

SECOND DIVISION

[G.R. No. 225503, June 26, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY DAGDAG A.K.A. "TISOY", ACCUSED-APPELLANT.

DECISION

CAGUIOA, J:

Before the Court is an ordinary appeal^[1] filed by the accused-appellant Jerry Dagdag a.k.a. "Tisoy" (Dagdag), assailing the Decision^[2] dated December 1, 2014 (assailed Decision) of the Court of Appeals (CA)^[3] in CA-G.R. CR-HC No. 05817, which affirmed the Judgment^[4] dated October 16, 2012 rendered by the Regional Trial Court of Pasig City, Branch 164 (RTC) in Criminal Case Nos. 16032-D and 16033-D, entitled *People of the Philippines v. Jerry Dagdag a.k.a. "Tisoy,"* finding Dagdag guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,^[5] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

[Dagdag] was charged for violation of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" upon separate Informations, the accusatory portions of each read as follows:

Criminal Case No. 16032-D

"On or about December 20, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Christopher Millanes, a police poseur buyer, one (1) heat-sealed transparent plastic bag containing seven (7) centigrams (0.07 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law."

Criminal Case No. 16033-D

"On or about December 20, 2007, in Pasig City, and within the

jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachets containing seven (7) centigrams (0.07 gram) with a total weight of fourteen (14) decigrams (0.14 gram) of white crystalline substance, which were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law."

Arraigned on both charges on 31 January 2008, [Dagdag], assisted by counsel *de officio*, entered pleas of "not guilty." Pre-trial was terminated also on 31 January 2008, after which, trial ensued.

Based on the Brief submitted by the Office of the Solicitor General, the facts are as follows:

"On December 20, 2007, a confidential informant went to the Pasig City Police Station Drug Enforcement Unit Anti-Illegal Drugs Special Operation Task Force to inform P/Insp. Dennis David that one alias "Tisoy," who was later identified as [accused-appellant] Jerry Dagdag, was rampantly selling illegal drugs along V. Pozon St., Barangay Bambang,. Pasig City. In response to that information, P/Insp. David formed a buy bust team and prepared all the necessary documents in the conduct of the entrapment operation like the pre-marked money consisting of two (2) one hundred peso bills with Serial Numbers RM 940869 and RM940870, among others. Designated to act as the poseur-buyer was PO1 Christopher Millanes with PO2 Peter Joseph Villanueva as his back-up, while PO1 Millanes was tasked to give the pre-arranged signal by using his cellular phone to prompt that the transaction had already taken place.

At around 10:30 o[']clock in the evening that same day, the team proceeded to the target area located at V. Pozon St., Barangay Bambang, Pasig City. When PO1 Christopher Millanes and the confidential informant were walking along the alley of V. Pozon St., they accidentally met [Dagdag]. The confidential informant told [Dagdag], "pare paeskor naman" and the latter asked, "magkano?" to which PO1 Millanes answered "dalawang daan." PO1 Millanes took out from his pocket the marked money and gave it to [Dagdag] who in turn handed to him the sachet containing the suspected shabu. Immediately thereafter, PO1 Millanes put inside his pocket the suspected shabu and dialed his cellular phone giving the pre-arranged signal to his back up PO2 Villanueva that the same was already consummated. At that point, PO1 Millanes grabbed the hand of [Dagdag] and introduced himself as Police Officer. [Dagdag] tried to resist the arrest but failed

because of the timely response of PO2 Joseph Villanueva. [Dagdag] was bodily searched by PO1 Millanes who recovered the marked money and another two (2) plastic sachets of suspected shabu from his pocket. The evidence seized from [Dagdag] were immediately marked at the crime scene by PO1 Millanes with the markings: A Tisoy/CM 12/20/07 for the sachet subject of the sale and B and C, respectively, for the other two (2) sachets of shabu recovered as a result of the body search.

Thereafter, [Dagdag] was brought to the Pasig Police Station for proper booking and documentation, his photograph was taken as well as the items seized from the operation. The Request for Laboratory Examination for the seized items [was] prepared and transmitted to the PNP Crime Laboratory. PO1 Millanes brought the request for laboratory examination together with the three (3) sachets of suspected shabu to the Eastern Police District (EPD) of the PNP Crime Laboratory in Marikina City. Police Chief Inspector Isidro L. Carino who conducted the laboratory examination on the seized evidence issued Physical Science Report No. D-524-07E stating that the specimens yielded positive result for methamphetamine hydrochloride or shabu, a dangerous [drug].

On the other hand, as reflected in Dagdag's Brief, the evidence for the defense shows the following:

"x x x.

At around 9:00 o'clock in the evening of December 20, 2007, **JERRY DAGDAG** (Jerry), his son-in-law, Albert V. Tacsagon[,] Jr. (Albert) and his two (2) grandchildren were watching [a] television show in the living room of their house located at 25 E. Jacinto Str[et]et Bambang, Pasig City. The daughter of [Dagdag], Joanna Camile C. Dagdag (Joanna), was sleeping in her room. Suddenly, two (2) men in civilian clothes and armed with firearms entered the house and poked a gun at [Dagdag]. PO1 Christopher introduced himself as a policeman and asked [Dagdag] if he is @ Jerry Tisoy. [Dagdag] answered "Opo, ano po ang problema?" PO1 Christopher immediately handcuffed [Dagdag] and told him to go with them. [Dagdag] asked PO1 Christopher and his companion why should he go with them when he did nothing wrong. Then, [Dagdag] told his grandchildren to stop crying while Albert was embracing them. PO1 Christopher and his companion pulled [Dagdag] towards the door and advised him not to make a scene on the road otherwise he [would] be shot. On the road, they flagged down a taxi, and when [Dagdag] was about to board the cab, Joanna, who was aroused from her sleep, came running after them and pulled the hand of [Dagdag]. The [latter] told Joanna to let go of him since the policemen [would] not allow him to let go. The policemen brought [Dagdag] to the

Pariancillo Police Headquarters. Thereat, he was brought inside a room on the second floor where PO1 Christopher told him to settle the case for Fifty Thousand Pesos (P50,000.00). [Dagdag] told PO1 Christopher that he is just a carpenter and he has no money. The third time PO1 Christopher returned to the room, he was already asking a reduced amount of Twenty Thousand Pesos (P20,000.00). But when [Dagdag] still refused to give the money, PO1 Christopher got angry and hurled invectives at [Dagdag]. PO1 Christopher took out from the drawer three (3) small plastic sachets, a lighter and a pair of scissors. Thereafter, PO1 Christopher put something inside the three (3) small plastic sachets, sealed it (sic)[,] and put markings on it (sic) using a pentel pen, and told him "You son of a bitch, this will be the evidence that we will use against you and we will pursue the case if you do not give money to us". A few minutes later, PO1 Christopher brought [Dagdag] to Marikina for drug testing, and then he was brought back to the police station where he was detained. (TSN, July 3, 2012, pp. 2-7).

ALBERT V. TACSAGON, JR. (Albert) corroborated the testimony of [Dagdag]. On December 20, 2007 at around 9:00 o'clock in the evening, while Albert was watching television together with his father-in-law [Dagdag] and his two (2) children, two (2) armed men in civilian clothes suddenly barged into their house looking for [Dagdag]. They pointed a gun at [Dagdag] and dragged him out of the house. Albert was surprised and attended to his children because they were frightened of the armed men (TSN, September 17, 2012, pp. 2-4.).

On December 20, 2007 at around 10:30 o'clock in the evening, **JOANNA CAMILLE DAGDAG** (Joanna), while sleeping inside a room of her house located 25 E. Jacinto Street, Bambang, Pasig City, was awakened when she heard the cry of her two (2) children. Joanna witnessed her father, [Dagdag], being accompanied by two (2) men with firearms out of the house. Then, upon seeing [Dagdag] being boarded inside a taxi, Joanna held [Dagdag]'s arm. But [Dagdag] told Joanna to let go, so Joanna released his arm. (TSN, September 25, 2012, pp. 3-5)."^[6]

The Ruling of the RTC

On October 16, 2012, the RTC rendered a Judgment convicting Dagdag on both charges. The dispositive portion of the RTC's Judgment reads:

WHEREFORE, premises considered, accused Jerry Dagdag alias "Tisoy" is hereby found guilty beyond reasonable doubt of the offenses of illegal sale of 7 centigrams (0.07 gram) of methylamphetamine hydrochloride and possession of 14 decigrams (0.14 gram), thereof and sentences him as follows:

1. For Criminal Case No. 16032-D [violation of Section 5, Article II of R.A. No. 9165] - life imprisonment and to pay a fine of five hundred thousand pesos (P500,000.00); and
2. For Criminal Case No. 16033-D [violation of Section 11, Article II of R.A. No. 9165] - imprisonment ranging from twelve years and one day to fifteen years (applying the Indeterminate Sentence Law) and to pay a fine of thirty (*sic*) thousand pesos (P300,000.00).

The Branch Clerk of this Court is directed to forward the sachets of shabu (Exhibits "M", "N", & "O") to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.^[7]

Aggrieved, Dagdag filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Dagdag. The dispositive portion of the assailed Decision reads:

WHEREFORE, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Judgment is **AFFIRMED with MODIFICATION** in that in Criminal Case No. 16033-D, accused-appellant is ordered to pay a fine in the amount of THREE HUNDRED THOUSAND PESOS (P300,000.00) and **not** Thirty Thousand Pesos.

SO ORDERED.^[8]

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Dagdag for violating Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits Dagdag for failure of the prosecution to prove his guilt beyond reasonable doubt.

Dagdag was charged with the crime of illegal sale and possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, of Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

^[9]

On the other hand, illegal possession of dangerous drugs under Section 11, Article II