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# SECOND DIVISION

# [ G.R. No. 220759, July 24, 2017 ]

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ARMANDO MENDOZA Y POTOLIN A.K.A. "JOJO," ACCUSED-APPELLANT.

## D E C I S I O N

**PERALTA, J.:**

Before us is an appeal from the Decision[1] dated March 24, 2015 of the Court of Appeals (*CA*) issued in CA-G.R. CR-HC No. 00958, the dispositive portion of which reads:

> WHEREFORE, the Decision dated September 18, 2008 rendered by the Regional Trial Court, Branch 13, Carigara, Leyte in Criminal Case No. 4638, convicting accused-appellant Armando Mendoza y Potolin a.k.a. "Jojo," of Violation of Section 5 of Article II of R.A. 9165, as amended, or the Dangerous Drugs Act is hereby AFFIRMED. The accused-appellant's conviction in Criminal Case No. 4637 for Violation of Section 11 of Article II of R.A. 9165 is REVERSED and SET ASIDE. The accused-appellant is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.
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> Cost against accused-appellant.[2]

On April 24, 2006, appellant was charged in two separate Informations with violation of Sections 11 and 5 of Article II of Republic Act (*RA*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*. The accusatory portion of the Informations respectively provides:

> Criminal Case No. 4637 (For violation of Section 11)
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> That on or about the 20th day of April 2006, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority, did then and there, unlawfully, willfully and feloniously, have in his control and possession two (2) teabags of marijuana, weighing 0.95g and 0.97g, respectively, a dangerous drug.[3]
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> Criminal Case No. 4638 (For violation of Section 5 )
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> That on or about the 20th day of April 2006, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, unlawfully, willfully and feloniously sell, deliver and give away four (4) teabags of marijuana weighing 0.96g, 1.11 g, 0.97g and 98g,

> respectively, a dangerous drug to poseur-buyer PO2 Elvin E. Ricote for P200.00 in two marked P100 bills with serial nos. SB226477 and XDO13891, without being authorized by law.[4]

When arraigned, appellant pleaded not guilty to both charges.[5]

Trial thereafter ensued. The evidence for the prosecution established that in the morning of April 18, 2006, a confidential informant (*CI*) went to the Office of the Provincial Anti-Illegal Drugs Special Operation Task Group (*PAIDSOTG*) of the Leyte Provincial Police Office, San Jose, Tacloban City, with the information that appellant was selling illegal drugs in Carigara, Leyte.[6] The PAIDSOTG Chief, Police Inspector (*P/Insp*.) Jesus Son, coordinated with the Carigara Chief of Police, Police Chief Inspector (*P/C Insp*.) Felix Diloy, for the conduct of a surveillance on the appellant. As a result, it was confirmed that appellant was engaged in selling marijuana.[7] The PAIDSOTG then coordinated with the Philippine Drugs Enforcement Agency (*PDEA*) of the planned buy-bust operation.[8] On April 20, 2006, the PAIDSOTG and members of the Carigara PNP planned the buy-bust operation. PO2 Elvin Ricote (*PO2 Ricote*) of the PAIDSOTG was designated to act as the poseur-buyer, while PO3 Alberto Parena (*PO3 Parena*) of the Carigara PNP as his back up, and two pieces of one hundred peso bills were prepared, marked and subscribed before an administering officer.[9]

At 5:45 in the afternoon of the same day, the team proceeded to the location of appellant's house in Barangay Barugohay Norte in Carigara Leyte and positioned themselves around the vicinity.[10] Before reaching appellant's house, PO2 Ricote, together with the CI, met the appellant in a sari-sari store and the CI introduced PO2 Ricote as a buyer of marijuana.[11] Appellant then told PO2 Ricote that the price per teabag of marijuana was P50.00 to which the latter agreed to buy 4 teabags. Appellant then took out from his right pocket the four teabags of suspected dried marijuana leaves and handed them to PO2 Ricote who, in turn, gave the marked two pieces of one hundred peso bills to the former.[12] PO2 Ricote then scratched his head as a pre-arranged signal, and PO3 Parena, who was inside a parked vehicle which was three meters away from the sari-sari store, immediately run to help in arresting appellant.[13] PO3 Parena made a missed call to P/Insp. Son to inform him of the consummation of the sale and for assistance.[14] Appellant still tried to escape, but PO2 Ricote held his hand and was then informed of his constitutional rights and the crime he committed. He was also bodily frisked and found from his pocket the two one-hundred-peso bills and two teabags of marijuana.[15] Appellant and the items seized were brought to the barangay hall for inventory.[16] PO2 Ricote and PO3 Parena prepared and signed a receipt of property seized dated April 20, 2006 which consisted of four teabags of suspected dried marijuana leaves and the marked money and their serial numbers, which was signed by the Barangay Chairman Ernesto Dipa.[17] A certificate of inventory[18] was prepared and signed by P/Insp. Son, which was also signed by the barangay chairman as witness.[19] PO3 Ricote marked the items sold to him by appellant in the barangay hall in the presence of the appellant, the barangay chairman and P/Insp. Son.[20]

The team brought appellant and the seized items to the police station for blotter. The seized items were submitted to the PNP Crime Laboratory for chemical analysis.

P/Insp. Son prepared the request for laboratory examination. A certain SPO1 Cesar Cruda of the PDEA acknowledged receipt of the letter request and the items from PO2 Ricote and submitted them to the crime laboratory on April 20, 2006.[21] (*P/C Insp*.) Edwin Zata, the Forensic Chemist, examined the specimens submitted which yielded positive results for marijuana, a dangerous drug.[22] His findings was reduced to writing as Chemistry Report No. D-094-2006. PO2 Ricote identified in court the items bought from appellant.[23]

Appellant denied the charges and claimed that on April 20, 2006, he, together with Teting Tatgus and a certain Bokbok, were along the road fronting the Caragara School of Fisheries located in Barangay Barugohay Norte, repairing a pedicab.[24] Thereafter, they all went to the house of a photographer in Sidlawan and they were joined by a certain Andy Makabenta and they all went to a sari-sari store to rest.[25] He then saw the arrival of a white vehicle and a motorcycle with two people riding on it.[26] A person alighted from the motorcycle and held the wrist of Makabenta, while another police officer alighted from the vehicle and pointed to him saying "you also apprehend that."[27] While he was being held by the police officer, appellant asked him what crime he had committed to which he was told to just keep quiet and was handcuffed.[28] He was then brought to the barangay hall where the police officer took money from a jar and placed them on the table and took pictures of him with the items on the table.[29]

On September 18, 2008, the RTC rendered a Decision,[30] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court found accused ARMANDO MENDOZA y POTOLIN, alias "Jojo", GUILTY beyond reasonable doubt in Criminal Case No. 4637, for Violation of Section 11(3) of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 as charged in the Information and sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY and to pay the fine of Three Hundred Thousand (PHP300,000.00) Pesos.
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> In Criminal Case No. 4638. the Court found accused ARMANDO MENDOZA y POTOLIN, alias "Jojo," GUILTY beyond reasonable doubt for Violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive [Dangerous] Drugs Act of 2002 as charged in the Information and sentenced to suffer the maximum penalty of LIFE IMPRISONMENT and to pay the fine of One Million (PhP 1,000,000.00) Pesos; and
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> Pay the Cost.
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> SO ORDERED.[31]

In so ruling, the RTC found that appellant's denial cannot override the positive identification in open court of his person by the police officers who apprehended him in the buy-bust operation. Appellant filed a notice of appeal within the reglementary period, thus, the entire records of the case was forwarded to the CA, Cebu.

On March 24, 2015, the CA rendered its Decision which we quoted in the beginning of this decision. The CA affirmed appellant's conviction for violation of Section 5 of

Article II of RA 9165, as amended, but acquitted him for violation of Section 11 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The CA affirmed the conviction of appellant for illegal sale of marijuana as all the elements of the crime were duly established; and that there was no break or gap in the chain of custody of the seized items. However, the CA found that in the case of illegal possession of marijuana, the prosecution failed to prove the *corpus delicti* of the crime. The two teabags of marijuana confiscated from appellant were never presented in court nor were there testimonies as to their whereabouts from the time they were confiscated and the markings made thereon.

Appellant filed a Notice of Partial Appeal and the records were forwarded to us for further review. In our Resolution[32] dated November 11, 2015, we noted the elevation of the records, accepted the appeal, and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both parties manifested that they are no longer filing supplemental briefs as they had refuted the issues in their respective briefs filed with the CA.[33]

Appellant raises the following assignment of errors:

I

> THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE CORPUS DELICTI

II

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE ELEMENTS FOR THE PROSECUTION FOR SALE OF ILLEGAL DRUGS WERE NOT ESTABLISHED.

We find no merit in the appeal.

In every prosecution for the illegal sale of marijuana, the following elements must be proved: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[34] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[35]

We agree with the CA that the prosecution had satisfactorily proven all these elements. PO2 Ricote, the poseur-buyer, positively identified appellant as the seller of the four teabags of suspected marijuana and to whom he handed the marked two pieces of one hundred peso bills as payment therefor. The substance sold by appellant to PO2 Ricote was sent to the PNP Crime Laboratory for analysis and upon the examination made by the Forensic Chemist, P/C Insp. Zata showed that the four teabags with a total weight of 4.02 grams yielded a positive result for marijuana, a dangerous drug. The marijuana was presented to the court and was identified by PO2 Ricote to be the marijuana he bought from appellant based on the markings he made thereon.

Appellant's claim that it was impossible for him to publicly deal with PO2 Ricote, an unfamiliar face, is not persuasive. Peddlers of illicit drugs have been known with

ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not.[36] Moreover, drug-pushing when done on a small-scale, like the instant case, belongs to those types of crimes that may be committed any time and at any place.[37]

Appellant contends that his apprehension was not a product of entrapment but an instigation as it was admitted that it was the asset who allegedly introduced PO2 Ricote to him as the buyer of marijuana; and that it was the asset who instructed him to sell marijuana to PO2 Ricote.

We find such contention unmeritorious.

In *People v. Dansico*,[38] we held:

> xxx. Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.
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> To determine whether there is instigation or entrapment, we held in *People v. Doria* that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:
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> > [I]n buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[39]