

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE FRANCISCO Y PANAG, ACCUSED-APPELLANT.

Ponente: SADANG, J.

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### SADANG, J.:

Accused-appellant Jose Francisco Y Panag (hereafter, accused) appeals from the Decision,[1] dated January 6, 2011, of the Regional Trial Court (RTC) of Dagupan City, Branch 42 in Criminal Case Nos. 2007-0175-D and 2007-0176-D.

Records show that accused was indicted for violation of Section 5, Art. II of R.A. No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002, in two (2) Informations, both dated March 12, 2007, that read thus:

Crim. Case No. 07-0175-D

That on or about the 10[th] day of March 2007, at 1:00 o'clock in the p.m., in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE FRANCISCO Y PANAG, did then and there, willfully, unlawfully and criminally, sell and deliver to PO1 Romulo Lavarias, a member of the PNP, Dagupan City Police Station who acted as poseur buyer, dried marijuana fruiting tops contained in two hundred ten (210) heat-sealed plastic sachets, weighing more or less 75.8 grams, without authority to do so.

Contrary to Article II, Section 5, RA 9165.[2]

Crim. Case No. 07-0176-D

That on or about the 10[th] day of March 2007, at 10:00 o'clock in the a.m., in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE FRANCISCO Y PANAG, did then and there, willfully, unlawfully and criminally, sell and deliver to a customer dried marijuana leaves contained in ten (10) heat-sealed plastic sachet (sic), weighing more or less 3 grams, without authority to do so.

Contrary to Article II, Section 5, RA 9165.[3]

At the arraignment on May 2, 2007, accused, assisted by counsel de officio Atty. Glenn Lumanlan, entered not guilty pleas to both charges; hence, pre-trial and trial ensued.

The prosecution's case, per the testimonies of PO1 Romulo Lavariaz, Jr. and P/Inspector Myrna C. Malojo, is as follows: At around 10 AM of March 10, 2007, during a test-buy operation, a police asset was able to purchase from accused marijuana leaves weighing 8.6 grams using a P100.00 bill marked "LSL." [4] This prompted the police to form a buy-bust team composed of P/Insp. Amado Cariño, PO1 Romulo B. Lavariaz, Jr. and P/Insp. Leo Llamas to operate against accused. Lavariaz was designated as the poseur-buyer. At around 1 PM, after a pre-operation conference, the team proceeded to the target area at PNR site, Dagupan City. Upon seeing accused in front of his house Lavariaz approached and asked if he could give him marijuana. He handed to the accused a P100 bill marked with the initials "LSL." [5] Accused accepted the money and told Lavariaz to wait as he went

inside his house. On his return, accused gave Lavariaz 10 heat-sealed plastic sachets containing dried marijuana leaves weighing 10.6 grams. Lavariaz then made a missed-call to the team members who closed in on accused. Lavariaz introduced himself as a police officer, arrested and frisked accused and recovered from him the test-buy and buy-bust P100.00 bills as well as 200 plastic sachets of suspected marijuana leaves.6 Lavariaz informed accused of his constitutional rights and wrote a confiscation receipt[7] at the place of arrest.[8] Lavariaz then put the markings "RBL-1" to "RBL-10" on the 10 plastic sachets containing the marijuana that he bought from accused.[9] The team members proceeded to the Dagupan Police Station bringing with them the accused and the seized items. The desk officer recorded the arrest in the police blotter and the duty investigator prepared the PDEA information of Arrest[10] and the Letter Request[11] for forensic examination. Thereafter, the specimens were delivered by Lavariaz to P/Insp./Forensic Chemist Malojo at 8 AM on March 12, 2007.[12] On the same day, P/Insp. Malojo, examined the specimens and issued her Chemistry Report No. D-40-071[13] with the finding that the subject specimens were positive for marijuana. According to Malojo, the specimens were subjected to qualitative examination composed of the physical examination, chemical examination and a confirmatory test.

Accused Jose Francisco and his nephew, Jerry Servillon, testified in his defense, thus: Between 12 noon to 1 PM, accused was in front of his house at Mayombo watching a game of pool being played by Jerry, Pupung Diaz and Jay Servillon when ten men in civilian clothes arrived. They introduced themselves as policemen and arrested accused without presenting a warrant of arrest and thereupon searched the house of accused without a search warrant. At the police station, he learned that the men who arrested him were police officers Lavariaz, Molina, Mendiones and Antipolo. Accused denied that he sold the ten (10) heat-sealed plastic sachets containing marijuana to the police. He also denied that the 210 plastic sachets containing dried marijuana fruiting tops were found in his possession.

On January 6, 2011, the trial court rendered its Decision[14] the fallo of which reads:

WHEREFORE, judgment is hereby rendered finding the accused JOSE FRANCISCO Y Panag GUILTY beyond reasonable doubt of the crime of selling marijuana dried leaves and sentencing him to suffer the penalty of life imprisonment and a fine of P500,000.00 which is imposed for violation of Sec. 5, Art. II of R.A. 9165. The prohibited marijuana dried leaves shall be disposed of in accordance with law.

SO ORDERED.

Accused filed a Notice of Appeal[15] which was given due course in the Order[16] dated February 3, 2011.

Accused raises this assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

### Ruling

It must be noted that although the accused was charged in two (2) separate informations, the trial court did not render separate judgments thereon but simply found accused guilty beyond reasonable doubt of violation of Section 5, Art II of R.A. 9165. The trial court did not consider in its decision the 200 heat-sealed plastic sachets containing marijuana dried leaves because these were found in the possession of the accused after the buy-bust operation and the informations do not charge illegal possession of dangerous drugs. Also, the trial court did not rule on the alleged sale of marijuana contained in 10 sachets as alleged in Crim. Case No. 07-0176-D. This is to be expected because the prosecution did not present the police asset who had allegedly bought the marijuana from the accused during a test-buy. Nonetheless, the trial court found that the prosecution was able to establish the sale between the poseur-buyer and the accused of marijuana leaves weighing 10.6 grams which were contained in 10

heat-sealed plastic sachets. It appears that the marijuana contained in the 10 plastic sachets were added to the 200 found in the possession of the accused, thus, the total sachets alleged in the Information in Crim. Case No. 07-0175-D is 210.

In cases involving sale of dangerous drugs, the prosecution must prove: 1) the identities of the buyer and seller, the object, and the consideration; and 2) the delivery of the thing sold and the payment therefor.[17] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale had actually taken place, coupled with the presentation in court of evidence of the corpus delicti.[18] The commission of illegal sale merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated.[19]

In this appeal, accused contends that the apprehending officers did not comply with Section 21 of RA No. 9165. He points out that the photographs testified to by Lavariaz merely depicted the barangay kagawad, the accused and the marked money. He also states that there was no physical inventory of the specimens seized and the Confiscation Receipt did not indicate the number of sachets allegedly seized from him. The Office of the Solicitor General (OSG) counters that non-compliance with Section 21 of RA No. 9165 did not render accused's arrest illegal and the seized items inadmissible and that there was substantial compliance with the law.

Section 21 of RA 9165 states:

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:

(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;

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Examination of the confiscation receipt[20] shows that it lists only the 200 plastic sachets weighing 133.2 grams which were found in the possession of the accused after the buy-bust operation and the two P100.00 bills used in the test-buy and buy-bust operation. The marijuana leaves contained in the 10 heat-sealed plastic sachets which were the objects of the sale between the poseur-buyer and the accused were not included in the receipt. However, contrary to the contention of accused, the seized items were photographed in the presence of the accused and a barangay kagawad. In fact, accused is in the photograph.[21]

In any case, even assuming that the requirements under Section 21, R.A. 9165 were not complied it is well-settled that such omission does not necessarily render the arrest of the accused illegal or the items seized from him inadmissible.[22] What is crucial is the proper preservation of the integrity and evidentiary value of the seized drugs as that would be significant in the determination of the guilt or innocence of the accused.[23]

As to the integrity of the seized drugs, accused contends that the prosecution failed to establish the chain of custody because the persons who touched the specimens did not testify in court and describe how they received

the specimens and the conditions thereof while in their custody and when they delivered them to the next person in the chain. The contention is untenable.

It bears to stress that the dangerous drug itself constitutes the very corpus delicti of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.[24]

To establish the guilt of the accused beyond reasonable doubt in dangerous drugs cases it is important that the substance illegally possessed or sold in the first place be the same substance offered in court as exhibit. This chain of custody requirement ensures that unnecessary doubts are removed concerning the identity of the evidence. When the identity of the dangerous drug recovered from the accused is not the same dangerous drug presented to the forensic chemist for review and examination, nor the same dangerous drug presented to the court, the identity of the dangerous drug is not preserved due to the broken chain of custody. With this, an element in the criminal cases for illegal sale and illegal possession of dangerous drugs, the corpus delicti, is not proven, and the accused must then be acquitted based on reasonable doubt.[25]

It has been ruled that the prosecution should establish the following links in that chain of custody of the confiscated items: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[26]

In this case, the evidence shows that there were only two persons who handled and touched the specimens in question. The first was PO1 Lavariaz. He was the poseur-buyer and the officer who arrested the accused and inscribed the markings "RBL-1" to "RBL-10" on the ten (10) sachets containing the marijuana leaves that was handed to him by the accused during the buy-bust operation.[27] The second person was P/Insp. Myrna Castro Malojo. She was the forensic chemist to whom Lavariaz delivered the specimens at 0800H on 12 March 2007 as shown by the stamp mark on the Memorandum[28] of P/Supt. Edgar Orduna Basbas addressed to the PNP Crime Laboratory requesting for laboratory examination of the specimens enumerated therein. Included in the memorandum are the specimens marked "RBL-1" to "RBL-10." The evidence also shows that after she conducted laboratory examinations and prepared her chemistry report, Malojo submitted the specimens to the trial court.[29] Clearly, the prosecution has shown an unbroken chain of custody. Otherwise put, it was established that the specimens presented and offered in evidence in court are the same specimens that were the object of the sale between the poseur-buyer and the accused.

WHEREFORE, the appeal is DENIED. The Decision dated January 6, 2011 of the Regional Trial Court of Dagupan City, Branch 42 in Criminal Case Nos. 2007-0175-D and 2007-0176-D is AFFIRMED.

### **SO ORDERED.**

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

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[1] Rollo., pp. 24-32.

- [2] Id, p. 12.
- [3] Id., p. 11.
- [4] TSN, January 18, 2008 p. 4.
- [5] TSN, January 18, 2008. p.14.
- [6] TSN, February 7, 2008. pp. 6-7.
- [7] Record, p. 195.
- [8] TSN, January 18, 2008. p.6.
- [9] TSN, February 5, 2010. pp. 9-10.
- [10] Record, p. 12.
- [11] Record, p. 17.
- [12] Record, p. 193.
- [13] Id., p. 194.
- [14] Supra at note 1.
- [15] Id., p. 229.
- [16] Id., p. 230.
- [17] People v. Agulay, G.R. No. 181747, 26 September 2008.
- [18] People v. Dela Cruz, G.R. No. 181545, 8 October 2008.
- [19] People v. Llanita, G.R. No. G.R. No. 189817, October 3, 2012.
- [20] Exhibit Z, Record p. 195.
- [21] Exhibit F, Record, p. 197
- [22] People v. Brainer, GR No. 188571, October 10, 2012, 683 SCRA 505.
- [23] Id.
- [24] People v. Alcuizar, 647 SCRA 431 (2011).
- [25] Mallillin v. People, 553 SCRA 619 (2008).
- [26] People v. Fermin, G.R. No. 179344, August 3, 2011, 655 SCRA 92.
- [27] Supra at Note 9.
- [28] Record, p. 194
- [29] TSN, January 31, 2008, p.4.

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