

FIRST DIVISION

[G.R. No. 229205, March 06, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO CATINGUEL Y VIRAY, ACCUSED-APPELLANT.**

DECISION

DEL CASTILLO, J.:

This is an appeal^[1] from the March 4, 2016 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07038 which affirmed the August 26, 2014 Decision^[3] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, in Criminal Case No. L-10004.

The Facts

Accused-appellant Eduardo Catinguel y Viray was charged with violation of Section 5,^[4] Article II of Republic Act (RA) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 in an Information^[5] which reads:

That on or about 2:30 in the afternoon of March 3, 2014, in Navato St., Brgy. Poblacion, Bugallon, Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously sell one (1) heat-sealed transparent plastic sachet containing marijuana leaves, a dangerous drug, to PO1 Adhedin C. Lamsen worth PHP 100.00 without lawful authority to do so.

Contrary to Sec. 5, Article II of R.A. 9165.^[6]

Arraignment pushed through and accused-appellant pleaded not guilty.^[7] Pretrial was conducted and terminated, after which trial ensued.^[8]

Version of the Prosecution

The evidence for the prosecution included the testimony of Police Officer 1 (PO1) Adhedin C. Lamsen (Lamsen) who claimed that he was assigned at Bugallon Police Station, Bugallon, Pangasinan.^[9] On March 3, 2014, at 2:00 p.m., he received information that a certain Brazil was allegedly selling marijuana on Navato St.^[10] PO1 Lamsen was dispatched in a buy-bust operation as a poseur-buyer, along with PO3 Jonathan Rico (Rico) who served as the arresting officer, as well as the confidential informant.^[11]

When the team proceeded to the target area,^[12] PO3 Rico positioned himself about three (3) to five (5) meters away, while PO1 Lamsen and the confidential informant

approached accused-appellant.^[13] Upon being assured by the confidential informant that PO1 Lamsen was not a police asset, and having been informed that PO1 Lamsen wanted to buy marijuana, accused-appellant handed to PO1 Lamsen one (1) transparent heat-sealed plastic sachet who, in turn, handed the marked money^[14] — five 20-peso bills with serial numbers FR819295, KY533953, FP637402, NY808726, and AR673195 marked "ACL1" to "ACL5" on the rightmost top corner.^[15]

After receipt of the plastic sachet from accused-appellant, PO1 Lamsen gave the pre-arranged signal to PO3 Rico who immediately rushed to their location. PO3 Rico introduced himself and PO1 Lamsen as police officers and informed the accused-appellant of his rights in the language known to him. Thereafter, PO3 Rico arrested accused-appellant and recovered from him the marked money.^[16]

PO1 Lamsen kept the plastic sachet in his possession en route to the police station. Thereat, the plastic sachet and the marked money were marked, inventoried, and photographed, in the presence of accused-appellant, Emil Toledo (Toledo) and Orlando Peralta (Peralta), who were the representatives from the media and the Department of Justice (DOJ), respectively.^[17] PO1 Lamsen, PO3 Rico, Toledo, and Peralta thereafter signed the Receipt of Property Seized.^[18] PO1 Lamsen explained that he did not mark the seized items at the place of arrest since he feared that two or three of accused-appellant's friends who were in the area would cause trouble following the arrest of accused-appellant.^[19] On cross-examination, PO1 Lamsen further elaborated that he kept the plastic sachet for about an hour, from apprehension up to the time of arrival of the representatives from the media and DOJ at the police station.^[20] He also stated that the intelligence operatives at the police station invited *barangay* officials during the briefing via telephone calls but nobody responded to their invitation.^[21]

PO1 Lamsen, together with PO3 Rico and accused-appellant, brought the request^[22] for a laboratory examination, as prepared by Senior Police Officer 1 (SPO1) Jojit Ocromas (Ocromas) and signed by Police Chief Inspector (PCI) Dominick S. Poblete (Poblete), as well as the sachet containing white substance, to the Pangasinan Police Provincial Office in Lingayen, Pangasinan, which were both received by PO1 Emilson Daus*.^[23]

Forensic chemist, PCI Myrna C. Malojo-Todeño (PCI Todeño), on the other hand, claimed that she personally received the sachet containing white substance from PO1 Lamsen.^[24] She conducted a qualitative examination on the item containing 2.304 grams of suspected dried marijuana which yielded a positive result for the presence of marijuana.^[25] PCI Todeño later sealed the sachet with a masking tape, put markings thereon, and turned it over to the evidence custodian, Elmer G. Manuel (Manuel), who in turn received it and placed "EGM" thereon.^[26] PCI Todeño thereafter issued Chemistry Report No. D-102-2014L^[27] dated March 3, 2014.

The testimonies of SPO1 Ocromas and PO3 Rico were dispensed with in light of the stipulation that they would only corroborate the testimony of PO1 Lamsen.^[28]

Version of the Defense

The defense presented the lone testimony of accused-appellant who denied the allegation. He claimed that on that day, he was plying his route as a tricycle driver.^[29] After his passenger got off on Navato St., two police officers in civilian attire approached him and invited him to the police station for questioning.^[30] He voluntarily went with them thinking that it would only take a while.^[31] At the police station, accused-appellant was bodily searched and when nothing was found, the Chief of Police brought out marijuana and asserted that it belonged to accused-appellant.^[32]

Ruling of the Regional Trial Court

The trial court found accused-appellant guilty in a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 and is accordingly sentenced to suffer the penalty of life imprisonment, together with such accessory penalties provided for in the law, and to pay a fine of P500,000.00.

The sachet of marijuana subject of this case is confiscated in favor of the government to be dealt with as the law directs.

SO ORDERED.^[33]

Accused-appellant filed his appeal assailing his conviction.^[34] In his Brief,^[35] he imputed error on the trial court in finding him guilty despite failure of the prosecution to prove a valid buy-bust operation and of the police officers to comply with the requirements of RA 9165 and its Implementing Rules and Regulations (IRR).^[36] He claimed that the marking of the seized item was not done at the place of arrest despite lack of proof that the people thereat posed a threat to security.^[37] Second, he assailed the absence of a local elected official during the marking, inventory, and taking of photographs.^[38] Third, he argued that the chain of custody was not unbroken since PO1 Daus who received the seized item from PO1 Lamsen; Manuel, who received the seized item from the forensic chemist for safekeeping until it was presented in court; and the unidentified person who turned over the seized item to the court, were all not presented in court.^[39] Finally, he bewailed that his denial was not given credence in light of the reality that in most cases, denial is the only plausible defense available to an innocent person.^[40]

The Office of the Solicitor General (OSG) filed the Plaintiff-Appellee's Brief^[41] for the People, insisting that the prosecution proved beyond reasonable doubt that accused-appellant was guilty of violating Section 5 of RA 9165.^[42] It argued that the integrity and evidentiary value of the seized item were properly preserved and there was no break in the chain of custody of the seized item.^[43] It likewise claimed that the defense of denial cannot prevail over the positive testimonies of the prosecution witnesses.^[44]

Ruling of the Court of Appeals

The appellate court affirmed the ruling of the trial court.^[45] It held that the prosecution was able to preserve the integrity and evidentiary value of the marijuana seized from accused-appellant and there was substantial compliance with the requirements of the law.

Hence, the present appeal.^[46]

After being required to file supplemental briefs if they so desired,^[47] the parties instead submitted Manifestations^[48] in which they stated that they were adopting their Briefs submitted earlier before the appellate court and were dispensing with the filing of Supplemental Briefs.

Our Ruling

There is merit in the appeal.

The failure of the police officers to observe the rule on the chain of custody of the seized item compels this Court to reverse the assailed rulings and acquit accused-appellant and clear him from the charge.

Mallillin v. People^[49] elaborates on the chain of custody in this wise:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.^[50]

The four critical links that must be established in the chain of custody of the dangerous drugs are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.^[51]

Section 21 of RA 9165 provides:

SEC. 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 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x

Section 21 (a) of the IRR of the same law additionally prescribes as follows:

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:

(a) The apprehending officer/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: 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, further, that non-compliance with 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 of and custody over said items; x x x

Evaluated against the abovementioned provisions, the evidence adduced by the prosecution instantly reveals discrepancies.

First, the marking of the seized item by the apprehending officer was not immediately done at the place of arrest. PO1 Lamsen explained that he did not mark