



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **October 16, 2019**, which reads as follows:

“**G.R. No. 241051 (Alfred Dela Serna and Rico Lagura vs. People of the Philippines)**. —The Court **NOTES** petitioner Rico Lagura’s Manifestation with Compliance dated June 21, 2019 with the Resolution dated February 27, 2019, stating that it is no longer necessary to submit a rectified verification of the petition for review on *certiorari* with certification of non-forum shopping considering that in his Manifestation with Compliance dated January 23, 2019, he already prayed to drop the name of Alfred Dela Serna as petitioner in this case, and submitting a compact disc containing the soft copy of the following: (1) petition and its annexes; (2) Manifestation with Compliance with the Resolution dated November 7, 2018; and (3) declaration.

This resolves the petition for review on *certiorari*<sup>1</sup> challenging the November 28, 2017 Decision<sup>2</sup> and the June 28, 2018 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 02649, which affirmed *in toto* the Decision<sup>4</sup> of the Regional Trial Court (RTC) in Criminal Case Nos. 16361 and 16362.

Alfred Dela Serna and Rico Lagura (petitioners) were charged with the use of dangerous drugs under Section 15, Article II of Republic Act (R.A.) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.” The *Informations* read:

*In Criminal Case No. 16361 (Re: Alfred Dela Serna) -*

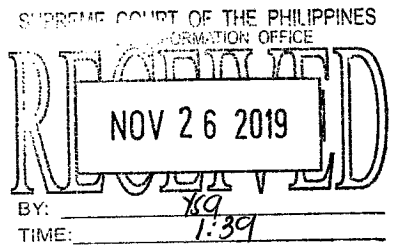
That on or about the 13<sup>th</sup> day of August, 2013, in the Municipality of Loon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without lawful authority, did then and there wil[l]fully, feloniously, unlawfully and knowingly, use and take methamphetamine hydrochloride, thereby the accused was arrested or

<sup>1</sup> *Rollo*, pp. 11-30.

<sup>2</sup> Penned by Associate Justice Gabriel T. Robeniol, and concurred in by Associate Justices Edgardo L. Delos Santos and Edward B. Contreras; *id.* at 89-99.

<sup>3</sup> *Id.* at 107-110.

<sup>4</sup> *Id.* at 52-57.



apprehended and after confirmatory test found to be positive for use of a dangerous drug; to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 15, Article II of R.A. 9165.<sup>5</sup> (Citation omitted)

*In Criminal Case No. 16362 (Re: Rico Lagura) -*

That on or about the 13<sup>th</sup> day of August, 2013, in the Municipality of Loon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without lawful authority, did then and there wilfully, feloniously, unlawfully and knowingly, use and take methamphetamine hydrochloride, thereby the accused was arrested or apprehended and after confirmatory test found to be positive for use of a dangerous drug; to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 15, Article II of R.A. 9165.<sup>6</sup> (Citation omitted)

On August 13, 2013, Police Senior Inspector Jacinto Chavez Mandal, Jr. ordered the members of the Police Station of Loon, Bohol to conduct a buy-bust operation against Leonardo Perez (Perez) and Sherlita Toradio for alleged drug activities happening in their abode in Barangay Catagbacan Norte, Loon, Bohol. After a briefing, the police officers went to the designated place and conducted the buy-bust.<sup>7</sup>

After the buy-bust, Senior Police Officer 3 William Tecson (SPO3 Tecson) and Police Officer 2 Fernando Ombajin (PO2 Ombajin) proceeded to a nearby hut where they saw petitioners and a certain Abundio Josol, Jr. (Josol, Jr.) having a pot session. Petitioners tried to escape but they were stopped by SPO3 Tecson and PO2 Ombajin. Drug paraphernalia were confiscated in the location, consisting of one empty cellophane, one empty sachet, three aluminum foils, one rolled aluminum foil (improvised totter), and two lighters.<sup>8</sup> The buy-bust team piloted a physical inventory and took photographs of the confiscated items. A total of 13 persons were arrested, including petitioners, and were brought to the police station where they were detained.<sup>9</sup>

The next day, the arresting officers prepared the memorandum requesting a forensic examination and drug testing. The specimens were turned over to the Bohol Provincial Crime Laboratory which were received by PO1 Romel Telan, who then gave the same to the Forensic Chemist, Police Chief Inspector Pinky Sayson-Acog (P/C Insp. Sayson-Acog). As per

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<sup>5</sup> Id. at 90.  
<sup>6</sup> Id. at 91.  
<sup>7</sup> Id.  
<sup>8</sup> Id. at 92.  
<sup>9</sup> Id.

Chemistry Report No. D-103-2013, the contents of the specimen marked "A," which is the open sachet containing traces of white crystalline residue, yielded positive for *Methamphetamine Hydrochloride*, while the rest of the specimens marked as "B" and "C" yielded negative results.<sup>10</sup>

Furthermore, petitioners' urine samples, as well as those of six others, tested positive for the presence of *Methamphetamine*.

Petitioners argue that when they were on their way to buy "*bato*" (*shabu*) from Perez, someone shouted "raid." Afraid, they ran and hid inside Perez's house where they were found by the police. The police officers arrested them and brought them to the police station. Their urine samples were taken and upon examination, petitioners' samples were positive for *methamphetamine*, while that of Josol, Jr. turned out negative.<sup>11</sup>

After the conduct of due proceedings, the RTC rendered its Decision dated September 10, 2015, the dispositive portion of which states:

**WHEREFORE**, premises considered, the court:

- a. Finds both [petitioners] **Alfred de la Serna y Paugia and Rico Lagura y Maluenda GUILTY** beyond reasonable doubt for the offense of Use of Dangerous Drugs penalized under Section 15, Article II of R.A. 9165 and hereby imposes a penalty of a minimum of six (6) months rehabilitation in a government center;
- b. Orders the [petitioners] to be confined and to undergo treatment and rehabilitation at the Treatment and Rehabilitation Center, located at Candabong, Binlod, Argao, Cebu, for a period of Six (6) months from date of the first day of confinement;
- c. Directs the Head of the Center to conduct an examination on the [petitioners] to determine if they are drug dependents by a physician accredited by the Dangerous Drugs Board (DDB) to justify their continued committed, treatment, and rehabilitation; and,
- d. Orders the Center to submit a monthly report to this Court and the Dangerous Drugs Board (DDB) or as often as the Board may deem necessary, on the progress of the treatment and rehabilitation of the drug dependent.

Costs of the treatment, confinement and rehabilitation shall be determined in accordance with the provisions of Section 74, Article VIII of R.A. 9165.

Let a commitment order be issued for the compulsory confinement of both [petitioners] at the Treatment and Rehabilitation Center, located at Candabong, Binlod, Argao, Cebu.

SO ORDERED.<sup>12</sup> (Emphasis in the original)

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<sup>10</sup> Id.

<sup>11</sup> Id at. 93.

<sup>12</sup> Id. at 57.

Petitioners subsequently appealed the RTC's Decision, arguing that the urine samples obtained from them were inadmissible.

In the assailed Decision dated November 28, 2017, the CA denied the petitioners' appeal, holding that the petitioners were criminally charged with one of the unlawful acts listed under Article II of R.A. No. 9165 as warranting a drug test. The petitioners' urine samples are material to the offense. In addition, there was no record to prove that they were forced against their will to submit their urine samples for drug testing. The CA affirmed *in toto* the findings of the RTC. The dispositive portion of the assailed Decision reads:

**WHEREFORE**, the appeal is **DENIED**. The Decision dated 10 September 2015 of the RTC, Branch 04, 7<sup>th</sup> Judicial Region, Tagbilaran City in Criminal Case Nos. 16361 and 16362, is **AFFIRMED** in toto.

**SO ORDERED.**<sup>13</sup> (Emphasis in the original)

Petitioners sought the reconsideration of the assailed Decision, but it was subsequently denied in the assailed Resolution dated June 28, 2018.

### The Issue

Hence, the present petition where the petitioners raise the lone issue of:

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF ALFRED DELA SERNA AND RICO LAGURA NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT<sup>14</sup>

The petitioners maintain that they were not arrested but were merely invited to the police station where they were subjected to a drug test. According to them, it is, thus, clear that the drug test that followed was never preceded by an arrest. The petitioners reiterate that not being covered by Section 15 of R.A. No. 9165, the proscription in Sections 2 and 17, Article III of the Constitution, protecting a person's rights to privacy and against self-incrimination, applies.

In their Comment,<sup>15</sup> the People of the Philippines (public respondent), through the Office of the Solicitor General, submits that the petition should be denied for being without merit and for repeatedly bringing up matters which have already been passed upon by the CA, as well as by the RTC. In addition, the public respondent contends that the urine samples obtained were admissible since the charge filed against the petitioners is under Section 15 of R.A. No. 9165.

<sup>13</sup> Id. at 98.

<sup>14</sup> Id. at 19.

<sup>15</sup> Id. at 137-153.

### Ruling of the Court

The Court resolves to deny the petition.

Petitioners were charged with the use of dangerous drugs in violation of the law, the pertinent provision of which reads:

Section 15. Use of Dangerous Drugs. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 10 of this Act, in which case the provisions stated therein shall apply.<sup>16</sup>

The elements of the crime are: (1) the accused was arrested; (2) the accused was subjected to a drug test; and (3) the confirmatory test shows that the accused used a dangerous drug.<sup>17</sup>

With regard to the first element, the lower court has found that PO2 Ombajin testified that he saw petitioners and Josol, Jr. engaging in a pot session inside a shanty near Perez's house. In addition, SPO3 Tecson saw drug paraphernalia on top of a table inside the shanty, which corroborates possible drug use. R.A. No. 9165 provides that possession of drug paraphernalia constitutes *prima facie* evidence that the possessor has smoked, ingested, or used a dangerous drug, and creates a presumption that the possessor violated Section 15 thereof.<sup>18</sup> As a result of which, there was lawful cause for the arrest of the petitioners.

Petitioners were then brought to the Bohol Provincial Crime Laboratory, where they were required to submit urine samples for drug testing.<sup>19</sup> When the petitioners complied, the second element was satisfied.

As to the third element, P/C Insp. Sayson-Acog's Chemistry Report Nos. DT-21-2012 and DT-24 to DT-30-2013<sup>20</sup> indicate that petitioners' urine samples tested positive for the presence of *methamphetamine*.

Verily, the evidence presented by the prosecution established that petitioners were arrested *in flagrante delicto*.

<sup>16</sup> R.A. No. 9165.

<sup>17</sup> *Dela Cruz v. People*, 739 Phil. 578, 585 (2014).

<sup>18</sup> *Ambre v. People*, 692 Phil. 681, 696 (2012).

<sup>19</sup> *Rollo*, p. 96.

<sup>20</sup> *Id.*

Furthermore, the reliance of the petitioners on the *Dela Cruz case*<sup>21</sup> is misplaced. In that case, the accused was found positive for drug use in a drug test after he was arrested for extortion. It was held in that case that drug testing is violative of one's right against self-incrimination and privacy because he was arrested for another offense, saying that the "drug test in Section 15 does not cover persons apprehended or arrested for any unlawful act, but only for unlawful acts listed under Article II of R.A. No. 9165."<sup>22</sup>

Nonetheless, the *Dela Cruz* ruling is helpful as to the Court's interpretation therein of the coverage of the phrase "a person apprehended or arrested," to wit:

First, "[a] person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime. The phrase must be read in context and understood in consonance with R.A. 9165. Section 15 comprehends persons arrested or apprehended for unlawful acts listed under Article II of the law.

Hence, a drug test can be made upon persons who are apprehended or arrested for, among others, the "importation," "sale, trading, administration, dispensation, delivery, distribution and transportation", "manufacture" and "possession" of dangerous drugs and/or controlled precursors and essential chemicals; possession thereof "during parties, social gatherings or meetings;" being "employees and visitors of a den, dive or resort"; "maintenance of a den, dive or resort"; "illegal chemical diversion of controlled precursors and essential chemicals"; "manufacture or delivery" or "possession" of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals; possession of dangerous drugs "during parties, social gatherings or meetings;" "unnecessary" or "unlawful" prescription thereof; "cultivation or culture of plants classified as dangerous drugs or are sources thereof"; and "maintenance and keeping of original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals." **To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning.** Note that accused appellant here was arrested in the alleged act of extortion.<sup>23</sup> (Emphasis supplied and citations omitted)

In the instant case, the petitioners were charged of the crime of illegal use of dangerous drugs. There was a valid occasion for the conduct of a drug test. Therefore, the urine samples taken from the petitioners and the results of the drug test are admissible in evidence.

Finally, the foregoing findings of fact, as sustained by the CA, bind this Court. Barring the application of recognized exceptions, the findings of fact of the CA are conclusive and binding on the parties and are not subject to review by this Court.<sup>24</sup>

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<sup>21</sup> Supra note 16.

<sup>22</sup> Id. at 585.

<sup>23</sup> Id. at 585-587.

<sup>24</sup> *Isabelita vda. de Dayao, et al. v. Heirs of Gavino Robles*, 612 Phil. 137, 144 (2009).

All told, the Court finds no reversible error on the part of the CA in affirming the conviction of the petitioners for the crimes charged and rendering the assailed Decision and Resolution.

**WHEREFORE**, premises considered, the instant petition is hereby **DENIED**. The Decision dated November 28, 2017 rendered by the Court of Appeals in CA-G.R. CR No. 02649 is **AFFIRMED**.

**SO ORDERED.**" (Leonen, J., on wellness leave.)

Very truly yours,

*Misael DC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Deputy Division Clerk of Court*

*gmw*  
*11/19/19*

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The Presiding Judge  
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Branch 4, Tagbilaran City  
(Criminal Case Nos. 16361 and 16362)

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