

NINETEENTH DIVISION

[CA-G.R. CR No. 02178, February 13, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FREDDIE PADAYAO, ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal on the Judgment^[1] of the Regional Trial Court (RTC), Branch 57, Cebu City dated December 21, 2012 in Criminal Case No. CBU-92702 finding accused-appellant Freddie Padayao guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (RA) 9165^[2] for possessing a half-consumed stick containing 0.04 gram of marijuana, and sentencing him with imprisonment ranging from 12 years and 1 day to 15 years and a fine of P300,000.00.

The Antecedents

Accused-appellant Freddie Padayao (appellant) was indicted in Criminal Case No. CBU- 92702 for violating Section 11, Article II of Republic Act 9165 under the following Information, viz.:

That on or about the 5th DAY of JUNE 2011 at about 6:00 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without being authorized by law, did then and there have in his possession and under his control one (1) stick of half-consumed hand-rolled white paper containing 0.04 gram of dried crushed marijuana leaves, a dangerous drug.

CONTRARY TO LAW.^[3]

When arraigned, appellant pleaded not guilty to the offense charged.^[4] During the trial, the prosecution's account was testified to by *barangay tanods* Zandro Garcia (Garcia) and Alvin Mahilum (Mahilum). The OSG summarized^[5] their testimonies as follows:

xxx on the date and time in question, barangay tanods (BT) Zandro Garcia and Alvin Mahilum were on roving patrol at Unit 3, Carbon Public Market, Cebu City. They were informed by somebody regarding the presence of persons smoking marijuana. The tanods went up to the second floor of Unit 3. BT Garcia tried to locate the specific place where the smell or odor of marijuana was coming from. Finally, they saw the accused smoking a marijuana cigarette. After introducing himself as a barangay tanod, BT Garcia confiscated the marijuana stick from the accused, who was there and then arrested. At the crime scene, said

tanod placed the markings "FP-06-05-11" on the half consumed marijuana stick which he brought to the police station. An inventory^[6] of the seized marijuana stick was witnessed by barangay official Domingo Ando, Jr. and photographs^[7] thereof were taken. The witnesses also signed the inventory. At the police station, the arrest and the seized illegal drug were reflected in the police blotter.^[8]

After an examination of the seized contraband by P/Supt. Mutchit Salinas, the laboratory chemist to whom the confiscated marijuana was forwarded for chemical testing, she found the specimen to be marijuana, a dangerous drug, per Chemistry Report No. D-650-2011.^[9]

On the other hand, appellant, for his defense, testified that he was a laborer in Carbon market. On the date of the incident, at about 7:00 o'clock in the morning, he was sitting on his cart waiting for someone to hire his services. While doing so, he was approached by the *barangay tanods* and told that somebody complained that her necklace was stolen and that appellant fitted the description of the snatcher. The woman victim then identified appellant as the snatcher. Appellant told the woman that he was only a laborer but the *barangay tanods* brought him to the *barangay* hall. Appellant thought that he would be charged for snatching. However, when he was brought to the police precinct, he was indicted for illegal possession of half-consumed marijuana stick .

After the parties presented their respective evidence, the trial court convicted appellant of the charge against him. The dispositive portion of its Decision reads, *viz.* :

WHEREFORE, premises considered, the Court finds Freddie Padayao guilty beyond reasonable doubt for Violation of Section 11, Article II of RA 9165 and is sentenced to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

The half consumed marijuana stick is forfeited in favor of the government.

Accused is entitled to a credit for the period during his preventive imprisonment.

SO ORDERED.^[10]

Aggrieved, appellant elevated the matter to Us citing the lone error that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[11]

This Court's Ruling

The appeal is meritorious.

We begin with the basic mandate by no less than Our Constitution that an accused

shall be presumed innocent until the contrary is proved. In criminal cases, the quantum of evidence required to overturn this presumption is proof beyond reasonable doubt, or that proof which produces moral certainty in an unprejudiced mind.^[12] The burden of proving that an accused is guilty of the offense charged lies upon the prosecution^[13] who must rely on its own evidence in discharging that burden.

In this case, the prosecution's case for possession against appellant rested on the alleged incident during which appellant was caught in possession of a half-consumed stick containing 0.04 gram of marijuana. The circumstances of the supposed incident were testified to by *barangay tanods* Garcia and Mahilum who were the ones who apprehended the accused. Their accounts formed part of the prosecution's evidence that appellant's alleged possession of the illegal drug took place.

Unfortunately, however, after evaluating the prosecution witnesses' testimonial evidence on record, this Court cannot help but harbor lingering qualms regarding the truth of the supposed occurrence.

In the Joint Affidavit^[14] which was used in filing the Information, both *barangay tanods* Garcia and Mahilum attested on the following facts, thus:

1. On June 5, 2011 at around 6:00 o'clock in the evening we were on duty and **while conducting a preventive foot patrol** within our area of jurisdiction, **passing by the interior portion of Unit 3, Carbon Public Market** xxx we were disturbed by a pungent odor, as we smelled to be a smoke from Marijuana leaves; [*Emphasis and underscoring supplied.*]

During his testimony, *barangay tanod* Garcia affirmed that they were on roving patrol when both he and *barangay tanod* Mahilum smelled the odor of marijuana.^[15] However, when it was *barangay tanod* Mahilum's turn to recount the incident, he gave a testimony laden with confusing details that no longer harmonized with the Joint Affidavit and *barangay tanod* Garcia's account. At some point, *barangay tanod* Mahilum even contradicted himself as shown by the following transcript of stenographic notes during his testimony.

TESTIMONY OF ALVIN MAHILUM ON QUESTIONS ASKED BY BY
PROSECUTOR SIMACO LABATA DURING DIRECT EXAMINATION:
^[16]

Q: **How about you, did you happen to notice or smell the odor?**

A: **No, because I was at a distance from Zandro, sir.**

TESTIMONY OF ALVIN MAHILUM ON QUESTIONS PROPOUNDED
BY ATTY. PRESCILLA SALVACION:^[17]

Q: You and Zandro Garcia started foot patrol at the ground floor?

A: At the second floor maam, in reaching the second floor there