

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO TAMAYO Y TENA, ACCUSED-APPELLANT.

G.R. No. 187070. February 24, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

For review is the Decision [1] dated April 21, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01850, which affirmed the Joint Decision [2] dated December 27, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 103 in Criminal Case Nos. Q-03-117407 and Q-03-117408. The trial court convicted appellant Rolando Tamayo y Tena of violation of Sections 5 [3] and 11 [4] of Article II of Republic Act No. 9165 [5] and sentenced him to suffer the penalty of life imprisonment and to pay the fine of P500,000.00 in Criminal Case No. Q-03-117407, and to suffer the penalty of life imprisonment and to pay the fine of P500,000.00 in Criminal Case No. Q-03-117408.

The appellant was charged in two (2) Informations, [6] which read as follows:

Crim. Case No. Q-03-117407

That on or about the 17[th] day of May, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, twelve point seventeen (12.17) grams of dried marijuana leaves a dangerous drug.

CONTRARY TO LAW.

Crim. Case No. Q-03-117408

That on or about the 17[th] day of May, 2003, in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, wilfully, unlawfully and knowingly have in her/his/their possession and control, one thousand four hundred ninety one point five (1,491.5) grams of marijuana fruiting tops, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment on June 30, 2003, the appellant pleaded not guilty to the charges against him. [7] Thereafter, trial ensued.

The prosecution presented as witnesses Police Officers Andres Nelson Sy and Cesar C. Collado of Police Station 4, Novaliches, Quezon City. They testified that on May 17, 2003 at around 5:30 p.m., a confidential informant arrived at the station and reported that a certain "Ronnie" was selling marijuana at Pilarin Street, Barangay Gulod, Novaliches, Quezon City. At once, a team was created to conduct a buy-bust operation in the reported area. PO3 Sy was designated as the poseur-buyer, while PO2 Collado, Police Superintendent Noli Wong and one (1) other police officer were assigned as back-ups. PO3 Sy placed his initials "ANS" on a one hundred peso (P100.00) bill, which would be used as the buy-bust money. Then the team and the confidential informant proceeded to the target

area. [8]

At around 7:00 p.m., PO3 Sy and the confidential informant went to the appellant's house, while PO2 Collado and the other officers remained inside their vehicle, about ten (10) to fifteen (15) meters away from the house. After the informant introduced PO3 Sy to the appellant, PO3 Sy was allowed to enter the house. Once inside, PO3 Sy told the appellant that he is interested in buying marijuana. The appellant asked PO3 Sy to wait. The appellant then went to the stairs and took a bag which was colored blue, green and pink. The appellant placed the bag on a table and took out a tea bag supposedly containing dried marijuana. PO3 Sy gave the P100.00 buy-bust money to the appellant, who in turn handed him the tea bag. Right after the exchange, PO3 Sy introduced himself as a police officer and placed the appellant under arrest. Thereafter, the confidential informant went out of the house, which was the pre-arranged signal that the sale of illegal drugs was already consummated. [9] PO3 Sy likewise testified that at the time he was transacting with the appellant, there were people playing video karera inside the house and that those people scampered away when he arrested the appellant. [10]

PO2 Collado testified that as soon as he saw the confidential informant go out of the house, he approached PO3 Sy who was already holding the appellant. PO2 Collado examined the bag and discovered dried marijuana leaves inside, but it was PO3 Sy who recovered the buy-bust money and other plastic sachets containing dried marijuana fruiting tops from the appellant. Afterwards, the appellant was brought to the police station together with the confiscated dried marijuana fruiting tops. There were eight (8) plastic sachets containing marijuana fruiting tops recovered from the appellant aside from the dried marijuana contents of the bag. [11]

On cross-examination, PO3 Sy testified that it was his first time to meet the appellant. He likewise testified that during the time he was dealing with the appellant, there were other people inside the house. [12] On the other hand, PO2 Collado testified that he was at a distance of about fifteen (15) meters from the appellant's house when the illegal sale took place. Right after he saw the confidential informant running out of the house, he immediately approached PO3 Sy. [13] PO3 Sy and PO2 Collado positively identified the appellant and the dried marijuana leaves in open court. [14] PO3 Sy identified the tea bag containing marijuana through his initials, "ANS." [15]

The testimony of Forensic Chemist Yelah C. Manaog, who examined the substance and prepared the report, was dispensed with, considering that the parties had stipulated that the report was duly accomplished after the substance examined by the crime laboratory yielded "positive" to the test for marijuana, a dangerous drug. [16]

The defense, for its part, presented the appellant as its sole witness. He testified that he was with his daughter inside his house at No. 18 Pilarin Street, Barangay Gulod, Novaliches, Quezon City at around 3:00 to 4:00 in the afternoon of May 17, 2003, when someone barged into his house and pointed a gun at him. He asked the person, who later turned out to be a police officer, what was going on but he did not get any answer. He was then forcibly dragged out of his house, made to board a van, and brought to Police Station 4 in Novaliches, Quezon City. He further testified that at the police station, he was put inside a detention cell. He denied the allegations of the prosecution. [17]

On cross-examination, the appellant testified that he worked as a mason while his wife is a manicurist. They have two (2) children who are still toddlers. He also narrated that at the time he was arrested, his wife was not in their house and he sought the help of his sister, Baby, who lives right beside them. According to him, Baby did not ask the police officers the reason for his arrest. [18]

On December 27, 2005, the trial court found the evidence of the prosecution sufficient to prove the appellant's guilt beyond reasonable doubt and rendered a decision of conviction in Criminal Case Nos. Q-03-117407 and Q-03-117408.

The dispositive portion of the trial court's joint decision reads:

WHEREFORE, in view of the foregoing disquisitions, judgment is hereby rendered finding accused Rolando Tamayo y Tena GUILTY beyond reasonable doubt of the crimes of drug pushing and of drug possession and he is hereby sentenced, as follows:

- In Criminal Case No. Q-03-117407, accused Rolando Tamayo y Tena is hereby sentenced to suffer Life Imprisonment and to pay a fine of P500,000.00.

- In Criminal Case No. Q-03-117408, accused Rolando Tamayo y Tena is hereby likewise sentenced to suffer Life Imprisonment and to pay a fine of P500,000.00 in view of the large quantity of marijuana involved.

The drugs involved in this case are hereby ordered transmitted to the PDEA thru DDB for proper disposition.

SO ORDERED. [19]

The appellant appealed to the Court of Appeals, [20] which, however, sustained the trial court's judgment of conviction.

Hence, the present appeal.

On June 10, 2009, we required the parties to submit their supplemental briefs if they so desired. The Office of the Solicitor General (OSG), however, opted not to file its supplemental brief, while the appellant adopted his brief filed with the Court of Appeals. In his brief, the appellant interposed the following arguments:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE ADDUCED BY THE DEFENSE. [21]

Simply stated, the issue is whether the appellant is guilty beyond reasonable doubt of violating Rep. Act No. 9165.

Appellant denies the charges against him and insists that he was merely inside his house with his three (3)-year old daughter and doing nothing illegal when the alleged buy-bust operation happened. He suggests that he was the victim of a frame-up as it is well known that some law enforcers engage in anomalous practices such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. He laments the fact that his testimony was not given weight and that the trial court found his version difficult to accept. He insists that the presumption of innocence prevails over the presumption of regularity in the performance of duty and contends that his guilt was not proven beyond reasonable doubt. [22]

For the State, the OSG maintains that the prosecution had established all the elements of an illegal sale of prohibited drugs, viz: (1) the appellant sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. The facts show that the appellant sold and delivered marijuana to PO3 Sy who posed as a buyer. The marijuana that was seized and identified as a prohibited drug was subsequently presented in evidence. Moreover, the OSG maintains that witnesses PO2 Collado and PO3 Sy positively identified the appellant as the perpetrator of the crime. The records do not disclose any ill-motive on their part to falsely accuse the appellant of an atrocious crime. [23]

We affirm the appellant's conviction.

It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[24] In this case, no evidence was adduced showing any irregularity in any material aspect of the conduct of the buy-bust operation. Neither was there any proof that the prosecution witnesses who were members of the buy-bust operation team, particularly those whose testimonies were in question, were impelled by any ill-feeling or improper motive against the appellant which would raise a doubt as to their credibility.

In a prosecution for illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. In a prosecution for illegal possession of a dangerous drug, 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.[25]

Here, the prosecution was able to prove the existence of all the elements of the illegal sale and illegal possession of marijuana. The appellant was positively identified by the prosecution witnesses as the person who possessed and sold the marijuana presented in court. In his testimony, PO3 Sy categorically stated that he bought the marijuana from the appellant. In addition, it was duly established that the sale actually took place and more marijuana was discovered in appellant's possession pursuant to a lawful arrest. The marked money used in the buy-bust operation was likewise duly presented. Furthermore, the marijuana seized from the appellant was positively and categorically identified in open court. [26]

We give credence to the straightforward testimony of prosecution witness PO3 Andres Nelson Sy, which clearly established that an illegal sale of marijuana actually took place and that the appellant was the seller, thus:

FIS. ARAULA;

You said that you are a police officer, do you remember where were you sometime in M[a]y 17, 2003, mr. witness?

WITNESS:

At police station 4, Novaliches, Quezon City sir.

FIS. ARAULA;

What time you reported to Police station 4 on May 17, 2003, mr. witness?

WITNESS:

I reported for work at about 8:00 in the morning sir.

FIS. ARAULA;

While at the police station, what happened, mr. witness?

WITNESS:

An informant arrived about 5:30 in the afternoon sir.

FIS. ARAULA;

What was the informant relayed, mr. witness?

WITNESS:

There was somebody selling marijuana at Pilarin Street, Brgy. Gulod, Novaliches, Quezon City through our Superior Wong sir.

FIS. ARAULA;

Was this confidential informant male or female, mr. witness?

WITNESS:

Male sir.

FIS. ARAULA;

After receiving that information of illegal activities, what action did your office take, mr. witness?

WITNESS:

Our chief call us to conduct a buy bust operation, Wong, De Guzman, Collado and I sir.

FIS. ARAULA;

After you were called, what happened next, mr. witness?

WITNESS:

I was told that I am the one who will buy marijuana sir.

FIS. ARAULA;

How much marijuana, mr. witness?

WITNESS:

One hundred peso sir.

FIS. ARAULA;

Where did you get the money to buy marijuana, mr. witness?

WITNESS:

From our Superior Wong sir.

FIS. ARAULA;

How about the other police officers, what is their role in that buy bust operation, mr. witness?

WITNESS:

They were my back up sir.

FIS. ARAULA;

Where you informed who was the subject of the buy bust operation, mr. witness?

WITNESS:

Yes sir.

FIS. ARAULA;

What is the name, mr. witness?

WITNESS:

He was called as Ronnie, but later we came to know him as Rolando Tamayo sir.

FIS. ARAULA;

After you were tasked as the poseur buyer and received the one hundred peso bill as buy bust money, what happened next, mr. witness?

WITNESS:

I first placed my initial ANS on top of the date 2001 sir.

FIS. ARAULA;

To that one hundred peso bill, mr. witness?

WITNESS:

Yes sir.

FIS. ARAULA;

You said you placed your initial on top of the date 2001, showing to you this one hundred peso bill can you show to us where is that marking that you are telling, now. Mr. witness?

WITNESS:

Here under 2001, ANS sir.

FIS. ARAULA;

May we request that this one hundred peso bill with serial no. BH359720 which was already marked as Exhibit G and we request that the marking placed by this witness as Exhibit G-1 your honor.

After you placed your markings, what happened next, mr. witness?

WITNESS:

We went to the place the confidential informant was with me in the vehicle and my companions were boarded in the van following us sir.

FIS. ARAULA;

What time you reached this Barangay Gulod, mr. witness?

WITNESS:

7:00 in the evening sir.

FIS. ARAULA;

Can you tell us what particular place at Barangay Gulod that you went to, mr. witness?

WITNESS:

Pilarin Street, Brgy. Gulod, Novaliches, Quezon City sir.

FIS. ARAULA;

What happened when you reached that place, mr. witness?

WITNESS:

We alighted from the motorcycle and we went to the compound with open gate, we proceeded to the place that was "tuktuk" that can be seen by my companions sir.

FIS. ARAULA;

What happened when you entered the compound mr. witness?

WITNESS:

We enter the house of Rolando Tamayo sir.

FIS. ARAULA;

How were you able to enter the house, mr. witness?

WITNESS:

My confidential informant introduced me to the subject and I was allowed to enter the house sir.

FIS. ARAULA;

Where was Rolando Tamayo whom you mentioned when you were introduced, mr. witness?

WITNESS:

I saw Rolando Tamayo at the sala it so happened there was a video camera inside sir.

FIS. ARAULA;

Where were you when you were introduced to Rolando Tamayo, mr. witness?

WITNESS:

I was beside the front door then I came in later sir.

FIS. ARAULA;

Where was Tamayo, mr. witness?

WITNESS:

He was at the sala of the house sir.

FIS. ARAULA:

You were in the door of the house of Tamayo while Tamayo was inside the house at the living room, mr. witness?

WITNESS:

Yes sir.

FIS. ARAULA;

When you entered the house, what happened, mr. witness?

WITNESS:

After I was introduced, I told him I will buy marijuana, Sir.

FIS. ARAULA;

What was the answer of Tamayo after informing him that you are interested in buying marijuana, mr. witness?

WITNESS:

He told me sige, wait for me sir.

FIS. ARAULA;

Where was your confidential informant, mr. witness?

WITNESS:

He was there also sir.

FIS. ARAULA;

You testified that Tamayo said wait for me, what happened next, mr. witness?

WITNESS:

He went to the stairs of the house he got [the] bag pack colored blue green and pink sir.

FIS. ARAULA;

How far were you from Tamayo, mr. witness?

WITNESS:

2 to 4 meters sir

FIS. ARAULA;

After that T[a]mayo able to get that bag, what did he do with that bag, mr. witness?

WITNESS:

I he put down on the table and got a tea bag sir.

FIS. ARAULA;

What did he with that tea bag, mr. witness?

WITNESS:

I gave one hundred peso bill and I got the tea bag sir.

FIS. ARAULA;

Can you described that tea bag, mr. witness?

WITNESS:

Small only sir.

COURT

We are presenting to you bag, see inside, what tea bag you are referring to?

FIS. ARAULA;

Witness is searching the bag

COURT;

Officer Sy searched the bag inside and he could not find tea bag, he found big marijuana but not tea bag.

The court interpreter found 8 tea bags.

WITNESS:

This is the tea bag I bought from Rolando Tamayo sir.

FIS. ARAULA;

How did you know that is the same tea bag, mr. witness?

WITNESS:

Because of the initial that I placed sir, ANS.

FIS. ARAULA;

May we request your honor that said initial be marked as Exhibit E-2 your honor.

After you received that tea bag in exchanged to one hundred peso bill, what happened next, mr. witness?

WITNESS:

That is the time I arrested him and introduced as police officer sir.

FIS. ARAULA;

How [about] the bag that you testified under the stairs from where he got the tea bag, mr. witness?

WITNESS:

In the sala sir.

FIS. ARAULA;

What did you do next, mr. witness?

WITNESS:

After I arrested him my companions who were outside the house at that time rush toward the house sir.

FIS. ARAULA;

Who were your companions, mr. witness?

WITNESS:

Collado was the first who entered and got the bag pack sir.

FIS. ARAULA;

What happened next, mr. witness?

WITNESS:

When I arrested Tamayo, my companions get the bag pack and get the one hundred peso bill that I gave him earlier sir. [27]

The RTC, as upheld by the Court of Appeals, found that the testimonies of the prosecution witnesses were unequivocal, definite and straightforward. More importantly, their testimonies were consistent in material respects with each other and with other testimonies and physical evidence.

We have held that trial courts have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Hence, their factual findings are accorded great weight, absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[28]

With respect to the penalty, we affirm the penalties imposed by the RTC and the Court of Appeals for the illegal sale and illegal possession of dangerous drugs, as the penalties are fully in accord with the provisions of Sections 5 and 11 of Rep. Act No. 9165, which provide:

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.

x x x x

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

(7) 500 grams or more of marijuana; and

x x x x

WHEREFORE, the Decision dated April 21, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01850 finding appellant Rolando Tamayo y Tena guilty beyond reasonable doubt of the crimes charged in Criminal Case Nos. Q-03-117407 and Q-03-117408 for violation of Sections 5 and 11 of Rep. Act No. 9165 is **AFFIRMED**.

With costs against the accused-appellant.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales, Leonardo-De Castro, and Bersamin, JJ., concur.

[1]CA rollo, pp. 73-85. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Edgardo F. Sundiam and Sixto C. Marella, Jr. concurring.

[2] Id. at 19-22. Penned by Presiding Judge Jaime N. Salazar, Jr.

[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 of such transactions.

x x x x

[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

(7) 500 grams or more of marijuana; and

x x x x

[5]AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Also known as the "Comprehensive Dangerous Drugs Act of 2002." Approved on June 7, 2002.

[6] Records, pp. 2-5.

[7] Id. at 18-19.

[8] TSN, March 16, 2004, pp. 2-5; TSN, September 7, 2004, pp. 2-4.

[9] Id. at 6-9; Id. at 5-8.

[10] TSN, September 7, 2004, pp. 12-13.

[11] TSN, March 16, 2004, pp. 9-12.

[12] TSN, September 7, 2004, p. 12.

[13] TSN, May 4, 2004, pp. 2-3.

[14] TSN, September 7, 2004, pp. 7-8, 13-14; TSN, March 16, 2004, pp. 11-14.

[15] Id. at 8.

[16] Records, pp. 7-9.

[17] TSN, February 21, 2005, pp. 3-6.

[18] Id. at 6-9.

[19] CA rollo, pp. 21-22.

[20] Records, pp. 103-104.

[21] CA rollo, p. 38.

[22] Id. at 38-42.

[23] Id. at 61-62.

[24] *People v. Navarro*, G.R. No. 173790, October 11, 2007, 535 SCRA 644, 649, citing *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 595.

[25] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[26] TSN, September 7, 2004, pp. 8-14.

[27] *Id.* at 2-9.

[28] *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 204.

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