

SECOND DIVISION

[G.R. No. 217661, June 26, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND BUNIAG Y MERCADERA, ACCUSED-APPELLANT.**

DECISION

CAGUIOA, J:

This is an Appeal^[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision^[2] dated January 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01246, which affirmed the Judgment^[3] dated December 23, 2013 rendered by the Regional Trial Court, Branch 40, Misamis Oriental, 10th Judicial Region (RTC) in Criminal Case No. 2008-498, finding accused-appellant Ferdinand Buniag y Mercadera (Buniag) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The Information^[5] filed against Buniag for violation of Section 5, Article II of RA 9165 pertinently reads:

That on or about 7:30 P.M. of August 9, 2008, at Olape St., Zone 2 Bayabas, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs did then and there wil[l]fully, unlawfully, criminally[,] and knowingly sell and/or offer for sale, and give away[,] and deliver to a poseur [-]buyer [o]ne (1) LG black and red travelling bag with marking "NVP" containing two (2) bundles of dried alleged marijuana fruiting tops with stalks both wrapped in a blue print paper with marking NVP-1 and NVP-2 respectively and one (1) bundle of dried marijuana fruiting tops with stalks wrapped in a GRAPHIC poster paper marking NVP-3 with the following corresponding net weights; A-1 (NVP-1) 154.7 grams, A-2 (NVP-2) 118.8 grams and A-3 [QNVP-3] 36.5 grams respectively, accused knowing the same to be a dangerous drug.

Contrary to Section 5, Paragraph 1, in relation to Section 26, Article II of Republic Act No. 9165.^[6]

Upon arraignment, Buniag pleaded not guilty to the charge.^[7]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On August 9, 2008 at around 4 o'clock in the afternoon, PDEA Agent IO1 Rubylyn S. Alfaro (IO1 Alfaro), together with her confidential informant, met with the accused-appellant Buniag outside the vicinity of Bayabas High School, Cagayan de Oro City. It was agreed that IO1 Alfaro will purchase Php 5,000.00 worth of marijuana from Buniag and that the delivery will be made at around 7:00 to 7:30 in the evening of the same day along the street of Olape, Zone 2, Bayabas, Cagayan de Oro City.

IO1 Alfaro and the CI then went back to their office and relayed the aforesaid information to her fellow agents. At the office, a briefing was conducted wherein IO1 Alfaro was designated as the poseur[-]buyer while IO2 Neil Vincent Pimentel (IO2 Pimentel) was assigned as the back[-]up and arresting officer. After the meeting, the buy[-]bust team composing of IO2 Pimentel, IO1 Alfaro, PO2 Benjamin Reycites, SPO1 Amacanin, IO1 Pica, and the CI, went to the designated area on board their unmarked service vehicle.

The buy[-]bust team arrived at the target area at around 7:10 in the evening. IO1 Alfaro and the CI were dropped off along Olape Street while the rest of the team were inside the vehicle, which was parked from a distance of 5 to 7 meters away from IO1 Alfaro. The rest of the team were cautiously observing the area while IO1 Alfaro and the CI were waiting for Buniag.

Minutes later, Buniag came, carrying with him a black traveling bag. Buniag approached IO1 Alfaro and demanded for the payment of the marijuana but the latter insisted that she should see the narcotics first. Buniag acceded to the request and opened the black traveling bag. IO1 Alfaro and the CI inspected the bag and saw three (3) bundles of marijuana stalks and leaves inside. Wasting no time, IO1 Alfaro made the pre-arranged signal, by executing a "missed call" to IO2 Pimentel, and the rest of the team rushed to their location. IO2 Pimentel arrested the accused-appellant after apprising the latter of his constitutional rights and the nature of the crime he had just violated. IO2 Pimentel then got hold of the black traveling bag, together with three (3) bundles of marijuana inside. The team then brought Buniag to their station with IO2 Pimentel in possession of the traveling bag and the illegal narcotics in going thereto.

At the station, IO2 Pimentel marked the black traveling bag with his initials "NVP" while the three bundles of marijuana were successively marked with "NVP 1" to "NVP 3". IO2 Pimentel then prepared the Inventory of Seized Items while their Regional Director made the Letter Request for Laboratory Examination. Pictures were also taken of the accused-appellant and the seized items. IO2 Pimentel and IO1 Alfaro then brought Buniag and the seized items to the Regional Crime Laboratory Office which received the seized items at 9:10 in the evening of the same day. Upon a qualitative examination conducted by PSI Erma Condino Salvacion, the three bundles were found positive for marijuana,

a dangerous drug. The result of the said examination was embodied in Chemistry Report No. D-154-2008.^[8]

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

On August 8, 2008, Buniag, a resident of Wao, Lanao del Sur, went to Cagayan de Oro City pursuant to the request of his brother, who was in Manila, to check the latter's house in Bayabas, Cagayan de Oro City. On the evening of the next day, he went out of his brother's house to buy some food. Suddenly, a vehicle stopped in front of him and two persons, whom he later recognized as IO2 Pimentel and IO1 Alfaro, alighted therefrom and ran towards him. The two persons then handcuffed him and told him that he is a suspect because there are plenty of marijuana in Wao, to which he replied that such is not true.

After his arrest, Buniag was made to board a vehicle. While inside the vehicle, IO2 Pimentel asked for Php 20,000.00 so that he will be released. He replied that he has no money because his family is very poor. IO2 Pimentel continued to ask if he has a title to a lot or a house, to which he replied that he has none. At the PDEA Office, he was made to sit down on a chair and was asked to point to a black bag. He was then photographed while pointing to the said bag. He was then brought to the crime laboratory wherein he was given a plastic container and was told to urinate [i]n it. He said that during the course of his arrest and at the laboratory, he was made to sign documents without knowing the contents therein. Buniag vehemently denied that he owned the black traveling bag, as well as the three bundles of marijuana inside it. He claimed that he did not even know what marijuana is.^[9]

Ruling of the RTC

In the assailed Judgment dated December 23, 2013, the RTC ruled that the prosecution sufficiently discharged the burden of proving the guilt of the accused beyond reasonable doubt for the crime of attempt to sell and/or delivery of a dangerous drug.^[10] There was a mere attempt to sell, as the consideration for the marijuana had not yet been given when the arrest was made.^[11] Buniag is likewise liable for delivery of a dangerous drug as he had in fact given and delivered to the poseur-buyer the bag containing marijuana fruiting tops and stalks.^[12] Lastly, it ruled that the chain of custody of the seized drugs was adequately established in the instant case.^[13]

The dispositive portion of the Judgment reads:

WHEREFORE, all the foregoing premises considered, the court hereby finds accused **Ferdinand Buniag y Mercadera GUILTY** beyond reasonable doubt of having committed the offense charged in the information (violation of Section 5, Article II of R.A. 9165). He is hereby sentenced to suffer the penalty of **life imprisonment** and to pay a fine

in the amount of FIVE HUNDRED THOUSAND PESOS (P500.000.00), without subsidiary imprisonment in case of insolvency. The period of his preventive detention shall be credited in his favor. The bundles of marijuana are hereby ordered forfeited in favour of the government for proper disposal in accordance with the rules.

SO ORDERED.^[14]

Aggrieved, Buniag appealed to the CA.

Ruling of the CA

In the assailed Decision dated January 30, 2015, the CA affirmed Buniag's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is DENIED. The Judgment dated June 14, 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 40 in Criminal Case No. 2008-498 is hereby MODIFIED. Accused-appellant Ferdinand Buniag y Mercadera is found GUILTY beyond reasonable doubt for violating Section 26(b), Article II of R.A. No. 9165 and is sentenced to suffer a penalty of life imprisonment and to pay a fine of P500,000.00

SO ORDERED.^[15]

The CA ruled that a perusal of the Information filed against Buniag would show that he was charged with violation of Section 5, paragraph 1, in relation to Section 26,^[16] Article II of RA 9165.^[17] Here, Buniag clearly intended to sell marijuana and commenced overt acts in relation to it, however, the sale was aborted when IO1 Alfaro, upon confirming that Buniag had with him the marijuana, made a "miss-call" to IO2 Pimentel, their pre-arranged signal, and the rest of the team rushed to the area and placed Buniag under arrest.^[18] From the testimonies of the witnesses, the prosecution was able to establish that there was an attempt to sell marijuana.^[19] Thus, the RTC should have convicted Buniag for violation of Section 26(b), Article II of RA 9165.^[20]

It further ruled that the failure to conduct an inventory and to photograph the confiscated items in the manner prescribed under Section 21 of RA 9165 is not fatal to the prosecution's cause.^[21] The marking of the seized items at the police station and in the presence of the accused is sufficient to show compliance with the rules on chain of custody.^[22] It further ruled that when the police officers involved in the buy-bust operation have no motive to falsely testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.^[23]

Hence, the instant appeal.

Issue

Whether the CA erred in finding the accused guilty beyond reasonable doubt of violating Section 26(b), Article II of RA 9165.

The Court's Ruling

The petition is meritorious. Buniag is accordingly acquitted.

The CA is correct in ruling that Buniag should have been convicted of the offense of attempted illegal sale of dangerous drugs. Under the rule on variance, while Buniag cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, he may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs.^[24]

A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance.^[25]

In the present case, Buniag attempted to sell shabu and commenced by overt acts the commission of the intended crime however, the sale was aborted when IO1 Alfaro, upon confirming that Buniag had with him the marijuana, made a "miss-call" to IO2 Pimentel, the pre-arranged signal, and the rest of the team rushed to the area and placed Buniag under arrest. Thus, the CA correctly ruled that the accused may only be held liable for attempted illegal sale of dangerous drugs.

Nevertheless, Buniag may still not be convicted of attempted illegal sale of dangerous drugs. At this juncture, it is important for the Court to point out that for a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, which necessarily includes attempted sale of illegal drugs, the following elements must be proven: (1) the transaction or sale took place; (2) **the corpus delicti or the illicit drug was presented as evidence**; and (3) the buyer and the seller were identified.^[26]

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense^[27] and the fact of its existence is vital to sustain a judgment of conviction.^[28] It is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.^[29]

In this case, even if the Court were to believe as true the version of the prosecution, due to the failure of the police officers to strictly comply with the requirements laid down under Section 21^[30] of RA 9165, the second element to convict Buniag of the crime charged is still absent since the prosecution failed to establish the *corpus delicti* beyond reasonable doubt.

There was blatant disregard of the chain of custody rule as shown below:

First, the police officers did not conduct the marking, photography, and inventory of the seized items at the place of arrest. Without having any valid excuse for the deferment of the conduct of the required procedure under Section 21 of RA 9165, they brought the seized items to the police station. As testified by IO2 Pimentel:

Q- You identified earlier the picture, am I correct also to say that