

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNABE M. BARTOLINI, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Before Us is an Appeal[1] filed by accused-appellant Bartolini assailing the Judgment[2] of Branch 25, Regional Trial Court (RTC), Cagayan de Oro City, convicting him for Violation of Section 5, Article II of Republic Act No. 9165 otherwise known as the Dangerous Drugs Act of 2002, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the Constitutional presumption of innocence of accused having been overcome by substantial evidence beyond reasonable doubt, this Court finds accused BERNABE M. BARTOLINI, "guilty" beyond reasonable doubt for Violation of Section 5, Article II of R.A. 9165 and without any aggravating nor mitigating circumstance, hereby sentences accused to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

Accused is credited in the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The twenty-six (26) pieces of white rolled Marijuana sticks are forfeited in favor of the government to be dispensed in accordance with law.

SO ORDERED.

The facts of the case are as follows:

Version of the Prosecution[3]

Sometime on June 12, 2004, the Provincial Anti-Illegal Drugs Special Operation Task Unit (PAID-SOTU) of Misamis, Oriental conducted a test-buy operation and were able to buy, using a decoy, two (2) marijuana sticks from appellant Bartolini. The following day, a buy-bust operation was conducted but failed because Bartolini was nowhere in the area.

On June 22, 2004 at around 7:00 o'clock in the evening, a buy-bust operation was conducted against appellant Bartolini. The buy-bust team was composed of SPO4 Lorenzo Larot as team leader, SPO3 Wilfred Saquilayan, PO3 Arthur Catalan, PO3 Juancho Dizon, PO2 Roel Sereno, Barangay Kagawad Leonardo Abenque and their decoy. The members, except the decoy, were inside a store pretending to be customers.

The decoy was about two (2) meters outside the store. A few minutes later, Bartolini approached the decoy. SPO4 Lorenzo Larot (Larot) saw the decoy show the marked money to Bartolini and the latter went to his house. When Bartolini got back, he gave the decoy twenty-six (26) sticks of marijuana. They then saw the decoy place his white towel on his shoulder, the pre-arranged signal that the transaction took place. Immediately, the team rushed to Bartolini and arrested him. The team recovered the marked money from Bartolini and 3 stalks of marijuana.

The team together with Bartolini went to the Tagoloan Police Station where the Certificate of Inventory was made which was signed by Larot, Bartolini and the Barangay Kagawad.

Larot then prepared the request for: (1) laboratory examination for the 26 sticks and 3 stalks of marijuana; (2) drug test of Bartolini; and (3) test for ultra-violet radiation of the marked money and the body of Bartolini. The results reveal that: (1) the sticks were marijuana; (2) Bartolini tested positive for marijuana; (3) the marked money and the hands of Bartolini were positive for bright green ultra-violet fluorescent powder.

Consequently, an Information for violation of Section 5 of R.A. 9165 was filed against Bartolini, to wit:

That on or about the 22[nd] day of June 2004 at about 7:20 o'clock in the evening, more or less, at Barangay Sugbongcogon, Municipality of Tagoloan, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess and to sell any dangerous drugs, knowingly, willfully and feloniously did then and there sell and convey to a third person twenty-six (26) pieces of white rolled Marijuana sticks, having a total weight of 2.2 grams, which when examined gave positive result to the test of the presence of Marijuana, a dangerous drug.

Version of the Defense[4]

On June 22, 2004 at around 7:00 o'clock in the evening, Bartolini was on his way to his house when he met two (2) acquaintances, whom he asked about the requirements for a job at Swift Processing Plant. During the conversation, two (2) persons walked towards them and upon reaching them, the two (2) persons held his right hand and put him under arrest. The two persons, he later learned, were Larot and Dizon.

Dizon asked him if he was Roger Patok and insisted that he is Roger Patok. They then asked him where his house was. They went to his house and searched and ransacked it. He saw Larot pull something from his pocket and place a white cellophane on the stove of his kitchen.

He was then brought to the highway where he was handcuffed and brought to the police station. At the police station he was made to hold money bills. He was then brought to Patag where he was ordered to urinate.

He strongly denies the accusation against him and contends that the buy-bust operation never happened and that he is a victim of "frame-up" by the police.

The RTC convicted Bartolini. Aggrieved, he filed the instant appeal and raised following error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSES CHARGED NOTWITHSTANDING (sic) THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Our Ruling

The appeal is without merit.

Bartolini argues that: (1) the corpus delicti of the offense and the chain of custody were not established; and (2) the prosecution failed to comply with Section 21(1) of R.A. 9165.

"The elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.[5]" "The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself.[6]"

In the instant case, Larot testified on the following: (1) he was part of the buy-bust team[7]; (2) he saw, but did

not hear, the transaction taking place from his position inside the store[8]; (3) he saw their decoy give the marked money to Bartolini and also saw Bartolini give the marijuana to their decoy[9]; (4) he was one of the arresting officers[10]; (5) he prepared the inventory at the Police Station[11]; (6) he prepared the laboratory request on the marijuana, marked money and the body of the accused[12]; (7) he identified the marijuana in court[13]; (8) he identified the accused in court[14].

Laboratory examination results show that: (1) the specimens submitted tested positive for the presence of marijuana[15]; (2) the urine of the Bartolini gave a positive result for marijuana[16]; (3) the right hand of Bartolini and the marked money tested positive for the presence of bright green fluorescent powder[17].

Clearly, the elements for illegal sale of drugs are present in the instant case.

Anent the allegation of failure to strictly comply with the procedure laid down by law, the Supreme Court once held[18]:

As recently highlighted in *People v. Cortez* and *People v. Lazaro, Jr.*, RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that what is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

In the instant case, the following are also clear: (1) the arrest was made on June 22, 2004; (2) at the Police Station, a Certificate of Inventory was prepared by Larot which was signed by Larot, Bartolini and the Barangay Kagawad[19]; (3) the laboratory request was prepared and delivered by Larot to the crime laboratory on the same day[20]; and (4) the request clearly indicated the markings made by Larot on the specimens delivered for examination[21].

There is nothing to indicate that the integrity and evidentiary value of the seized items have been compromised. And "unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered or meddled with, the presumptions that the integrity of such evidence had been preserved and that the police officers who handled the seized drugs had discharged their duties properly and with regularity remain.[22]" The burden to prove otherwise is with Bartolini and he failed to do so.

"Well-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath – all of which are useful for an accurate determination of a witness' honesty and sincerity.[23]"

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court is AFFIRMED.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

- [1] Rollo, pp. 56-73
- [2] Rollo, pp. 75-78
- [3] Rollo, pp. 92-108 and TSN, May 11, 2005, pp. 2-24
- [4] Rollo, pp. 54-73 and TSN, July 13, 2006, pp. 1-15
- [5] People v. Manlangit, G.R. No. 189806, January 12, 2010 citing People v. Macatingag
- [6] People v. Climaco, G.R. No. 199403, June 13, 2012
- [7] TSN, May 11, 2005, p. 5
- [8] TSN, May 11, 2005, p. 14
- [9] TSN, May 11, 2005, pp. 7 and 14
- [10] TSN, May 11, 2005, p. 7
- [11] TSN, May 11, 2005, p. 8
- [12] TSN, May 11, 2005, p. 9
- [13] TSN, May 11, 2005, p. 11
- [14] TSN, May 11, 2005, pp. 8-9
- [15] Records, p. 164
- [16] Records, p. 165
- [17] Records, p. 166
- [18] People v. Cardenas, G.R. No. 190342, March 21, 2012
- [19] Records, p. 167
- [20] Records, p. 163
- [21] Records, p. 163
- [22] People v. Manalao, G.R. No. 187496, February 6, 2013
- [23] Lim v. San and Lo, G.R. No. 159723, September 9, 2004

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