

SECOND DIVISION

[G.R. No. 234648, March 27, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
ELIZALDE JAGDON Y BANAAG A.K.A. "ZALDY," ACCUSED-
APPELLANT.**

D E C I S I O N

J. REYES, JR., J.:

This is an appeal from the March 30, 2017 Decision^[1] of the Court of Appeals-Cebu City (CA) in CA-G.R. CR-HC No. 02249, which affirmed the February 24, 2016 Decision^[2] of the Regional Trial Court, Branch 52, Bacolod City (RTC) in Criminal Case Nos. 10-33276/77, finding accused-appellant Elizalde Jagdon y Banaag a.k.a "Zaldy" (Jagdon) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In two separate Information^[3] both dated March 23, 2010, Jagdon was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of the information read:

Crim. Case No. 10-33276

x x x x

That on or about the 17th day of March, [sic] 2010, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) staple-sealed transparent plastic bag containing forty five (45) knot tied marijuana cigarettes having a total weight of 13.06 grams, in violation of the aforementioned law.^[4]

Crim. Case No. 10-33277

x x x x

That on or about the 17th day of March, [sic] 2010, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver,, give away to a police poseur buyer, PO2 Ian S.

Piano, in a [buy bust] operation twelve (12) knot tied marijuana cigarettes with a total weight of 3.53 grams, in exchange of marked money of two (2) one hundred (P100.00) Peso bills bearing Serial Nos. MA518579 and ST105425 and one (1) twenty (P20.00) Peso bill bearing Serial No. ZU158596, in violation of the aforementioned law.^[5]

During his arraignment on April 22, 2010 for both offenses, Jagdon pleaded "Not Guilty."^[6]

Evidence for the Prosecution

On March 17, 2010, the Office of the City Anti-Illegal Drugs Special Operations Task Force Group (CAID-SOTG) of the Bacolod City Police received a tip from one of their confidential informants (CIs) that Jagdon is selling marijuana in Barangay Handumanan. The Bacolod City Police organized a buy bust team led by Police Senior Inspector Joemarie Occeño (PSINSP Occeno) and Police Officer 2 Ian Piano (PO2 Piano) as the poseur-buyer. At around 12:45 p.m., the buy bust team proceeded to the location where PO2 Piano and the CI went inside a junk shop where Jagdon allegedly transacted with his customers.^[7]

Once inside, the CI, who knew Jagdon, informed him that they wanted to buy 12 sticks of marijuana. PO2 Piano handed over the marked money totalling P220.00 to Jagdon, who, in turn, gave 12 sticks of suspected marijuana, which he took from a small blue bag. After the transaction, PO2 Piano identified himself as a police officer and signalled PSINSP Occeño to make the arrest.^[8]

During the arrest, Jagdon surrendered the small blue bag he was carrying. PO2 Piano searched the same and found another 45 sticks of suspected marijuana. After marking the recovered drugs, they were inventoried and photographed in the presence of two barangay officials — the barangay secretary and a Purok President. Jagdon and the seized items were then brought to the police station where the incident was recorded in the blotter. Thereafter, the purported marijuana sticks were sent to the crime laboratory for analysis, where they yielded a positive result for marijuana.^[9]

Evidence for the Defense

On March 17, 2010, Jagdon was inside his house where he was about to put his son to sleep. His younger brother asked permission to go out of the house, but before he could do so, two persons suddenly barged into their home looking to buy marijuana. Jagdon told them that no one was selling marijuana in their home and one of the men asked if he knew a Rocky, Bongrich, and a Nonoy Gopio. When he denied knowing them, he was handcuffed, while the men, with their five other companions, proceeded to search his house.^[10]

The RTC Ruling

In its February 24, 2016 Decision,^[11] the RTC convicted Jagdon for violation of Sections 5 and 11, Article II of R.A. No. 9165. The trial court opined that the testimony of PO2 Piano categorically established all the elements of the illegal sale of dangerous drugs. It pointed out that he positively identified Jagdon as the one who gave the sticks of marijuana and received the marked money as payment. The RTC upheld the validity of the buy bust operations highlighting that the CAID-SOTG

conducted the operation with the coordination of the Philippine Drug Enforcement Agency. The trial court expounded that Jagdon was also guilty of illegal possession of dangerous drugs as 45 more sticks of suspected marijuana were recovered from him after he was searched as an incident of a lawful arrest.

The RTC upheld the integrity of the drugs seized on account of the observance of the procedure in Section 21 of R.A. No. 9165. The trial court noted that the seized drugs were marked in front of Jagdon and the two barangay officials. It added that the chain of custody was unbroken as all the links of the chain, from the time the drugs were seized until its presentation in court, were satisfactorily proven. The RTC disregarded Jagdon's unsubstantiated claim of frame-up especially since the legitimacy and regularity of the buy bust operation had been established. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- (a) In **Criminal Case No. 10-33277** (Sale of Dangerous Drug), finding Accused-Defendant ELIZALDE JAGDON y BANAAG "**GUILTY**", beyond reasonable doubt, of Section 5, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated March 23, 2010. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00);
- (b) In **Criminal Case No. 10-33276**, finding Accused-Defendant ELIZALDE JAGDON y BANAAG "**GUILTY**", beyond reasonable doubt, of Section 11, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated March 23, 2010. He is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and eight (8) months, as minimum to seventeen (17) years and eight (8) months, as maximum and to pay a fine of three hundred thousand pesos (P300,000.00).
- (c) The dangerous drugs subject matter of these cases are hereby confiscated in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency (PDEA), Regional Office Six (6) for destruction;
- (d) The Jail Warden of the Bureau of Jail Management and Penology, Male Dormitory, Barangay Taculing, Bacolod City is hereby **ORDERED** to **IMMEDIATELY TRANSFER** Accused-Defendant ELIZALDE JAGDON y BANAAG to the National Bilibid Prison, Muntinlupa City, Metro Manila, for the service of his sentence pursuant to OCA Circular No. 40-2013; and, [sic]
- (e) No pronouncement as to cost.

SO ORDERED. ^[12]

Aggrieved, Jagdon appealed before the CA.

The CA Ruling

In its assailed March 30, 2017 Decision, the CA upheld Jagdon's conviction for violation of Sections 5 and 11, Article II of R.A. No. 9165. The appellate court posited that Jagdon was lawfully arrested and subsequently searched by virtue of a legitimate buy bust operation. It noted that PO2 Piano consistently identified Jagdon as the one who sold him 12 sticks of marijuana and from whom 45 additional sticks were recovered. The CA explained that the evidence of the prosecution sufficiently established that the integrity and evidentiary value of the seized marijuana were preserved. The appellate court expounded that PO2 Piano detailed how he had marked the seized drugs in Jagdon's presence and how he handled the same before he turned it over to the crime laboratory for examination. It elaborated that the integrity of the evidence is presumed unless there is a showing of bad faith, ill will, or proof that the evidence had been tampered with.

Further, the CA postulated that Jagdon never questioned the chain of custody before the trial court and was raised only for the first time on appeal. The appellate court pointed out that he never assailed the police's non-compliance with Section 21, Article II of R.A. No. 9165. Thus, the CA surmised that it was too late for Jagdon to question the integrity and evidentiary value of the seized items. It ruled:

WHEREFORE, in view of the foregoing premises, the present appeal is hereby DENIED. Accordingly, the 24 February 2016 Decision of the Regional Trial Court, Branch 52, Bacolod City in Crim. Case Nos. 10-33276 and 10-33277 finding the accused-appellant guilty beyond reasonable doubt of violation of Section 5 and 11, Article II of R.A. 9165 is hereby AFFIRMED.

SO ORDERED.^[13]

Hence, this appeal, raising:

The Issue

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF R.A.NO. 9165.

The Court's Ruling

The appeal is meritorious.

In order to achieve conviction for the illegal sale of dangerous drugs, the following elements must concur: (1) identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment.^[14] On the other hand, the elements of the crime of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object that 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.^[15] In both illegal sale and illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.^[16]

It is not difficult to envision why the preservation of the integrity and identity of the drugs seized is crucial in the prosecution of drug offenses. The unique characteristics of illegal drugs render it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.^[17] Thus, it is imperative that it is established that the drugs presented in court as evidence are the very same drugs recovered from the accused in drug offenses.

To ensure that unnecessary doubts on the identity of the evidence are removed, the chain of custody is observed.^[18] Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.^[19] Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *People v. Kamad*,^[20] the Court recognized the following links that must be established in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. In turn, the requirements under Section 21 of R.A. No. 9165 reinforce the first two links of the chain to make them foolproof against adulteration or planting of evidence.^[21]

In the present case, Jagdon laments that the police did not comply with the requirements or procedure set forth in Section 21 of R.A. No. 9165. Particularly, he notes that the witnesses required by law were not present during the marking and inventory of the drugs allegedly recovered from him. Thus, Jagdon believes that the identity and integrity of the drugs in question had been tainted. Meanwhile, the CA points out that there was substantial compliance with the requirements under Section 21 of R.A. No. 9165. The CA likewise opined that Jagdon can no longer assail the police's alleged failure to comply with the procedure laid out in Section 21, Article II of R.A. No. 9165 because he did not challenge the same during trial. The appellate court explained that he is precluded from questioning it for the first time on appeal.

Appeal opens the entire case for review

When an accused appeals his conviction, he waives his constitutional guarantee against double jeopardy as the entire case is open for review.^[22] The Court then renders judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned.^[23] Thus, in *People v. Miranda*,^[24] the Court elucidated that an accused may challenge the non-compliance of the procedures under Section 21 of R.A. No. 9165 even for the first time on appeal, to wit: