

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANNY LUMUMBA Y MADE, ACCUSED-APPELLANT.

G.R. No. 232354. August 29, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

Before Us is an appeal, assailing the September 30, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07444, which affirmed the March 31, 2015 Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 227, which convicted accused-appellant for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002".

The Facts

An Information[3] for the sale of 0.64 gram of marijuana fruiting tops was filed against accused-appellant, to which he pleaded not guilty to. During the pre-trial conference, the parties stipulated, among others, to dispense with the testimony of the Forensic Chemist, Police Senior Inspector May Andrea Bonifacio (PSI Bonifacio).

During trial, the prosecution established that on September 19, 2008, a confidential informant (CI) went to the Quezon City Police District (QCPD), to report to Police Inspector Romeo Rabuya (PI Rabuya), the illegal drug activities of accused-appellant. The CI claimed that he personally knew accused-appellant as a drug pusher in Barangay Tatalon, Quezon City.[4]

PI Rabuya then directed PO1 Franklin Gadia (PO1 Gadia) and PO1 Erwin Bautista (PO1 Bautista) to validate the report and conduct surveillance. PO1 Gadia, PO1 Bautista, and the CI proceeded to Barangay Tatalon, where the CI conducted a test buy through a contact and was able to confirm that accused-appellant was selling illegal drugs.[5]

A buy-bust operation was then recommended, and approved to be executed against accused-appellant. PO1 Gadia was designated as the poseur-buyer, and PO1 Bautista was the arresting officer. The buy-bust money consisting of a One Hundred Peso bill with serial number JY075711 was marked with PO1 Gadia's initial. A pre-operation report and coordination form were submitted to the Philippine Drug Enforcement Agency (PDEA), setting forth the details of the operation.[6]

On September 21, 2008, the team proceeded to the target area in Barangay Tatalon, Quezon City, and strategically positioned themselves within visible sight of the operation. The team saw a man standing in front of the Bolanos Compound ROTC Hunters, who, turned out to be the accused-appellant. PO1 Gadia and the CI approached him, and the CI introduced PO1 Gadia to accused-appellant. PO1 Gadia told accused-appellant that he wanted to buy marijuana worth P100.00. After he was assured that PO1 Gadia was indeed interested in buying marijuana, accused-appellant took out from his right pocket a small heat-sealed transparent plastic sachet, containing dried marijuana leaves with fruiting tops. PO1 Gadia then gave accused-appellant the marked P100.00 bill who placed the same in his pocket. PO1 Gadia placed the plastic sachet he bought inside his pocket, and executed the

pre-arranged signal by scratching his head. He then held the right hand of accused-appellant and introduced himself as a police officer.[7]

PO1 Bautista approached accused-appellant upon seeing the pre- arranged signal and informed him that he was being arrested for illegal sale of drugs. The buy-bust money was recovered from the right front pocket of accused-appellant's pants.[8]

Evidence for the Prosecution

The seized item was inventoried and photographed in the presence of accused-appellant, the other police operatives, and media representative, Alice Francisco of DZAM.[9] It was raised during cross-examination that the media representative's address was not stated, thus, the court would be unable to subpoena her to affirm her presence during the inventory.[10]

During trial, PO1 Gadia testified that the inventory and photographs were taken at the actual site, while PO1 Bautista claimed that no photographs were taken at the place of arrest, but at the police station already.[11]

Accused-appellant was thereafter brought to the police station. PO1 Gadia, who was in possession of the seized marijuana, turned over the same to PO2 Caranza. PO2 Caranza, prepared the Request for Laboratory Examination. PO1 Gadia and PO1 Bautista delivered the seized specimen, and thereafter requested for its examination to the crime laboratory.

PSI Bonifacio personally received the specimen and the request for examination from PO1 Bautista. Her qualitative examination of the same found it positive for the presence of marijuana.[12]

Evidence for the Defense

Accused-appellant, for his part, denied the allegations against him. He claimed that he was resting in his room on September 19, 2008 when someone knocked on the door. When he opened it, PO1 Bautista, PO1 Gadia and PO2 Caranza were there and invited him to go to the precinct.

At the police station, the police officers asked him about the whereabouts of his niece Juday, who was living with him. Since he was not able to answer the question, he was then placed in the detention cell. During his detention, accused-appellant claimed that marijuana was planted on him.[13]

The RTC Ruling

In a Decision[14] dated March 31, 2015, the RTC found that all elements of the crime for illegal sale of dangerous drugs were established. It also found that although there were inconsistencies in the testimonies of PO1

Gadia and PO1 Bautista as to where the photographs were taken, it found the same to be minor as it did not affect the credibility of the witnesses nor the prosecution's case. It disposed, thus:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, JUDGMENT IS HEREBY RENDERED finding Accused DANNY LUMUMBA Y MADE GUILTY beyond reasonable doubt of the offense charged for violation of Section 5, ART, II, R.A. 9165 for having sold 0.64 gram of Marijuana Fruiting Tops, a dangerous drug and he is hereby sentenced to suffer THE PENALTY OF LIFE IMPRISONMENT AND TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

In the service of his sentence, herein accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The Branch Clerk of this Court is hereby ordered to record the dispositive portion of this Decision in the

Criminal Docket of the Court and to turn over the subject specimen covered by Chemistry Report No. D-465-08, consisting of 0.64 gram of Marijuana Fruiting Tops too (sic) the Chief of PDEA Crime Laboratory so that the same shall be included in PDENs next scheduled date of burning and destruction.

She is also ordered to prepare the Mittimus and necessary documents for the immediate transfer of the accused (sic) custody to the Bureau of Corrections in Muntinlupa City, pursuant to the SC Circular.

SO ORDERED.

On appeal, the CA sustained accused-appellant's conviction. It echoed that the elements for the illegal sale of marijuana were established. It found that the non-compliance with Sec. 21 of RA 9165 was negligible, considering that the prosecution was able to preserve the integrity and evidentiary value of the illegal drug.

Hence, this appeal.

The Court's Ruling

Accused-appellant questions the integrity of the corpus delicti and points out the various non-compliance with Sec. 21 of RA 9165, i.e., accused-appellant was not asked to sign the inventory or furnished a copy therewith; there were no elected official or DOJ representative; the media representative could not be subpoenaed because the prosecution never gave her address; the photographs were questionable; and, the prosecution gave no sufficient justification as to the police officer's lapses.

The Office of the Solicitor General (OSG) counters that the prosecution had established an unbroken chain of custody of the illegal drug seized from accused-appellant, and that the identity and integrity of the substance seized and examined was clearly established. It emphasized that the rules do not require strict compliance with procedural requirements as long as the integrity of the seized evidence has been duly preserved. It also insisted on the credibility of the witnesses and disregarded the minor inconsistencies in their testimonies, if any.

The appeal is meritorious.

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs, and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case:[15]

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of 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 and custody over said items;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject items: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

The rules clearly provide that the apprehending team should mark and conduct a physical inventory of the seized items, and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[16]

The case of *People of the Philippines vs. Año*[17] makes a thorough discussion of the procedural requirements as regards the presence of insulating witnesses required by law, thus:

In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes. In the case of *People v. Mendoza*, the Court stressed that "[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 1064030 - provide that non-compliance with the requirements of Section 21, Article II of RA 9165 - under justifiable grounds - will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the

procedural lapses. and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. (Emphasis Supplied)

Here, there were various lapses in the procedure that were left unexplained or with no justifiable grounds for non-compliance. First, a scrutiny of the inventory receipt[18] would reveal that accused-appellant did not sign the same, which was also confirmed during trial, in the testimony of PO1 Gadia:

FISCAL BACOLOR: Who were present when you conducted the said Inventory?

WITNESS: Myself, PO1 Erwin Bautista and my other operatives.

FISCAL BACOLOR: Where is the accused when you conducted the Inventory?

WITNESS: He was with us present when we conducted an Inventory.

FISCAL BACOLOR: Did you ask him to sign the Inventory?

WITNESS: No, sir.[19]

x x x x

Second, only the media representative was present and signed the said inventory receipt:

FISCAL BACOLOR: You mentioned that there was a representative from the Media who was present when you made the Inventory, can you please tell us who was that representative from the Media?

WITNESS: Yes, this person, Alice Francisco from DZAM.[20]

x x x x

FISCAL COLES: And who were present during the inventory?

WITNESS: PO1 Franklin Gadia, I, and a representative from OFW Asia, a media representative Alice Francisco, Ma'am.

FISCAL COLES: Where was the accused at that time?

WITNESS: He was also present, Ma'am.

FISCAL COLES: Why there were (sic) no representatives from DOJ and from the barangay?

WITNESS: That was only the available witness na nakuha namin, si Alice Francisco, from media.

COURT: What time was this?

WITNESS: 1:00 o'clock p.m., your Honor.

COURT: In the afternoon, and yet there were no available witnesses, mandated witnesses required by the law?

WITNESS: Yun pong kasi mga nasa barangay, your Honor, hindi po sila nikikialam (sic), sa madali't salita, your Honor, naglilinis po sila, hindi po sila tumitistigo.

COURT: Are you trying to tell the court that they refused?

WITNESS: Yes, your Honor, parang ayaw po nilang makialam.

COURT: Saan barangay yan?

WITNESS: Barangay Tatalon, your Honor.

COURT: Were you able to talk to the Barangay Chairman?

WITNESS: No, your Honor, that was only the media representative, your Honor.

COURT: Be candid with the court, wala kayong pinuntahang barangay?

WITNESS: It was the investigator who invited the supposed witnesses, your Honor.

x x x x[21]

Contrary to the conclusion of the CA, the reason given cannot be deemed a justifiable ground for non-compliance of the requirement for the presence of the insulating witnesses. There was no proof that other measures were taken to ensure that any other elected public official could be present after the alleged members of the said barangay refused to do so. Police officers must prove that they exerted efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[22] We do not find that to be so in this case.

Third, there was disparity in the testimonies of PO1 Gadia and PO1 Bautista as to where the photographs were taken:

x x x x

Q:

And, where did you conduct the inventory, Mr. Witness?

A:

At the area, sir.

Q:

And, who in particular conducted the inventory?

A:

I was the one and PO1 Bautista.

Q:

Who wrote the entries in the inventory?

A:

PO1 Bautista, sir.

x x x x

Q:

Now, were there pictures taken, Mr. Witness?

A:

Yes, sir, at the area.

Q:

So there were pictures taken in the area?

A:

Yes, sir.

Q:

Pictures of the accused as well as the surrounding of the area or the place of operation?

A:

Picture of the accused and the specimen.[23]

x x x x

ATTY. MALLABO: Aside from the markings, did you take photographs at the place of seizure?

WITNESS: No, sir.

ATTY. MALLABO: Are you not supposed to photograph the item you received or you recovered or you seized from any person right there at the place of seizure, that is the requirement of the law? Hindi mo ginawa?

WITNESS: Hindi po, sir.

ATTY. MALLABO: So, your statement is insufficient?

WITNESS: Sir, ginawa naman po namin sa opisina, sir.

ATTY. MALLABO: You are not supposed to bring the money right at the place of seizure, that is my question. Your answer is, no, I did not. Therefore, your statement is insufficient, correct?

WITNESS: No, sir.

FISCAL ZULUETA: It is up to the court to determine.

x x x x

ATTY. MALLABO: And also the inventory, there is lack of the mandatory witnesses as required by Section 21 of Republic Act 9165?

WITNESS: Yes, sir.

x x x x[24]

As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses. However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies.[25]

In case of non-compliance, the prosecution must be able to explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are, or that they even exist. Indeed, failure to strictly comply with this rule, however, does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." [26] Here, the justifiable grounds were markedly absent.

Considering the absence of a justifiable explanation as to non-compliance with the rules, as well as the conflicting testimonies on material facts, We find that the prosecution failed to prove its case. The corpus delicti's integrity cannot then be said to have been properly established.

The breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the corpus delicti had been compromised.[27] The Court, therefore, acquits accused-appellant on the basis of reasonable doubt.

WHEREFORE, the appeal is GRANTED. The Decision dated September 30, 2016, docketed as CA-G.R. CR-H.C. No. 07444 is hereby REVERSED and SET ASIDE.

Accordingly, accused-appellant DANNY LUMUMBA y MADE is hereby ACQUITTED based on reasonable doubt.

The Director of the Bureau of Corrections is DIRECTED to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

Leonardo-De Castro, C. J., (Chairperson), Bersamin, Del Castillo, and Jardeleza, JJ., concur.

[1] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan. CA rollo, pp. 108-121.

[2] Penned by Presiding Judge Elvira D.C. Panganiban. Id. at 47-53.

[3] "That on or about the 21st day of September(,) 2008, 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, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as a broker in the said transaction, 0.64 (zero point sixty four) grams (sic) of Marijuana Fruiting Tops, a dangerous drug. CONTRARY TO LAW." Id. at 47-108.

[4] Id. at 110.

[5] Id.

[6] Id. at 48, 111.

[7] Id. at 49, 111.

[8] Id. at 111.

[9] Id. at 49, 112.

[10] Id. at 49-50, 112.

[11] Id. at 50.

[12] Id. at 112.

[13] Id. at 51, 112.

[14] Id. at 47-53.

[15] People vs. Que, G.R. No. 212994, January 31, 2018.

[16] People v. Que, supra note 15.

[17] G.R. No. 230070, March 14, 2018.

[18] Original Records, p. 17.

[19] TSN, May 19, 2010, p. 8.

[20] TSN, May 19, 2010, p. 9.

[21] TSN, March 18, 2014, pp. 4-5.

[22] People v. Angeles, G.R. No. 218947, June 20, 2018.

[23] TSN, March 20, 2012, p. 4.

[24] TSN, March 18, 2014, pp. 11-12.

[25] *People v. Rashid Binasing*, G.R. No. 221439, July 4, 2018.

[26] *People v. Dumagay*, G.R. No. 216753, February 7, 2018; see *People v. Almorfe, et al.*, 631 Phil. 51, 60 (2010).

[27] *People v. Ferrer*, G.R. No. 213914, June 6, 2018.

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