

SECOND DIVISION

[G.R. No. 245368, June 21, 2021]

**DARREL JOHN PINGA Y TOLENTINO ALIAS "DJ," PETITIONER,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

ssailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated August 28, 2018 and the Resolution^[3] dated February 12, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40318, which affirmed the Judgment^[4] dated February 28, 2017 of the Regional Trial Court of Pasig City, Branch 164 (RTC) in Crim. Case No. 20223-D-PSG finding petitioner Darrel John Pinga y Tolentino alias "DJ" (Pinga) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of Republic Act No. (RA) 9165,^[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[6] filed before the RTC charging Pinga of the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of RA 9165, the accusatory portion of which reads:

On or about May 1, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control ten (10) heat-sealed transparent plastic sachets containing the following, to wit:

- | | |
|---------------|-------------------|
| a) 0.30 gram; | f) 0.28 gram; |
| b) 0.30 gram; | g) 0.30 gram; |
| c) 0.29 gram; | h) 0.30 gram; |
| d) 0.30 gram; | i) 0.29 gram; and |
| e) 0.30 gram; | j) 3.87 gram[s]. |

or with a total weight of 6.53 gram[s] of white crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.^[7]

The prosecution alleged that at around 9:30 p.m. of April 30, 2015, the members of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station were instructed to conduct surveillance in Barangay Maybunga, Pasig City where the selling of illegal drugs was rampant. Police Officer

(PO)1 Rodrigo Jose Nidoy, Jr. (PO1 Nidoy) and PO2 Marvin Santos (PO2 Santos) were assigned to monitor the area of Estrella Maris and San Antonio Subdivision, Barangay Maybunga, Pasig City. On May 1, 2015, at around 12:30 a.m., PO1 Nidoy and PO2 Santos proceeded to conduct surveillance on board a motorcycle. While cruising along Yakal Street, they noticed a man, later on identified as petitioner Pinga, around four to five meters away, who was playing with a *balisong*^[8] or fan knife. The officers approached Pinga who immediately hid the knife behind his back. PO1 Nidoy introduced himself as a police officer and questioned Pinga regarding his possession of the knife. Pinga responded that it was for self-defense. PO1 Nidoy asked Pinga to raise his hand, confiscated the knife, informed him that his act constituted the crime of illegal possession of a deadly weapon, and then informed him of his constitutional rights. PO1 Nidoy then frisked Pinga and felt a bulge in his right front pocket. PO1 Nidoy ordered Pinga to empty his pockets, thus, revealing ten (10) plastic sachets containing white crystalline substance. Upon seeing the sachets, PO1 Nidoy informed Pinga that he was committing the crime of illegal possession of drugs and again informed him of his constitutional rights. Immediately after this arrest, and in the presence of petitioner, PO1 Nidoy marked the knife; he also marked the ten (10) plastic sachets with "1RJN/DJ 05/01/2015" to "10RJN/DJ 05/01/2015" and his signature. PO2 Santos called over Barangay Captain Mario Concepcion (Brgy. Capt. Concepcion) of Maybunga to witness the inventory of the seized evidence at the place of the arrest. Both Brgy. Capt. Concepcion and Pinga signed the inventory. Pinga was then brought to the police station. Thereat, PO1 Nidoy showed the marked plastic sachets to the investigator, PO3 Nelson Cruz. The latter then prepared the request for drug test of petitioner, request for laboratory examination of the plastic sachets, and the chain of custody form. Subsequently, the police officers brought Pinga to Rizal Medical Center for his physical examination. Later, they proceeded to the Eastern Police District Crime Laboratory in Mandaluyong City where PO1 Nidoy turned over the plastic sachets to Police Chief Inspector Rhea Fe DC Alviar (PCI Alviar), the forensic chemist. After qualitative examination, the contents tested positive for methamphetamine hydrochloride, a dangerous drug. PCI Alviar then prepared and signed Physical Sciences Report No. D-247-15E,^[9] and resealed the specimen samples with masking tape and affixed her markings and signature thereon. The specimen remained in her custody until she brought the same to court for presentation.^[10]

In his defense, Pinga denied the charges against him, claiming instead, that he was inside his house with his wife, Theresa Janina R. Orbeta (Theresa), and one of his children when somebody knocked on their door. As Theresa was about to answer the same, their door was kicked down and six (6) to eight (8) men entered their home, informing them that it was a buy-bust operation. Both Pinga and Theresa were handcuffed. The police officers searched their house but found nothing illegal. They uncuffed Theresa but brought Pinga to the motorpool where he was asked to give them his automated teller machine (ATM) card. Pinga told them that he did not have one and that he had no money. The police officers got angry and told him that cases would be filed against him. He was then brought to the Maybunga barangay hall where he was presented to the barangay captain. PO1 Nidoy brought out a fan knife and plastic sachets, and the barangay captain signed a document. That was the first time Pinga saw the plastic sachets of *shabu* which was later used as evidence against him. He was then brought to Rizal Medical Center for medical examination and then to Mandaluyong City for a drug test. Afterwards, he was brought back to the motorpool where he was temporarily detained. Two days later, Pinga was

brought for inquest where he first learned of the charges against him.^[11]

In a Judgment^[12] dated February 28, 2017, the RTC found Pinga **guilty** beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for a period of twenty (20) years and one (1) day and to pay a fine in the amount of P400,000.00.^[13] The RTC found that Pinga was validly arrested while he was then committing a crime within view of the arresting officers. Likewise, the drugs were seized in a valid warrantless search incidental to a lawful arrest. The RTC further found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Pinga committed the crime of illegal possession of ten (10) plastic sachets containing methamphetamine hydrochloride, a dangerous drug, with a total amount of 6.53 grams, and that the chain of custody of the seized items had been substantially complied with. On the other hand, the RTC rejected Pinga's defense of denial against the overwhelming evidence of the prosecution.^[14]

On appeal^[15] to the CA, Pinga's conviction was **affirmed with modification** in a Decision^[16] dated August 28, 2018, wherein the penalty imposed was adjusted to twenty (20) years and one (1) day to life imprisonment.^[17] The CA upheld Pinga's arrest, as well as the subsequent search and seizure of the plastic sachets. Furthermore, it found that all the elements of the crime charged against Pinga were proven beyond reasonable doubt and that the integrity and evidentiary value of the seized items have been preserved due to the police officers' substantial compliance with the chain of custody rule.^[18]

Pinga's motion for reconsideration^[19] was denied in a Resolution^[20] dated February 12, 2019. Hence, this petition seeking the reversal of petitioner's conviction.

The Court's Ruling

The petition is meritorious.

At the outset, the Court affirms the findings of both the RTC and the CA which upheld the validity of Pinga's arrest, as well as the search and seizure of the plastic sachets incidental thereto.

While Section 2,^[21] Article III of the 1987 Constitution mandates that a search and seizure must be carried out by virtue of a judicial warrant predicated upon the existence of probable cause, there are exceptions thereto. One such recognized exception is a search incidental to a lawful arrest. In order to be valid, there must first be a lawful arrest before a search can be made - the process cannot be reversed.^[22] However, a lawful arrest may be effected with or without a warrant. An example of a valid warrantless arrest is when an accused is caught *in flagrante delicto* pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure.^[23] A valid *in flagrante delicto* arrest, on the other hand, requires the concurrence of two requisites: "(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."^[24]

As observed by both the RTC and the CA, at the time Pinga was arrested, he was committing a crime, *i.e.*, the illegal possession of a bladed weapon in violation of Presidential Decree No. 9, as amended, within the view and in the presence of both PO1 Nido and PO2 Santos. Having been caught *in flagrante delicto*, Pinga's arrest was lawful, thus, making the search incidental thereto valid. Consequently, the seized plastic sachets are admissible in evidence.

This notwithstanding, a judicious review of the records of the case reveals that there were unexplained lapses in complying with the witness requirement in the chain of custody rule which cast doubt on the integrity of the *corpus delicti* of the crime charged.

To convict an accused for the crime of Illegal Possession of Dangerous Drugs under RA 9165,^[25] 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.^[26] 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.^[27]

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 of the crime.^[28] 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.^[29]

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,^[30] a representative from the media **and** the Department of Justice (DOJ), and any elected public official;^[31] or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service^[32] (NPS) **or** the media.^[33] 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."^[34]

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.^[35] Nonetheless, 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.^[36] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for noncompliance.^[37] These considerations arise from the fact that police officers