

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMIGIO VIRAY Y LOPEZ, ACCUSED-APPELLANT.

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

This is an appeal from the 11 July 2011 Decision[1] of the Regional Trial Court of the Olongapo City, Branch 75, in Criminal Cases Nos. 194-08 and 196-08, finding him guilty beyond reasonable doubt for Violation of Sections 5 and 11, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002., the dispositive portion of which reads:

“WHEREFORE, judgment is rendered as follows:

- In Criminal Case No. 194-08, the Court finds REMIGIO VIRAY y LOPEZ GUILTY beyond reasonable doubt of Violation of Sec. 5, RA 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000 plus cost, without subsidiary imprisonment in case of insolvency; and
- In Criminal Case No. 196-08, the Court finds REMIGIO VIRYA y LOPEZ GUILTY beyond reasonable doubt of Violation of Sec. 11, RA 9165 and sentences him to suffer the penalty of imprisonment from twelve (12) years and one day to fourteen (14) years and eight months and to pay a fine of P300,000 plus cost, without subsidiary imprisonment in case of insolvency.

The accused shall also suffer the accessory penalties under Section 35, RA 9165 and shall be credited in the service of the sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The sachets of marijuana marked as Exhs. “E” to “E-4” of the Prosecution are ordered confiscated in favor of the government and to be disposed of in accordance with law.

SO DECIDED.”[2]

The accusatory portion of the Informations[3] charging herein accused-appellant, reads:

Criminal Case No. 194-08

“That on or about the twenty-seventh (27th) day of May, 2008, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, did then and there wilfully, unlawfully and knowingly deliver to PO1 Sherwin Tan and PO1 Lawrence Reyes Php100.00 (SL439657) worth of marijuana fruiting tops, which is a dangerous drug in one heat-sealed transparent plastic sachet weighing Three grams and

three tenth (3.3) of a gram. Contrary to law.

Criminal Case No. 196-08

That on or about the twenty-seventh (27th) day of May, 2008, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, did then and there wilfully, unlawfully and knowingly have in his effective possession and control three (3) heat-sealed transparent plastic sachet containing marijuana fruiting tops having a combined weight of Nine grams (9.0) and one (1) small folded newspaper containing marijuana fruiting tops weighing One gram and four tenth (1.4) of a gram which are dangerous drugs, said accused not having the corresponding prescription to possess said dangerous drugs.

CONTRARY TO LAW.”

Upon arraignment, accused-appellant pleaded NOT GUILTY. Trial ensued. The prosecution presented as its witnesses P/Insp Julius Javier, PO1 Sherwin Tan, PO1 Lawrence Reyes and SPO2 Allan delos Reyes. For the defense, accused-appellant testified in his behalf.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of facts as follows:[4]

“The City Anti-Illegal Drugs Special Operations Team (CAIDSOT) of Olongapo City, through P/Insp. Julius Javier, received a report that accused-appellant, an ambulant balut vendor, was selling dangerous drugs within the areas of Barangay Pag-asa and Barangay East, Bajac-Bajac, Olongapo City. Acting on this tip, P/Insp. Javier formed a surveillance team composing of himself, PO1 Sherwin Tan, PO1 Lawrence Reyes, SPO1 Allan delos Reyes, PO3 Hortencio Javier and PO1 Lowela Buscas. The team conducted surveillance on accused-appellant, which lasted for less than one month.

The surveillance confirmed that accused-appellant was indeed involved in the selling of dangerous drugs. Consequently, on May 27, 2008 at about 7:00 p.m., P/Insp. Javier, together with the rest of the members of the CAIDSOT conducted a buy-bust operation. PO1 Tan was designated as the poseur buyer, SPO1 delos Reyes as the investigator, and PO1 Reyes, along with other members of the team, as back-up.

The team proceeded to the target area near Saulog Terminal Compound, Perimeter Street, Barangay Pag-asa and strategically positioned themselves. PO1 Tan approached accused-appellant and pretended to buy balut. A friendly conversation then ensued. PO1 Tan told accused-appellant that he is a friend of a certain Bong Cortez, to whom, according to informant's tip, accused-appellant sold marijuana. Thereafter, he told accused-appellant that he wanted to buy marijuana amounting to Php 100.00. Accused-appellant opened the basket containing balut and took a sachet of marijuana fruiting top. PO1 Tan handed the marked Php 100.00 bill to accused-appellant and the latter gave the marijuana. At this point, PO1 Tan gave the pre-arranged signal by removing his bullcap, frisked accused-appellant and recovered the marked buy-bust money.

Immediately thereafter, the other members of the team arrived. PO1 Reyes searched accused-appellant's basket of balut and recovered three (3) sachets of marijuana and another sachet of marijuana wrapped in a piece of

newspaper.

After informing accused-appellant of his constitutional rights, he was arrested and brought to the police station for proper disposition.

The seized items were respectively marked and turned over to SPO1 delos Reyes, the assigned investigator. SPO1 delos Reyes prepared the necessary documents including the request for laboratory examination of the seized alleged drugs which yielded positive for marijuana, a dangerous drug.”

Version of the defense.

The accused-appellant testified that on the night of 27 May 2008, he came from Tambakan, Pagasa going to Bonifacio Street in Olongapo City peddling “balut.” While plying Bonifacio Street, he was called by Sherwin Tan whom he knew to be a police officer since he usually passes by Police Station 3 in Olongapo City. Accused-appellant approached Tan and the latter asked “how much is the balut.” After accused-appellant replied, Tan asked if he has marijuana. To which accused-appellant replied “none.”[5]

Suddenly, another police officer, Lawrence Reyes, approached him and grabbed the basket of “balut.” He noticed that, when the basket was grabbed from him, Reyes is holding something in his hand which he placed on top of the basket. Reyes then asked “what is this?” He replied “I do not know.”[6]

The police officers then brought him inside the Pagasa market near the LTO. The police officers showed accused-appellant the marijuana that was allegedly confiscated from accused-appellant's basket but he reiterated that the marijuana were not his.[7]

Accused-appellant further testified that he was immediately detained. He, later on, came to know that charges for selling marijuana were filed against him.[8]

After the prosecution and the defense both rested their respective cases, the trial court, after closely evaluating the evidence adduced by the prosecution and the defense, ruled against the accused-appellant and found him guilty for the violations charged.

The court a quo ruled that the defense of denial and/or frame as insufficient to exculpate accused-appellant from the charges against him. It cannot prevail over the positive testimonies of the police officers as the person who sold and delivered the regulated marijuana to PO1 Tan.[9] That the accused was caught in flagrante delicto in a legitimate buy-bust operation conducted by the police.[10]

Aggrieved, accused-appellant interposed this instant appeal.

ASSIGNMENT OF ERROR

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.

Accused-appellant now avers that the apprehending team did not make a physical inventory of the alleged seized marijuana as mandated by Sec. 21 R.A. 9165. He also attacks the chain of custody of the drugs seized. With the

above reasons, he argues that the prosecution failed to establish that the contents of the plastic sachets and object wrapped in newspaper are marijuana fruiting tops. Thus, he avers that the prosecution failed to prove with absolute certainty the corpus delicti of the crime.[11]

The People, through the OSG, posits that the presentation of the chemist in court was dispensed with because the parties already stipulated on the genuineness and due execution of the chemistry report that the objects seized from defendant-appellant are marijuana fruiting tops. Thus, the elements necessary for the prosecution of illegal sale of dangerous drugs, particularly the object of the sale, are present.[12] The OSG also posits that the integrity and evidentiary value of the seized items were properly preserved by the apprehending officers from the time said items were seized from accused-appellant, to the police station, to the forensic chemist, and finally, to the court.[13]

OUR RULING

The appeal is bereft of merit.

For a successful prosecution of the offense of illegal sale of dangerous drugs, like marijuana, the following elements must first be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[14] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.[15] Clearly, the commission of the offense of illegal sale of dangerous drugs, like marijuana, 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.[16]

After a painstaking review of the records, We find that the prosecution has amply proven all the elements of the drugs sale beyond moral certainty.

In the instant case, it is undisputed that following a tip from a confidential informant, P/Insp. Julius Jaiver (Head of the Anti Illegal Drug Operation Group) ordered for a surveillance on the person of the accused which lasted for less than a month.[17] The police officers conducted surveillance near accused-appellant's house and the streets he is plying while selling "balut" as disguise for his marijuana peddling. After having been convinced that accused-appellant is involved in drug selling, P/Insp. Julius Javier ordered for a buy-bust operation on 27 May 2008.[18] Afterwards, the members of the Anti-Illegal Drug Operation Group proceeded to Perimeter Street near Saulog Terminal to conduct the buy-bust operation. The prosecution witnesses consistently identified accused-appellant as the person who sold and delivered one sachet of marijuana to PO1 Sherwin Tan in exchange for the one piece of 100 hundred peso marked bill[19] which was recovered from him following his arrest.

In a buy-bust operation, ways and means are resorted to for the purpose of trapping and capturing lawbreakers in the execution of their criminal plan.[20] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[21]

Here, not a single iota of evidence was presented by accused-appellant that the arresting officers were equipped with ill motive so as to concoct a plan to arrest accused-appellant under the guise of a legitimate buy-bust operation. No record would show that the arresting officers who conducted the buy-bust operation personally know accused-appellant other than the information given to them by their confidential informant that one Remigio Viray is involved in selling drugs.[22] Hence, the presence of ill-motive is unlikely in the present case.

The only evidence proffered by accused-appellant is the defense of denial and frame up. He testified that when PO1 Reyes grabbed the basket of balut he saw him put something on top of the basket and later on he was charged with illegal sale of marijuana.[23]

We are not persuaded.

For the defense of frame-up to prosper, the accused must present clear and convincing evidence of such fact. In *People v. Hernandez*,[24] the Supreme Court dismissed the defense of frame-up relied upon by the accused for failing to present clear and convincing evidence to prove his allegations. The Supreme Court said:

“xxx The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. In the case before us, appellants miserably failed to present any evidence in support of their claims. Aside from their self-serving assertions, no plausible proof was presented to bolster their allegations. xxx”

In the instant case, nothing was offered by accused-appellant to bolster his claim of denial and frame up other than his self serving assertion.

It is clear from the foregoing that the elements of illegal sale of dangerous drugs are present in the instant case when the accused-appellant agreed to the offer of purchase of marijuana by PO1 Sherwin Tan and accused-appellant handed 1 plastic sachet containing marijuana to PO1 Tan in exchange for the one piece of 100 peso marked bill.

As to the offense of illegal possession of marijuana, a dangerous drug, it must be shown that: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[25]

These circumstances of illegal possession of marijuana are obtaining in the present case.

Incident to accused-appellant's lawful arrest resulting from the buy-bust operation, three (3) more small heat-sealed transparent plastic sachets and one (1) folded newspaper containing marijuana with an aggregate weight of 10.4 grams, which were the same kind of dangerous drug he was caught selling red-handed, were recovered in his possession by PO1 Reyes, who assisted PO1 Tan in arresting accused-appellant. When the three (3) more small heat-sealed transparent plastic sachets and one (1) folded newspaper of marijuana were presented in court, the prosecution witnesses identified them to be the same objects recovered from appellant while he was being frisked during his arrest for illegally selling marijuana. No evidence was presented that accused-appellant has the legal authority to possess such dangerous drugs. Moreover, it is well settled that possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession and the burden of evidence is, thus, shifted to the accused to explain the absence of knowledge or animus possidendi.[26] Accused-appellant failed to discharge this burden.

The final argument of appellant that the police officers likewise failed to observe the requirements of Section 21, Article II of Republic Act No. 9165,[27] primarily because the seized drugs were not photographed in his presence or his representative or counsel, a representative from the media, a representative from the DOJ and any elected public official, deserves scant consideration.

It is well settled that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and will not

render appellant's arrest illegal or the items seized/confiscated from him inadmissible. The implementing rules[28] offer some flexibility when a proviso added that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." Arresting officer PO1 Reyes was able to mark and photograph the items seized from accused-appellant at the police station and the following morning was delivered to the PNP Crime Laboratory. Likewise, when presented in court, all the arresting officers were able to identify that they are the same items seized from accused-appellant during the buy-bust operation. In the case of *Imson vs. People*,[29] the Supreme Court held that:

xxx testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. xxx

As to penalty, Section 5, Article II of Republic Act No. 9165 clearly provides that the penalty for illegal sale of dangerous drugs, like marijuana, regardless of its quantity and purity, shall be life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00. In light, however, of the effectivity of Republic Act No. 9346, the imposition of the supreme penalty of death has been proscribed. Thus, the penalty of life imprisonment and a fine of P500,000.00 imposed upon accused-appellant by the RTC is proper.

Section 11, Article II of Republic Act No. 9165, on the other hand, provides for the penalty for illegal possession of dangerous drugs, like marijuana. For illegal possession of more than ten (10) grams of marijuana, a dangerous drug, the penalty is life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00). In this case, appellant's possession of marijuana with an aggregate weight of 10.4 grams, that is, more than ten (10) grams, without any legal authority has been proven beyond reasonable doubt by the prosecution. However, We rule that the court a quo, in imposing a penalty of 12 years and 1 day to fourteen (14) years and eight months, is not in line with Section 11, Article II of R.A. 9165.[30] This must be so, since the Indeterminate Sentence Law finds no application in this case because the penalty of life imprisonment to death provided for illegal possession of ten (10) grams or more of marijuana is indivisible penalty which does not have any fixed duration.

Hence, the proper penalty to be imposed upon accused-appellant is life imprisonment, the imposable penalty for illegal possession of 10.4 grams of marijuana committed by accused-appellant.

A modification of the penalty imposed by the trial court is, thus, in order. In view of the foregoing, We find that the accused-appellant should be sentenced to suffer the penalty of life imprisonment in Criminal Case No. 196-08.

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 75 3rd Judicial Region, Olongapo City, dated 11 July 2011 is hereby AFFIRMED with the MODIFICATION in that in CRIMINAL CASE NO. 196-08 accused-appellant is sentenced to suffer the penalty of life imprisonment, and to pay a fine of Five hundred thousand pesos (P500,000.00).

The Decision of the trial court finding the accused-appellant guilty of violation of Section 5, Article II of R.A. 9165 in CRIMINAL CASE NO. 2551-M-2003 is hereby AFFIRMED in all respects.

SO ORDERED.

Dimaampao, (Chairman), and Sadang, JJ., concur.

- [1] Rollo, pp. 30-41
- [2] Ibid., pp. 40-41
- [3] Records, pp. 1-2 & 16-17
- [4] Rollo, pp. 101-103
- [5] TSN., February 15, 2011, pp. 2-3
- [6] TSN., February 15, 2011, p. 3
- [7] TSN., February 15, 2011, pp.3-4
- [8] TSN., February 15, 2011, p. 2-3
- [9] Rollo, p. 40
- [10] Ibid., pp. 38
- [11] Rollo, pp. 63, 66-67
- [12] Ibid., pp. 109-110
- [13] Ibid., pp. 109
- [14] People v. Sembrano, G.R. No. 185848, 16 August 2010, 640 SCRA 328
- [15] People v. Dumlao, G.R. No. 181599, 20 August 2008, 562 SCRA 762
- [16] People v. Dela Rosa, G.R. No. 185166, 26 January 2011, 640 SCRA 635
- [17] TSN, September 9, 2008, pp. 5-8
- [18] Ibid., p. 14
- [19] Records, p. 122
- [20] People vs. Lim, G.R. No. 187503, September 11, 2009, 599 SCRA 712.
- [21] Supra.
- [22] Supra, Note 6
- [23] Rollo, p. 42
- [24] G.R. No. 184804, June 18, 2009, 589 SCRA 625
- [25] Dolera vs. People, G.R. No. 180693, September 4, 2009, 598 SCRA 484
- [26] People vs. Pendatun, G.R. No. 148822, July 12, 2004
- [27] 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;

xxx xxx xxx

[28] Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(a) 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: Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[29] G.R. No. 193003, 13 July 2011

[30] Section 11. Possession of Dangerous Drugs. - 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, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(5) xxx xxx

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) xxx xxx

(8) xxx xxx

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