



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 03 February 2021 which reads as follows:*

**“G.R. No. 253046 (*Hoi Heng Un alias ‘Shi Cha’ v. People of the Philippines*) — We deny the petition.**

Foremost, petitioner Hoi Heng Un alias *Shi Cha* availed of the wrong remedy before the Court. Although Section 3(e), Rule 122<sup>1</sup> of the Rules of Court states that appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the same rules, among the exceptions thereto is when the Court of Appeals imposed the penalty of life imprisonment, in which case appeal shall be made via notice of appeal with the Court of Appeals<sup>2</sup> pursuant to Section 13(c), Rule 124.<sup>3</sup>

Here, petitioner was convicted of two (2) counts of Illegal Possession of Dangerous Drugs and was sentenced to life imprisonment for each count. Pursuant to Section 13(c) of Rule 124, therefore, he should have filed a notice of appeal before the Court of Appeals, not a petition for review before this Court. It is axiomatic that a fatally defective or erroneous appeal or motion will not toll the running of a period to appeal. A detour from the proper course of an appeal will not earn for the errant party a fresh start.<sup>4</sup> Petitioner’s

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<sup>1</sup> Section 3. *How appeal taken.* -

x x x x

(e) 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.

<sup>2</sup> *Ramos v. People*, 803 Phil. 775, 782-783 (2017).

<sup>3</sup> 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.

<sup>4</sup> See *Banting v. Manglapuz*, 531 Phil. 101, 111-112 (2006).

procedural *faux pas* therefore resulted in the finality of his verdict of conviction.

At any rate, even if the Court treats the present petition as an ordinary appeal, a denial thereof is still in order.

**First.** Petitioner assails the credibility of the prosecution witnesses.<sup>5</sup> Suffice it to state, however, that the assessment of credibility is best undertaken by the trial court since it has the opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand.<sup>6</sup> Hence, the trial court's factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case.<sup>7</sup>

In any event, there was nothing in the testimony of SPO3 Alejandro Gerardo Liwanag (SPO3 Liwanag) and SPO3 Hercules Basmayor (SPO3 Basmayor) which arouses suspicion.

It was not out of the ordinary for SPO3 Liwanag to return to his car to retrieve the buy bust money instead of immediately arresting petitioner after showing him the plastic bag of suspected shabu. To recall, SPO3 Liwanag's team was at the scene to perform a buy bust operation against the group of alias Chan and Chua, of which petitioner was a mere member.<sup>8</sup> He was merely following through with the planned buy bust operation and was waiting for the consummation of the sale before giving the pre-arranged signal to SPO3 Basmayor.

The Court also finds that it was not physically impossible for SPO3 Basmayor to have immediately arrested petitioner right after SPO3 Liwanag gave him a missed call. For petitioner's argument is premised on the erroneous assumption that SPO3 Basmayor had to wait for SPO3 Liwanag's call before going after petitioner.

To be sure, SPO3 Basmayor and the other members of the buy-bust team were in the vicinity of the Cardinal Santos Hospital as backup during the buy bust operation.<sup>9</sup> When petitioner's co-accused Li Hong Peng and Lin Hausen started signaling petitioner to leave, it was only natural for SPO3 Basmayor to step in before the operation got compromised. Meanwhile, the rest of the team intercepted Li Hong Peng and Lin Hausen after speeding off. Given the circumstances, therefore, the buy bust team did not have to wait for SPO3 Liwanag's signal.

As for the alleged physical impossibility of retrieving about two (2) kilos of benzphetamine hydrochloride from under the driver seat of a Nissan

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<sup>5</sup> *Rollo*, p. 12.

<sup>6</sup> See *People v. Ocdol*, 741 Phil. 701, 710-711 (2014).

<sup>7</sup> See *People v. Regaspi*, 768 Phil. 593, 598 (2015).

<sup>8</sup> *Rollo*, pp. 22-27.

<sup>9</sup> *Id.* at 26.

Cefiro, the Court cannot give credence to such argument. Aside from his mere say-so, petitioner offered no proof of the alleged impossibility. He did not even provide the court with a comparison of the space under the driver seat vis-à-vis the size of drug items marked AGRL-1 and AGRL-2. Besides, such issue is purely factual and requires actual observation of physical evidence, which this Court does not perform in an appeal by certiorari.<sup>10</sup>

**Second**, petitioner claims that the prosecution failed to establish his possession of dangerous drugs for it was not shown that he was the registered owner of the Nissan Cefiro.<sup>11</sup>

We are not convinced.

Whether petitioner owns the contents of the Nissan Cefiro and the Nissan Cefiro itself is immaterial. For mere illegal possession of dangerous drugs, which is less than ownership, is already punishable under Section 11 of Republic Act No. (RA) 9165.<sup>12</sup>

Possession, under the law, includes not only actual possession, but also constructive possession. *People v. Zaragosa*<sup>13</sup> elucidates:

Actual possession exists when the drug is in the immediate possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Here, petitioner was in actual possession of the drug items marked AGRL-1 and AGRL-2. These pertain to the 979.50 and 975.17 grams of benzphetamine hydrochloride shown to SPO3 Liwanag during the operation. Clearly, these were under his control and disposal as he was about to sell them to SPO3 Liwanag before their transaction got aborted.

<sup>10</sup> Section 1, Rule 45, Rules of Court.

<sup>11</sup> *Rollo*, pp. 12-13.

<sup>12</sup> SEC. 11. *Possession of Dangerous Drugs*. — 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or “shabu”;

x x x x

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or “ecstasy”, paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

<sup>13</sup> 823 Phil. 1162, 1176-1177 (2018).

As for the seven (7) heat sealed plastic bags of methamphetamine hydrochloride marked HBB1 to HBB7 with an aggregate weight of 13,948.93 grams, these were recovered from the compartment of the Nissan Cefiro which petitioner was driving by himself. Thus, only he was in constructive possession thereof.

**Finally.** Petitioner bewails the arresting officers' non-compliance with Section 21 of RA 9165, specifically the three (3) - witness requirement. He claims that the absence of a representative from the Department of Justice during the inventory and photograph of the seized items was fatal to the prosecution's case.

The argument lacks merit.

Petitioner is charged with Illegal Possession of Dangerous Drugs allegedly committed on January 29, 2012. The applicable law, therefore, is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, viz:

**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;** (emphasis added)

x x x x

The Implementing Rules and Regulations of RA 9165 further commands:

**Section 21.** (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.** (emphases added)

x x x x

Verily, although the rules require the presence of all three (3) insulating witness during the inventory and photograph of the seized items, non-compliance with the requirement under **justifiable ground** shall not invalidate the seizure and custody over said items.

*People v. Lim*<sup>14</sup> enumerated examples of justifiable grounds which had been accepted by the Court:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.** (emphasis added)

Here, petitioner claims that the absence of a DOJ representative during inventory and photograph was not justified; the arresting officers should have coordinated with the DOJ earlier, considering that they had been building a case against him for a long time.<sup>15</sup>

Records show, however, that while the confidential informant had been trying to broker a sale with petitioner as early as January 12, 2012, petitioner only confirmed their meet-up on January 29, 2012. Prior to that, the arresting officers did not know when the transaction would take place, if at all. It was only at 8 o'clock in the morning of January 29, 2012, the day of the transaction itself when the confidential informant told SPO3 Liwanag that petitioner would be meeting with them at the vicinity of Cardinal Santos Hospital around 2 o'clock in the afternoon.

The buy bust team, therefore, only had six (6) hours to prepare for the operation. In spite of this time constraint, the team still exerted effort to

<sup>14</sup> G.R. No. 231989, September 04, 2018.

<sup>15</sup> *Rollo*, p. 13.

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comply with the three (3) witness rule. SPO3 Liwanag testified that their very own chief P/SUPT. Ismael Fajardo coordinated with the DOJ but alas, there was no prosecutor available at that time. This, nevertheless, constitutes earnest effort to secure the presence of a DOJ representative.<sup>16</sup>

All told, the Court of Appeals did not err in affirming the trial court's conviction against petitioner for Illegal Possession of Dangerous Drugs.

**WHEREFORE**, the petition is **DENIED** for being the wrong mode of appeal and for lack of merit. The Decision dated November 19, 2019 and Resolution dated July 29, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 11771 are **AFFIRMED**.

Petitioner **HOI HENG UN** alias *Shi Cha* is found **GUILTY** of two (2) counts of violation of Section 11, Republic Act No. 9165. He is sentenced to **Life Imprisonment** and **ORDERED to PAY** fine of ₱10,000,000.00 for each count.

**SO ORDERED.”**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court by *3/10*  
10 MAR 2021

ATTY. FERDINAND MARK C. RONQUILLO (reg)  
Counsel for Petitioner  
1327 A. Linao St. Paco, Manila

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amoroso Street  
1229 Legaspi Village  
Makati City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 264  
Pasig City (Station in San Juan City)  
(Crim. Case No. 17869-D-SJ)

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COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. CR-HC No. 11771

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<sup>16</sup> *Id.* at 38