

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARK LESTER DELA ROSA Y SUELLO, ACCUSED-APPELLANT.

G.R. No. 185166. January 26, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

The subject of this present appeal is the Decision[1] dated 24 April 2008 of the Court of Appeals in CA-G.R. CR HC No. 02642, affirming the Decision[2] dated 8 December 2006 of the Regional Trial Court (RTC) of Makati City, Branch 135, in Criminal Case Nos. 06-1870 to 06-1871, finding herein appellant Mark Lester Dela Rosa y Suello guilty beyond reasonable doubt of the crime of illegal sale and illegal possession of marijuana, a dangerous drug, in violation of Sections 5[3] and 11,[4] Article II of Republic Act No. 9165,[5] thereby, sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 for violation of Section 5, Article II of Republic Act No. 9165 (Criminal Case No. 06-1870) and an indeterminate penalty of 12 years and 1 day, as minimum, to 14 years and 8 months, as maximum, and to pay a fine of P300,000.00 for violation of Section 11, Article II of Republic Act No. 9165 (Criminal Case No. 06-1871).

In two separate Informations[6] both dated 26 September 2006, appellant Mark Lester Dela Rosa y Suello was charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 06-1870 and Criminal Case No. 06-1871. The Informations read as follows:

Criminal Case No. 06-1870

That on or about the 25[th] day of September 2006, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription did then and there willfully, unlawfully and feloniously sell, distribute and transport three point zero two (3.02) grams of marijuana, which is a dangerous drug in consideration of the amount of one hundred (Php100.00) pesos.[7] [Emphasis supplied].

Criminal Case No. 06-1871

That on or about the 25[th] day of September 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession five point six zero (5.60) grams of [m]arijuana, which is a dangerous drug.[8] [Emphasis supplied].

When arraigned,[9] appellant, assisted by counsel de oficio, pleaded "NOT GUILTY" to both charges. Thereafter, trial on the merits ensued.

The prosecution presented the testimony of its lone witness, Police Officer 3 Eusebio Lowaton, Jr. (PO3 Lowaton), of the Special Anti Illegal Drug-Special Operation Task Force (SAID-SOTF), Makati City.

The facts of the case as culled from the records and testimony of PO3 Lowaton are as follows:

On 25 September 2006, the Makati Anti-Drug Abuse Council (MADAC) operatives, together with an informant, came to the office of SAID-SOTF, Makati City, where PO3 Lowaton was one of the police officers assigned thereat, and reported that appellant was involved in the illegal sale of marijuana in Kalayaan Avenue, Barangay Singkamas, Makati City.[10]

On the basis thereof, the SAID-SOTF, Makati City, formed a team to conduct a buy-bust operation to verify if appellant was, indeed, involved in the illegal sale of marijuana in the above-mentioned place. The buy-bust team through one of its members, PO3 Lowaton, prepared a Pre-Operational Report/Coordination Sheet[11] and sent the same to the Philippine Drug Enforcement Agency (PDEA). In response thereto, PDEA sent a Certificate of Coordination[12] to confirm that the buy-bust team of SAID-SOTF, Makati City, had made the necessary coordination with their office in connection with the conduct of its anti-drug operations against appellant.[13]

After a complete coordination with PDEA, the briefing of the members of the buy-bust team followed, wherein PO3 Lowaton was designated as poseur-buyer. He was also given two Fifty Peso bills[14] marked money in the total amount of P100.00, bearing Serial Nos. FR 485129 and CY 532084, respectively, with markings "ATS" on the upper right portion of the serial number of each bill.[15]

Thereafter, the buy-bust team, together with the informant, proceeded to the target area in Kalayaan Avenue, Barangay Singkamas, Makati City. Upon arrival thereat, the buy-bust team waited for the appellant and soon after, the latter arrived after a few minutes. Subsequently, PO3 Lowaton and the informant walked towards the direction of the appellant. The informant then approached appellant and introduced to him PO3 Lowaton as someone interested in buying marijuana. Appellant asked PO3 Lowaton as to the amount of marijuana that he wanted to buy to which the latter replied that he would be buying P100.00 worth of marijuana. Appellant immediately took one plastic sachet of marijuana from his pocket that corresponds to the amount agreed upon and handed the same to PO3 Lowaton. The latter, in turn, handed the two marked Fifty Peso bills to appellant as payment for the purchased item.[16]

Upon the consummation of the sale, PO3 Lowaton executed their pre-arranged signal by holding appellant's right hand. At this juncture, the other members of the buy-bust team who were in the vicinity of the target area came in to help PO3 Lowaton, who at that moment had already introduced himself as a police officer, in arresting appellant. Appellant was arrested at around 3:15 p.m. PO3 Lowaton informed appellant of the cause of his arrest and of his constitutional rights. While frisking the appellant, however, PO3 Lowaton recovered from the former two more plastic sachets of marijuana. Subsequently, PO3 Lowaton marked the one plastic sachet of marijuana sold to him by appellant with his initials "EBL." He likewise marked the two other plastic sachets of marijuana that he recovered from appellant as "EBL-1" and "EBL-2." The seized items from appellant were also inventoried at the place where appellant was arrested and in his presence, as evidenced by an Acknowledgment Receipt[17] dated 25 September 2006.[18]

After appellant's arrest, he was brought to the office of SAID-SOTF, Makati City. The three plastic sachets of marijuana that has been previously marked were photographed[19] and sent to the Philippine National Police (PNP) Crime Laboratory for examination. The examination conducted on the aforesaid specimen, i.e., three plastic sachet of marijuana, yielded positive[20] results to the tests for the presence of marijuana, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S.[21] Also, after the completion of the buy-bust operation, an after operation report or the so-called "Spot Report"[22] was prepared and sent to PDEA.[23]

After PO3 Lowaton's testimony, the parties agreed and stipulated that the testimony of Jeffrey Abellana, one of MADAC operatives, would be that he was a member of the back up team that assisted in the arrest of appellant. The prosecution, thus, decided to dispense with his testimony.[24]

The defense, on the other hand, presented appellant as their sole witness and offered a different version of what transpired on the day of his arrest.

Appellant narrated that on 25 September 2006, at around 12:00 noon, he was sleeping inside his house located at 4041 Kalayaan Street, Barangay Singkamas, Makati City, when suddenly he was awakened by three persons, who introduced themselves as MADAC operatives. These MADAC operatives were looking for a certain Richard. Upon asking them the reason why they were looking for Richard inside his house and at the same time telling them that he was not the person they were looking for, the MADAC operatives simply told him to just go with them peacefully. Without offering any resistance, appellant went with the MADAC operatives. The latter brought him to their office where he was asked to reveal the whereabouts of Richard to which the appellant replied that he does not know the person they were looking for. At this juncture, the MADAC operatives told him that if he will not reveal the whereabouts of Richard, then, they will charge him with possession of marijuana that they were carrying at that moment. Thereafter, he was detained at their office for about eight to nine days.[25]

Appellant further stated that when the MADAC operatives brought him out of the detention cell, he was subsequently brought inside a building where there was a fiscal. The latter then informed him that he was charged with the crime of illegal sale and possession of marijuana in violation of Sections 5 and 11, Article II of Republic Act No. 9165. Appellant, however, denied the same.[26]

After all the documentary and testimonial evidence offered by both parties were meticulously evaluated, the trial court concluded that all the elements of the offenses charged against appellant were satisfactorily proven by the prosecution. Thus, in its Decision dated 8 December 2006, the trial court held appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

WHEREFORE, it appearing that the guilt of [appellant] MARK LESTER DE LA ROSA y SUELLO was proven beyond reasonable doubt, as principal, with no mitigating or aggravating circumstances, for violation [of] Section[s] 5 and 11, Article II of Republic Act No. 9165, he is hereby sentenced:

1. In Criminal Case No. 06-1870, to suffer life imprisonment and to pay a fine of P500,000.00;
2. In Criminal Case No. 06-1871, to suffer imprisonment for an indeterminate term of twelve [12] years and one [1] day, as minimum, to fourteen [14] years, and eight [8] months, as maximum, and to pay a fine of P300,000.00; and
3. To pay the costs.

Let the plastic sachets containing 3.02grams, 2.95 grams, and 2.65 grams of marijuana be turned over to the PDEA for proper disposition.[27] [Emphasis supplied].

Aggrieved, appellant appealed the aforesaid 8 December 2006 Decision of the trial court to the Court of Appeals via a Notice of Appeal.[28]

The Court of Appeals, after a thorough study of the records, rendered the assailed Decision dated 24 April 2008, affirming appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165. The decretal portion of the said Decision reads, thus:

WHEREFORE, the instant appeal is hereby DENIED and the questioned Decision of the RTC of Makati City, Branch 135, in Criminal Case Nos. 06-1870 and 06-1871, convicting the [appellant] beyond reasonable doubt of the crime of violation of Sections 5 and 11, Article II of Republic Act No. 9165, AFFIRMED.[29] [Emphasis supplied].

Still unsatisfied, appellant elevated the aforesaid Decision of the appellate court to this Court via a Notice of Appeal.[30]

In a Resolution[31] dated 14 January 2009, this Court required the parties to simultaneously submit their respective supplemental briefs if they so desire. Instead of filing a Supplemental Brief, the Office of the Solicitor General filed a Manifestation and Motion[32] stating that it be excused from filing it as the appellant has not advanced any cogent or compelling reason for the modification, much less reversal of the assailed appellate court's Decision.

Appellant, on the other hand, opted to file a Supplemental Brief[33] reiterating therein the arguments raised in his Appellant's Brief filed before the Court of Appeals.

In his brief, appellant raised the following assignment of errors:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE EVIDENCE OF THE PROSECUTION WHICH FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE [APPELLANT].

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY OF THE CRIMES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[34]

Appellant argues that the fact of sale of marijuana was not conclusively established because PO3 Lowaton's testimony was incredible for no person in his right mind would boldly sell prohibited drugs in broad daylight and in a public place. The inconsistency in the testimony of PO3 Lowaton as regards their pre-arranged signal similarly casts doubt on the credibility of his testimony. More so, the alleged buy-bust operation was conducted without any prior surveillance. Appellant likewise maintains that his arrest was tainted with irregularity as there was an evident violation of Section 21, Article II of Republic Act No. 9165. By reason of the foregoing, appellant insists that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

After a painstaking review of the records, this Court affirms appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165.

In every prosecution for illegal sale of dangerous drugs, like marijuana, the following elements must 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.[35] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence. We reiterate the meaning of the term *corpus delicti* which is the actual commission by someone of the particular crime charged.[36] The commission of the offense of illegal sale of dangerous drugs, like marijuana, requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former; the crime is considered consummated by the delivery of the goods.[37]

In the case at bench, this Court is fully convinced that the prosecution has adequately and satisfactorily proved all the aforesaid elements of illegal sale of marijuana.

Appellant, who was caught in flagrante delicto, was positively identified by PO3 Lowaton, who acted as the poseur-buyer, as the same person who sold the one plastic sachet of marijuana to him weighing 3.02 grams for a consideration of P100.00. Such one plastic sachet of marijuana was presented in court, which PO3 Lowaton identified to be the same object sold to him by appellant. He further stated that the markings "EBL" found on the said object were his initials, which he placed thereon at the time the appellant was arrested.[38] PO3 Lowaton similarly identified in court the recovered marked money from the appellant that consists of two Fifty Peso bills in the total amount of P100.00 with markings "ATS" on the upper right portion of the serial number of each bill.[39]

More so, the testimony of PO3 Lowaton clearly established in detail how his transaction with appellant happened starting from the moment their informant introduced him to appellant as someone interested in buying his stuff from the time appellant handed him the one plastic sachet of marijuana and, in turn, he handed appellant the two Fifty Peso bills marked money for a total amount of P100.00 that consummated the sale transaction between him and appellant. PO3 Lowaton caused the one plastic sachet of marijuana to be examined at the PNP Crime Laboratory. The item weighing 3.02 grams was tested positive for marijuana as evidenced by Physical Science Report No. D-659-06S prepared by Engineer Richard Allan B. Mangalip, Forensic Chemical Officer/Chief, Physical Science Section of the PNP Crime Laboratory-Southern Police District Crime Laboratory Office.

Thus, it is already beyond question that appellant's guilt for the crime of illegal sale of marijuana, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165 was proven by the prosecution beyond reasonable doubt.

Appellant's contention that PO3 Lowaton's testimony was not credible for no person in his right mind would boldly sell prohibited drugs in broad daylight and in a public place deserves scant consideration.

This Court has consistently pronounced that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private, as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.[40]

Similarly, the alleged contradiction and inconsistency pointed to by appellant in the testimony of PO3 Lowaton as regards the pre-arranged signal agreed upon by the buy-bust team is only minor, trivial, immaterial, and does not in any way affect the credibility of PO3 Lowaton's testimony, since his testimony clearly and categorically established the sale of marijuana. Such minor inconsistency referring to the details of the sale of marijuana may be considered as badges of truth rather than of falsehood.[41]

In *People v. Nicolas*,[42] this Court held that the employment of a pre-arranged signal, or the lack of it, is not indispensable in a buy-bust operation. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. With more reason that a mere inconsistency thereof does not and will not affect the credibility of the prosecution witness so long as all the elements of the offense have been established with certainty.

That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation, especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant. The Court will not pretend to establish on a priori basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. The selection of appropriate and effective means of entrapping drug traffickers is best left to the discretion of police authorities.[43]

For illegal possession of a dangerous drug, like marijuana, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[44]

All the aforesaid elements were clearly established by the prosecution. As an incident to his lawful arrest resulting from the buy-bust operation, appellant was similarly found to have in his possession two more plastic sachets of marijuana with a total weight of 5.60 grams, the same kind of dangerous drug he was caught selling in flagrante delicto. The said two plastic sachets of marijuana was also presented in court, which PO3 Lowatan identified to be the same objects recovered from appellant while he was being frisked on the occasion of his arrest for illegally selling marijuana. PO3 Lowatan likewise explained that the markings "EBL-1" and "EBL-2" written on the two plastic sachets of marijuana were his initials and the same were done by him.

Further, the record is bereft of any evidence that would show that appellant had the legal authority to possess the two plastic sachets of marijuana recovered from him. This Court held in a catena of cases that a mere possession of a regulated drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession - the onus probandi is shifted to the accused, to explain the absence of knowledge or animus possidendi.[45]

With that, appellant's guilt for the crime of illegal possession of marijuana, a dangerous drug, in clear violation of Section 11, Article II of Republic Act No. 9165, was also proven by the prosecution beyond reasonable doubt.

As a last ditch effort, appellant claims that his arrest was tainted with irregularity as the seized items were not photographed in accordance with the provisions of Section 21, Article II of Republic Act No. 9165, thus, an evident violation thereof. The said argument is baseless.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides:

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; [Emphasis supplied].

The aforesaid provision is implemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) 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. [Emphasis supplied].

The afore-quoted Section 21(a), Article II of the IRR of Republic Act No. 9165, offers some flexibility in complying with the express requirements. Indeed, the evident purpose of the procedure is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of or innocence of the accused. Thus, the proviso stating that non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.[46]

In the present case, the records and the transcribed stenographic notes clearly showed that the seized items from appellant were physically inventoried by PO3 Lowaton at the place where appellant was arrested and in his presence, as evidenced by an Acknowledgment Receipt[47] dated 25 September 2006.[48] Also, when appellant was brought to the office of SAID-SOTF, Makati City, the marked three plastic sachets of marijuana were photographed[49] by the apprehending team before it was sent to the PNP Crime Laboratory for examination, which examination yielded positive[50] result to the tests for the presence of marijuana, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S.[51]

Even granting *arguendo* that the prosecution failed to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the aforesaid guidelines, the same is not fatal and does not automatically render appellant's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused.[52]

The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[53]

The prosecution, in this case, has adequately shown the continuous and unbroken possession and subsequent transfers of the three plastic sachets of marijuana from the time appellant handed to PO3 Lowaton the one plastic sachet of marijuana to consummate the sale thereof; then the subsequent recovery by PO3 Lowaton of two more plastic sachets of marijuana from appellant; followed by the markings made by PO3 Lowaton of his initials on the said three plastic sachets of marijuana at the place where appellant was arrested and in his presence; until they were sent to the PNP Crime Laboratory for examination that yielded positive result for the presence of marijuana, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S; and up to the time that the marked three plastic sachets of marijuana were offered in court. Such fact persuasively proves that the three plastic sachets of marijuana presented in court were the same items seized from appellant during the buy-bust operation. The integrity and evidentiary value thereof was duly preserved.

It has been judicially settled that in buy-bust operations, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. This presumption is overturned only if there is clear and convincing evidence that they were not properly performing their duty or that they were inspired by improper motive. The courts, nonetheless, are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual.[54]

In *People v. De Guzman*[55] citing *People v. Doria*,[56] this Court took pains in discussing the "objective" test in buy-bust operations to determine the credibility of the testimony of the police officers involved in the operation:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported

transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[57]

As aptly observed by both the trial court and the appellate court:

We find the testimony of the poseur-buyer, [PO3 Lowaton] clear and credible. He recounted in full detail how the deal was set by the informant, the actual exchange of the plastic sachet of marijuana and the [marked money] consisting of two (2) [F]ifty [P]eso bills, and the apprehension of the [appellant] [and the incidental recovery of two more plastic sachets of marijuana in his possession]. x x x.

The totality of evidence presented is convincing and points to appellant as being engaged in the sale of the illegal drugs. The testimony of the prosecution witness identifying the appellant to be a seller of illegal drugs appears to be categorical and unfabricated. No ill motive on the part of [PO3 Lowaton] has been shown to tarnish his testimony. Such positive evidence certainly prevails over mere denial and alibi which, if unsubstantiated by clear and convincing evidence, are negative and self-serving unworthy of credible weight in law.[58]

The Court finds no reason to deviate from the factual findings of the trial court and the Court of Appeals. It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirm the findings. Trial courts are in the best position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[59]

In comparison to the overwhelming evidence of the prosecution, all that the appellant could muster is the defense of denial and frame-up.

Denial or frame-up, like alibi, has been viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of Dangerous Drugs Act. The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denial of appellant cannot prevail over the positive testimony of the prosecution witness.[60]

In *People v. Rosialda*[61] citing *People v. Rodrigo*,[62] this Court pronounced that once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused.[63]

In this case, it has been established beyond doubt that the prosecution was able to prove with certainty all the elements of the crimes charged and the identity of the appellant after he was positively identified by the prosecution witness. Thus, appellant's self-serving assertions unsupported by any plausible proof to bolster his

allegations have no leg to stand on. His defense of denial or frame-up must necessarily fail.

To repeat, in cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over petitioner's self-serving and uncorroborated denial.[64]

This Court will now determine the penalties to be imposed upon appellant.

Section 5, Article II of Republic Act No. 9165, provides for the imposable penalties for illegal sale of marijuana, thus:

Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. [Emphasis supplied].

From the afore-quoted provision, the sale of any dangerous drug, like marijuana, regardless of the quantity and purity involved is punishable by life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00. In light of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed.[65] Consequently, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. Thus, this Court sustains the penalty imposed by the lower courts in Criminal Case No. 06-1870.

Section 11, Article II of Republic Act No. 9165, on the other hand, expressly provides the penalty for illegal possession of marijuana, thus:

Sec. 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:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana. [Emphasis supplied].

The aforesaid provision clearly states that the imposable penalty for illegal possession of any dangerous drug, like marijuana, with a quantity of five grams or more but less than 10 grams, is imprisonment of 20 years and 1 day to life imprisonment and a fine ranging from P400,000.00 to P500,000.00.

The prosecution in Criminal Case No. 06-1871 established beyond reasonable doubt that appellant, without any legal authority, had in his possession 5.60 grams of marijuana. Therefore, the penalty imposed upon appellant by the lower courts for illegal possession of marijuana is not proper as the said penalty was only for illegal possession of marijuana having a quantity of less than five grams.

Following the penalty provided for under Section 11, Article II of Republic Act No. 9165, for illegal possession of five grams or more but less than 10 grams of marijuana, this Court, thus, imposed upon appellant the penalty of imprisonment of 20 years and one day and a fine of P400,000.00.

The Indeterminate Sentence Law finds no application in this case as the penalty of imprisonment provided for illegal possession of five grams or more but less than 10 grams of marijuana is indivisible.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 02642 dated 24 April 2008 finding herein appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby AFFIRMED with MODIFICATION that for the crime of illegal possession of marijuana in violation of Section 11, Article II of Republic Act No. 9165, docketed as Criminal Case No. 06-1871, appellant is hereby sentenced to suffer the penalty of imprisonment of 20 years and 1 day and a fine of P400,000.00.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Reyes, Jr. and Ramon M. Bato, Jr., concurring. Rollo, pp. 2-19.

[2] Penned by Judge Francisco B. Ibay. CA rollo, pp. 11-15.

[3] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any or such transactions.

[4] SEC. 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:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana.

[5] Otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

[6] CA rollo, pp. 7-8.

[7] Id. at 7.

[8] Id. at 8.

[9] As evidenced by Certification of Arraignment dated 11 October 2006. Records, p. 29.

[10] TSN, 27 October 2006, pp. 2-3.

[11] Records, p. 16.

[12] Id. at 17.

[13] TSN, 27 October 2006, pp. 4-5.

[14] Records, p. 50.

[15] As contained in the Joint Affidavit of Arrest executed by PO3 Lowaton and Jeffrey Abellana, one of MADAC operatives, which was adopted as part of the direct testimony of PO3 Lowaton. Records, pp. 21-22; TSN, 27 October 2006, p. 12.

[16] TSN, 27 October 2006, pp. 6-7.

[17] Records, p. 13.

[18] TSN, 27 October 2006, pp. 7 and 9; Joint Affidavit of Arrest that has been adopted as part of PO3 Lowaton's direct testimony, records, pp. 21-22; TSN, 27 October 2006, p. 12.

[19] Records, p. 19.

[20] Id.

[21] Id. at 11.

[22] Id. at 14.

[23] TSN, 27 October 2006, pp. 8-10.

[24] Id. at 12.

[25] TSN, 3 November 2006, pp. 4-6.

[26] Id. at 7.

[27] CA rollo, p. 15.

- [28] Id. at 16.
- [29] Rollo, p. 18.
- [30] Id. at 20.
- [31] Id. at 25-26.
- [32] Id. at 27-28.
- [33] Id. at 31-37.
- [34] CA rollo, p. 27.
- [35] *People v. Alao*, 379 Phil. 402, 412 (2000).
- [36] *People v. Sembrano*, G.R. No. 185848, 16 August 2010.
- [37] *People v. Dumlao*, G.R. No. 181599, 20 August 2008, 562 SCRA 762, 768-769.
- [38] TSN, 27 October 2006, p. 8.
- [39] Id. at 10.
- [40] *People v. Requiz*, 376 Phil. 750, 759-760 (1999).
- [41] *People v. Chang*, 382 Phil. 669, 695 (2000) citing *People v. Salinas*, G.R. No. 107192, 18 November 1993, 228 SCRA 45, 50.
- [42] G.R. No. 170234, 8 February 2007, 515 SCRA 187, 197.
- [43] *People v. Zheng Bai Hui*, 393 Phil. 68, 133 (2000).
- [44] *People v. Tamayo*, G.R. No. 187070, 24 February 2010.
- [45] *People v. Sembrano*, supra note 36 citing *People v. Noque*, G.R. No. 175319, 15 January 2010 and *People v. Tee*, 443 Phil. 521, 551 (2003).
- [46] *People v. Lorenzo*, G.R. No. 184760, 23 April 2010.
- [47] Records, p. 13.
- [48] TSN, 27 October 2006, pp. 7 and 9; Joint Affidavit of Arrest that has been adopted as part of PO3 Lowaton's direct testimony, records, pp. 21-22; TSN, 27 October 2006, p. 12.
- [49] Records, p. 19.
- [50] Id.
- [51] Id. at 11.
- [52] *People v. Rosialda*, G.R. No. 188330, 25 August 2010.
- [53] Id.
- [54] *People v. De Guzman*, G.R. No. 151205, 9 June 2004, 431 SCRA 516, 522-523.
- [55] Id.
- [56] G.R. No. 125299, 22 January 1999, 301 SCRA 668.

[57] Id. at 698-699.

[58] Rollo, pp. 11-12.

[59] *Perez v. People*, 515 Phil. 195, 203-204 (2006).

[60] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468.

[61] *People v. Rosialda*, supra note 52.

[62] G.R. No. 176159, 11 September 2008, 564 SCRA 584, 596.

[63] *People v. Rodrigo*, id.

[64] *People v. Dumlao*, supra note 37 at 770.

[65] *People v. Sembrano*, supra note 36.

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