



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 18, 2020 which reads as follows:

“G.R. No. 241969 – KITH CABIGQUEZ y REDONDO, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

After a careful review of the records of the instant case, the Court **REVERSES** and **SETS ASIDE** the Resolutions dated May 10, 2018¹ and August 15, 2018² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01823-MIN as the evidence against KITH CABIGQUEZ y REDONDO (Kith) is insufficient to sustain his conviction for violation of Sections 5 and 11, Article II, Republic Act (R.A.) No. 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,” as amended.

Anent the first issue on the denial of the CA of Kith’s Petition for Review on *Certiorari* under Rule 45³ (petition) based on his failure to file his appellant’s brief within the reglementary period, Section 8, Rule 124 of the Rules of Court provides that the CA may dismiss the petition if the appellant fails to file his brief within the period prescribed by the rules, **except where the appellant is represented by a counsel de officio.**⁴ The provision is clear and unambiguous. Section 8 provides for an exception in the dismissal of an appeal for failure to file the appellant’s brief, that is, where the

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¹ *Rollo*, pp. 68-69. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Walter S. Ong, concurring.

² *Id.* at 120-122.

³ *Id.* at 18-42.

⁴ RULES OF COURT, Rule 124, Sec. 8, par. 1:

SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.* — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, **except where the appellant is represented by a counsel de officio.** (Emphasis supplied)

appellant is represented by a counsel *de officio*.⁵ In the instant case, it has been clearly established by the defense that Kith has been represented by a counsel *de officio*, the Public Attorney's Office, from the inception of the case as he cannot afford a counsel *de parte*.⁶ Hence, the exception to the rule applies. More so in this case because Kith submitted his appellant's brief, albeit late and the defense raised meritorious grounds to warrant Kith's acquittal.

In this connection, the Court, in several cases, had set aside technicalities in the Rules in order to give way to justice and equity. The Court can overlook the short delay in the filing of pleading if strict compliance with the Rules would mean sacrificing justice to technicality. The imminence of a person being deprived unjustly of his liberty due to a procedural lapse of counsel is a strong and compelling reason to warrant suspension of the Rules.⁷ *Motu proprio* dismissals of appeals are thus not always called for. Although the right to appeal is a statutory, not a natural, right, it is an essential part of the judicial system and courts should proceed with caution so as not to deprive a party of this prerogative, but instead, afford every party-litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.⁸ More so must this be in criminal cases where, as here, the appellant is an indigent who could ill-afford the services of a counsel *de parte*.⁹

As succinctly held in *People v. Ramos*,¹⁰

If Ramos' appeal is denied due course, a person could be wrongfully imprisoned for life over a mere technicality. It is not contended that Ramos failed to perfect her appeal within the reglementary period; her counsel merely failed to file her appellant's brief within the period accorded to her.

We must remember that there is a distinction between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration. The latter simply results in the abandonment of

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⁵ *Masas v. People*, G.R. No. 177313, December 19, 2007, 541 SCRA 280, 284.

⁶ *Rollo*, p. 32.

⁷ *De Guzman v. People*, G.R. No. 167492, March 22, 2007, 518 SCRA 767, 772, citing *Alonzo v. Villamor*, 16 Phil. 315 (1910).

⁸ *Id.* at 773, citing *Moslars v. Court of Appeals (Third Division)*, G.R. No. 129744, June 26, 1998, 291 SCRA 440, 448.

⁹ *Id.*

¹⁰ GR No. 206906, July 25, 2016, 798 SCRA 164.

the appeal which can lead to its dismissal upon failure to move for its reconsideration. Considering that we suspend our own rules to exempt a particular case where the appellant failed to perfect its appeal within the reglementary period, we should grant more leeway to exempt a case from the stricture of procedural rules when the appellate court has already obtained jurisdiction.

We concede that it is upon the sound discretion of the CA to consider an appeal despite the failure to file an appellant's brief on time. However, we are not unfamiliar with the time-honored doctrine that procedural rules take a step back when it would subvert or frustrate the attainment of justice, especially when the life and liberty of the accused is at stake. Based on this consideration, we can consider this case as an exception given that the evidence on record fails to show that Ramos is guilty beyond reasonable doubt.¹¹

With regard to the second issue, as held in several cases involving dangerous drugs, such as *People v. Guzon*,¹² *People v. Tubera*,¹³ *People v. Ilagan*,¹⁴ *People v. Calates*,¹⁵ and *People v. Sarabia*,¹⁶ it is well-settled that the State bears not only the burden of proving the elements of the crime, but also of proving the *corpus delicti* or the body of the crime. In drugs cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. Thus, in order to obviate any doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁷

In relation to this, as held in a long line of cases, including *People v. Kamad*,¹⁸ *People v. Garcia*,¹⁹ *People v. Denoman*,²⁰ *People v. Omamos*,²¹ and *People v. Ubungen*,²² there are four (4) links in the chain of custody: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drugs seized by the apprehending officer

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¹¹ Id. at 171-172.

¹² G.R. No. 199901, October 9, 2013, 707 SCRA 384, 396.

¹³ G.R. No. 216941, June 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65306>>.

¹⁴ G.R. No. 227021, December 5, 2018, 888 SCRA 496, 510.

¹⁵ G.R. No. 214759, April 4, 2018, 860 SCRA 460, 469.

¹⁶ G.R. No. 243190, August 28, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65635>>.

¹⁷ *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369.

¹⁸ G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

¹⁹ G.R. No. 173480, February 25, 2009, 580 SCRA 259, 275-276.

²⁰ G.R. No. 171732, August 14, 2009, 596 SCRA 257, 272-275.

²¹ G.R. No. 223036, July 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65476>>.

²² G.R. No. 225497, July 23, 2018, 873 SCRA 172, 182.

to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.

As part of the chain of custody procedure, Section 21, Article II of R.A. No. 9165,²³ the applicable law at the time of the commission of the alleged crime, imposes upon the members of the buy-bust team to strictly comply with the following requirements: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.²⁴

In a plethora of cases which includes, *People v. Jimenez*,²⁵ *People v. Señeres, Jr.*,²⁶ *People v. Nabua*,²⁷ *People v. Doria*,²⁸ and *People v. Cadiante*,²⁹ the Court held that Section 21 is clear that the three (3) required witnesses should be physically present at the time of apprehension or immediately thereafter — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. At the time of the inventory, the presence of the three witnesses who will sign the inventory becomes indispensable. The buy-bust team has enough time and opportunity to bring with them, or immediately after the buy-bust

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²³ The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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[.]

²⁴ *People v. De Leon*, G.R. No. 214472, November 28, 2018, 887 SCRA 349, 363.

²⁵ G.R. No. 230721, October 15, 2018, 883 SCRA 263.

²⁶ G.R. No. 231008, November 5, 2018, 884 SCRA 172.

²⁷ G.R. No. 235785, August 14, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65642>>.

²⁸ G.R. No. 227854, October 9, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66044>>.

²⁹ G.R. No. 228255, June 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65167>>.

to summon, the said witnesses. The requirement for the presence of a DOJ representative, the media, and an elected public official at the time of the inventory is to insulate the inventory from any taint of illegitimacy or irregularity.³⁰ Failure of the arresting officers to justify the absence of any of the required witnesses, *i.e.*, the representative from the media or the DOJ and any elected official shall constitute as a substantial gap in the chain of custody.³¹

Another crucial link in the chain of custody rule is the marking of the seized drugs. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized to identify them as the subject matter of the prohibited sale. Marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference.³² The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, planting, or contamination of evidence.³³

The third link in the chain of custody is the delivery by the investigating officer of the illegal drugs to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.³⁴ The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.³⁵ The Court has acquitted an accused in several cases, such as *People v. Del Rosario*,³⁶ *People v. Siaton*,³⁷ *People v. Gayoso*,³⁸ *People v. Villarta*,³⁹ and *People v. Angeles*⁴⁰ for failure of the prosecution to prove the third and fourth links in the chain of custody.

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³⁰ *People v. Cadungog*, G.R. No. 229926, April 3, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65065>>.

³¹ *People v. Pantallano*, G.R. No. 233800, March 6, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65009>>.

³² *People v. Nuarin*, G.R. No. 188698, July 22, 2015, 763 SCRA 504, 511.

³³ *Id.*

³⁴ *People v. Del Rosario*, G.R. No. 235658, June 22, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66342>>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ G.R. No. 208353, July 4, 2016, 795 SCRA 478, 496-501.

³⁸ G.R. No. 206590, March 27, 2017, 821 SCRA 516, 530-531, 534.

³⁹ G.R. No. 217887, March 14, 2018, 859 SCRA 193, 226-227.

⁴⁰ G.R. No. 218947, June 20, 2018, 867 SCRA 281, 296-298.

Applying the foregoing settled jurisprudence in the instant case, based on the facts summarized in the Regional Trial Court (RTC) Judgment,⁴¹ the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Kith.

First, only Doctor Glorio Sajulga, a barangay kagawad and Jose Atienza, Jr., a media representative, were present during the inventory of the seized items at the place of seizure and arrest.⁴² There was no DOJ representative present as clearly required by the law.

Also, although the seized items were allegedly inventoried and marked at the place of seizure and arrest, there was no mention whether the buy-bust team took photographs of the same. To be sure, the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.⁴³

Second, based on the inconsistent testimonies of IA1 Joel L. Genita (IA1 Genita) and IO1 Albert Orellan (IO1 Orellan), it is unclear as to who between the two of them made the markings on the seized items. IA1 Genita, during his testimony, claimed that he was the one who marked the green plastic cellophane containing two (2) bundles of alleged marijuana with his initials "BB1" and "BB2" and he turned them over after marking to IO1 Orellan.⁴⁴ On the other hand, IO1 Orellan also expressly averred during his testimony that he was the one who marked the green plastic cellophane containing two (2) bundles of marijuana with markings "BB1" and "BB2."⁴⁵ Aside from this glaring inconsistency in the testimony of the two police officers, it is also well to point out that it was the green plastic cellphone which was the container of the two (2) bundles of marijuana that was marked and not the two (2) bundles of marijuana themselves. Given the anomalous marking of the seized items, suffice it to say that there was no marking of the seized items as required by the law.

Third, the third and fourth links in the chain of custody were likewise absent. No testimony was offered as to how each seized item

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⁴¹ *Rollo*, pp. 47-61. Penned by Assisting Judge Mirabeaus A. Undalok.

⁴² TSN, March 14, 2014, p. 31.

⁴³ *People v. Musor*, G.R. No. 231843, November 7, 2018, 885 SCRA 154, 175.

⁴⁴ TSN, November 27, 2014, pp. 22-25.

⁴⁵ TSN, March 14, 2014, pp. 26-27.

during the buy-bust operation was safely kept prior to their delivery to the Philippine National Police Crime Laboratory. There was also no mention of specific measures made to ensure the integrity and evidentiary of the seized items. Also, Forensic Chemist PCI Ellen Variacion Avanzado did not even testify how the seized items were safely kept after she conducted the examination and before the seized items were turned over to the RTC.⁴⁶

Lastly, while jurisprudence provides that strict compliance with the requirements of Section 21 is not always possible given the wide range of varying field conditions, the Implementing Rules and Regulations of R.A. No. 9165 nonetheless state 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 and custody over said items.” Thus, for this saving clause to apply, the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.⁴⁷

However, in the present case, the police officers failed to present any justifiable ground for their non-compliance. It must be emphasized that the buy-bust team had more than sufficient time to ensure the presence of all the required witnesses as they had one (1) day to prepare for the buy-bust operation from the moment they received the tip from IO2 Pimentel.⁴⁸ Neither did the police officers nor the prosecution – during the trial – offer any explanation for their other deviations from the law. Thus, the police officers cannot hide behind the saving clause.

All told, these glaring lapses in the chain of custody open the door to the possibility that the seized drugs had been tampered, altered, or substituted. In fact, any reasonable mind would ask the obvious question of whether the drugs allegedly confiscated from the accused-appellants are still the very same drugs turned over to the laboratory and submitted to the court. The integrity and evidentiary value of the seized items were not preserved by the buy-bust team. Thus, the prosecution failed to prove the *corpus delicti* of the offenses charged due to the multiple unexplained breaches of procedure

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⁴⁶ *Rollo*, p. 39.

⁴⁷ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

⁴⁸ *Rollo*, pp. 49-50. The full name of IO2 Pimentel was not mentioned in the *rollo*, CA *rollo* and records.

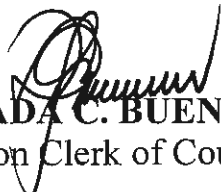
committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of Kith.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Resolutions dated May 10, 2018 and August 15, 2018 of the Court of Appeals, in CA-G.R. CR-HC No. 01823-MIN are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner **KITH CABIGQUEZ y REDONDO** is **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director of Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.” *Carandang, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *sk*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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