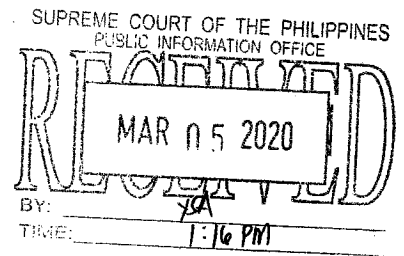




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION



**NOTICE**

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **11 December 2019** which reads as follows:

**G.R. No. 244749 (Ponciano Almoro y Castillo v. People of the Philippines)**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated July 27, 2018 and the Resolution<sup>3</sup> dated February 8, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09682, which affirmed the Judgment<sup>4</sup> dated July 28, 2017 of the Regional Trial Court of Calamba City, Branch 37 (RTC) in Criminal Case Nos. 28110-2016-C and 28111-2016-C, finding petitioner Ponciano Almoro y Castillo (petitioner) guilty beyond reasonable doubt of violating Sections 5 and 11 of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Facts**

This case stemmed from two (2) Informations<sup>6</sup> filed before the RTC accusing petitioner of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 9:30 in the morning of November 5, 2016, acting on the information received from a confidential agent, officers of the Calamba City Police successfully conducted a buy-bust operation against petitioner at his residence in Barangay Makiling, Calamba City, Laguna, during which one (1) plastic sachet containing 0.08 gram of white crystalline substance was recovered from him. When petitioner was searched upon his arrest, police officers found three (3) more plastic sachets containing a total weight of 0.76 gram of the same substance inside one of his pockets. The officers then marked, inventoried,<sup>7</sup> and photographed<sup>8</sup> the seized items, right at the place of arrest, in the presence of petitioner, as well as a barangay official, Vicente P. Siman (Siman). Thereafter, petitioner was brought to a nearby barangay hall, where his arrest was recorded in the

<sup>1</sup> Rollo, pp. 9-32.

<sup>2</sup> Id. at 52-63. Penned by Associate Justice Rodil V. Zalameda (now a member of the Court) with Associate Justices Samuel H. Gaerlan and Maria Filomena D. Singh, concurring.

<sup>3</sup> Id. at 65-66.

<sup>4</sup> Id. at 34-49. Penned by Presiding Judge Caesar C. Buenagua.

<sup>5</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

<sup>6</sup> Docketed as Criminal Case Nos. 28110-16-C and 28111-16-C for violation of Sections 5 and 11 of RA 9165, respectively. (See records [Criminal Case No. 28110-16-C], pp. 1 and 2; records [Criminal Case No. 28111-16-C, pp.1 and 2].

<sup>7</sup> See Receipt/Inventory for Property Seized dated November 5, 2016; records (Criminal Case No. 28110-16-C), p. 15.

<sup>8</sup> See id. at 18-20.

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barangay blotter, and the seized items were subsequently forwarded to the regional crime laboratory<sup>9</sup> where, after examination,<sup>10</sup> their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>11</sup>

In defense, petitioner denied the charges against him, claiming instead that he was resting at home when several police officers suddenly barged in, performed a futile search, and falsely made it appear that illegal drugs had been recovered from him.<sup>12</sup>

In a Judgment<sup>13</sup> dated July 28, 2017, the RTC found petitioner **guilty** beyond reasonable doubt of the crimes charged, and accordingly, sentenced him to suffer the following penalties: (a) in Criminal Case No. 28110-16-C, or for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (b) in Criminal Case No. 28111-16-C, or for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of ₱300,000.00.<sup>14</sup> It gave credence to the testimony of the poseur-buyer, Police Officer 1 Piljoromane Gonzales (PO1 Gonzales), and ruled that all the respective elements of the alleged crimes had been sufficiently proved. It also held that there was substantial compliance with the chain of custody rule considering that the integrity of the confiscated drugs was properly preserved. Meanwhile, it found petitioner's defenses of denial and frame-up untenable for lack of evidence.<sup>15</sup>

Aggrieved, petitioner appealed<sup>16</sup> to the CA, arguing that he should be acquitted because the trial court erred in giving credence to the inconsistent testimony of PO1 Gonzales, and in view of the arresting officers' unjustified failure to secure the presence of representatives from the Department of Justice (DOJ) and the media, as required under the chain of custody rule.<sup>17</sup>

In a Decision<sup>18</sup> dated July 27, 2018, the CA **affirmed** the conviction of petitioner. It echoed the findings of the trial court that all the respective elements of the crimes charged had been successfully proved, and that non-compliance with the chain of custody rule did not render the seized drugs inadmissible since the prosecution was able to sufficiently establish their integrity and evidentiary value.<sup>19</sup>

<sup>9</sup> See Request for Laboratory Examination dated November 5, 2016; *id.* at 21.

<sup>10</sup> See Chemistry Report No. D-2633-16 dated November 5, 2016; *id.* at 14.

<sup>11</sup> *Id.*

<sup>12</sup> See *rollo*, pp. 37-38.

<sup>13</sup> *Id.* at 34-49.

<sup>14</sup> *Id.* at 48-49.

<sup>15</sup> See *id.* at 39-48.

<sup>16</sup> See Notice of Appeal dated August 11, 2017; records (Crim. Case No. 28111-16-C), pp. 111-112.

<sup>17</sup> See Appellant's Brief dated January 11, 2018; See *CA rollo*, pp. 26-55.

<sup>18</sup> *Rollo*, pp. 52-63.

<sup>19</sup> *Id.* at 57-62.

Undaunted, petitioner moved for reconsideration of the CA decision, which was denied in a Resolution<sup>20</sup> dated February 8, 2019; hence, the instant petition.

### The Court's Ruling

At the outset, the Court observes that petitioner made a procedural lapse in elevating the case before the Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court (Rules). While, as a general rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13 (c), Rule 124 of the Rules provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal.<sup>21</sup> Nonetheless, in the interest of substantial justice, the Court will treat the instant petition as an ordinary appeal in order to finally resolve the substantive issues at hand.

After a judicious review of the records, the Court finds for the petitioner.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>22</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>23</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.<sup>24</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence

<sup>20</sup> Id. at 65-66.

<sup>21</sup> See *Ramos v. People*, 803 Phil. 775, 782-783 (2017).

<sup>22</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (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; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

<sup>23</sup> See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>24</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

of the crime.<sup>25</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>26</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>27</sup>

The law further requires that the said inventory and photography be done in the presence of the accused or the person 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,<sup>28</sup> a representative from the media AND the DOJ, and any elected public official;<sup>29</sup> 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.<sup>30</sup> The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>31</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”<sup>32</sup> This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”<sup>33</sup>

<sup>25</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, supra note 22; *People v. Sanchez*, supra note 22; *People v. Magsano*, supra note 22; *People v. Manansala*, supra note 22; *People v. Miranda*, supra note 22; and *People v. Mamangon*, supra note 22. See also *People v. Viterbo*, supra note 23.

<sup>26</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

<sup>27</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>28</sup> Entitled “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,’” approved on July 15, 2014. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” Verily, a copy of the law was published on July 23, 2014 in the respective issues of “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the “Manila Bulletin” (Vol. 499, No. 23; World News section, p. 6); hence, **RA 10640 became effective on August 7, 2014.**

<sup>29</sup> Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>30</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>31</sup> See *People v. Miranda*, supra note 22. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>32</sup> See *People v. Miranda*, id. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 24, at 1038.

<sup>33</sup> See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>34</sup> As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>35</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>36</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>37</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>38</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>39</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>40</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>41</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>42</sup>

Notably, the Court, in *People v. Miranda*,<sup>43</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense

<sup>34</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>35</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>36</sup> Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “*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.*”

<sup>37</sup> Section 1 of RA 10640 pertinently states: “*Provided, finally, That noncompliance of 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 and custody over said items.*”

<sup>38</sup> *People v. Almorfe*, supra note 35.

<sup>39</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>40</sup> See *People v. Manansala*, supra note 22 at 375.

<sup>41</sup> See *People v. Gamboa*, supra note 24, citing *People v. Umipang*, supra note 24, at 1053.

<sup>42</sup> See *People v. Crispo*, supra note 22 at 376-377.

<sup>43</sup> Supra note 22.

raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."<sup>44</sup>

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by a representative from the NPS or the media. This may be easily gleaned from the Receipt/Inventory for Property Seized,<sup>45</sup> which only confirms the presence of an elected public official, *i.e.*, Siman. Such fact was also admitted by PO1 Gonzales on direct and cross-examination who justified the deviation by explaining that the arresting team had contacted a representative of the media, but the latter failed to arrive at the place of arrest due to a commotion in the area, to wit:

### Direct Examination

[Prosecutor Nelson C. Ditan]: After marking these items or pieces of plastic sachets, what did you do next?

[PO1 Gonzales]: My back up security took photographs and **we called a media representative but the media representative was not able to come because there was already a commotion** and people were already coming out. So we just brought him at the barangay hall, sir.<sup>46</sup> (Emphasis supplied)

### Cross-Examination

[Atty. Vicente Carambas]: And you said that you were supposed to call a media personality but he was not able to arrive, is that correct?

[PO1 Gonzales]: Yes, sir.

Q: Can you name that media personality who failed to arrive?

A: No, sir.<sup>47</sup>

The Court, however, finds such explanation untenable.

As earlier stated, it is incumbent upon the prosecution to account for a deviation from the witness requirement by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to comply therewith. In this regard, the Court, in *People v. Lim*,<sup>48</sup> explained that the absence of a required witness must be based on acceptable reasons such as: "(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

<sup>44</sup> See *id.*

<sup>45</sup> Records (Criminal Case No. 28110-16-C), p. 15.

<sup>46</sup> TSN, March 16, 2017, p. 11.

<sup>47</sup> TSN, March 16, 2017, p. 36.

<sup>48</sup> See G.R. No. 231989, September 4, 2018.

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 [and] media representative[s] 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.”<sup>49</sup>

However, none of these circumstances exist in this case. The sheer statement of PO1 Gonzales that a representative from the media was contacted but had failed to arrive due to a commotion at the place of arrest, without more, cannot be considered as a justifiable reason to deviate from the mandatory directives of the law. Markedly, the prosecution did not even attempt to explain how the alleged commotion had prevented the media representative from reaching the place of arrest, or whether the arresting officers tried to assist such person in arriving thereat, or, at least, tell him to meet them at the police station where they could have conducted the requisite inventory and photography. At any rate, since the person they contacted did not promptly appear, the officers should have nevertheless tried to procure the presence of another witness within the allowable period.

In view of the foregoing, it cannot be said that the apprehending team exerted genuine and sufficient efforts to comply with the witness requirement in this case. Hence, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner, which constitute the *corpus delicti* of the crimes charged, have been compromised;<sup>50</sup> therefore, his acquittal is perforce in order.

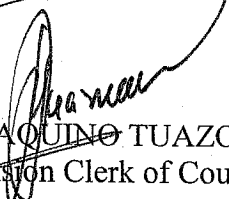
**WHEREFORE**, the petition is **GRANTED**. The Decision dated July 27, 2018 and the Resolution dated February 8, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09682 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Ponciano Almoro y Castillo is **ACQUITTED** of the crimes charged. 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.

<sup>49</sup> See *id.*, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

<sup>50</sup> See *People v. Patacsil*, G.R. No. 234052, August 6, 2018.

**SO ORDERED.”**

Very truly yours,



TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Wjh 12/26*

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 37  
Calamba, Laguna  
(Crim. Case Nos. 28110-2016-C and  
28111-2016-C)

\*PONCIANO ALMORO y CASTILLO (x)  
Accused-Appellant  
c/o The Director  
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\*THE DIRECTOR (x)  
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\*with copy of CA decision dated July 27, 2018  
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