

SPECIAL FOURTH DIVISION

[CA-G.R. CR NO. 35466, May 20, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOEY NUCUP Y PADILLA, ACCUSED-APPELLANT.**

D E C I S I O N

TOLENTINO, A.G., J.:

On appeal before this Court is the *decision*^[1] dated December 17, 2012 of the Regional Trial Court of San Fernando, Pampanga, Branch 42 in Criminal Case No. 15794, which found the accused-appellant guilty of the crime charged against him.

The accused-appellant was charged with Violation of Section 11, Article II, RA 9165, in an *Information*^[2] dated January 28, 2008, which reads as follows:

"That on or about the 27th day of January, 2008 in the City of San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully, and knowingly have in his possession, custody, and control one (1) piece of small heat-sealed transparent plastic sachet containing Marijuana Fruiting tops weighing of (sic) ONE GRAM AND TWELVE HUNDREDTHS (1.12), OF A GRAM, a dangerous drugs (sic).

Contrary to law."

When the case was called for arraignment on February 8, 2008, the accused-appellant pleaded "NOT GUILTY".

The version of the plaintiff-appellee, as summarized in its Counter-Statement of Facts,^[3] is as follows:

"On January 27, 2008, at around 8:20 p.m., PO2 Manuel Dimla (PO2 Dimla) and PO1 Jerome Bugarin (PO1 Bugarin), while on duty, received a call from the Radio Operator of San Fernando Police Station, PO3 Manuel Santos (PO3 Santos), informing them to check on an alleged commotion and pot session ensuing at Food House Videoke/Beerhouse near the Water District, about two (2) kilometers away from their location.^[4] They were informed that the target person was wearing a long sleeved shirt with orange stripes and with a "pandi" or bandana on the head.^[5]

Upon their arrival at the area, PO2 Dimla and PO1 Bugarin immediately entered the Beerhouse and found Joey Nucup (appellant) on the left side, fitting the description relayed by PO3 Santos.^[6] As they approached appellant, the police officers smelled marijuana and saw appellant sniffing the prohibited drug. At that instant, PO2 Dimla and PO1 Bugarin

informed appellant that they are police officers and instructed him to stand up and empty his pockets. As appellant was complying, one (1) plastic sachet of marijuana fell from his pocket.^[7] That police officers then informed him that he is being (sic) brought to the station . He was also apprised of his rights. The two police officers then called PO3 Barredo, Police Investigator who arrived together with another police officer, PO3 Abad. PO2 Dimla eventually turned over the confiscated drug items to PO3 Barredo, and appellant was brought to the police station.^[8]

At the station, PO2 Dimla marked the seized items, "MDS" for the stick of marijuana, while "MD 1" for the plastic sachet of marijuana.^[9] A Request for Laboratory examination was prepared by PO3 Barredo, who was accompanied by PO1 Bugarin when they submitted the same to the Crime Laboratory together with the seized items.^[10] After a qualitative examination was conducted over the heat-sealed plastic transparent sachet containing dried marijuana fruiting tops and one (1) marijuana cigarette, Engr. Ma. Luisa Gundra David, Forensic Chemist, indicated in the Chemistry Report that the tests yielded positive results for the presence of marijuana, a dangerous drug.^[11]

On the other hand, the version of the accused-appellant, is as follows:

"On January 27, 2008, at around 11:00 o'clock in the evening, JOEY NUCUP ("Joey") was drinking beer at Foodhouse Videoke Bar together with a certain Mysis Cunanan. At around 11:20 o'clock p.m., there was a commotion outside the bar. When he went (sic) take a look, he saw that more or less eight (8) people were fighting . Upon seeing this, they decided to stay inside the videoke bar to keep out of harm's way. At around 11:30 o'clock p.m., two (2) policemen entered the videoke bar and talked with each other. One of the policemen (whom he later came to know as PO2 Dimpla) went outside to look for the persons who cause (sic) the commotion, while the other policeman (PO1 Bugarin) went to stand near their table.^[12]

Thereafter, PO2 Dimla came inside the videoke bar again and immediately went to Joey's table and asked him and his companion if they could invite them to the precinct to which he answered "Opo." Thereafter, Joey and Mysis were boarded to a mobile patrol and were brought to the City Hall of San Fernando, Pampanga where they were turned over to Investigator Barredo.^[13]

Investigator Barredo commanded him to empty his pockets, which he did, yielding one (1) pack of Marlboro Lights, one (1) cellular phone, and two (2) pieces of fifty (50) peso bill (sic). Mysis, who was just sitting in a chair, was not asked to do the same. Investigator Barredo did not know what happened to Mysis and neither did he know why he was placed inside the jail.^[14]^[15]

After considering the evidence for both sides, the trial court rendered the challenged decision, finding the accused-appellant guilty as charged. The dispositive portion of the decision reads as follows:

"PREMISES GIVEN, the Court orders the following:

i. *The Accused JOEY NUCUP Y PADILLA is found GUILTY in Criminal Case No. 15794.*

ii. *He is ordered to serve IMPRISONMENT with a MINIMUM of Twelve (12) years and One (1) Day to a MAXIMUM of Twelve (12) Years and Ten (10) Months and pay a FINE in the amount of Three Hundred Thousand Pesos (P300,00.00).*

iii. *He shall be credited with the period he served in detention.*

SO ORDERED."^[16]

Hence, we have this appeal.

THE APPEAL IS WITHOUT MERIT.

In his *Brief*, the accused-appellant assigned the following errors:^[17]

"I. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHOSE GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II. THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION ESTABLISHED THE CORPUS DELICTI OF THE OFFENSE CHARGED."

On the other hand, the plaintiff-appellee, in refutation of the errors assigned by the accused-appellant, avers that:

1. The prosecution was able to prove beyond reasonable doubt that appellant violated Section 11, Article II of Republic Act No. 9165.
2. Non-compliance with the procedure laid down in Section 21 of RA 9165 does not render the seized items inadmissible.^[18]

The accused-appellant asserts that the police officers failed to account for the chain of custody of the seized items alleged to be Marijuana. He maintains that the specimen, which PO2 Dimla turned over to PO3 Barredo, may no longer be the same specimen taken from him.

In a criminal case, it is critical to start with the law's own starting perspective on the status of the accused — in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.^[19] The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption prevails and the accused should necessarily be acquitted.^[20]

For an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not

authorized by law; and (3) the accused freely and consciously possesses the said drug.^[21]

All these require the presentation in court of the corpus delicti, i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.^[22]

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

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[.]

This procedure, however, was not shown to have been complied with by the arresting officers, and nothing on record suggests that they had extended reasonable efforts to comply with the said statutory requirement in handling the evidence.

A perusal of the records shows that the apprehending team, upon confiscation of the drug, immediately brought the accused-appellant and the seized specimen to the police station. No physical inventory and photograph of the seized items were taken in the presence of the appellant or his counsel, a representative from the media and the DOJ, and an elective official.

We stress that based on the facts established by the prosecution, PO2 Dimla and PO1 Bugarin arrested the accused-appellant, they called Police Investigator PO3 Barredo, who arrived together with PO3 Abad. PO2 Dimla then turned over the confiscated drug items to PO3 Barredo and thereafter, they all proceeded to the police station. It was only at the police station when PO2 Dimla marked the seized items. At no time during PO2 Dimla's testimony did he even intimate that the group inventoried or photographed the confiscated item.

A review of jurisprudence, even prior to the passage of R.A. No. 9165, shows that the Supreme Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974.

^[23] Section 1 of this Regulation requires the apprehending team, having initial custody and control of the seized drugs, to immediately inventory and photograph the same in the presence of the accused and/or his representatives, who shall be required to sign the copies of the inventory and be given a copy thereof.