

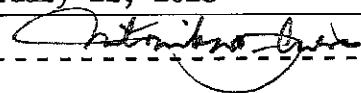
EN BANC

G.R. No. 250307 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, versus ROBERT UY y TING, *accused-appellant*.

Promulgated:

February 21, 2023

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CONCURRING OPINION

CAGUIOA, J.:

The duty of the Court, as this democratic state's bastion of justice, to uphold the law and an accused's fundamental rights applies in each and every case. It is not dependent on extraneous factors such as the amount of dangerous drugs involved. I thus fully concur with the *ponencia* in acquitting the accused Robert Uy y Ting (Uy) from charges of violating Sections 5 and 11 of Republic Act (R.A.) No. 9165. There is nothing in the facts, or in the law, to support his conviction.

Brief review of the facts

Uy, a Filipino, along with five Chinese nationals, Ong Chi Seng¹ @ Jackie² Ong (Jackie Ong), Co Ching Ki³ @ Chai Ong (Chai Ong), Tan Ty Siao, Go Siak Ping, and James Go Ong @ William Gan or Willie⁴ Gan (Gan) were all charged with violations of Sections 5 and 11 of R.A. No. 9165. The charge for Section 5 was for transporting almost 10 kilos of *shabu*, while the charge for Section 11 was for the rest of around 230 kilos of *shabu* confiscated at a warehouse.

The charges arose from an operation of the Anti-Illegal Drug Special Operation Task Force of Camp Crame, in coordination with the Bureau of Immigration, to execute a mission order against Jackie Ong. On the day of the operation, the police officers knocked on the door of Jackie Ong. Jackie Ong opened the door, and allegedly, he allowed the police officers to enter. The police officers noticed that there were three other Chinese nationals there, including Gan. The police officers asked them to produce documents evidencing their proper stay in the country, but the Chinese nationals were unable to provide any. When threatened with deportation, one of the nationals — Chai Ong — as well as Jackie Ong offered 10 kilos of *shabu* in exchange

¹ Also referred to as "Co Chi Seng" in some parts of the record.

² Also spelled as "Jacky" in some parts of the record.

³ Also referred to as "Co Ching Seng" in some parts of the record.

⁴ Also referred to as "Willy Gan" in some parts of the record.



for their freedom. The police officers played along but still reported it to their superior. One of the police officers involved in the operation then gave his phone to Chai Ong who, after several calls, told them that the 10 kilos of *shabu* were ready for pickup and a vehicle was needed to deliver them. Another one of the police officers offered his own vehicle, a red Mitsubishi Lancer, for use for the said pick-up. They then proceeded to a McDonald's outlet along MacArthur Highway, where they left the car before leaving the place. After a few minutes, a man boarded the car and drove it. The other police officers followed the car until it entered a warehouse in Valenzuela. The police officers waited until the car came out of the warehouse and they followed it until it reached the previously agreed upon pick-up area. The police officers then approached the car and they noticed a box inside as the driver was about to get out. They then seized the box, opened it, and found five plastic bags of *shabu* inside. They thus arrested the driver of the vehicle, who was later on identified to be accused Uy. When Uy was already in custody, the police officers then applied for a search warrant which they obtained hours later, which allowed them to raid the warehouse where they got the rest of the *shabu* (around 230 kilos). The drugs seized from the warehouse became the basis for the charge of violating Section 11 of R.A. No. 9165. The owner of the warehouse testified for the prosecution, and he said that he leased the warehouse to Gan, but Uy helped in building communications between him and Gan.

For the defense, Uy argued that he was merely hired as Gan's driver because the latter was unfamiliar in Metro Manila. On the day of the incident, he claimed that he received a call from Gan to be at McDonald's MacArthur Highway where a red Mitsubishi Lancer would be and the keys would already be in the ignition switch. He was told to drive the same to the warehouse. Upon arriving at the warehouse, however, he was immediately accosted by police officers and brought to Camp Crame. He was brought to a room with four Chinese nationals he met for the first time.

Branch 171, Regional Trial Court of Valenzuela City (RTC) dismissed the cases against Jackie Ong and the three other Chinese nationals after they filed a demurrer to evidence. It held that there was no proof that they participated in the crimes charged. It, however, convicted Gan for violation of Section 11, and Uy for violation of Sections 5 and 11. Only Uy filed an appeal with the CA. The CA affirmed Uy's convictions. Thus, this case.

The *ponencia* acquits Uy for the following reasons:

1. For the Section 11 charge, there was no proof that Uy had actual or constructive possession of the drugs seized in the warehouse. It was not shown that Uy had control and dominion over the drugs or the place where they were found.

2. For both the Section 5 and Section 11 charges, the police officers failed to follow Section 21, thus casting doubt on the



identity of the *corpus delicti*. The *ponencia* emphasizes that Section 21 is mandatory, regardless of the volume of the seized items. The instances of non-compliance in the case involving violation of Section 5 were: a) marking and inventory were done without the presence of any of the three required witnesses; b) there was no Inventory Receipt; and c) the photographs of the boxes containing *shabu* were not clear in indicating if they were taken at the place of seizure or at the nearest police station. Meanwhile, in the Section 11 case: a) there was no Inventory Report; b) the photographs taken were merely: of the warehouse gate, exterior, and the door; of the operatives while securing the specimens recovered; a general photo of the items found inside the warehouse; and the operatives together with the items inside the warehouse. These, the *ponencia* holds, hardly constitute the required inventory and photography under Section 21.

3. Every other link — the second, third, and fourth — in the chain of custody was also broken.

Because the reasonable doubt affected the very *corpus delicti* of the offenses, the *ponencia* also extends the acquittal even to Gan who no longer appealed the RTC Decision. The *ponencia* notes, however, that the RTC clearly erred in its judgment of conviction, as it only imposed the penalty of 12 to 14 years of imprisonment, while the law clearly provided life imprisonment as penalty for illegal possession of dangerous drugs considering the volumes involved in this case.

The *ponencia* thus castigates the police officers for their non-compliance with Section 21, and the RTC judge for imposing the wrong penalty upon Gan. It states:

The Court also cannot help but observe that, despite this case initially involving five foreign nationals and [Uy], the sole Filipino, it ended with only [Uy] and [Gan] convicted by the RTC, with [Gan] even meted a penalty far too lenient than that imposed by law. It bewilders the Court how the RTC could have acquitted Co Ching Ki and Jackie Ong, ratiocinating that their bribe to PSI De Chavez was not proven as fact, and, in the same breath, convict [Uy] whose participation in the events could have only arisen if the bribe, as recounted by PSI De Chavez, occurred. Further, it truly confounds the Court how the RTC could have imposed an erroneous penalty on [Gan] and [Uy] for violation of Sec. 11 of RA 9165 when there is no room for confusion in the language of the law. Even the prosecution's failure to appeal the incorrect penalty imposed on [Gan] astounds the Court. Truly, the acquittal in the instant case is ordained by the multiple errors, whether through negligence or misfeasance, committed by the prosecution, the defense, and the trial court.

The Court beseeches all actors in the administration of criminal justice in Our jurisdiction to effectively carry out their respective duties and responsibilities, keeping in mind that any failure on their part will likely result in acquittal. Such is the burden imposed on these actors, ordained by

the evidentiary value required in criminal cases: proof beyond reasonable doubt.⁵

I fully concur with the acquittal and the reasons provided by the *ponencia*.

Uy did not have constructive possession of the drugs found in the warehouse

I agree with the *ponencia* that the prosecution failed to prove the element of possession. To recall, in acts *mala prohibita* like illegal possession of dangerous drugs, it is required that the accused must have intended to commit the act that is, by the very nature of things, the crime itself. Thus, in cases involving the illegal possession of dangerous drugs, the prosecution must prove that:

x x x (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug.⁶

At the core of these elements is the burden of the prosecution to prove the intent to possess the dangerous drug or *animus possidendi*.

Thus, the Court has held that in criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly, freely, intentionally, and consciously possessed the prohibited articles in his or her person, or that *animus possidendi* is shown to be present together with his or her possession or control of such article.⁷

Here, the prosecution utterly failed to show that Uy had possession, whether actual or constructive, of the items found at the warehouse, and that he had *animus possidendi* of the same. As pointed out by the *ponencia*, Uy was already in police custody when the search warrant was implemented at the warehouse, and therefore, Uy could not have had actual possession of the drugs found therein. There also could not be any constructive possession, as the lessee of the warehouse was Gan, not Uy. Apart from these, the prosecution was not able to establish anything that would establish any nexus between Uy, on the one hand, and the warehouse or the items found therein, on the other.

The chain-of-custody rule, as enunciated in Section 21, was violated in this case

⁵ *Ponencia*, pp. 32-33.

⁶ *People v. Lacerna*, G.R. No. 109250, September 5, 1997, 278 SCRA 561, 579-580.

⁷ *People v. Peñaflores, Jr.*, G.R. No. 175604, April 10, 2008, 551 SCRA 111, 126.



As the Court has repeatedly discussed in previous cases, Section 21 of R.A. No. 9165 provides the specific procedure as to how the agents of the State ought to handle dangerous drugs to ensure a conviction of an accused person once brought to court. In relation to this, in the recently decided cases of *People v. Casa*⁸ (*Casa*) and *Nisperos v. People*⁹ (*Nisperos*), the Court *en banc* stressed the importance of conducting an inventory of the seized items in the presence of the insulating witnesses “immediately after seizure and confiscation,” bearing in mind that Section 21 and its requirements are meant to ensure the integrity of the seized item from the moment of seizure considering the susceptibility of the *corpus delicti* to being contaminated, or worse, planted.

In *Casa*, the Court *en banc* emphasized that the phrase “immediately after seizure or confiscation” in Section 21 means that “the inventory and taking of photographs generally must be conducted at the place of seizure.”¹⁰ The exception to this rule — meaning, the physical inventory and taking of photographs of the seized item are allowed to be conducted at the nearest police station or at the nearest office of the apprehending officer or team — is only when the police officers are able to provide justification that: (1) it was not practicable to conduct these at the place of seizure; or (2) the items seized are threatened by immediate or extreme danger at the place of seizure.¹¹ *Casa* is then complemented by *Nisperos* which underscored the importance of having the mandatory witnesses *readily available* at or near the place of apprehension to ensure that the inventory could be conducted “immediately after seizure or confiscation.”

In this case, absolutely none of these requirements of Section 21 was complied with. The *ponencia* is thus correct in acquitting Uy from the charge in light of the serious doubts cast on the integrity of the *corpus delicti*. This remains true despite the fact that the amount of drugs involved in this case is not minuscule. Indeed, while the Court’s strictness in imposing Section 21 was brought primarily by the ease by which planting, switching, and contamination could easily be done in drugs cases involving minute amounts and sachets, this does not mean that the requirements of the law would suddenly change simply because the danger being addressed was admittedly minimized by the amount involved in the present case.

I thus write this Concurring Opinion to commend the Court as it finally emphasizes the correct conclusion that its interpretation of the law must remain consistent regardless of the amount of dangerous drugs involved in a case. The requirements of the law are dictated by its letter, the legislative intent that animates the same, as well as the constitutional rights that are at play — and nothing else. Since the law does not distinguish between cases involving large amounts of dangerous drugs, on the one hand, and those which

⁸ G.R. No. 254208, August 16, 2022, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/show_docs/1/68582>.

⁹ G.R. No. 250927, November 29, 2022.

¹⁰ *People v. Casa*, supra note 8.

¹¹ *Id.*




involve miniscule amounts, on the other, then it is but appropriate to not make any undue distinction in the application of the law. I therefore express my full concurrence with the *ponencia* both as to the result and the disquisitions contained therein.

Based on these premises, I vote to **GRANT** the instant petition and **REVERSE** and **SET ASIDE** the Decision dated April 25, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 08320 finding accused-appellant Robert Uy y Ting guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165. Accused-appellant Uy is **ACQUITTED**.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court