



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

RAMIL CHA y AZORES, @ G.R. No. 246550
OBET,

Petitioner, **Present:**

PERALTA, C.J., *Chairperson,*
 CAGUIOA,
 REYES, J. JR.,
 LAZARO-JAVIER, and
 LOPEZ, JJ.

- versus -

Promulgated:

SEP 16 2020

PEOPLE OF THE PHILIPPINES,
 Respondent.

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DECISION

REYES, J. JR., J.:

Before us is a Petition for Review on *Certiorari* assailing the Decision¹ dated March 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09971, which affirmed the Joint Judgment dated June 29, 2017 of the Regional Trial Court (RTC), Branch 76, Malolos City, Bulacan in Criminal Case No. 2585-M-2010, finding petitioner Ramil Cha y Azores (petitioner) guilty beyond reasonable doubt for the offense of selling a sachet of *marijuana* in violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

Factual Antecedents

Petitioner was charged with Violation of Sections 5 and 11, Article II of R.A. No. 9165 before the RTC. The petitioner was subsequently acquitted

¹ Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and Gabriel T. Robeniol, concurring; *rollo*, pp. 43-56.

of the charge of violation of Section 11 of R.A. No. 9165 in Criminal Case No. 2586-M-2010.² The Information charging petitioner of Violation of Section 5 of R.A. No. 9165 in Criminal Case No. 2585-M-2010 reads:

That on or about the 26th day of July, 2010, in the [M]unicipality of Balagtas, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet containing dried [*marijuana*] fruiting tops weighing 1.724 grams.

Contrary to law.³

Arraigned with the assistance of counsel, petitioner entered a plea of “Not Guilty” to both charges.⁴

During the pre-trial hearing, the following stipulation of facts were entered into by the parties: (1) the identity of the accused as the person charged in the two sets of Information; (2) the jurisdiction of the court to try the cases; (3) the qualification and competency of Forensic Chemist/Police Senior Inspector Gina Camposano-Ledesma (P/SI Camposano-Ledesma) as an expert witness; and (4) the validity of the laboratory examination that said forensic chemist conducted, subject to the condition that said accused was not the source of the confiscated items and that the names of the said accused as appearing in the documentary evidence as the alleged source of the confiscated items are disputed as said witness has no personal knowledge as to the recovery of the said items. By reason of these stipulations, the further presentation to the witness stand of P/SI Camposano-Ledesma was dispensed with.⁵

Version of the Prosecution

The prosecution alleged that on July 26, 2010, Senior Inspector 2 Alodia Tumbaga (SI2 Tumbaga) of the Philippine Drug Enforcement Agency (PDEA) received word from a confidential informant that an individual known as “Obet,” who turned out to be herein petitioner, was engaged in illegal drug trade in *Barangay* San Juan, Balagtas, Bulacan.

After receiving the information, SI2 Tumbaga, formed and led an Anti-Narcotics operation with Investigation Officer 1 Froilan Bitong (IO1 Bitong) as *poseur*-buyer, and IO1 Norman Daez (IO1 Daez), as immediate back-up. The rest of the team members were assigned as perimeter defense. Prior to the operation, the team prepared documents such as the Pre-Operation Report and Authority to Operate with Control Number 07-10-00054.

² Id. at 133.

³ Id. at 57.

⁴ Id. at 44.

⁵ Id. at 123.

Briefing was conducted. Thereafter, the team proceeded to MacArthur Highway, *Barangay* San Juan, Balagtas, Bulacan to meet the informant using their service vehicle, an L-300 Mitsubishi van. Another briefing was conducted inside the van, together with the informant, to discuss strategies for the buy-bust operation before proceeding to petitioner's house. IO1 Bitong was given a ₱100-bill with serial number FS061520 as buy-bust money, which was marked "FVB" at the front lower left portion thereof.

The PDEA headed to the target site with the help of the informant. Upon arrival thereat, the informant and IO1 Bitong walked towards the residence of petitioner and knocked at the gate while the rest of the team positioned themselves within viewing distance for monitoring. Petitioner went out of the gate and the informant introduced IO1 Bitong as the buyer of *marijuana*.

At this point, IO1 Bitong told the informant to buy cigarette so that he and petitioner will be left alone. IO1 Bitong told petitioner that he wanted to purchase *marijuana* worth ₱100.00. Petitioner demanded for the payment, but IO1 Bitong asked petitioner if he could see the item first. Petitioner pulled out from his right pocket one heat-sealed transparent plastic sachet containing dried leaves suspected to be *marijuana* and handed it to IO1 Bitong. In turn, IO1 Bitong handed to petitioner the marked money. After the transaction, IO1 Bitong gave the pre-arranged signal by sending a missed call to IO1 Daez.

In response to the pre-arranged signal, IO1 Daez rushed to the scene, and aided IO1 Bitong in effecting the arrest of the petitioner who was apprised of his constitutional rights. A body search conducted on petitioner resulted in the recovery of the marked money, 13 plastic sachets of *marijuana* and 4 plastic sachets of *shabu*.

A commotion was caused by petitioner's relatives and people gathered around them. Because of these, compounded by the poorly lit crime scene, the team leader decided to conduct the inventory at the *barangay* hall. The PDEA operatives then brought the petitioner to the *barangay* hall, together with the seized items.

On the way, IO1 Bitong maintained possession of the contraband, subject of the sale and IO1 Daez took custody of the items retrieved from the petitioner until he turned them over to IO1 Bitong at the *barangay* hall. There, the items were inventoried and marked in the presence of petitioner and signed by representatives from the Department of Justice (DOJ) and the media, and a *barangay* official. In the course of the inventory, photographs were taken to document the event. In the *barangay* hall, SI2 Tumbaga prepared the Request for Laboratory Examination on the specimens and Request for Drug Test, while a Joint Affidavit of *Poseur-Buyer/Arresting*

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Officer was executed by IO1 Bitong and IO1 Daez in connection with the arrest of the accused.⁶

Then they proceeded to the crime laboratory office wherein IO1 Bitong personally submitted the evidence for examination. It was received by the Bulacan Provincial Crime Laboratory, Malolos City, Bulacan. Thereafter, they proceeded to their station. The findings of the laboratory examination as shown in Chemistry Report No. D-076-2010 is that the sold and seized sachets were indeed dangerous drugs. IO1 Bitong also identified the documents, such as the Chemistry Report No. D-076-2010, Pre-operation Report, the Authority to Operate, as well as the joint sworn statement which they executed in relation to these cases.⁷

Version of the Defense

The defense, for its part, offered denial and frame-up. According to petitioner, he was at home having dinner with his live-in partner and their children, when the policemen forced their way into his house during the incident in question. They handcuffed him and searched the premises, but found no contraband.⁸

The PDEA operatives then brought petitioner to the *barangay* hall where he was made to point out the drugs as if the items were his while pictures were being taken. He, however, denied ownership of the items. Thereafter, he was taken to Camp Alejo, Malolos City, Bulacan for drug testing.⁹

In a Joint Judgment dated June 29, 2017, the RTC found petitioner guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs, but acquitted him on the charge of illegal possession of *shabu* and *marijuana*, to wit:

WHEREFORE, for having established the guilt of the accused beyond reasonable doubt, JUDGMENT is hereby rendered in CRIMINAL CASE NO. 2585-M-2010 CONVICTING accused RAMIL CHA y AZORES @ OBET for his offense of selling a sachet of [*marijuana*] which is classified as a dangerous drug in violation of Section 5, Article II, R.A. 9165, and is hereby sentenced to LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND PESOS (PhP 500,000.00).

However, the said accused is ACQUITTED in Criminal Case No. 2586-M-2010 for failure of the prosecution to prove his guilt beyond reasonable doubt.

As to the evidence subject matter of these cases which are listed in the Chemistry Report No. D-113-2010, are hereby confiscated in favor of

⁶ Id. at 44-47.

⁷ Id. at 125.

⁸ Id. at 47.

⁹ Id.

the government. The Branch Clerk of Court is directed to dispose the said specimens in accordance with the existing rules and regulations.

Furnish copies of this Joint Judgment to the public prosecutor, defense counsel, accused, and to the Provincial Jail Warden of Bulacan who is hereby directed to immediately commit the accused to the National Penitentiary located at the National Bilibid Prisons in Muntinlupa City per Circular No. 42-93 since the accused is considered as a national prisoner. In connection therewith, issue the corresponding [*mittimus*].

SO ORDERED.¹⁰

Petitioner filed a Motion for Reconsideration which was denied in the Order dated September 13, 2017.¹¹

On appeal, petitioner lamented that the prosecution failed to prove the elements of selling prohibited drugs. Petitioner raised inconsistencies in the testimonies of the prosecution witnesses and the failure of the PDEA officers to comply with the chain of custody rule. The CA denied the appeal in its Decision dated March 25, 2019.¹²

Petitioner then filed the instant petition. Petitioner ultimately hinges his defense on the issue on the failure of the buy-bust team to comply with the chain of custody rule. Petitioner claims that during his apprehension and immediately after the alleged seizure and confiscation and marking of the items, no representative from the DOJ, elective official and media were present. The markings, inventory and photographing were not done in the place of the incident, and the prosecution witnesses failed to prove that it is not practicable or can be excused.¹³

The Court's Ruling

At the outset, the Court notes the procedural error committed by petitioner in elevating the case before the Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. While, as a rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13(c), Rule 124 of the Rules of Court provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal.¹⁴

Be that as it may, in the interest of substantial justice, the Court deems it prudent to treat the instant petition as an ordinary appeal to resolve the substantive issues at hand.

¹⁰ Id. at 132-133.

¹¹ Id. at 48.

¹² Id. at 55.

¹³ Id. at 26.

¹⁴ *Matabilas v. People*, G.R. No. 243615, November 11, 2019.

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Petitioner submits that that there was non-compliance with the chain of custody rule and the procedure in the seizure and custody of drugs. Specifically, petitioner questions the fact that the marking and inventory of the seized drugs were not done at the place of confiscation. Petitioner further argues that the prosecution did not present proof on how the items were turned over to the chemist and its condition at the time it was delivered to the last person who touched the same.

We find merit in the instant petition.

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.¹⁵ The prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court.¹⁶

Jurisprudence states that it is essential that the State establish with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of said offenses. It is the prosecution's burden to show beyond reasonable doubt an unbroken chain of custody over the seized items and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁷

This requirement is not a mere procedural matter which can be simply brushed aside by simple allegation of substantial compliance or presumption of regularity in the conduct of an official duty.¹⁸

Section 21(1) of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs. This provision specifically requires the apprehending officers to *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official. They should also sign the inventory and be furnished a copy thereof.¹⁹

The term "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when such situation is not practicable that the Implementing Rules and

¹⁵ *People v. Dela Torre*, G.R. No. 238519, June 26, 2019.

¹⁶ *People v. Soria*, G.R. No. 229049, June 6, 2019.

¹⁷ *People v. Lozano*, G.R. No. 227700, August 28, 2019.

¹⁸ *Id.*

¹⁹ *People v. Maralit*, G.R. No. 232381, August 1, 2018.

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Regulations of R.A. No. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.²⁰

The Court finds that there is insufficient compliance with the chain of custody under Section 21, Article II of R.A. No. 9165 and there is doubt as to the integrity and evidential value of the seized drugs.

In the case at bar, the Court finds that the failure of the enforcers to mark the seized items immediately after, or at the place of apprehension, is not justified. As admitted by the prosecution witnesses, the marking and inventory of the seized items were done in the *barangay* hall and not at the place of arrest.

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void, this has always been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²¹ The prosecution failed in this regard.

IO1 Bitong testified:

Q: Who were the members of the team that was made or formed?
A: Our team leader is SI2 Alodia Tumbaga, IO1 Norman Daez and IO1 Froilan Bitong, I cannot recall anymore the others.

Q: How many were you?
A: Five (5) to six (6) members, [s]ir.²²

x x x x

Q: Where were you when you marked [the object of the buy bust]?
A: At the barangay hall of San Juan, Balagtas.

x x x x

Q: Tell us the distance of the barangay hall of San Juan, to that place of the incident?
A: About 60 to 70 meters away, [s]ir.

Q: That is just near?
A: I would say it is near, Sir.

Q: So, you could go there on foot?

²⁰ *People v. Alcantara*, G.R. No. 231361, July 3, 2019.

²¹ *People v. De Castro*, G.R. No. 243386, September 2, 2019.

²² TSN, October 10, 2011; rollo, p. 62.

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A: Yes, [s]ir.

Q: Tell us Mr. witness why you did not immediately mark them at the place of the incident and you brought it to the barangay hall?

A: Our team leader decided to mark the specimen in the barangay hall because relatives of Obet started to be unruly.

Q: Were you able to enter the house of alias Obet?

A: No, [s]ir, only at the front, [s]ir.

Q: Were you able to find out who was residing in that house?

A: The wife and sister were also outside.

Q: They were the one who are talking to that were made to be a commotion? [sic]

A: Yes, [s]ir.²³

x x x x

Q: We respectfully request additional marking for this Inventory as Exhibit "I-1." How about the signatures of these Oliver Umpacan, Boy Cruz and Danilo Reyes, who are these persons?

A: Oliver Umpacan is the DOJ representative, Boy Cruz [is the] representative of Media and Danilo Reyes is the barangay [councilor] of San Juan, Balagtas, Bulacan.

Q: Were you able to gather all these people in the barangay hall?

A: Yes, [s]ir, we called thru telephone Oliver Umpacan and Boy Cruz.

Q: What time was this inventory prepared?

A: More or less we made the arrest at 8:15 and then afterwards, we went to the barangay hall already.²⁴

x x x x

IO1 Daez also testified:

Q: [As] you've mentioned, [M]r. witness, that you [sic] were about 6 persons who went to the place of the incident, is that correct?

A: Yes, ma'[a]m.

Atty. Galang:

Q: And all of you were armed because you know for a fact that you will conduct a [buy-bust] operation, is that correct?

A: Yes, ma'am.

Q: And now, [M]r. witness, would you likewise agree with me that as PDEA operative[,] you are knowledgeable that you must [place] the markings on the plastic sachets at the place of the incident?

A: Yes, ma'am.

²³ *Id.* at 72-73.

²⁴ *Id.* at 76.

Q: And allegedly your reason why you did not place the marking on the plastic sachets was because of apparent commotion at the place of the incident, is that correct?

A: Yes, ma'am.

Q: And likewise, [M]r. witness, am I correct to say that as drug operative[,] you knew for a fact that when you go to a place you should be ready for any kind of commotion?

A: Yes, ma'am.

Q: And would you likewise agree with me, [M]r. witness, that aside from your mere allegations that there was [a] commotion[,] you don't have proof to show that there was such an incident, is that correct?

A: Yes, ma'am.²⁵

x x x x

[RE-DIRECT] EXAMINATION

Q: Mr. witness, you said that there was a commotion and that was the very reason why the markings [were] not done at the scene of the incident?

A: [A] lot of people were surrounding us and beside the fact that the place was hostile and dimly [lit,] we were not equipped with lights to make the area lighted, [s]ir.

Q: Now, you mentioned that the place was hostile, what made you say that the place was hostile, [M]r. witness?

A: That was according to the confidential informant, sir.

Q: Now, according to your confidential informant the area was hostile, would you please describe how hostile was that place based from the information that you gathered from your confidential informant, [M]r. witness?

A: According to the confidential informant there were few NPA in the said area, sir.

x x x x

Court:

Q: What is that area, [M]r. witness?

Witness:

A: San Juan, Balagtas, Bulacan, Your Honor,

Fiscal Santiago:

Q: That was the very reason why no marking was done at the place of the incident, [M]r. witness?

A: Yes, sir.²⁶

²⁵ TSN, March 4, 2014; rollo, pp. 97-98.

²⁶ *Id.* at 99-100.

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Based on the foregoing, we noted the following deviations from the mandatory requirements laid down by Section 21, Article II of R.A. No. 9165.

First, the sachet of *marijuana* was not marked immediately at the place of arrest. Both the RTC and the CA gave credence to the prosecution witnesses' reasoning that there was a commotion perpetrated by petitioner's relatives and the place of the incident was dimly lit, and spectators were drawn to the sight, which prompted them to conduct the inventory at the *barangay* hall, which was only a walking distance away.²⁷

We do not agree. We find the justification offered by the prosecution to be flimsy and hollow. The police officers could have easily controlled the commotion caused by petitioner's relatives, namely, his wife and sister, and the people surrounding the officers. Noteworthy is the fact that they are composed of **six officers who are armed**.

Notably, in *People v. Cornel*,²⁸ the Court ruled that the buy-bust team's excuse of the existence of a commotion was not a justifiable reason for failing to conduct the inventory at the place of seizure. The Court there ruled that seven armed members of the buy-bust team could have easily contained any commotion, thus, they should have been able to conduct the marking and inventory at the place of seizure.²⁹

Also, the fact that the place is dimly lit can hardly be a justification to deviate from the rules. A buy-bust operation is a planned activity, therefore, the officers should have foreseen the fact that the place is dimly lit and the officers could have easily addressed the situation by bringing adequate lighting equipment.

Further, we find the excuse that the place is hostile because there were few NPAs in the area, **according to the confidential informant**, to be hearsay, self-serving, unsubstantiated, and unworthy of consideration. Assuming the same to be true, the buy-bust team could have prepared for the situation since this information was already given by their confidential informant beforehand.

Second, records are bereft of mention that the insulating witnesses were present at the time and place of the arrest. While they were attendant during the marking and inventory at the *barangay* hall, we find this to be insufficient compliance with the rules laid down by Section 21, Article II of R.A. No. 9165.

The practice of police officers of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them

²⁷ *Rollo*, pp. 51 and 131.

²⁸ 829 Phil. 645 (2018).

²⁹ *Id.* at 657.

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in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.³⁰

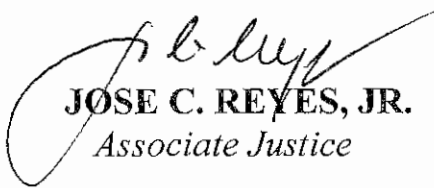
Absent the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. This adversely affected the trustworthiness of the incrimination of the accused. The insulating presence of such witnesses would have preserved an unbroken chain of custody.³¹

Based on the foregoing, we find that there is doubt in the integrity and evidentiary value of the *corpus delicti*. Consequently, the accused must be acquitted.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 25, 2019 of the Court of Appeals in CA G.R. CR-HC No. 09971, which affirmed the Joint Judgment dated June 29, 2017 of the Regional Trial Court (RTC) Branch 76, Malolos City, Bulacan in Criminal Case No. 2585-M-2010 is hereby **REVERSED AND SET ASIDE**.

Accordingly, petitioner Ramil Cha y Azores is **ACQUITTED** of the crimes charged on the ground of reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to cause his immediate release, unless he is being lawfully held in custody for any other reason.

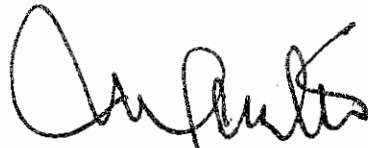
SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

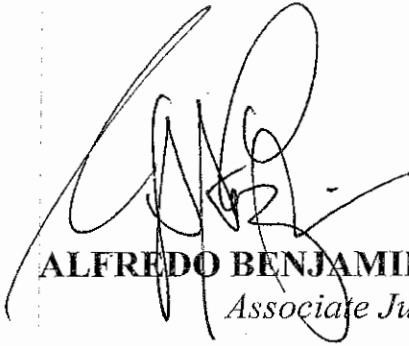
WE CONCUR:

³⁰ *People v. De Castro*, supra note 20.

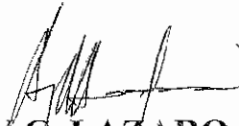
³¹ *People v. Alcantara*, supra note 19.



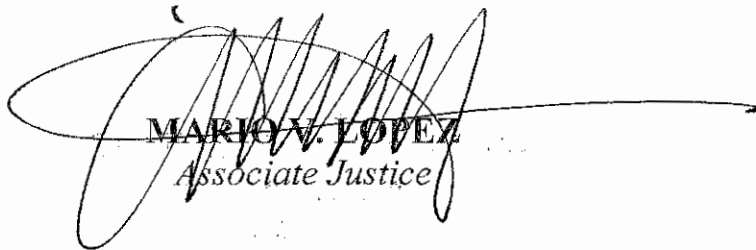
DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



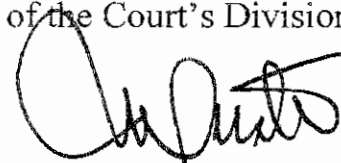
AMY C. LAZARO-JAVIER
Associate Justice



MARION V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice