

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO ANDOLERO Y SUMAYAN, ACCUSED-T-APPELLANT.

Ponente: LOPEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/db51027510ef/>

LOPEZ, J.:

Before the Court is an appeal from the November 17, 2010 Decision[1] and January 3, 2011 Resolution[2] of the Regional Trial Court, Branch 8, Malaybalay City (court a quo) which convicted Ricardo Andolero y Sumayan (appellant) guilty beyond reasonable doubt of the crime of cultivation of prohibited drugs in violation of Section 16 of Republic Act (RA) No. 9165 also known as the "Comprehensive Dangerous Drugs Act of 2002" and sentenced appellant the penalty of life imprisonment and a fine of Php500,000.00.

The antecedent facts are as follows:

On November 22, 2006, appellant was charged with violation of Section 16 of RA No. 9165, in an Information, which alleged:

That on the 20[th] day of November 2006, in the afternoon, at Barangay Jasaan, municipality of Cabanglasan, province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and criminally plant and cultivate five (5) hills of marijuana plants, which marijuana are classified as, source of a dangerous drug, with a total weight of 6.70 grams without having secured permit or authority from the government.

Contrary to and in violation of Section 16 of Republic Act No. 9165.[3]

At the arraignment, appellant pleaded not guilty.[4] Thereafter, case was tried on the merits.

The evidence for the prosecution is summarized, thus:

In the morning of September 27, 2006, at about 10:00 in the morning, P/Insp. Rafael Lutrago while on duty at Cabanglasan Police Station, received a report from Epifanio Flores (Flores) that appellant was cultivating marijuana plants at Barangay Jasaan, Cabanglasan, Bukidnon. Upon receiving the information, P/Insp. Lutrago immediately formed a team consisting of SPO3 Eliezar Toyhacao, PO3 Hermon Pandong, PO3 Josefino Bonggat and PO2 Eotropio Ocier to verify the information.

The team arrived at Barangay Jasaan around 1:00 in the afternoon and immediately coordinated with barangay chairman Leonardo Bioyo and barangay kagawad Melanio Sundo. The team then proceeded to the area with kagawad Sundo and the informant (Flores). When they arrived at the area, Flores pointed to the police the suspected marijuana plants. The team hid in the grassy portion of the area and observed the surroundings. At about 2:00 in the afternoon, they saw a person bringing a plastic gallon of water approached the area, and watered the suspected marijuana plants. Upon seeing this, P/Insp. Lutrago and his companions immediately rushed to the area and introduced themselves as police officers. P/Insp. Lutrago commanded the person not to move, but instead the person ran. The team chased the person and when arrested, the person revealed his name as Ricardo Andolero, the appellant. After he was apprehended, they went back to the area and uprooted five (5) hills of suspected

marijuana plants. Appellant was then brought to the Philippine National Police (PNP) Station of Cabanglasan, Bukidnon, where they made a record of evidence, prepared a receipt and request for crime laboratory examination. The following day, the appellant and the confiscated marijuana plants were brought to the PNP crime laboratory, Cagayan de Oro City by PO3 Pandong, PO3 Bongat and PO2 Ocier for qualitative and quantitative examination.

Police Inspector Erma Contino Salvacion performed the laboratory tests. Per Chemistry Report No. D-59-06B[5] qualitative examination conducted on one (1) transparent plastic bag with attached markings “Exhibit “A” of alleged five (5) hills of marijuana plants having a total weight of 6.70 grams” yielded positive result to the tests for the presence of marijuana, a dangerous drug. However, Chemistry Report DT-51-06B,[6] containing urine samples of appellant, yielded negative result for the presence of methamphetamine and THC-metabolites, both dangerous drugs.

The evidence for the defense on the one hand, is summarized, thus:

In the afternoon of November 20, 2006, at about 2:00, appellant, a 23 year old habal-habal driver, was at Barangay Jasaan, Cabanglasan, Bukidnon with Pedro Gellama (Gellama) and Albert Caburnay. Gellama requested appellant to help load the harvested peppers to his motorcycle for transport from Banglasan to Aglayan. Moments later, Flores, together with three (3) CAFGU members Elmer Maputi, Felimon Roble and Lolito Pesaña arrived. Flores immediately pointed a gun to appellant and arrested him for allegedly planting marijuana plants. Appellant was stunned and resisted his arrest, but he was forcibly brought to a military detachment where police officers from Cabanglasan Police Station were waiting. While there, appellant was handcuffed and photographed with marijuana plants tucked inside his pocket. Appellant denied all the accusations against him. He maintains that he is a habal habal driver and does not own a land at Barangay Jasaan, Cabanglasan, Bukidnon. He does not even recognize what marijuana plant looks like. According to appellant, he got the ire of Flores when he started collecting fare from the CAFGU members, for the habal habal ride.

Roble, a CAFGU member and Gellama, who were both present at the time appellant was arrested corroborated the version of appellant. They testified that there is no proof of the version of the prosecution that the policemen arrested appellant at the place where the supposed marijuana plants were planted. According to Roble, at the time of the arrest, only Flores and his two (2) other companions were there and the policemen were just waiting in the detachment. Gellama and Roble added that no marijuana plants and leaves were seized from the possession of appellant at the time he was arrested.

After due proceedings, the court a quo on November 17, 2010 issued the first assailed Order, thus:

WHEREFORE, the court finds the accused Ricardo Andolero y Sumayan, guilty beyond reasonable doubt of the crime of cultivation of prohibited drugs in violation of Sec. 16 of Republic Act No. 9165 and imposes upon him the penalty of life imprisonment and a fine of P500,000.00. The accused shall serve his penalty in the National Penitentiary of Davao Penal Colony. The 6.70 grams of marijuana is ordered forfeited and turned over to the Philippine Drug Enforcement Agency (PDEA) for destruction.

SO ORDERED.[7]

In ruling for the conviction of appellant, the court a quo gave probative value to the testimonies of the prosecution witnesses who positively identified appellant as the person who watered the marijuana plants. The court a quo likewise applied the presumption that the police officers were performing their duties in a regular manner. To justify the warrantless arrest of the appellant, the court a quo found that the accused was caught in the act in flagrant delicto watering the marijuana plants, hence, no warrant is necessary. Further, the court a quo held that notwithstanding the non-presentation of the inventory receipt and photographs of the seized items, the integrity

and evidentiary value of the seized marijuana was preserved from the testimonies of P/Insp. Lutrago, SPO1 Pandong and the forensic expert.

The subsequent motion for reconsideration filed by appellant was denied by the court a quo in the second assailed Resolution dated January 3, 2011.[8]

Hence, the appeal.

Assignment of Errors:

In this appeal, appellant raised the following errors, thus:

I

THE COURT A QUO ERRED IN COMPLETELY DISREGARDING THE EVIDENCE FOR THE ACCUSED-APPELLANT WHICH IS IN TOTAL DEROGATION OF THE EVIDENCE FOR THE PROSECUTION;

II

THE COURT A QUO ERRED IN NOT CONSIDERING THAT THE EVIDENCE FOR THE ACCUSED-APPELLANT STANDS UNREBUTTED BY THE PROSECUTION;

III

THE COURT A QUO ERRED IN NOT APPRECIATING THAT THE FAILURE OF THE PROSECUTION TO PRESENT EPIFANIO FLORES AND MELANIO SUNDO IS IN VIOLATION OF ACCUSED' APPELLANT'S CONSTITUTIONAL RIGHT TO CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST HIM;

IV

THE COURT A QUO ERRED IN MAKING VERY ERRONEOUS STATEMENT OF FACTS IN ITS DECISION CONTRARY TO THE EVIDENCE OF THE PROSECUTION AND THE DEFENSE, TO THE GRAVE INJUSTICE OF THE ACCUSED-APPELLANT.[9]

The Court's Ruling:

We resolve to acquit appellant for the prosecution's failure to prove his guilt beyond reasonable doubt.

Appellant disputes the sufficiency of the evidence presented by the prosecution to convict him of the crime charged. He pointed out that the court a quo's decision was entirely based on the testimony of the police officers who allegedly saw him in the act of watering the suspected marijuana plants. Notably, other than the bare testimonies of the police officers, no other evidence was presented by the prosecution to corroborate the same. Appellant further contests his conviction due to the inconsistencies in the prosecution's witnesses, coupled with its failure to establish with certainty the chain of custody of evidence. Finally, appellant argues against the presumption of regularity of performance of duties.

We agree with the observations of the appellant.

Elements of the crime not established by the prosecution

Well-enshrined in our jurisdiction is the principle that the accused is presumed to be innocent until the contrary is proven.[10] The prosecution has the burden to overcome such presumption of innocence by presenting the

quantum of evidence required.[11] This constitutional presumption of innocence can be overcome only by proof beyond reasonable doubt which requires moral certainty of guilt, a certainty that convinces and satisfies the reason and conscience of those who act upon it.[12] This quantum of proof, however, was not satisfied in this case. A review of the records, shows that the testimony of the prosecution witnesses failed to establish the elements of the crime charged.

Section 16 of RA 9165 reads:

Sec. 16. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who shall plant, cultivate or culture marijuana, opium poppy or any other plant regardless of quantity, which is or may hereafter be classified as a dangerous drug or as a source from which any dangerous drug may be manufactured or derived: Provided, That in the case of medical laboratories and medical research centers which cultivate or culture marijuana, opium poppy and other plants, or materials of such dangerous drugs for medical experiments and research purposes, or for the creation of new types of medicine, the Board shall prescribe the necessary implementing guidelines for the proper cultivation, culture, handling, experimentation and disposal of such plants and materials.

xxx

For the successful prosecution of the crime of planting and cultivation of illegal drugs, the following elements must be established by the prosecution: (1) the planting, cultivation or culture of marijuana, opium poppy or any other plant regardless of quantity, which is or may hereafter be classified as a dangerous drug; and (2) that such activity was undertaken without previous authority.[13]

In the instant case, the prosecution merely relied on the testimonies of the police officers who testified that in the morning of November 20, 2006, they received an information from Flores that appellant was planting marijuana at Barangay Jasaan, Cabanglasan, Bukidnon. Upon learning the same, they immediately went to the area and hid themselves in the grassy portion. Moments later, appellant arrived bringing a gallon of water and watered the suspected marijuana plants. The police immediately went out from hiding and commanded appellant to freeze, but the latter ran. After appellant was caught, they went back to the area and uprooted five (5) hills of marijuana. They immediately brought appellant to the police station, where he was photographed and investigated. The day after, appellant and the suspected marijuana plants were brought to the PNP Crime Laboratory in Cagayan de Oro City for examination, which yielded positive result for marijuana.

Notably though, the prosecution failed to establish that appellant was responsible in personally planting the suspected marijuana plants. Nor was it shown that appellant was the owner or tiller of the land where the supposed marijuana plants were grown. In the cases decided by the Supreme Court relating to the planting and cultivation of marijuana plants, We found that the persons charged therein are either the landowner,[14] or one in possession of the landholding. In one case involving public land, the one charged and subsequently convicted was the person maintaining a hut thereon used as temporary dwelling and was caught cutting and gathering marijuana plants from the premises.[15] In another case, the person was caught emerging from a nipa hut to inspect the marijuana plantation and failed to explain his presence thereon.[16] This is not so in the instant case.

We likewise noted material inconsistencies and contradictions in the testimonies of the prosecution witnesses which created doubts on their credibility.

Inconsistencies in the testimonies of the prosecution witnesses

First, P/Insp. Lutrigo maintains that immediately after the arrest, they brought appellant immediately to

Cabanglasan Police Station where he was investigated, photographed and the evidence against him was inventoried. But his testimony is contradicted by SPO1 Pandong who revealed during cross examination viz:

Q- And from the area where you arrested Andolero, you brought him immediately to your Police Station at Cabanglasan, am I right?

A- We stopped over first in the house of the Barangay Captain, they prepared us some food, Sir, before we proceeded to the PNP Station of Cabanglasan. [17]

Second, the prosecution witnesses presented conflicting versions as to how and when the seized items were photographed, as well as who took the photograph and has custody over it, thus:

P/Insp. Lutrago categorically for his part narrated, thus:

Q- Did you take photos on those specimen?

A- Yes, your Honor.

Q- Where are the photos now?

A- It was attached as exhibit, Your Honor.

Q- Who in particular took pictures on those specimen?

A- My personnel, a member of the team, Your Honor.

Q- Who among those member of the team?

A- PO3 Hermon Pandong, Your Honor.[18]

xxx

Q- Alright, so before you uprooted this, as you said you uprooted this marijuana, did you photograph the plants before they were uprooted?

A- Yes, Your Honor.

Q- Before theses (sic) were on the ground yet?

A- Yes, Your Honor.

xxx

Q- Where was that picture, if any?

A- It was attached as our exhibits, Your Honor.

Q- Again, I would like to show you your affidavit. Go over it and tell the court if there is any allegation that you took pictures of this marijuana plants before theses (sic) were uprooted?

A- It's not in my affidavit, Your Honor. Not included in my affidavit the taking of the photograph, Your Honor.

xxx

Q- So during the uprooting, there were pictures?

A- Yes, Your Honor.

Q- Before they were uprooted, did you also poise (sic) in a picture with your men, Sundo and Flores, did you also poise (sic) for a picture showing the plants?

A- Only my men and Kagawad Sundo, Your Honor.

Q- And where are these pictures, again you lost it or you misplaced it?

A- I don't know, Your Honor, the pictures were attached with our exhibits.

Q- Alright, I am asking where are these exhibits, the pictures, the alleged marijuana leaves or marijuana plants, where are they?

A- It's there I think. I think it's just misplaced, Your Honor.[19]

The Court notes that on the basis of the foregoing, PO3 Pandong was summoned in the next hearing to bring those photos. However, on the scheduled hearing of PO3 Pandong, he failed to bring the photos, admitting thereon that he lost it. PO3 Pandong's testimony likewise conflicted with that of P/Insp. Lutrago who testified that the marijuana plants were photographed before it was uprooted, thus:

Q-

Now you also mentioned that there was that (sic) photos that taken on the uprooted marijuana, do you have it now in your possession the photos or the pictures?

A-

No.

xxx

Q-

Where did you take pictures?

A-

In the area where the marijuana was planted.

Q-

Alright. Did you take pictures before the plants were uprooted or after the plants were uprooted?

A- After the plants were uprooted.

xxx

Q- Where are these pictures now, you lost it?

A- Yes.[20]

On cross-examination, however, PO3 Pandong recanted his statement by pointing to SPO4 Eliezar Toyhacao as the photographer and the person-in-charge of the investigation, thus:

Q- By the way, before I forget, you also took pictures of the accused together with theses five (5) hills of marijuana plants, you also took pictures?

A- Yes.

xxx

Q- Who was the photopher? (sic)

A- SPO4 Eliezer Toyhacao.

xxx

Q- After Toyhacao took the pictures, did you see these pictures taken by Toyhacao?

A- Yes, I saw personally the pictures, Your Honor.

xxx

Q- If this Toyhacao will be asked to produce the negative, do you think he can still produce it?

A- I am not sure, if he can produce it.[21]

Records show that the prosecution rested its case dispensing with the testimony of SP04 Toyhaco, and non-presentation of the alleged photographs.

Preservation of the corpus delicti not established

We also note that the prosecution witnesses failed to supply vital details as to the marking and handling of the seized drugs which cast a doubt on the existence and integrity of the corpus delicti, i.e., the supposed marijuana plants.

While PO3 Pandong testified that after appellant was arrested, they took pictures of the suspected marijuana, uprooted the same, brought the accused and the suspected marijuana plant to the Police Station for proper disposition, and on the next day, the seized items were brought to Cagayan de Oro City for laboratory examination, he never disclosed the identity of the person/s who had control and possession of the same at the time of its transportation to the police station, up to the time the confiscated items were brought for laboratory examination. Neither was it mentioned that the seized items were properly marked.

Furthermore, while PO3 Pandong and P/Insp. Lutrago maintains that they prepared a certificate of inventory of the seized items, the prosecution witnesses likewise failed to present the same and similarly pointed fingers at each other regarding its possession.

Clearly, there are procedural lapses attending the identification and preservation of the seized marijuana plants that the prosecution introduced into evidence. In cases, where the Supreme Court relaxed the rule of the strict

adherence to the chain of custody, there was at least some explanation for the non-presentation by the prosecution of the photographs, inventory and marking of exhibits. This is not so in the instant case because none was presented at all to at least corroborate the testimonies of the police officers. Hence, the court a quo erroneously presumed that the procedure was followed on the sole testimonies of the prosecution witnesses without concrete evidence to support the same. Thus, for failure of the prosecution to establish the guilt of appellant beyond reasonable doubt, consequently, appellant should not be punished for the failure of the prosecution to dispose of its burden to overcome the constitutional presumption of innocence. We adhere to the principle applied by the Supreme Court that it is better to acquit a guilty person than to convict an innocent one.[22]

WHEREFORE, the November 17, 2010 Decision and January 3, 2011 Resolution of the Regional Trial Court, Branch 8, Malaybalay City in Criminal Case No. 16797-06, finding Ricardo Andolero y Sumayan guilty beyond reasonable doubt of the crime of cultivation of prohibited drugs in violation of Section 16 of RA No. 9165, and imposing upon him the penalty of life imprisonment and a fine of Php500,000.00 is hereby REVERSED and SET ASIDE for insufficiency of evidence. Appellant is ACQUITTED and ordered RELEASED immediately from confinement unless held for another lawful cause.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Records, p. 127.

[2] Records, p. 167.

[3] Records, p. 2.

[4] Records, p. 23.

[5] Annex “A”, Folder of Exhibits, p. 12

[6] Annex “B”, Folder of Exhibits, p. 13.

[7] Ibid.

[8] Ibid.

[9] Rollo, p. 14.

[10] People v. Dagdagan, G.R. No. 100332, March 22, 1993.

[11] People v. Buhain, G.R. No. 195528, July 24, 2013.

[12] Ibid.

[13] Villareal II, Comments and Cases on Republic Act No. 9165 “Dangerous Drugs Act of 2002” [Rex Book Store Publishing Inc.:2011].

[14] People v. Valdez, G.R. No. 129296, September 25, 2000.

- [15] People v. Alunday, G.R. No. 181546, September 3, 2008.
- [16] Zanoria v. Court of Appeals, G.R. No. 110163, December 15, 1997.
- [17] TSN, July 23, 2009, p. 30.
- [18] TSN, February 10, 2009, p. 15.
- [19] TSN, February 10, 2009, pp. 34-37
- [20] TSN, July 23, 2009, pp. 15-26.
- [21] TSN, July 23, 2009, pp. 30-33.
- [22] People v. Dacasin, G.R. No. 127811, April 29, 1999.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.