin Dimaano witnessed the inventory. SPO1 Adelantar took photographs of the inventory and prepared the Certificate of Inventory.⁸

PO1 Bombales testified that he was in possession of the sachets from the time he confiscated them until he handed them to SPO1 Adelantar at the *barangay* hall. The turn-over was evidenced by a Chain of Custody Form.⁹

Sioco was taken to the police station for documentation and preparation of Requests for Drug Test and Laboratory Examination. He and the confiscated sachets were brought to the BPCLO for testing. The chemistry report showed that the contents of the sachets were positive for the presence of methamphetamine hydrochloride.¹⁰

For the defense, Sioco was the lone witness, who denied the accusations against him. He alleged that at about 8:30 p.m. of August 11, 2013, while he was buying a cigarette at a store near the bus terminal, three armed men wearing civilian clothes arrived. He ran out

- over -

296

⁵ Id. at 35-37.

⁶ Id. at 37, CA Decision; *rollo*, pp. 139-140, RTC Decision.

⁷ Id.; Id. at 140.

⁸ Id. at 37-38; Id.

⁹ Id. at 38; Id.

¹⁰ Id.

of fear, but they eventually caught him. He was forced to board a vehicle, where individuals told him that he violated the drugs law while they poked a gun and fan knife at him. Despite his protest and plea, he was taken to the police station, where Police Officer Jeffrey Hernandez demanded money in exchange for not filing a criminal charge against him. When he failed to heed the demand, he was jailed. He testified that he was already in custody on the evening of August 11, 2013.¹¹

The following day or on August 12, 2013, at around 7 a.m. the police officers took Sioco back to the bus terminal, where he was arrested. One of the police officers brought out three plastic sachets and took their photographs. He was taken to Camp Malvar, where he underwent drug testing and then brought back to the police station.¹²

The RTC Decision

On May 30, 2017, the RTC rendered a Decision finding Sioco guilty of illegal possession of dangerous drugs and imposed the indeterminate penalty of imprisonment of 12 years and 1 day as minimum to 15 years as maximum, and to pay a fine of ₱300,000.00.¹³

The RTC held that all the elements of illegal possession of dangerous drugs were established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.¹⁴

The RTC did not give credence to Sioco's defense of denial and extortion in the absence of evidence. He failed to prove that the police officers were ill-motivated in charging him.¹⁵

The CA Decision

On appeal, the CA affirmed with modification the conviction in its June 28, 2018 Decision. The CA modified the indeterminate penalty of imprisonment to 12 years and 1 day as minimum to 14

- over -

296

¹¹ Id. at 39, CA Decision; id. at 141, RTC Decision.

¹² Id.

¹³ Id. at 142.

¹⁴ Id. at 141.

¹⁵ Id. at 142.

years and 8 months as maximum. The CA sustained the fine of ₱300,000.00.¹⁶

The CA confirmed that all the elements of illegal possession of *shabu* were present in the case. The CA pointed out that mere possession of a dangerous drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of satisfactory explanation.¹⁷

The CA explained that the presentation of the informant is dispensable, because his/her testimony would only be corroborative to the testimony of the *poseur* buyer.¹⁸ Likewise, coordination with the Philippine Drug Enforcement Agency (PDEA) is dispensable, particularly in *in flagrante* apprehensions.¹⁹

The CA explicated that the defense failed to prove any ill motive of the police officers to charge Sioco of a serious crime; thus, the presumption of regularity in the performance of official duty and the trial court's findings shall prevail over Sioco's bare allegations.²⁰

Lastly, the CA elucidated that the prosecution established the links in the chain of custody. The CA also clarified that although a media representative was absent during the inventory, it does not result to an unlawful arrest or render the seized evidence inadmissible. What is crucial is preservation of the integrity and evidentiary value of the seized items.²¹

Sioco moved for reconsideration, which the CA denied in its October 16, 2018 Resolution.²² Undeterred, Sioco filed this petition seeking an acquittal.

The Issue Presented

In his petition, Sioco raised the sole issue of whether or not the CA gravely erred in affirming his conviction despite the prosecution's failure to sufficiently prove compliance with Section 21 of R.A. No. 9165, and to establish a clear and unbroken chain of custody over the allegedly seized dangerous drug.²³

- over -

296

¹⁶ Id. at 51.

¹⁷ Id. at 40-41

¹⁸ Id. at 41.

¹⁹ Id. at 43.

²⁰ Id. at 42-43.

²¹ Id. at 44-48.

²² Id. at 53-56.

²³ Id. at 18.

In its comment, the respondent People of the Philippines (People), as represented by the Office of the Solicitor General (OSG), averred that (1) factual issues are not reviewable by a petition under Rule 45, and (2) the CA committed no error in affirming Sioco's conviction as all the elements of the crime were proven.²⁴

The Court's Ruling

The Court acquits the accused.

The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic v. Heirs of Eladio Santiago, et al.*,²⁵ the Court enumerated the exceptions to this rule:

x x x (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) **when the inference is manifestly mistaken**, absurd or impossible; (3) **when there is a grave abuse of discretion**; (4) **when the judgment is based on a misapprehension of facts**; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record. (Emphasis supplied)

The second, third, and fourth exceptions are applicable in this case, because the CA failed to apply the three-witness rule under R.A. No. 9165 and as pronounced in jurisprudence.²⁶

The buy-bust operation happened on August 12, 2013, at the time when R.A. No. 9165 was effective. Section 21 of R.A. No. 9165 states that the conduct of physical inventory and photograph taking of the seized items must be in the presence of three witnesses, other than the accused or his counsel/representative: (1) a representative from the media, (2) a representative from the Department of Justice, and (3) any elected public official. The three witnesses are mandated to sign the inventory sheet and they must be given a copy thereof.

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²⁴ Id. at 187, 191.

²⁵ 808 Phil. 1, 9-10 (2017).

²⁶ *People v. Silayan y Villamarin*, G.R. No. 229362, June 19, 2019; *People v. Ramos y Cabanatan*, G.R. No. 233744, February 28, 2018; *People v. Umipang*, 686 Phil. 1024-1055 (2012).

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, 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 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.** (Emphasis supplied)

Section 21 of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides the same rule on the number of witnesses.

SECTION 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, seized 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; (Emphasis supplied)

Here, it is undisputed that the inventory was conducted in the presence of only two witnesses: Public Prosecutor Maria Socorro Godoy of Batangas City Prosecutor's Office and *Barangay Kagawad* Serafin Dimaano. Clearly, the police officers failed to comply with the three-witness rule under Section 21 of R.A. No. 9165 and its IRR.

In its decision, the CA acknowledged the non-compliance with the three-witness rule and yet it affirmed the conviction.

It is also worthy to note that the prosecution complied with the *Inventory of the Items Seized*, as well as with the photo requirement under Section 21, performed in the presence of the accused-appellant, the police officers, Public Prosecutor Maria Socorro Godoy of the Batangas City Prosecution's Office and *Barangay Kagawad* Serafin Dimaano. The absence of a representative from the media does not *ipso facto* result in the unlawful arrest of the accused-appellant or render inadmissible in evidence the items seized. What is crucial is that the integrity and evidentiary value of the seized items had been preserved for use in the determination of his guilt or innocence.²⁷

The Court explained in *People v. Silayan y Villamarin, People v. Ramos y Cabanatan*, and *People v. Umipang*,²⁸ that the absence of the required witnesses may be excused, but only after the prosecution has presented justifiable grounds for non-compliance with the three-witness rule. Here, neither the CA nor the RTC decisions indicated that the prosecution satisfactorily explained why the required number of witnesses was not met. Without such explanation or justification, the Court shall strictly apply Section 21 of R.A. No. 9165. This, the CA failed to do. Thus, the Court finds that the CA's decision was arrived at through serious mistake and with grave abuse of discretion, which warrants an application of the exceptions to Rule 45.

In *People v. Silayan y Villamarin*,²⁹ the Court acquitted the accused because the police officers failed to comply with the three-witness rule. We do the same in Sioco's case.

- over -

296

²⁷ *Rollo*, p. 48.

²⁸ *People v. Silayan y Villamarin*, G.R. No. 229362, June 19, 2019; *People v. Ramos y Cabanatan*, G.R. No. 233744, February 28, 2018; *Supra* Note 26.

²⁹ G.R. No. 229362, June 19, 2019.

The Court has, on numerous occasions, acquitted an accused based on reasonable doubt, for the failure of the police to obtain the presence of the three witnesses required by law – a representative of the DOJ, media, and an elected public official - during the conduct of the inventory of the seized items. The conviction of an accused, who enjoys the constitutional presumption of innocence, must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense. In this case, there was a blatant failure to comply with the requirements of Section 21 (1), Article II of R.A. No. 9165 and its IRR without any justifiable ground for such non-compliance. Clearly, the prosecution failed to prove the guilt of Silayan beyond reasonable doubt. We find that an acquittal is in order.

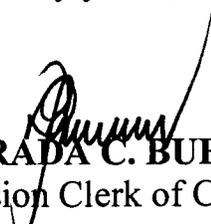
WHEREFORE, the petition is **GRANTED**. The June 28, 2018 Decision and October 16, 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 40409, affirming the May 30, 2017 Decision of the Regional Trial Court of Batangas, Branch 4 in Criminal Case No. 18261, are **REVERSED**.

Petitioner Arwin Sioco y Daniel, alias *Kawing* is **ACQUITTED** of violating Section 11, Article II of Republic Act No. 9165. His **IMMEDIATE RELEASE** from custody is hereby **ORDERED** unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director/Superintendent of National Bilibid Prisons in Muntinlupa for immediate implementation. He/She is ordered to report to this Court within five (5) days from receipt of this Resolution of the action taken.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{m 3/3}
296

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Court of Appeals (x)
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