



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 10, 2021 which reads as follows:

“G.R. No. 241801 (Randy Bocuya y Miculob, Petitioner, v. People of the Philippines, Respondent). —This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision² dated 20 April 2018 and Resolution³ dated 22 August 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 40070 entitled, “People of the Philippines v. Randy Bocuya y Miculob.” The CA affirmed *in toto* the Decision⁴ dated 20 March 2017 of Branch 227, Regional Trial Court (RTC) of Quezon City, finding petitioner Randy Bocuya y Miculob (petitioner) guilty beyond reasonable doubt of Violation of Section 11(3), Article II of Republic Act No. (RA) 9165.⁵

Antecedents

Petitioner was charged with the offense of Violation of Section 11(3), Article II of RA 9165 in an Information,⁶ the accusatory portion of which reads:

That on or about the 27th day of April, 2012, in Quezon City, Philippines, the said accused, not authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and control dangerous drugs, to wit: One (1) small heat-sealed transparent

- over – eleven (11) pages ...

184

¹ *Rollo*, pp. 08-28.

² *Id.* at 29-43; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Ronaldo B. Martin of the Court of Appeals, Manila.

³ *Id.* at 44-46.

⁴ *Id.* at 64-72; Records, pp. 260-268; penned by RTC Presiding Judge Elvira D.C. Panganiban.

⁵ Otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

⁶ Records, pp. 01-02.

plastic sachet marked as '(NZ/RB 4-27-12)' with zero point zero four (0.04) gram of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁷

On arraignment, petitioner pleaded not guilty to the charge. Pre-trial and trial on the merits ensued thereafter.⁸

Version of the Prosecution

Based on a tip of a concerned citizen about the proliferation of illegal drug activities around *Barangay* Commonwealth, Quezon City, near Litex Road, PO3 Napoleon Zamora (PO3 Zamora) and PO3 Anthony Pamilar (PO3 Pamilar) conducted surveillance operation within the area in the evening of 27 April 2012. While thereat, PO3 Zamora noticed petitioner examining a plastic sachet containing white crystalline substance which he suspected to be *shabu*.⁹

Immediately, PO3 Zamora and PO3 Pamilar alighted from their vehicle, approached petitioner, and confiscated the item from the latter.¹⁰ Thereafter, they arrested him and brought him to the police station.¹¹ Since petitioner's arrest was merely by chance, the police officers were not equipped with the tools needed for the same during the surveillance. Hence, the marking, inventory and photographing were done by the police officers at the police station. PO3 Zamora marked the seized evidence with "NZ/RB 4-27-12," without any of the required witnesses while SPO2 Jerry Abad, the duty investigator took photographs.¹² Later, PO3 Zamora transferred the custody of the item to SPO2 Abad, who prepared the referral letter, request for laboratory examination, inventory receipts, and chain of custody form.

Next, PO3 Zamora brought the confiscated item to the PNP Crime Laboratory, Camp Crame Quezon City, and turned over the same to PCI Alejandro De Guzman (PCI De Guzman), the forensic chemist, for examination. PCI De Guzman confirmed in his Final Chemistry Report No. D-97-12¹³ that the content of the confiscated item tested positive for Methamphetamine Hydrochloride or *shabu*.¹⁴

- over -

184

⁷ *Id.* at 01.

⁸ *Rollo*, p. 31.

⁹ *Id.* at 33-34.

¹⁰ *Id.* at 34.

¹¹ *Id.*

¹² *Id.*

¹³ Records, p. 97.

¹⁴ *Rollo*, p. 31.

Moreover, the result of petitioner's drug (urine) test showed that he was positive for the presence of *shabu* and marijuana.¹⁵

Version of the Defense

In the afternoon of 27 April 2012, petitioner was selling fish nets and *duyan* at Erap City in Montalban, Rizal. He was about to buy cigarettes from a store when a *Tamaraw FX* suddenly stopped in front of him. The five (5) police officers who alighted from said vehicle then entered the store and arrested a man and a woman. On their way out, they also arrested petitioner for no reason.¹⁶

Thereafter, the police officers, along with the arrested individuals, boarded the vehicle and proceeded to Police Station 6. While on transit, the police officers frisked the arrested individuals, and recovered *shabu* from one of them, a woman, but did not recover anything illegal from petitioner.¹⁷ Petitioner pleaded his case and insisted on his innocence but the police officers would not listen to him. Instead, they asked him to contact his family to ask money for his liberty.¹⁸ As petitioner's family could not provide the bribe money demanded by the police officers, they went to the Quezon City Hall for inquest. However, he did not see the public prosecutor since he was only made to wait at the lobby of the Quezon City Hall.¹⁹ Then, at the police station, the police officers took a photograph of him standing before a table with a sachet of *shabu*, as well as a Php500.00 bill on it.²⁰

Petitioner was puzzled why he was charged for an offense he did not commit and was even prosecuted in Quezon City when he was arrested in Montalban, Rizal.²¹ Nevertheless, he did not want to file a complaint against the police officers as he just wanted the litigation to end and start a new life.²²

Ruling of the RTC

On 20 March 2017, the RTC rendered its judgment, finding petitioner guilty as charged.²³ The dispositive portion of its Decision reads:

- over -

184

¹⁵ *Id.* at 69.

¹⁶ *Id.* at 34.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 34-35.

²⁰ *Id.* at 35.

²¹ *Id.* at 34.

²² *Id.* at 35.

²³ *Id.*

WHEREFORE, in light of the foregoing premises, judgment is hereby rendered finding accused RANDY BOCUYA y MICULOB **GUILTY BEYOND REASONABLE DOUBT** of the offense charged for violation of Section 11, Article II of R.A. 9165 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment from **TWELVE (12) YEARS AND ONE (1) DAY AS MINIMUM TO THIRTEEN (13) YEARS AS MAXIMUM** and to pay a fine of **THREE HUNDRED THOUSAND (P300,000.00) PESOS.**

In the service of his sentence, herein accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The Officer-in-Charge of this court is hereby ordered to record the dispositive portion of this Decision in Criminal docket of the Court and to turn over the subject specimen covered by **Chemistry Report No. D-97-12** to the Chief of PDEA Crime Laboratory so that the same shall be included in PDEA's scheduled date of burning and destruction.

She is also ordered to prepare the Mittimus and the necessary documents to be submitted to the Director of the Bureau of Corrections in Muntinlupa City where accused is presently serving sentence for another criminal case for Homicide.

SO ORDERED.²⁴

Ruling of the CA

On appeal, the CA affirmed the conviction of petitioner. The dispositive portion of the CA's assailed Decision reads:

WHEREFORE, the present appeal is **DISMISSED.** The Decision dated March 20, 2017 of the Branch 227 of Quezon City in Criminal Case No. Q-12-175826 is hereby **AFFIRMED in toto.**

SO ORDERED.²⁵

On petitioner's insistence that his arrest was illegal, the CA concluded that the warrantless arrest of petitioner was lawful, and in accordance with the exception under Section 5(a), Rule 113 of the Revised Rules of Criminal Procedure.²⁶ The CA pointed out that petitioner was caught red handed by the police officers examining a plastic sachet containing white crystalline substance at the place

- over -

184

²⁴ *Id.* at 70-71.

²⁵ *Id.* at 42.

²⁶ *Id.* at 41.

specified by the concerned citizen where illegal drug users usually converge.²⁷

As regards the merits of the case, the CA held that the prosecution was able to duly establish the elements of the offense charged, including the *corpus delicti*.²⁸ The CA also ruled that the prosecution successfully established an unbroken chain of custody in this case.

Like the RTC, the CA acknowledged that the police officers failed to strictly adhere to the requirements of the law since the marking, photographing and inventory were all done at the police station, and without the presence of all the required witnesses. However, the CA held that such lapses committed by the police officers would not result in the acquittal of petitioner, as the law and its IRR merely require substantial compliance, not perfect adherence, so long as it can be proven that the integrity and the evidentiary value of the seized item were preserved, as in this case.²⁹ Finally, the CA found petitioner's denial unavailing considering the positive assertions of the prosecution's witnesses that he was caught in *flagrante delicto* possessing an illegal drug.³⁰

Petitioner filed a Motion for Reconsideration³¹ of said ruling, but the CA denied the same. Hence, petitioner filed this petition, submitting the following issues for Our consideration:

I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 11, PARAGRAPH 3, ARTICLE II OF R.A. NO. 9165, NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE THE ELEMENTS OF POSSESSION OF ILLEGAL DRUGS

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 11, PARAGRAPH 3, ARTICLE II OF R.A. NO. 9165, NOTWITHSTANDING THE APPREHENDING

- over -

184

²⁷ *Id.* at 42.

²⁸ *Id.* at 38.

²⁹ *Id.* at 40-41.

³⁰ *Id.* at 41.

³¹ *Id.* at 89-98.

TEAM'S NON-COMPLIANCE WITH SECTION 21 OF
REPUBLIC ACT NO. 9165³²**Ruling of the Court**

We grant the Petition.

Proof beyond reasonable doubt is imperative to sustain a conviction in criminal cases.³³ This requisite quantum of proof is borne by the constitutional imperative of due process. It is also in keeping with the presumption of innocence of an accused until the contrary is proved.³⁴ The accused in a criminal case enjoys the presumption of innocence until proven guilty. It is well-established in jurisprudence that the prosecution bears the burden to overcome such presumption.³⁵

While proof beyond reasonable doubt does not demand absolute, impeccable, and infallible certainty, it still requires moral certainty.³⁶ The conscience must be satisfied that the accused is responsible for the offense charged.³⁷ Necessarily so, the prosecution bears the burden of proving an accused's guilt through the strength of its own evidence; it cannot merely capitalize on the defense's supposed weaknesses. And unless the prosecution successfully discharges this burden, the accused need not even offer evidence in his or her behalf. He or she would be entitled to an acquittal.³⁸

In the instant case, petitioner argues, *inter alia*, that his arrest was illegal as the police officers were devoid of probable cause to arrest him. As his arrest was illegal, petitioner additionally contends that the confiscated item cannot be admitted as evidence for being the proverbial "fruit of the poisonous tree."

The Court agrees.

Petitioner is estopped from assailing the legality of his arrest, but not the admissibility of the confiscated item

- over -

184

³² *Id.* at 14.

³³ *De Guzman v. People*, G.R. No. 240475, 24 July 2019 [Per J. Leonen].

³⁴ *Id.*

³⁵ *People v. Baya*, G.R. No. 240428 (Notice), 11 September 2019.

³⁶ *Supra* at note 33.

³⁷ *Id.*

³⁸ *Id.*

Preliminarily, the Office of the Solicitor General (OSG) is right in pointing out that as a well-settled rule, an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.³⁹ However, while petitioner already waived his objection to the validity of his arrest for his failure to timely raise such issue, such waiver only affects the jurisdiction of the court over his person but does not carry a waiver of the admissibility of evidence.⁴⁰

The established facts of this case, when taken together, show the lack of probable cause on the part of the police officers to arrest petitioner

The CA held that the warrantless arrest in this case was lawful, noting that the police officers saw petitioner actually committing an offense, as he was holding and examining the plastic sachet containing the illegal drug in a place allegedly known for drug-related activities.⁴¹ Consequently, it would appear that an ensuing warrantless search was valid for being an incident to petitioner's lawful arrest.

It bears to stress, however, that for an arrest of a suspect *in flagrante delicto*, two (2) elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer. The officer's personal knowledge of the fact of the commission of an offense is absolutely required. The officer himself must witness the crime.⁴²

Given the established facts of this case, the Court holds that petitioner's arrest was done under extremely dubious circumstances. Specifically, the Court does not see any probable cause on the part of the police officers to arrest petitioner.

- over -

184

³⁹ *Dominguez v. People*, G.R. No. 235898, 13 March 2019 [Per J. Caguioa].

⁴⁰ *Id.*

⁴¹ *Rollo*, pp. 41-42.

⁴² *Supra* at note 39.

It is undisputed that the surveillance conducted by the police officers happened at night time, at around 6:30 P.M. Furthermore, as stated in the RTC Decision, PO3 Zamora admitted that they were in a moving tinted vehicle, and still about five (5) meters away from petitioner when they noticed him.⁴³ Finally, the plastic sachet which petitioner was allegedly examining that time contained the minuscule amount of .04 gram of *shabu*.

These facts are strikingly similar to those in *Dominguez v. People (Dominguez)*,⁴⁴ where the accused was likewise arrested by the police officers for merely holding a plastic sachet in his hand. The Court, ruling against the invalidity of the warrantless arrest and the inadmissibility of the confiscated item in said case, held in this wise:

The circumstances as stated above do not give rise to a reasonable suspicion that Dominguez was in possession of *shabu*. From a meter away, even with perfect vision, SPO1 Parchaso would not have been able to identify with reasonable accuracy the contents of the plastic sachet. **Dominguez' acts of standing on the street and holding a plastic sachet in his hands, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest.** In fact, SPO1 Parchaso's testimony reveals that before the arrest was made, he only saw that Dominguez was holding a small plastic sachet. He was unable to describe what said plastic sachet contained, if any. He only mentioned that the plastic contained "*pinaghihinalaang shabu*" after he had already arrested Dominguez and subsequently confiscated said plastic sachet: x x x (Emphasis in the original)

The Court could only echo such sentiment in *Dominguez* here. Certainly, if it was rather doubtful that a police officer could identify the contents of a plastic sachet from a distance of one (1) meter, it is surely beyond imagination that PO3 Zamora would be able to identify the minuscule content of a plastic sachet from a distance of five (5) meters, specially during night time and inside a moving tinted vehicle.

Relative to this, it is worth noting that in *People v. Villareal*,⁴⁵ the Court held that even if a police officer had previously effected numerous arrests, all involving *shabu*, such circumstance would be insufficient to create a conclusion that what he purportedly saw in the hands of accused was indeed *shabu*. This conclusion rings true here as PO3 Zamora admitted that at first glance, he was not sure what the

- over -

184

⁴³ *Id.* at 67; see also Records, p. 165, TSN dated 05 October 2015, p. 4.

⁴⁴ *Supra* at note 39.

⁴⁵ G.R. No. 201363, 18 March 2013, 706 Phil. 511 (2013) [Per J. Perlas-Bernabe].

content of the plastic sachet was, and that he only had a suspicion that it was *shabu*.⁴⁶

PO3 Zamora was clearly not certain, and his suspicion may have been impelled only by the fact that petitioner was at the wrong place and at the wrong time, loitering in a notorious place for drug-related activities in the evening. This, however, would not be enough for him to have probable cause to justify petitioner's arrest. In fact, even if petitioner was then exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would still not have been sufficient in order for the police officers to effect a *lawful* warrantless arrest of petitioner under paragraph (a) of Section 5, Rule 113.⁴⁷ Verily, it is not enough that the arresting officer had reasonable ground to believe that the accused had just committed a crime; a crime must, in fact, have been committed first, which does not exist here.⁴⁸

As the police officers had no probable cause to justify a valid warrantless arrest, the evidence supposedly confiscated from petitioner cannot be used as evidence against him

There being no overt act done by petitioner sufficient to incite suspicion of a criminal activity committed, was being committed, or about to be committed by petitioner, the police officers had no justification of effecting his warrantless arrest. And there being no lawful warrantless arrest that took place, petitioner was correct in arguing that the *shabu* purportedly seized from him was inadmissible in evidence for being the "fruit of the poisonous tree," pursuant to the exclusionary rule under Section 3 (2), Article III of the of the 1987 Constitution.⁴⁹

Petitioner should be acquitted for failure of the prosecution to establish the corpus delicti

The confiscated *shabu*, being the *corpus delicti* of the offense charged, its inadmissibility renders the prosecution's case against petitioner evidently toothless, and the acquittal of petitioner is thus in order notwithstanding his equally weak defense and his waiver to

- over -

184

⁴⁶ Records, pp. 166-167, pp. 05-06, TSN dated 05 October 2015.

⁴⁷ *Supra* at note 45.

⁴⁸ See *Dominguez v. People*, G.R. No. 235898, 13 March 2019 [Per J. Caguioa].

⁴⁹ See *People v. Manago*, G.R. No. 212340, 17 August 2016 [Per J. Perlas-Bernabe].


question the illegality of his arrest. As the Court explained in *People v. Racho*,⁵⁰ without the confiscated *shabu*, an accused's conviction cannot be sustained based on the remaining evidence. Thus, an acquittal is warranted, despite the waiver of appellant of his right to question the illegality of his arrest by entering a plea and his active participation in the trial of the case.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated 20 April 2018 and Resolution dated 22 August 2018 of the Court of Appeals in CA-G.R. CR-HC No. 40070 are **REVERSED** and **SET ASIDE**. Petitioner **Randy Bocuya y Miculob** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to report to this court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *6/17*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
184

- over -

⁵⁰ G.R. No. 186529, 03 August 2010, 640 Phil. 669 (2010) [Per J. Nachura]



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