

## SECOND DIVISION

[ G.R. No. 229720, August 19, 2019 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MELVIN DUNGO Y OCAMPO, APPELLANT.**

### D E C I S I O N

**CARPIO, ACTING C.J.:**

#### The Case

Before the Court is an appeal from the Decision<sup>[1]</sup> of the Court of Appeals dated 29 July 2016 in CA-G.R. CR-H.C. No. 06833, which affirmed *in toto* the Decision<sup>[2]</sup> of the Regional Trial Court of San Fernando City, Pampanga, Branch 43 (RTC), finding appellant Melvin Dungo y Ocampo (Dungo) guilty beyond reasonable doubt of violation of Article II, Section 5, Republic Act No. 9165 (RA9165).<sup>[3]</sup>

#### The Facts

On 2 September 2009, a confidential informant went to the police station in Sto. Tomas, Pampanga to report that a certain "Ogag" was selling illegal drugs from his residence on Paralaya Street, San Matias, Sto. Tomas, Pampanga.<sup>[4]</sup> Police Officer 3 Jason Canda<sup>[5]</sup> (PO3 Canda) relayed the information to their station commander, Police Chief Inspector Ricardo Pangan, Jr. (PCI Pangan). They then started planning a buy-bust operation in coordination with the Philippine Drug Enforcement Agency (PDEA) and Barangay San Matias *Punong Barangay* Valeriano C. Lingat (PB Lingat). PO2 Jamil Lugtu (PO2 Lugtu) was to act as poseur-buyer with PO3 Canda as back and arresting officer, while the rest of the team were to provide perimeter security.<sup>[6]</sup>

At the target site, the confidential informant and PO2 Lugtu went to meet Ogag, while PO3 Canda hid in a strategic location. The informant saw Ogag in front of the latter's house, so he and PO2 Lugtu approached. He introduced PO2 Lugtu as a prospective buyer of shabu. PO2 Lugtu handed a P500 bill to Ogag, who, in turn, gave him two plastic sachets containing white crystalline substance suspected to be shabu. At that point, PO2 Lugtu scratched his head, the pre-arranged signal, and PO3 Canda approached. Ogag was placed under arrest, frisked, and informed of his rights.<sup>[7]</sup>

PO3 Canda then called PCI Pangan and barangay officials to witness the search on Ogag's person and seizure of the evidence. They seized the P500 bill used in the transaction and the two plastic sachets, which PO2 Lugtu marked with his initials, JBL-1 and JBL-2.<sup>[8]</sup>

They then proceeded to the police station where the items and Dungo were turned

over to Senior Police Officer 4 (SPO4) Danilo Fernandez, the chief investigator on duty.<sup>[9]</sup>

According to PO3 Canda, they prepared the Turn Over Receipt and Confiscation Report and the latter was signed by representatives from the Department of Justice (DOJ), media, and the barangay. Subsequently, the sachets containing the suspected shabu were brought to the Philippine National Police (PNP) Crime Laboratory by another police officer, PO2 Fer Adonis Gonzales. Upon examination, the PNP Crime Laboratory concluded that the white crystalline substance was, in fact, methamphetamine hydrochloride.<sup>[10]</sup>

The prosecution also presented, by way of stipulation, the testimony of PCI Angel Timario (PCI Timario), the Chemical Officer who examined the confiscated substance at the Regional Crime Laboratory Office, Camp Olivas, San Fernando, Pampanga. PCI Timario testified that he examined the contents of the heat sealed transparent sachets marked JBL-1 and JBL-2, and confirmed them to contain shabu. However, upon clarificatory questions, PCI Timario admitted that he had "no knowledge as to whether the sachets of shabu with markings JBL-1 and JBL-2 were the ones particularly sold by [Dungo] in the instant case."<sup>[11]</sup>

On the other hand, Dungo testified in his defense. He claimed that on the day of the buy-bust operation, he was at his workplace near his home when PO2 Lugtu and PO3 Canda arrived looking for him. He approached them and they went to his house. Upon their arrival, the policemen poked their guns at him and frisked him. They then searched the house but found nothing. Another group of policemen arrived and they brought him to the police station. After photographs were taken, he was brought to jail.<sup>[12]</sup>

He further stated that he was not aware that there was a buy-bust operation and that he only learned of the case against him when it was already filed. He said that he only reached Grade VI and did not understand the policemen's testimonies against him. He also said that he did not know why he was brought for Inquest and was merely following the instructions of the policemen. Likewise, he was only assisted by counsel when he was already brought to court.<sup>[13]</sup>

### **The Ruling of the RTC**

On 3 May 2014, the RTC handed down its decision, the dispositive portion of which reads:

WHEREFORE, all the foregoing considered, MELVIN DUNGO Y OCAMPO, finding him guilty beyond reasonable doubt of the offense charged, is hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred Thousand (P500,000.00) Pesos; and the cost of suit.

The two (2) plastic sachet[s] (Exhibit "C-1" and "C-2"), the contents of which were positive for methamphetamine hydrochloride, a dangerous drug, are hereby confiscated and forfeited in favor of the Government.

The Officer-in-Charge of this court is hereby directed to turn over the same to the PDEA for proper disposal thereof.

SO ORDERED.<sup>[14]</sup>

The RTC ruled that the prosecution was able to satisfactorily prove all the elements of the crime.<sup>[15]</sup> It gave full credence to the testimonies of the police officers, relying on the presumption of regularity in the performance of official duty and the lack of evidence of any improper motive on their part.<sup>[16]</sup>

### **The Ruling of the Court of Appeals**

The Court of Appeals affirmed the RTC decision *in toto*. The Court of Appeals ruled that the "failure of the police officers to make a physical inventory, to photograph, and to mark the seized items at the place of arrest does not render said drugs inadmissible in evidence or automatically impair the integrity of the chain of custody of the same."<sup>[17]</sup> It held that the requirement to mark the seized items "immediately after seizure and confiscation"<sup>[18]</sup> allows for the marking to be done at the police station "as long as it is done in the presence of the accused and that what is of utmost importance is the preservation of its integrity and evidentiary value."<sup>[19]</sup>

The Court of Appeals held that the prosecution sufficiently established the unbroken chain of custody of the seized evidence, from the time of arrest to the submission of the specimen to PCI Timario for examination.<sup>[20]</sup>

Dungo is now before this Court appealing the decision on the ground that the same is contrary to facts, law, and jurisprudence.<sup>[21]</sup>

### **The Issue**

The lone issue in this case is whether the prosecution was able to prove Dungo's guilt beyond reasonable doubt.

### **The Ruling of the Court**

The appeal is meritorious. The facts as established in this case raise reasonable doubt warranting the acquittal of Dungo.

The general rule is that the Court is not a trier of facts, but in a criminal case, the appellate court has the power to examine the records and review errors in the appealed judgment whether they are assigned or not.<sup>[22]</sup> This must be so "since no less than the liberty of an accused is at stake."<sup>[23]</sup>

Illegal sale of drugs is governed by RA 9165:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in

transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x

Central to the prosecution for the illegal sale of drugs is establishing the identity of the object of the sale since "the existence of the dangerous drug is a condition *sine qua non* for conviction. The dangerous drug [being the] very *corpus delicti* of the crime."<sup>[24]</sup>

Thus, Section 21 of RA 9165 sets out the procedure to be followed by law enforcement officers:

*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 x

This procedure is further amplified in the Implementing Rules and Regulations (IRR) of RA 9165:

*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 x

Since it is the dangerous drugs that comprise the *corpus delicti*, its identity "must also be established with the same unwavering exactitude as that requisite to make a finding of guilt."<sup>[25]</sup> In other words, no less than **proof beyond reasonable doubt** is required to establish the *corpus delicti* in every case under RA 9165.

The duty of the prosecution then is to establish "proof that the identity and integrity of the x x x prohibited or regulated drug, has been preserved"<sup>[26]</sup> by accounting "for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*."<sup>[27]</sup>

**Chain of custody** is defined in Section 1 of Dangerous Drugs Board Regulation No. 1, Series of 2002 as "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."

Further, the same section states that the record "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."<sup>[28]</sup>

The prosecution must establish these four links:

(1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;