



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. 224608 (Richard Gutierrez y Garcia @ “Richard” v. People of the Philippines). – The Court resolves to **NOTE**:

(1) petitioner’s Manifestation/Transmittal dated October 26, 2020 stating that he filed through electronic mail his motion for early resolution on October 26, 2020, a copy of which is thereto attached; and

(2) said Motion for Early Resolution dated October 23, 2020.

This is a Petition for Review on *Certiorari*¹ under Rule 45 assailing the Decision² dated October 28, 2015 of the Court of Appeals (CA) in CA - G.R. CR-HC No. 06867 which affirmed the Joint Decision³ dated February 26, 2014 of Branch 210, Regional Trial Court (RTC), Mandaluyong City finding Richard Gutierrez y Garcia @ “Richard” (petitioner) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.⁴

Petitioner was initially charged in two separate Informations⁵ which read as follows:

Criminal Case No. MC11-13709-D

That on or about the 2nd day of May 2011, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above named accused, without authority of law,

¹ *Rollo*, pp. 10-44.

² *Id.* at 46-59; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela, concurring.

³ *Id.* at 102-117; penned by Judge Maria A. Cancino-Erum.

⁴ An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

⁵ *Id.* at 47-48; as culled from the CA Decision.

did then and there willfully, unlawfully and feloniously sell, deliver and distribute to another 0.02 gram of Methamphetamine hydrochloride (“*shabu*”), a dangerous drug.

CONTRARY TO LAW.⁶

Criminal Case No. MCI1-13710-D

That on or about the 2nd day of May 2011, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above named accused, without authority of law, did then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control 0.02 gram of Methamphetamine hydrochloride (“*shabu*”), a dangerous drug.

CONTRARY TO LAW.⁷

On May 18, 2016, petitioner entered a plea of not guilty to the offenses charged. After the termination of the pre-trial, trial on the merits ensued.⁸

Version of the Prosecution

In the evening of May 2, 2011, Police Officer II Jayson Rivera (PO2 Rivcra) of Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) and his companions received an information from a confidential informant that there was an ongoing sale of *shabu* at Welfareville Compound, Brgy. Addition Hills, Mandaluyong City. The team leader, Senior Police Officer II Drexell Molina (SPO2 Molina) conducted a briefing for a buy-bust operation.⁹

After the briefing and coordination, PO2 Rivera and SPO2 Molina, along with other police officers and the confidential informant, proceeded to Block 41, Zone 4, Brgy. Addition Hills, Mandaluyong City. The confidential informant led them to petitioner, who was playing *pusoy* with three other players while several persons were watching. One of the men called the confidential informant, gesturing them to come. PO2 Rivera and the confidential informant approached petitioner. Petitioner asked them how much they were getting to which PO2 Rivera answered, “*Dos lang, Sir.*” Thereafter, petitioner pulled something from his pocket. PO2 Rivera then handed the buy-bust money to petitioner. The latter discreetly handed to PO2 Rivera a small plastic sachet

⁶ As culled from the CA Decision, *id.* at 47.

⁷ As culled from the CA Decision, *id.* at 48.

⁸ *Id.*

⁹ *Id.* at 49.

containing white crystalline substance. After PO2 Rivera received the plastic sachet, he immediately made the pre-arranged signal which is the throwing of a lighted cigarette. He held the plastic sachet he got from petitioner and pocketed it. Police Officer II Jeffrey Agbunag (PO2 Agbunag) arrived, arrested petitioner, and recovered from him another plastic sachet containing white crystalline substance.¹⁰

Several persons tried to pull petitioner from the police officers which caused PO2 Rivera, PO2 Agbunag and petitioner to fall on the ground. As a result, petitioner sustained a wound on his forehead while PO2 Rivera and PO2 Agbunag suffered abrasions.¹¹

The police officers brought petitioner to the Mandaluyong City Medical Center for medical examination. From the hospital, they brought petitioner to the office of the SAID-SOTF for investigation. PO2 Rivera and PO2 Agbunag marked the items they each seized from petitioner. Thereafter, they submitted the seized items for laboratory examination.¹²

Version of the Defense

Petitioner asserted that he had not sold *shabu* to PO2 Rivera. He also argued that there was no legitimate buy-bust operation conducted.¹³

The defense presented Annabelle L. Casyao, who testified that on the night of the arrest, petitioner was playing *pusoy* with three other players at a store in front of her house. A pregnant woman arrived and said to petitioner, "*Richard, may pera ka na bayaran mo na ako,*" to which he replied, "*Teka lang wala pa naman kaming pera dito*" When petitioner answered in this manner, two male persons appeared; one of them suddenly grabbed petitioner by the neck. When petitioner resisted, one of them hit him with a gun on his forehead. They then dragged him out of the zone.¹⁴

Ruling of the RTC

On February 26, 2014, the RTC rendered a Joint Decision¹⁵ as follows:

¹⁰ *Id.* at 49-50.

¹¹ *Id.* at 106.

¹² *Id.*

¹³ *Id.* at 51.

¹⁴ *Id.*

¹⁵ *Id.* at 102-117.

WHEREFORE, finding accused Richard Gutierrez y Garcia GUILTY beyond reasonable doubt of the offense of violation of Sec. 5, Art. II of RA 9165 (unauthorized sale of *shabu*, a dangerous drug), he is hereby sentenced in Crim. Case No. MCI 1-13709-D to suffer life imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00), and to pay the cost.

However, in Crim. Case No. MCH-13710-D, (for illegal possession of *shabu*, a dangerous drug), accused Richard Gutierrez y Garcia is hereby ACQUITTED, as his guilt has not been established beyond reasonable doubt.

The two (2) plastic sachets containing methamphetamine hydrochloride commonly known as *shabu* (Exhs. "D" and "E") are ordered forfeited in favor of the government. Upon the finality of this decision in Crim. Case No. MCII-13709-D the Branch Clerk of Court is directed to turn over the aforesaid two (2) plastic sachets containing *shabu* to the PDEA, to be disposed of according to law, and the receipt by the PDEA to be attached to the records of these cases.

SO ORDERED.¹⁶ (Emphasis omitted.)

The RTC ruled that the prosecution had proven all the elements of the Illegal Sale of *shabu* and gave credence to the testimony of PO2 Rivera over testimonies of the defense witnesses.¹⁷

Aggrieved, petitioner appealed to the CA.

Ruling of the CA

On October 28, 2015, the CA denied petitioner's appeal. The CA found no solid ground to reverse the ruling of the RTC.¹⁸ The CA disposed of the case as follows:

WHEREFORE, the instant appeal is DISMISSED. The Joint Decision dated 26 February 2014 of the Regional Trial Court of Mandaluyong City, Branch 210, Criminal Case No. MCII-13709-D, is hereby AFFIRMED.

SO ORDERED.¹⁹

Hence, this appeal.

Issue

Whether the CA is correct in affirming the conviction of petitioner for violation of Section 5, Article II of RA 9165.

¹⁶ *Id.* at 116-117.

¹⁷ *Id.* at 113.

¹⁸ *Id.* at 58.

¹⁹ *Id.*

Our Ruling

At the outset, the Court notes that petitioner filed a Petition for Review on Certiorari²⁰ under Rule 45 of the Rules of Court. As the Court explained in *Arambulo v. People*,²¹ as a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on certiorari under Rule 45 of the Rules of Court.²² However, this rule is subject to an exception. Thus, when the penalty imposed by the CA is reclusion perpetua or life imprisonment, the appeal shall be made by a mere notice of appeal filed before the CA.²³ Here, petitioner availed himself of the wrong mode of appeal by filing a Petition for Review on Certiorari despite the fact that the CA affirmed the RTC's imposition of the penalty of life imprisonment against him. Nevertheless, in the interest of justice, the Court will treat his petition for review on certiorari as an ordinary appeal and resolve the substantive issues of this case with finality.²⁴

The appeal is meritorious.

In actions involving the Illegal Sale of Dangerous Drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.²⁵

In drugs cases, it is imperative to prove the *corpus delicti* or the illicit drugs itself. There must be an unbroken chain to establish the *corpus delicti*.

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the

²⁰ *Id.* at 10-44.

²¹ GR No. 241834, July 24, 2019.

²² *Id.*, citing Section 3 (e), Rule 122 of the Revised Rules of Criminal Procedure which provides:
Section 3. *How appeal taken.*-

x x x x

(c) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45.

²³ *Arambulo v. People*, *supra* note 21, citing Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure which provides:

Section 13. *Certification or appeal of case to the Supreme Court.* -

x x x x

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

²⁴ *Arambulo v. People*, *supra* note 21, citing *Ramos v. People*, 803 Phil. 775, 782-783 (2017).

²⁵ *People v. Morales*, 630 Phil. 215 (2010).

marked illegal drug seized from the forensic chemist to the court.²⁶ To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.²⁷

The law requires that the marking, physical inventory and photography of the confiscated drugs be conducted immediately after seizure.²⁸ Moreover, the law directs that the inventory and photography be done in the presence of the accused 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, a representative from the media and the Department of Justice (DOJ), and any elected public official,²⁹ or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) or the media.³⁰

After a review of the records of the case, the Court finds that the prosecution undoubtedly failed to prove the *corpus delicti* of the offense charged. The prosecution failed to demonstrate that the police officers observed the requirements mandated by Section 21, Article II of RA 9165.

It cannot be denied that no inventory of the seized items were ever conducted. The only thing PO2 Rivera did was the marking of the item allegedly sold to him with his initials, "JLR." Thus, there can be no other conclusion than that the chain of custody was broken.

It bears to stress that the rule requires that there must be an inventory sheet signed by the accused or his representative along with the required three witnesses.³¹ Here, no inventory was conducted at all. Worse, nothing in the records shows that the prosecution or the police officers provided justification for the non-compliance with the inventory requirement.

²⁶ *People v. Belmonte*, G.R. No. 224588, July 04, 2018, 871 SCRA 17, 34-35.

²⁷ *Id.* at 42-43.

²⁸ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016).

²⁹ *People v. Cohayco*, G.R. No. 241324, September 11, 2019.

³⁰ *Id.*

³¹ 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:

(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;

(*Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, [June 7, 2002]*).

The above-mentioned lapses are not minor but fatal as they show that the chain of custody had been broken which, thus, casts doubt on the integrity of the dangerous drugs supposedly seized from petitioner.

The Court cannot merely gloss over the glaring lapses committed by the police officers, especially when the shabu allegedly bought from petitioner was only 0.02 gram. In *People v. Del Mundo*,³² it was held that courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving minuscule amounts of drugs as they can be readily planted and tampered.

The Court holds that the evidence on record and the circumstances obtaining here do not support a finding of guilt beyond reasonable doubt. The failure to conduct an inventory creates a serious doubt on whether the supposedly seized drugs from petitioner were the same drugs presented in court as evidence. Hence, the *corpus delicti* has not been adequately proven.

In fine, reasonable doubt does exist in the present case because the quantum of proof required for the conviction of petitioner for the violation charged was not met, his acquittal is therefore in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 28, 2015 of the Court of Appeals in CA - G.R. CR-HC No. 06867 is **REVERSED** and **SET ASIDE**. Petitioner Richard Gutierrez y Garcia @ "Richard" is hereby **ACQUITTED**.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Richard Gutierrez y Garcia @ "Richard," 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.

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

By authority of the Court:

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

³² 818 Phil. 575 (2017).

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The Presiding Judge
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Branch 210, Mandaluyong City
Crim. Case No. MC11-13709-D

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c/o The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Director General
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