



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **08 July 2020** which reads as follows:*

“G.R. No. 233007 (*Alfredo Bacaycay y Adesas v. People of the Philippines*). – This is a Petition for Review on *Certiorari*¹ from the Decision² dated February 28, 2017 and Resolution³ dated July 13, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38474 which affirmed the Judgment⁴ dated February 17, 2016 of Branch 204, Regional Trial Court (RTC), Muntinlupa City in Criminal Case No. 08-130. The RTC found Alfredo Bacaycay y Adesas (petitioner) guilty beyond reasonable doubt of violation of Illegal Possession of Dangerous Drugs in violation of Section 11, Article II of Republic Act (RA) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Antecedents

Petitioner was charged with violation of Section 11, Article II of RA 9165 in an Information which reads:

That on or about the 19th day of October, 2007 in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully have in his possession, custody and control Methylamphetamine Hydrochloride, a dangerous drug, weighing 0.08gram, contained in four (4) heat-sealed transparent plastic sachets in violation of the above-cited law.

¹ *Rollo*, pp. 10-26.

² *Id.* at 86-102; penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Danton Q. Bueser and Renato C. Francisco (retired), concurring.

³ *Id.* at 125-127; penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Danton Q. Bueser and Renato C. Francisco, concurring.

⁴ *Id.* at 51-58; penned by Presiding Judge Juanita T. Guerrero.

Contrary to law.⁵

The prosecution alleged that on October 19, 2007, the prison guards of the Elite Reaction Team (ERT), 1-9 Shift of the Maximum Security Compound, Bureau of Corrections, Muntinlupa City, while on patrol, saw petitioner with four pieces of transparent plastic sachets containing crystallized substance, suspected to be *shabu*.⁶ They then brought petitioner to the ERT Office. They turned over the confiscated items to the ERT for proper documentation.⁷ Immediately thereafter, the police officer conducted the marking and photographing of the seized items.⁸ They then brought the seized items to the Drug Enforcement Unit (DEU) of Muntinlupa City which prepared the request for examination to the crime laboratory. After the crime laboratory examination, the seized items tested positive for methylamphetamine hydrochloride, a dangerous drug.⁹

In his defense, petitioner denied the charges against him. Instead, he asserted that at that time, after washing the clothes of their brigade, he went to sleep at the newly constructed "*kubol*." Thereafter, a Bureau of Corrections personnel went inside the "*kubol*" looking for an inmate found to have illegal drugs¹⁰ in his possession. The personnel woke him up, ordered him to stand up, and brought him to the Security and Response Unit (SRU) Office.¹¹ There, the officers interrogated and showed him the illegal drugs.¹² He claimed that the seized items were planted and that he was unaware of any reason why the prison guards would falsely charge him.¹³

Ruling of the Regional Trial Court

In the Judgment¹⁴ dated February 17, 2016, the RTC found petitioner guilty beyond reasonable doubt for violation of Section 11, Article II of RA 9165, and accordingly, sentenced him to suffer the

⁵ *Id.* at 51.

⁶ *Id.* at 52-53; 89.

⁷ *Id.* at 53; 89-90.

⁸ *Id.* at 53; 90.

⁹ *Id.* at 53; 90.

¹⁰ *Id.* at 54; 90.

¹¹ *Id.* at 54; 91.

¹² *Id.* at 54; 91.

¹³ *Id.* at 54; 91.

¹⁴ *Id.* at 51-58.

penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine in the amount of ₱300,000.00.¹⁵ It ruled that the prosecution was able to establish by clear and convincing evidence all the elements of the offense charged. It gave credence to the clear and convincing testimonies of the prosecution witnesses and the presumption of regularity in the performance of their official functions in the absence of any ill motive or bad faith on their part to charge the petitioner with the offense.¹⁶

The dispositive portion of the Judgment¹⁷ provides:

WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt, ALFREDO BACAYCAY y ADESAS is sentenced to an indeterminate penalty of imprisonment from Twelve (12) years and One (1) day as minimum to Fourteen (14) years as maximum and to pay a FINE of Php300,000.00.

The preventive imprisonment undergone by the accused shall be credited on his favor.

The drug evidence is confiscated and ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Let a Mittimus be issued committing accused ALFREDO BACAYCAY to the New Bilibid Prisons (NBP) for the service of his sentence pending any appeal that he may file in this case.

SO ORDERED.¹⁸

Aggrieved, petitioner appealed to the CA.¹⁹

Ruling of the Court of Appeals

In the Decision²⁰ dated February 28, 2017, the CA affirmed the RTC ruling, but modified the penalty to an indeterminate sentence of twelve (12) years and one (1) day as minimum to fourteen (14) years and

¹⁵ *Id.* at 58.

¹⁶ *Id.* at 55-56.

¹⁷ *Id.* at 51-58.

¹⁸ *Id.* at 58.

¹⁹ *Id.* at 31-50.

²⁰ *Id.* at 86-102.

eight (8) months as maximum pursuant to *People v. Simon*.²¹ It found that the integrity and evidentiary value of the *corpus delicti* had been preserved and that there was substantial compliance with the post-seizure procedure under Section 21, Article II of RA 9165.

Undaunted, petitioner moved for reconsideration. However, the CA denied it in a Resolution²² dated July 13, 2017.

Hence, this petition.

The primordial issue brought to the Court for resolution is whether petitioner is guilty of Illegal Possession of Dangerous Drugs punishable under Section 11, Article II of RA 9165.

Our Ruling

The petition is meritorious.

Petitioner questions the appreciation of the presence of the *corpus delicti* by the lower courts. The *corpus delicti* of the offense of illegal possession of dangerous drugs is the dangerous drug seized from the accused;²³ thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. It must be established that the illegal items seized from the accused must be the exact items presented before the court. This is where the chain of custody requirement in drugs cases comes into play to ensure that doubts concerning the identity of the seized drugs are removed.²⁴

Under Section 21 (1), Article II of RA 9165, the physical inventory and photographing shall be done immediately after seizure and confiscation 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. Moreover, the physical inventory and photographing shall be conducted at the place where the search

²¹ 304 Phil. 725(1994).

²² *Rollo*, pp. 125-127.

²³ *People v. Ismael*, 806 Phil. 21, 29 (2017).

²⁴ *Mallillin v. People*, 576 Phil. 576, 587 (2008).

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.

The Court notes that RA 10640²⁵ amended RA 9165 by modifying Section 21 (1) thereof, which, among others, reduced the required witnesses to the physical inventory and photographing of the seized drugs to two: an elected public official and a representative of the National Prosecution Service *or* the media during the physical inventory. Nevertheless, since the incidents herein occurred prior to the approval of RA 10640, Section 21(1), Article II of RA 9165 as originally worded still applies.²⁶

Petitioner disputes the integrity of the *corpus delicti* and the various non-compliance by the prison officers with Section 21, Article II of RA 9165, to wit: (a) the items which were allegedly seized from petitioner were not immediately marked after confiscation at the “*kubol*”; (b) there were no witnesses during the inventory; and (c) there was no inventory receipt prepared by the prison officers who confiscated the seized items.

To justify the foregoing acts, the Office of the Solicitor General alludes to the saving clause as contained in the Implementing Rules and Regulations (IRR) of RA 9165 which essentially allows non-compliance with Section 21, Article II of RA 9165. This is necessary so as not to automatically render void and invalid the seizure and custody of the seized items under justifiable grounds as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

While the Court recognizes that strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible under varied field conditions,²⁷ and testimony about a perfect chain is not always possible to obtain,²⁸ jurisprudence specifically requires a more exacting standard before narcotic substances are

²⁵ 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.”

²⁶ See *People v. Tampus*, G.R. No. 221434, February 6, 2019.

²⁷ *People v. Crispo*, G.R. No. 230065, March 14, 2018, 899 SCRA 356, 369.

²⁸ *Mallillin v. People*, *supra* note 24.

accepted as evidence.²⁹ The saving clause applies only on the following: (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds; and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.³⁰ Indubitably, the rules require more than a statement by the apprehending officers of a justifiable ground for non-compliance.³¹ This ground must also be clearly indicated in their sworn affidavit, coupled with statements as to how the integrity of the seized item was preserved. With greater reason, a more rigid adherence to Section 21, Article II of RA 9165 must be observed in cases where the quantity of illegal drugs seized is miniscule, as in the instant case, since it is highly susceptible to planting, tampering, or alteration.³²

In the case at bench, the provisions of Section 21, Article II of RA 9165 were not observed and various deviations were committed by the prison guards from the prescribed chain of custody rule thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly confiscated from petitioner. To start, no inventory was conducted as there was an absence of an inventory receipt. While the prosecution explained this lapse as a standard practice in 2007 of making the initial report and transmittal to the DEU,³³ this is a substantial requirement which is crucial to the preservation of the integrity and credibility of the confiscated items, as this same document is where the mandatory witnesses affix their signatures. Photographs are not enough since the law itself uses the preposition “and” in the conduct of physical inventory and photograph of the seized items.

Moreover, the marking was not conducted immediately at the place of confiscation. In *People v. Gonzales*,³⁴ as cited in *People v. Ismael*,³⁵ the Court emphasized that the marking of the dangerous drugs immediately upon their confiscation or recovery is indispensable in the preservation of their integrity and evidentiary value.³⁶ This is because succeeding handlers of dangerous drugs or related items will use the marking as reference.³⁷ In addition, this marking operates to set apart as

²⁹ *People v. Andrada*, G.R. No. 232299, June 20, 2018, 867 SCRA 484, 496-497.

³⁰ *People v. dela Rosa*, G.R. No. 230228, December 13, 2017, 849 SCRA 146, 163.

³¹ *People v. Sarip*, G.R. No. 231917, July 8, 2019.

³² *Id.*

³³ TSN, May 27, 2011, p. 15.

³⁴ 708 Phil. 121 (2013).

³⁵ 806 Phil. 21 (2017).

³⁶ *People v. Gonzales*, *supra* note 34 at 131.

³⁷ *Id.*

evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence.³⁸ The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by law to be made immediately after, or at the place of apprehension.³⁹ Only if this is not practicable that the IRR allows that the inventory and photographing could be done at the nearest police station or the nearest office of the apprehending officer/team.⁴⁰ The prosecution failed to adduce any justifiable explanation for this gap.

While the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirements of having the required witnesses to be physically present at the time or near the place of apprehension and having their signatures on the Inventory Receipt are not dispensed with, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.⁴¹ The testimonies of the prosecution disclosed that there was non-compliance as to the presence of the mandatory witnesses to the inventory as decreed under Section 21(1), Article II of RA 9165. Worse, there was even no recognition of the commission of the procedural lapses, nor was any justification provided by the prison officers for non-compliance with the chain of custody rule.⁴² While the absence of the required witnesses under Section 21, Article II of RA 9165 does not *per se* render the confiscated items inadmissible,⁴³ the prosecution must adduce a justifiable reason for this failure or a showing of any genuine and sufficient effort to secure the required witnesses.⁴⁴ The presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality.⁴⁵

Thus, in view of the numerous gaps in the chain of custody in violation of the exacting standards laid down in Section 21, Article II of

³⁸ *Id.* citing *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

³⁹ *People v. Tomalis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 146.

⁴⁰ *Id.*

⁴¹ *Id.* at 147.

⁴² See *Valdez v. People*, G.R. No. 238349, August 14, 2019.

⁴³ *People v. Crispo*, *supra* note 27 at 376.

⁴⁴ *Id.*

⁴⁵ *People v. De la Victoria*, G.R. No. 233325, April 16, 2018, 861 SCRA 305, 322.

RA 9165 and the resulting doubt as to the identity of the drugs allegedly seized from petitioner, the Court is constrained to acquit him of violation of Illegal Possession of Dangerous Drugs, punishable under Section 11, Article II of RA 9165.

Consequently, it is unnecessary to discuss the other issues raised herein by petitioner.

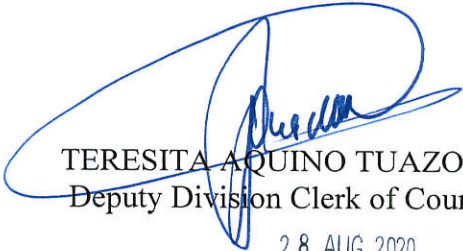
WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated February 28, 2017 as well as the Resolution dated July 13, 2017 of the Court of Appeals in CA-G.R. CR No. 38474 is hereby **REVERSED** and **SET ASIDE**. Petitioner Alfredo Bacaycay y Adesas is hereby **ACQUITTED** for violation of Illegal Sale of Dangerous Drugs for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Alfredo Bacaycay y Adesas, 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." (GAERLAN, *J.*, designated as additional member, per Special Order No. 2780 dated May 11, 2020).

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
28 AUG 2020

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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
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Muntinlupa City
(Crim. Case No. 08-130)

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