

THIRD DIVISION

[G.R. No. 206224, January 18, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN ASISLO Y MATIO, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

Before Us is a Notice of Appeal assailing the Decision^[1] dated June 1, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04081, which affirmed the Decision^[2] dated July 21, 2009 of the Regional Trial Court (RTC), Branch 61, Baguio City, finding the accused-appellant Juan Asislo y Matio guilty of illegal sale of marijuana, a dangerous drug, in violation of Section 5 of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

On May 14, 2008, accused-appellant Asislo, Jose Astudillo, and Samuel Pal-iwen were similarly charged with the violation of Section 5 of R.A. No. 9165, to wit:

That on or about the 13th day of May, 2008 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there, willfully, unlawfully and feloniously deliver and transport NINETY-ONE (91) BRICKS and TWO (2) TUBE TYPE OF DRIED MARIJUANA LEAVES, a dangerous drug, in different sizes, thickness, and weight, weighing a total of ONE HUNDRED TEN (110) KILOGRAMS, to PDEA undercover agents, knowing fully well that said "marijuana dried leaves" are dangerous drugs, in violation of the abovementioned provision of law.^[3]

During the arraignment, all of the accused entered a plea of not guilty. Thereafter, the trial on the merits ensued.

As found by the trial court, the prosecution presented the following version of the events leading to the arrest of all the accused:

Sometime in the second week of April 2008, the Philippine Drug Enforcement Agency-Cordillera Administrative Region (PDEA-CAR) Office received intelligence information from PDEA-La Union about the proliferation and distribution of marijuana in La Union, and the same revealed that the accused Juan Asislo had delivered a huge volume of marijuana in Baguio City to an unidentified buyer sometime in the first week of April 2008. Regional Director PCI Edgar S. Apalla directed IA1 Ferdinand Natividad to coordinate and communicate with PDEA-La Union to build a case against Asislo.^[4]

In the third week of April 2008, the confidential informant, "Jojo", arrived at the Office of PDEA-CAR in Baguio City and introduced himself. Natividad instructed him to continue dealing with Asislo, and to inform them of any developments regarding Asislo's alleged illicit activities. On April 28, 2008, Jojo reported that he met Asislo along with his unidentified companions. Asislo asked him to look for a buyer of the 300 kilos of marijuana in exchange for a commission. Natividad ordered Jojo to inform Asislo that a buyer from Manila was interested to purchase 200 kilos of marijuana.^[5]

On May 2, 2008, Jojo reported that Asislo disclosed that the prevailing price of marijuana was P1,500.00 per kilo. Per Natividad's instruction, Jojo apprised Asislo that the buyer from Manila who was willing to buy 200 kilos of marijuana will be in Baguio for a vacation. In a phone call, Asislo insisted in talking with the buyer. Natividad talked with him through the phone and reiterated to him his interest to buy 200 kilos of dried marijuana leaves. However, Asislo notified him that he only had around 100 kilos of marijuana leaves. Natividad settled with Asislo, and asked the latter to wait for his call for the delivery of the marijuana.^[6]

On May 8, 2008, Asislo called Natividad that they were prepared to deliver about 110 kilos of marijuana on May 13, 2008. Upon learning the negotiations of Natividad with Asislo, PCI Apalla formed the team for the entrapment operation composing of Natividad as the poseur-buyer, SPO4 Romeo Abordo as the team leader, and SPO2 Cabily Agbayani and SPO1 Emerson Lingbawan as the members of the back-up team and arresting officers.^[7]

In the evening of May 12, 2008, they agreed to have their transaction within the vicinity of Dontogan, Green Valley, Baguio City, near a certain "car wash" area between 7 o'clock and 8 o'clock in the morning on May 13, 2008.^[8]

Around 5 o'clock in the morning on May 13, 2008, the entrapment and arresting team proceeded to the area. Asislo related to Natividad that he was with other four individuals on board a dark blue Kia Besta van with plate number XFC 682. At 7:30 in the morning, the Besta van stopped at about 30 meters from the agreed place of transaction. Two men alighted from the vehicle and approached Natividad. One of them was Jojo, who then introduced the other as Asislo. Natividad asked Asislo to see the marijuana before he pays. Thereafter, Asislo ordered the van's driver, Jose Astudillo, to open the compartment. Natividad saw five sacks and a plastic bag. Asislo asked his other companion, Samuel Pal-iwen, to help him pull out one sack and opened the same in front of Natividad. The sack was loaded with bricks of marijuana.^[9]

Natividad removed his ball cap, their pre-arranged signal, and held Asislo in a tight embrace. He removed his service firearm and introduced himself as a PDEA agent. The back-up team rushed to the scene and arrested the other accused. SPO2 Agbayani recited to Asislo and his companions their constitutional rights. SPO1 Lingbawan searched the van, and found four sacks containing bricks of marijuana and a plastic bag with two pieces of tube type of marijuana leaves inside. SPO4 Abordo seized Asislo's cell phone. The van used in transporting the marijuana was impounded at the PDEA-CAR Office.^[10]

Because of the volume of the confiscated dangerous drugs, the team brought the sacks of marijuana to the PDEA-CAR Field Office for proper markings and documentations. Thereafter, the drugs were turned over to the Philippine National Police (*PNP*) Crime Laboratory Office at Camp Bado Dangwa, La Trinidad, Benguet for chemical analysis. Asislo and his two companions were subjected to urine examination, which yielded negative results, at the PNP Laboratory Office.^[11]

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

At about 4 o'clock in the afternoon on May 11, 2008, Astudillo, after a day's work of driving a passenger jeepney, was watching a billiards game inside a building at the jeepney station at Sasaba, Santol, La Union. The store where the other accused, Asislo and Pal-iwen, worked as broom makers was also in the same building.^[12]

Around that time, Astudillo saw Jojo conversing with Asislo. While busy making brooms, Pal-iwen was nearby and within hearing distance. Astudillo heard Jojo inquiring about anyone who leases any closed vehicle for transportation of brooms and bananas. Asislo suggested one Jimmy Tad-o. He accompanied Asislo and Jojo when they proceeded to Tad-o's place. After reaching an agreement, Tad-o asked Astudillo to travel with Asislo and to return the vehicle at Sasaba.^[13]

Around 1 o'clock in the morning on May 13, 2008, Pal-iwen saw Jojo and some companions load brooms and sacks in the van. With Pal-iwen and Asislo, Jojo drove the van bound for Baguio City. Jojo unloaded the brooms and bananas at the San Fernando City Market. Then, Astudillo showed up after Asislo called him on the cell phone.

Astudillo then drove the van to Dontogan, Green Valley, Baguio City. Upon arrival, Asislo and Jojo alighted from the van and proceeded to the construction site of Asislo's uncle for coffee. The PDEA agents suddenly arrived and arrested them. They were brought to the PDEA-CAR Office at the Melvin Jones, Burnham Park, Baguio City where they were accused of delivering marijuana.

On July 21, 2009, the Baguio City RTC convicted Asislo of the crime of illegal sale, while it acquitted Astudillo and Pal-iwen due to insufficiency of evidence against them and the failure of prosecution to establish conspiracy. In convicting accused-appellant Asislo, the RTC ratiocinated that the sale of illegal drugs, like any other sale, is perfected upon the meeting of the minds between the vendor and the vendee with respect to the subject matter and as regards the cause or consideration.^[14] The dispositive portion of the decision reads:

WHEREFORE, this Court renders judgment finding the accused Juan Asislo GUILTY beyond reasonable doubt and he is sentenced to suffer Life Imprisonment and to pay a fine of P5,000,000.00.

Accused Jose Astudillo and Samuel Pal-iwen are hereby ACQUITTED for insufficiency of evidence and they are ordered RELEASED from custody unless being held for some other lawful reasons which require their continued detention.

SO ORDERED.^[15]

Accused-appellant Asislo, through the Public Attorney's Office, appealed before the CA arguing that the RTC erred in convicting him due to the lapses in the chain of custody of the seized dangerous drugs, and the failure of the prosecution to establish his guilt beyond reasonable doubt. The CA, in affirming the decision of the RTC, held that the presentation of the buy-bust money is not indispensable to the prosecution of a drug case.^[16] However, the CA reduced the fine to P1,000,000.00, the *fallo* of the decision reads:

WHEREFORE, in view of the foregoing, the Decision dated July 21, 2009 rendered by the Regional Trial Court of Baguio City, Branch 61, is, except for the amount of fine imposed which is REDUCED to One Million (P1,000,000.00) Pesos, hereby AFFIRMED.

SO ORDERED.^[17]

Aggrieved, accused-appellant Asislo now seeks his acquittal before this Court lamenting that the prosecution failed to establish an unbroken link in the chain of custody. He avers that the PDEA agents did not comply with the procedures mandated by Section 21 of R.A. No. 9165, since there was a lapse of time from the seizure of the illicit drugs to the marking and inventory. In his Supplemental Brief, Asislo maintains that the fact that it was only Natividad who marked the confiscated drugs casts a shadow of doubt to the authenticity of the evidence presented before the court.

The appeal lacks merit.

Section 21 (1), Article II of R.A. No. 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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Correlatively, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(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[.]**^[18]

In many cases, this Court has held that "while the chain of custody should ideally be perfect, in reality it is not, as it is almost always impossible to obtain an unbroken chain."^[19] Since the law itself provided exceptions to its requirements, the non-compliance with Section 21 of the IRR is not fatal and does not make the items seized inadmissible.^[20] The most important factor is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."^[21]

In the prosecution of a case for illegal sale of dangerous drugs, the primary consideration is to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.^[22] The prosecution must establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced in evidence against the accused was the same illegal drug that was confiscated from him.^[23]

The records of the case show that the authorities were able to preserve the integrity of the seized marijuana, and establish in the trial that the links in the chain of custody of the same were not compromised. While it is true that the drugs were not marked immediately after its seizure and not in the presence of the accused, the prosecution was able to prove, however, that the bricks of marijuana contained in five sacks and a plastic bag confiscated during the buy-bust operation were the same items presented and identified before the court.

After the seizure of the marijuana and the arrest of the accused, IAI Natividad called PCI Apalla through mobile phone and reported the operation. Due to the volume of the confiscated drugs, PCI Apalla ordered IAI Natividad and his companions to bring the sacks of marijuana to their field office for proper markings and documentations.