

## SECOND DIVISION

[ G.R. No. 201293, June 19, 2019 ]

**JOEL A. LARGO, PETITIONER, V. PEOPLE OF THE PHILIPPINES  
RESPONDENT.**

### DECISION

**LAZARO-JAVIER, J.:**

#### THE CASE

This petition assails the following dispositions of the Court of Appeals in CA-G.R. CEB-CR No. 00940<sup>[1]</sup> entitled "*People of the Philippines v. Joel A. Largo*":

1. Decision<sup>[2]</sup> dated November 30, 2010 affirming petitioner's conviction in Criminal Case No. CBU-75585 for violation of Section 11, Article II of Republic Act 9165; and
2. Resolution<sup>[3]</sup> dated February 29, 2012 denying petitioner's motion for reconsideration.

#### THE PROCEEDINGS BEFORE THE TRIAL COURT

##### ***The Charge***

In Criminal Case No. CBU-75585, petitioner Joel A. Largo was charged with violation of Section 11, Article II of Republic Act 9165 (RA 9165) under the following Information, *viz*:

That on or about the 28<sup>th</sup> day of November 2005, at 1:00 o'clock in the afternoon in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control one (1) heat-sealed transparent plastic packet containing 0.05 gram of white crystalline substance locally known as "Shabu" containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>[4]</sup>

On arraignment, petitioner pleaded "not guilty". Trial ensued.

Barangay Tanods Vicente Bosque and Venancio Catalan of Brgy. Ermita, Cebu City testified for the prosecution. On the other hand, appellant Joel Largo and Celia Dalugdog<sup>[\*]</sup> testified for the defense.

##### ***The Prosecution's Evidence***

On November 28, 2005, around 1 o'clock in the afternoon, Barangay Tanods Bosque, Catalan, and three other barangay tanods were patrolling the Carbon Public

Market in Cebu City when a cargo handler informed them that people at the second floor of Unit 3 were engaged in a pot session.<sup>[5]</sup> When they arrived in the area, people who saw them scampered away. One of them ran toward Barangay Tanod Bosque. It was petitioner Joel A. Largo. When the latter realized he was heading toward a barangay tanod, he backed off. Then he flicked away a plastic sachet containing white crystalline substance. Barangay Tanod Bosque arrested him and retrieved the plastic sachet from the ground. He held on to the plastic sachet until they reached the police station.<sup>[6]</sup> There, he turned it over to Police Investigator SPO1 Romeo Abellana who marked it "JLA".

**Barangay Tanod Catalan** brought the plastic sachet to the PNP Crime Laboratory for examination. P/Sr. Insp. David Alexander Patriana who examined the contents of the plastic sachet confirmed that they tested positive for methamphetamine hydrochloride or "shabu", a dangerous drug.<sup>[7]</sup>

The prosecution presented in evidence the letter request for laboratory examination<sup>[8]</sup> and Chemistry Report No. D-1806-2005.<sup>[9]</sup>

### ***The Defense's Evidence***

**Petitioner** testified that on November 27, 2005 he was waiting for a jeepney ride in front of the University of San Jose Recolletos Bldg. when barangay tanods of Ermita, Cebu City accosted and picked him up. When he asked why he was being accosted, the barangay tanods replied that Barangay Captain Imok Rupinta of Ermita, Cebu City wanted to talk to him. They brought him to the barangay hall where he got detained. He was neither investigated nor informed of his constitutional rights. Worse, the supposed Barangay Captain Rupinta never arrived.

Around 8 o'clock in the evening of the same day, a certain Erik Larrubis y Ripe was also brought in and detained in the same cell. Like him, Erik did not know why the barangay tanods arrested and jailed him.

On the following day, Virgilio Cartilla y Carteciano of Mantalongon, Dalaguete, Cebu was also brought in and detained. All three of them were clueless why they were being detained in the same cell.

On November 28, 2005, around 2:30 in the afternoon, they were brought to the Police Station 5, M.C. Briones St., Cebu City supposedly for further investigation but the same did not take place.

In the afternoon of November 29, 2005, they were taken to the Office of the City Prosecutor of Capitol, Cebu City for inquest proceedings. Through a blotter report,<sup>[10]</sup> he came to know that they had been separately charged with violation of Section 11 of R.A. 9165 or illegal possession of dangerous drugs.<sup>[11]</sup>

**Celia Dalugdog**, the mother-in-law of petitioner's brother, testified that on November 27, 2005, petitioner asked permission to go home to Basak, Cebu City. He wanted to bring home milk for his child. On the following day, she learned of petitioner's arrest so she visited him in his detention cell.<sup>[12]</sup>

The defense presented the following documentary evidence: Resolution of Prosecutor Agan recommending the dismissal of the case;<sup>[13]</sup> Affidavit of Celia

Dalugdog;<sup>[14]</sup> Certification of Police Blotter regarding the arrest of Joel Largo;<sup>[15]</sup> and Counter-Affidavit of Joel Largo.<sup>[16]</sup>

### **The Trial Court's Decision**

By *Judgment* dated April 4, 2008,<sup>[17]</sup> the trial court found petitioner guilty as charged and sentenced him to twelve years and one day to fifteen years and fine of P350,000.00, *viz*:

WHEREFORE, the guilt of the accused duly proven beyond reasonable doubt, the Court sentences the accused to suffer an imprisonment ranging from twelve (12) years and one (1) day to fifteen (15) years and to pay Php 350,000.00 as fine.

The trial court gave full credence to the testimonies of Barangay Tanods Vicente Bosque and Venancio Catalan and held that although the chain-of-custody rule was not strictly observed, the integrity of the confiscated sachet of shabu was duly preserved, and its evidentiary value, remained intact.

Petitioner moved for reconsideration which the trial court denied.

### **The Appeal**

On appeal, petitioner faulted the trial court for finding him guilty of the offense charged despite the following alleged infirmities: (1) the prosecution dismally failed to establish the identity and chain of custody of the *corpus delicti*; (2) his warrantless arrest was invalid because it was not proved that he was caught *in flagrante delicto*; and (3) the testimony of Brgy. Tanod Bosque that on the same day petitioner was arrested, the former has altogether three successive warrantless arrests in Carbon Public Market with exactly 30-minute intervals.

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Roman G. Del Rosario and Associate Solicitor Ma. Felina C.B. Yu countered petitioner's warrantless arrest was valid in view of the urgent need for the arresting officers to promptly apprehend people engaged in illegal drug trade and illegal drug use. Consequently, the plastic sachet of dangerous drugs obtained in the course of the arrest was also admissible in evidence. More so considering that the defense did not present any evidence to show that the law enforcers were impelled by any ill motive to falsely implicate petitioner of illegal possession of dangerous drug.

### **The Court of Appeals' Ruling**

By Decision dated November 30, 2010, the Court of Appeals affirmed. It also denied petitioner's motion for reconsideration through Resolution dated February 29, 2012.

### **The Present Petition**

Petitioner now implores the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals.

He faults the Court of Appeals for **first**, admitting in evidence the confiscated dangerous drug despite the fact that it was obtained incidental to his invalid warrantless arrest and **second**, for disregarding the blatant breach of the chain of custody rule.

In refutation, the OSG essentially reiterate its arguments before the Court of Appeals.

### **Issues**

1. Was petitioner's warrantless arrest valid?
2. Was the chain of custody rule duly complied with?

### **Ruling**

On the first issue, we cannot sustain petitioner's challenge against his warrantless arrest and the consequent seizure of the dangerous drug. A warrantless arrest is not a jurisdictional defect and any objection thereto is deemed waived when the person arrested submits to arraignment without raising this objection through an appropriate motion to quash.<sup>[18]</sup>

Here, petitioner voluntarily submitted to the jurisdiction of the trial court, underwent arraignment and actively participated during the trial. Before arraignment and even during the entire proceedings before, petitioner never objected to the manner by which he got arrested. His belated objection for the first time on appeal may no longer be entertained.

We now proceed to the second issue: was the chain of custody rule complied with?

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.<sup>[19]</sup> The dangerous drug seized from the accused constitutes such *corpus delicti*. It is thus of utmost imperative that the prosecution be able to establish that the identity and integrity of the seized drug be duly preserved in order to support a verdict of conviction.<sup>[20]</sup> Verily, not only should the prosecution prove the fact of possession. It must also prove that the substance subject of illegal possession is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

The Information here alleged that the offense was committed on November 28, 2005. The governing law, therefore, is RA 9165, Section 21 (1), *viz*:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, *viz*:

- (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and

the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; 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;

XXXX XXXX

The chain of custody is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.<sup>[21]</sup>

**People v. Gayoso**<sup>[22]</sup> enumerated the four links comprising the chain of custody:

**First**, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

**Second**, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

**Third**, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

**Fourth**, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.<sup>[23]</sup>

We focus on the first, third and fourth links.

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.<sup>[24]</sup> Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.<sup>[25]</sup>

Here, Barangay Tanod Bosque admitted he did not mark the dangerous drug which he retrieved from the second floor of the Carbon Market, thus:

Q: Since you stated earlier that you were the one who picked up that plastic pack containing white substance after it was flicked by that person who was in possession of that plastic pack of white substance from the