

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MINA MANGLINONG Y DACURAY, ACCUSED-APPELLANT.

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before us is an appeal interposed by accused-appellant Mina Manglinong y Dacuray, assailing the Decision^[1] dated August 29, 2012 of the Regional Trial Court (RTC), Branch 48, Urdaneta City, Pangasinan, in Criminal Case No. U-15825, which found her guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentenced her to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

On November 6, 2008, the prosecution filed with the RTC, Urdaneta City, Pangasinan, an Information^[2] charging accused-appellant with the Violation of Section 5, Article II of RA No. 9165. committed, as follows:

That on or about 8:20 o'clock in the evening of November 5, 2008 at Mara's Compound, Perez St., Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell two (2) heat-sealed transparent plastic bags containing marijuana, weighing 2.01 grams and 2.30 grams, with a total weight of 4.31 grams, a dangerous drug.

Upon arraignment held on January 22, 2009, accused-appellant pleaded not guilty to the offense charged.^[3] Subsequently, trial on the merits proceeded.

The prosecution presented as witnesses Police Officer 1 (PO1) Danny Ventura and Intelligence Officer 3 (IO3) Juvenal Azurin, while the defense presented its lone witness, accused-appellant herself.

The records reveal that on November 5, 2008 at 8:30 o'clock in the morning, while he was at their office in Barangay Bayaoas, PO1 Ventura received a report from a confidential informant that Mina Manglinong, herein accused-appellant, was selling marijuana leaves at Mara's Compound, Perez Street, Urdaneta City. He verified from their records and confirmed that accused-appellant was still on their watch list. Thereafter, the police officers formed a team to conduct a buy-bust operation with IO3 Juvenal Azurin as their team leader. Two pieces of P100-peso bills were marked with "JA", which stands for Juvenal Azurin and "DV" for Danny Ventura. IO3 Azurin was assigned as the poseur-buyer and PO1 Ventura as his immediate back-up. The lighting of cigarette was agreed upon as their pre-arranged signal for the consummation of the sale. After final briefing, the team proceeded to the place of operation at Mara Compound, while Azurin and the confidential informant went directly to accused-appellant's house.^[4] The confidential informant introduced IO3 Azurin to accused-appellant as an interested buyer of marijuana leaves and asked how much one tea bag cost, to which accused-appellant answered P125.00 per bag. IO3 Azurin haggled for P100.00 per tea bag as he would buy two bags. Accused-appellant agreed and went out to get the tea bags and then handed them to IO3 Azurin. After examining the items, IO3 Azurin handed to accused-appellant the marked money, and then, as pre-arranged, IO3 Azurin lighted a cigarette. Immediately, the team rushed to the scene and arrested accused-appellant. IO3 Azurin recovered from accused-appellant the marked money, and then brought her to their office for proper disposition and marking of

evidence.[5] Thereafter, in the presence of Barangay Chairman Norberto Del Prado, PO1 Ventura prepared an Inventory[6] of the seized items and then submitted them to the crime laboratory for examination, while IO3 Azurin prepared the Request for Laboratory Examination[7]. Pictures[8] were also taken.[9] As per Chemistry Report No. D-106-2008-U10, the two heat-sealed transparent plastic bags with markings yielded a positive result for the presence of marijuana, a dangerous drug.

Accused-appellant, on the other hand, alleged that at around 8:00 o'clock in the evening of November 5, 2008, while she was at their house with her children and husband, who was drinking Red Horse beer, somebody went inside their house and invited her for a talk. She went with them and they boarded her in their vehicle and brought her to a place she later on learned to be the office of the PDEA[11]. Inside the office, she was told to sit, and that somebody would fetch her. The men showed her something placed inside a sachet. She asked them what was it, and they told her it was marijuana. The following day, she was brought to the hospital for medical examination. Then, they brought her to the Hall of Justice, and then to the Bureau of Jail and Management Penology (BJMP). She did not file any counter-affidavit because she did not know anything about the processes in court. Accused-appellant further alleged that she never had any misunderstanding with the PDEA agents, and it was the first time she saw them. She did not protest when she was taken by the PDEA agents to their vehicle because she was told that they were merely going to ask her some questions. She also did not file any case against them.[12]

On August 29, 2012, the trial court rendered a Decision[13], finding accused-appellant guilty beyond reasonable doubt of the offense charged and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. It ruled that the elements of the offense of illegal sale of dangerous drugs were clearly established. Accused-appellant was positively identified by the arresting officer who acted as the poseur-buyer. The sale transaction was likewise clearly shown in all its stages from inception to consummation. The evidence of the defense, on the other hand, failed to prove ill-motive on the part of the arresting officers, hence, they are presumed to have performed their duties in a regular manner. The fallo of the decision reads, as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Mina Manglinong GUILTY of the offense charged and the court hereby sentences her to suffer a penalty of Life Imprisonment and to pay a fine of Php500,000.00.

The illegal drug presented in court as evidence is hereby forfeited in favor of the government and shall be forwarded to PDEA officer for proper disposition.

SO ORDERED.

Aggrieved, accused-appellant filed a Notice of Appeal[14], raising the following assignment of errors, to wit:[15]

I THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION; [and]

II THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE CORPUS DELICTI OF THE CRIME.

Accused-appellant contends that the prosecution failed to comply with the mandatory procedures in the handling and disposition of the seized prohibited drugs provided in paragraph 1, Section 21, Article II of RA No. 9165, as specifically shown by the absence of the indispensable members from the media and the Department of Justice during the conduct of the inventory. In addition, the forensic chemist who conducted the laboratory examination was never presented in court to testify on her receipt of the seized items, on the conduct of the analysis of the

specimen, and how they were handled after their examination. The prosecution failed to offer explanation why the forensic chemist's testimony was dispensed with. For these reasons, the defense prays that the doubt be resolved in favor of accused-appellant.[16]

In its plaintiff-appellee's Brief[17], the Office of the Solicitor General (OSG), representing the People, refuted accused-appellant's contention, stating that the failure of the law enforcers to strictly comply with Section 21 of RA No. 9165 is not fatal and cannot render void the seizure and custody of the drugs confiscated as evidentiary value of the seized items was properly preserved. It also argues that the police officers are presumed to have acted regularly in the performance of their official functions, there being absence of clear and convincing evidence showing why the presumption should be overturned.

The appeal is impressed with merit.

In the prosecution of illegal possession of dangerous drugs, it must be proven that: (i) the accused was in possession of the dangerous drug, (ii) such possession is not authorized by law, and (iii) the accused freely and consciously possessed the dangerous drug.[18]

The existence of the drug is the very corpus delicti of the crime of illegal possession of dangerous drugs and, thus, a condition sine qua non for conviction. In order to establish the existence of the drug, its chain of custody must be sufficiently established. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[19]

Under the chain of custody rule, the following links should be established in the chain of custody of the confiscated item: 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.[20]

In the present case, we find that the linkages in the custody of the seized item were not clearly established and that the prosecution failed to prove beyond reasonable doubt that the subject substance was the very same object taken from accused-appellant. As gleaned from the records, after accused-appellant was arrested and the marijuana was allegedly confiscated from her, PO1 Ventura prepared an inventory of the seized illegal drugs and submitted the drugs to the crime laboratory for examination. The chain of custody however, stopped there. PO1 Ventura failed to testify on to whom he delivered the seized items for examination. No witness testified on how the subject drug was kept after it was examined/tested prior to its presentation in court. And finally, the forensic chemist who issued Chemistry Report No. D-106-2008-U was not presented in court to identify it and to testify on the veracity of his findings therein. Notably, during the pre-trial conference[21], there was no stipulation regarding the non-presentation of the forensic chemist nor any other matter regarding the handling of the specimen after it left the possession of the arresting officers. Thus, there is no way we can find how the seized marijuana was handled from the arresting officer to the forensic chemist and from the latter to the court for its identification and presentation.

Although in many instances, the Highest Court has repeatedly held that the non-presentation of the forensic chemist in illegal drugs cases is an insufficient cause for acquittal[22]. In this case however, the totality of evidence failed to prove beyond reasonable doubt the identity of the corpus delicti or the dangerous drug itself.

It may be true that where no ill-motive can be attributed to the police officers, the presumption of regularity in the

performance of official duty should prevail. However, such presumption obtains only when there is no deviation from the regular performance of duty. Where the official act in question is irregular on its face, the presumption of regularity cannot stand.[23]

In this case, the official acts of the law enforcers are clearly shown and proven to be irregular. Thus, when challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused[24].

WHEREFORE, the Decision dated August 29, 2012 of the RTC, Branch 48, Urdaneta City, Pangasinan in Criminal Case No. U-15825 is REVERSED and SET ASIDE. A new judgment is rendered ACQUITTING accused-appellant MINA MANGLINONG y DACURAY of illegal sale of dangerous drugs, and ORDERING her release from detention, unless she is confined for any other lawful cause.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this decision, the action he has taken thereon.

SO ORDERED.

[*]Inting, S.B., and [**]Sadang, M.Q. C., JJ., concur.

[*] Acting Senior Member vice J. P.J. Baltazar-Padilla, per Office Order No. 135-15-ABR dated April 17, 2015.

[**] Acting Junior Member, per Office Order No. 135-15-ABR dated April 17, 2015.

[1] Records, pp. 197-202.

[2] Id. at 2.

[3] Id. at 32.

[4] TSN, February 28, 2011, pp. 3-5; TSN, May 25, 2011, pp. 2-5.

[5] TSN, May 25, 2011, pp. 5-7.

[6] Records, p. 12.

[7] Id. at 10.

[8] Id. at 15-23.

[9] TSN, May 25, 2011, pp. 8-9; TSN, February 28, 2011, pp. 9-12.

[10] Records, p. 11.

[11] PDEA stands for Philippine Drug Enforcement Agency.

[12] TSN, August 21, 2011, pp. 2-7.

[13] See Note 1.

[14] Records, p. 204.

[15] Rollo, p. 54.

[16] Id. at 58-62.

[17] Id. at 79-92.

[18] See *People vs. Gutierrez*, 607 SCRA 377, 390-391 (2009), citing *People vs. Pringas*, 531 SCRA 828.

[19] *People vs. Garcia*, 580 SCRA 259, 274 (2009), citing *People vs. Sanchez*, 569 SCRA 194 and other related case.

[20] *People vs. Kamad*, 610 SCRA 295, 307-308 (2010) (citations omitted); also see Section 21, RA No. 9165.

[21] Records, p. 39.

[22] *People vs. Cervantes*, 581 SCRA 762, 781 (2009) (citation omitted).

[23] *People vs. Martinez*, 637 SCRA 791, 822 (2010), citing *People vs. Obmiranis*, 574 SCRA 140, 156-157.

[24] See *People vs. Peralta*, 613 SCRA 763, 773 (2010), citing *Dolera vs. People*, 598 SCRA 484.

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