

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EVELYN ABADINES CUICO,
Petitioner,

G.R. No. 232293

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

PEOPLE OF THE
PHILIPPINES,
Respondent.

Promulgated:

DEC 09 2020

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) filed by the petitioner Evelyn Abadines Cuico (Cuico) assailing the Decision² dated October 28, 2016 and Resolution³ dated May 15, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 01927, which affirmed the Decision⁴ dated April 27, 2012 of Branch 8, Regional Trial Court of Cebu City (RTC) in Criminal Case No. CBU-92807, finding Cuico guilty beyond reasonable doubt of violating Section 12, Article II of Republic Act No. 9165 (RA 9165).

The Facts

An Information was filed against Cuico for violating Section 12 of RA 9165, the accusatory portion of which reads:

¹ *Rollo*, pp. 10-32.

² *Id.* at 84-94. Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez concurring.

³ *Id.* at 103-104.

⁴ *Id.* at 61-66. Penned by Presiding Judge Macaundas M. Hadjirasul.

That on or about the 15th day of June, 2011, at about 1:05 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose did then and there have in her possession and her control twenty four (24) disposable syringes and three (3) empty ampoules of Nubain used for injecting NUBAIN which instruments and/or equipments (*sic*) fit or intended for injecting nubain, otherwise known as NALBUPHINE HYDROCHLORIDE, now classified as dangerous drug per Dangerous Drug Board Resolution No. 1, Series of 2010.

CONTRARY TO LAW.⁵

When arraigned, Cuico pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

The prosecution's version, as summarized by the CA, is as follows:

According to prosecution witness PO3 Edmund Tiempo of the Cebu City Police Office, Station 1, on June 15, 2011, at around 1:05 A.M., their team, which was composed of SPO1 Erwin Ferrer, PO2 Marvin Sanson, and the witness himself, conducted a "foot patrol" in Barangay Kamagayan, Cebu City in connection with the report of rampant illegal activities in said area.

When they were in the interior part of Barangay Kamagayan, they saw a group of men coming out from a small shanty made of light materials. At that point, PO3 Tiempo, who was then standing near the open door of said shanty, saw accused-appellant inside the shanty holding a disposable syringe used for "injecting *nubain*." He knew said fact on account of his experience, being in the police service for fifteen (15) years, and having previously made more than ten (10) arrests involving illegal possession of drug paraphernalia in the same area. Thus, they accosted accused-appellant and introduced themselves as police officers.

Inside the shanty, they were able to seize twenty three (23) more pieces of disposable syringes and three (3) pieces of empty ampoules of *nubain* on a table. Then, PO3 Tiempo marked the disposable syringe, together with the additional items recovered on the table, with the initials "E.C.-1 06/15/11" up to "E.C.-27 06/15/11."

Afterwards, they proceeded to the police station wherein PO3 Tiempo made an inventory of said items, signed by SPO1 Ferrer and one Milford Trasmonte, an official of Barangay Parian, Cebu City. The incident was entered in the police blotter, and PO2 Sanson took photographs of the seized items in the presence of PO3 Tiempo and accused-appellant. PO3 Tiempo kept the seized items inside his locker and, during the trial, he presented them before the Trial Court, and identified them as the same items seized from accused-appellant.⁶

⁵ Id. at 85.

⁶ Id. at 85-86.



On the other hand, the evidence of the defense is based on the lone testimony of Cuico, whose testimony was likewise summarized by the CA as follows:

Accused-appellant raised the defenses of denial and frame-up. According to her, on June 15, 2011, at around 1:05 A.M. in Barangay Kamagayan, she was paid to attend to the video “karera” machine at her friend’s house, which was situated at a distance of three (3) houses from hers.

While inside her friend’s house, three (3) persons, whom accused-appellant did not know, came inside, introduced themselves as policemen, and asked if she was the video *karera* attendant. After answering in the affirmative, the policemen directed her to call the owner of the machine. However, she did not know the owner thereof. The police officers then brought accused-appellant to the police station.⁷

Ruling of the RTC

After trial on the merits, in its Decision⁸ dated April 27, 2012, the RTC convicted Cuico of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, finding the accused, EVELYN ABADINES CUICO, guilty beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act), she is hereby sentenced to suffer the penalty of imprisonment for a period of ONE (1) YEAR as minimum to TWO (2) YEARS as MAXIMUM, and to pay a FINE in the amount of P20,000.00.

X X X X

SO ORDERED.⁹

In adjudging Cuico guilty, the RTC relied on the testimony of PO3 Edmund Tiempo (PO3 Tiempo) as it found the same to be natural, reasonable, and probable.¹⁰ Moreover, the RTC noted that nothing has been shown to have motivated PO3 Tiempo to make up a story or falsely implicate Cuico of any crime. It found PO3 Tiempo’s testimony of more weight and substance as compared to Cuico’s whose defense of denial was held to be inherently weak.¹¹ The RTC added:

The Court also agrees with PO[3] Tiempo and so holds that the subject syringes were used and intended to be used for injection of Nalbuphine Hydrochloride, a dangerous drug. Seven (7) of those were removed from their seals while the rest (17 pieces) were still sealed. Of

⁷ Id. at 86-87.

⁸ Supra note 4.

⁹ *Rollo*, p. 66.

¹⁰ Id. at 63.

¹¹ Id.

course, syringes can also be used for the injection of legitimate medicines but in this case, the possession of the accused of the subject syringes does not appear to be for any lawful purpose.¹²

Moreover, the RTC explained that it was convicting Cuico for there was no reason to doubt the identities of the syringes and empty ampoules of Nalbuphine Hydrochloride presented by the prosecution as the ones which were recovered from her.¹³ The RTC further opined that the failure of the police officers to subject the seized items to forensic examination was not a bar to Cuico's conviction. The RTC explained:

Considering that the ampoules of Nubain were empty when recovered according to PO[3] Tiempo, a condition which can be very conspicuous from the ampoules themselves compared to other drug paraphernalia where the presence or absence of traces of illegal substances may not be visible to the naked eye, **there seems to be no need to submit them and the syringes to a laboratory examination.** Besides, as already mentioned above, seventeen (17) pieces of the syringes were still in their seals.

In other words, the foregoing evidence of the prosecution proves substantial compliance with the requirements of the chain [of] custody rule and in the preservation and disposition of drug paraphernalia.¹⁴ (Emphasis supplied)

Cuico was thus convicted by the RTC. Aggrieved, she filed an appeal to the CA.

Ruling of the CA

In the questioned Decision¹⁵ dated October 28, 2016, the CA affirmed the RTC's conviction of Cuico. It elucidated:

For a successful prosecution of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, R.A. No. 9165, the following elements must be established: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

In the instant case, the prosecution has sufficiently established that accused-appellant was in possession of drugs paraphernalia consisting of twenty-four (24) disposable syringes, and three empty ampoules of *nubain*, and that the latter was not authorized by law to do so.¹⁶

¹² Id. at 63-64.

¹³ Id. at 64-65.

¹⁴ Id. at 65.

¹⁵ Supra note 2.

¹⁶ *Rollo*, p. 89.

The CA further explained that the integrity and evidentiary value of the drug paraphernalia were dutifully preserved despite non-compliance with Section 21, RA 9165. The CA thus affirmed her conviction.

Cuico sought reconsideration of the said Decision, but the same was denied by the CA in a Resolution¹⁷ dated May 15, 2017.

Hence, the instant petition.

Issue

For resolution of the Court is the issue of whether the CA erred in affirming the conviction of Cuico.

The Court's Ruling

The petition is meritorious. The prosecution was unable to prove Cuico's guilt beyond reasonable doubt.

At the outset, it bears emphasis that "the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent."¹⁸ This presumption continues although the accused had been convicted in the trial court, as long as such conviction is still pending appeal. As the Court explained in *Polangcos v. People*:¹⁹

Article III, Section 14 (2) of the 1987 Constitution provides that every accused is presumed innocent unless his guilt is proven beyond reasonable doubt. It is "a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense."

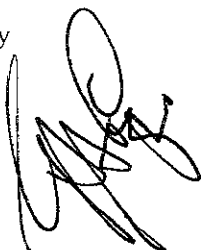
This presumption in favor of the accused remains until the judgment of conviction becomes final and executory. Borrowing the words of the Court in *Mangubat, et al. v. Sandiganbayan, et al.*, "[u]ntil a promulgation of final conviction is made, this constitutional mandate prevails." **Hence, even if a judgment of conviction exists, as long as the same remains pending appeal, the accused is still presumed to be innocent until his guilt is proved beyond reasonable doubt.** Thus, in *People v. Mingming*, the Court outlined what the prosecution must do to hurdle the presumption and secure a conviction:

First, the accused enjoys the constitutional presumption of innocence until final conviction; conviction

¹⁷ Id. at 103-104.

¹⁸ *Polangcos v. People*, G.R. No. 239866, September 11, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65740>>.

¹⁹ Id.



requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.

Second, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense. (Emphasis supplied)

In particular, in cases involving dangerous drugs, in order to hurdle the constitutional presumption of innocence, the prosecution has the burden to prove compliance with the chain of custody requirements under Section 21, Article II of RA 9165, to wit: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (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 of the same; and **(3) the seized drugs or drug paraphernalia must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.**²⁰

Strict compliance with the foregoing requirements is necessary in protecting the integrity and identity of the *corpus delicti*, **without which the crime of the illegal sale, or illegal possession of dangerous drugs or drug paraphernalia cannot be proved beyond reasonable doubt.**²¹ In other words, non-compliance with Section 21 is tantamount to a failure to establish an essential element of the crime, and will therefore engender the acquittal of the accused.²²

Thus, in the cases of *People v. Jimenez*,²³ *People v. Malazo*,²⁴ *People v. Pantallano*,²⁵ *People v. Sampa*,²⁶ and *People v. Claudel*,²⁷ the Court acquitted the respective accused therein, on reasonable doubt, because the police officers failed to comply with all of the foregoing requirements of Section 21. Following the foregoing cases, Cuico should perforce be acquitted because the police officers in this case failed to comply with the mandatory requirements of Section 21.

Specifically, **the police officers should have submitted the drug paraphernalia for forensic examination**, and the CA erred in saying otherwise. The CA explained:

²⁰ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018, 888 SCRA 604, 618-619.

²¹ See *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487.

²² *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 499.

²³ G.R. No. 230721, October 15, 2018, 883 SCRA 263.

²⁴ G.R. No. 223713, January 7, 2019, 893 SCRA 57.

²⁵ G.R. No. 233800, March 6, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65009>>.

²⁶ G.R. No. 242160, July 8, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65516>>.

²⁷ G.R. No. 219852, April 3, 2019, 90 SCRA 1.

On the non-submission of the emptied syringes and ampules of *nubain* for laboratory examination, PO3 Tiempo adequately explained the use of said items as drug paraphernalia for injecting *nubain*. Hence there is no need to further subject them to laboratory examination in order to find traces of any illegal substance as the possession itself of said items is the punishable act.²⁸

While it is true that Section 12 of RA 9165 punishes the possession of drug paraphernalia, it does not mean that forensic testing may completely be dispensed with. Section 11 of RA 9165, for instance, also punishes the possession of dangerous drugs, but it must first be proven that what the accused possessed was indeed dangerous drugs. In prosecutions involving Section 12 of RA 9165, forensic testing should thus still be done, especially in cases like the present case where the allegation is that one of the syringes was **used** to inject *nubain* and there were also confiscated empty bottles which could be confirmed to have contained *nubain* through forensic testing. This must be so, for every criminal charge must be proved by the prosecution **beyond reasonable doubt**. The fact that the confiscated items *may* be used as drug paraphernalia is not enough to establish a person's guilt and overcome the presumption of innocence. In this connection, Section 21(2) of RA 9165 is unequivocal in its requirement:

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, **as well as instruments/paraphernalia and/or laboratory equipment**, the same **shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination**. (Emphasis and underscoring supplied)

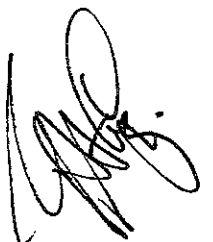
The Implementing Rules and Regulations of RA 9165 is just as clear:

SECTION 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:

x x x x

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, **as well as instruments/paraphernalia and/or laboratory equipment**, the same **shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination**; (Emphasis and underscoring supplied)

²⁸ Rollo, p. 93.



In *People v. Taboy*,²⁹ one of the reasons cited by the Court in ruling that the charge of illegal possession of drug paraphernalia could not prosper was that “there was no indication that [the police officer] properly turned over the alleged paraphernalia to the crime laboratory, as the request for laboratory examination pertained only to the seized drug from accused-appellant.”³⁰ Similarly, in *Derilo v. People*,³¹ the Court ratiocinated:

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of RA No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia *fit or intended* for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

In the present case, there is no evidence showing that the aluminum foil, tube, and lighters found in the petitioner's house were fit or intended for introducing any dangerous drug into the body. *The prosecution did not bother to show that there were traces of shabu on any of these alleged drug paraphernalia. In fact, it appears that the only evidence that the prosecution offered to prove this charge is the existence of the seized items by themselves.*

For the prosecution's failure to prove that the items seized were intended to be used as drug paraphernalia, the petitioner must also be acquitted of the charge under Section 12 of RA No. 9165. Indeed, we cannot convict the petitioner for possession of drug paraphernalia when it was not proven beyond reasonable doubt that these items were used or intended to be used as drug paraphernalia.³² (Emphasis and underscoring in the original; italics supplied)

To stress, while the present case involves mere possession of drug paraphernalia and not dangerous drugs, the quantum of evidence required remains the same, *i.e.*, proof beyond reasonable doubt. The requirement of testing is, as it should be, mandatory for prosecutions under Section 12 mostly involve the possession of ordinary household items such as foils, lighters, or in this case, syringes. Without a laboratory examination of the bottles and syringes confirming traces of illegal substances, there exists sufficient and reasonable ground to believe, consistent with the presumption of innocence, that the confiscated items were possessed for lawful purposes.

In light of the foregoing, the Court acquits Cuico of the charge against her.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated October 28, 2016 and Resolution dated May 15, 2017 of the Court of Appeals in CA-G.R. CEB-CR No. 01927 are hereby **REVERSED** and **SET ASIDE**. Let an entry of final judgment be issued immediately.

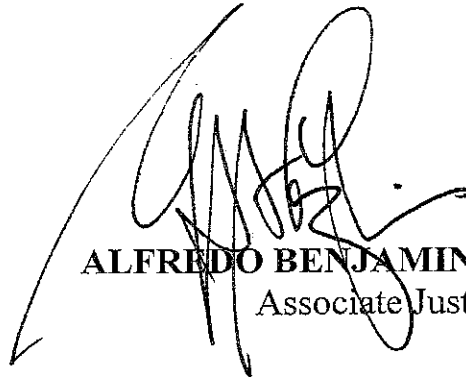
²⁹ G.R. No. 223515, June 25, 2018, 868 SCRA 82.

³⁰ Id. at 98.

³¹ G.R. No. 190466, April 18, 2016, 789 SCRA 517.

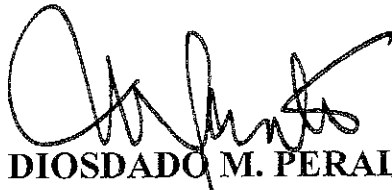
³² Id. at 532.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

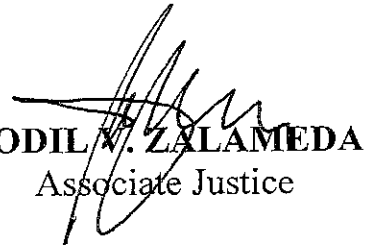
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ROMARI B. CARANDANG
Associate Justice



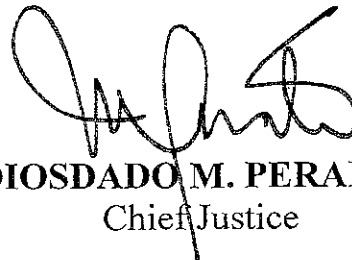
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

