

THIRD DIVISION

[G.R. No. 205764, February 03, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEE QUIJANO ENAD, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

This is an appeal from the Decision^[1] dated February 28, 2012 of the Court of Appeals (CA) in CA-G.R. CEB CR HC No. 01109, which affirmed the judgment^[2] of the Regional Trial Court (RTC) of Toledo City, Cebu, Branch 29, finding accused-appellant Lee Quijano Enad guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, in Criminal Case No. TCS-5357.

On August 16, 2005, an Information was filed charging appellant with violation of Section 5, Article II of RA 9165, the accusatory portion of which reads:

That on the 14th day of August 2005 at around 11:45 o'clock in the morning, at Barangay Bayong, Municipality of Balamban, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously SELL and DELIVER to one of the poseur-buyers of the PNP in the amount of P200.00 with Serial Nos. SN DQ547867 and GM030950 one (1) plastic bag containing 2,722.00 grams of dried suspected marijuana wrapped in a newspaper which when subjected for laboratory examination gave positive results for the presence of Marijuana, a dangerous drug.

CONTRARY TO LAW.^[3]

Upon his arraignment on June 30, 2006, appellant, assisted by counsel, pleaded not guilty to the charge.

On September 1, 2006, the pre-trial was terminated. Thereafter, trial on the merits ensued.

For the prosecution, three (3) witnesses testified, namely: Police Inspector (P/Insp.) Leoncio G. Demauero, a member of the Philippine Drug Enforcement Agency (PDEA), Region VII, Cebu City, who was designated as back-up and arresting officer; P/Insp. Arceliano A. Bañares, also a member of the PDEA who was designated as poseur-buyer; and Jude Daniel Mendoza, the Forensic Chemical Officer/Medical Technologist of the Philippine National Police (PNP) Crime Laboratory Region 7, Cebu City.

According to the prosecution, in the first week of August 2005, Police

Superintendent (P/Supt.) Amado Marquez ordered Police Chief Inspector (PCI) Carmelo Dayon to verify the report of an informant anent the rampant sale of illegal drugs by appellant in Balamban, Cebu. PCI Dayon then instructed P/Insp. Demauero and Bañares to conduct a surveillance operation against appellant, which they conducted for a week in coordination with the Balamban Police Station.

On August 14, 2005, upon being directed by PCI Dayon and armed with a pre-operation report, P/Insp. Demauero and Bañares conducted a buy-bust operation against appellant in Barangay Bayong, at the junction road going to Barangay Magsaysay in Balamban, Cebu. P/Insp. Bañares acted as the poseur-buyer, while P/Insp. Demauero acted as the back-up and arresting officer. During the operation, they were also assisted by SPO2 Jude Dennis Aguanta of the Balamban Police Station, three (3) barangay tanods and an informant. Upon reaching Barangay Bayong, they first staked out along the highway in front of a store. Thereafter, they saw appellant.

The informant then told P/Insp. Demauero through radio that appellant was on his way to their position on board a motorcycle or *habal-habal*. P/Insp. Bañares quickly positioned himself on the side of the road which was twenty (20) meters away from the store where P/Insp. Demauero was standing in a discreet position. P/Insp. Bañares then approached and held the motorcycle being boarded by appellant. P/Insp. Bañares introduced himself as a band member and told the *habal-habal* driver that he needs illegal drugs for their performance. Upon hearing the conversation of P/Insp. Bañares and the driver, appellant butted in and asked how much is needed. Appellant said that the marijuana costs P1,500.00 per kilo and asked P/Insp. Bañares if he had the money. P/Insp. Bañares pulled out from his right pocket the boodle money which was sandwiched between two (2) One Hundred Peso bills P100.00 and gave it to appellant. In turn, appellant opened the bag with suspected dried marijuana. After seeing the contents, P/Insp. Bañares took the bag and made the pre-arranged signal that the transaction was already consummated. P/Insp. Bañares immediately introduced himself as a police officer and recovered the money from appellant. P/Insp. Demauero also rushed in and arrested the appellant who offered no resistance.

P/Insp. Bañares and Demauero brought the appellant to a nearby store and presented him before barangay tanods, then proceeded to the office. P/Insp. Demauero prepared the booking sheet, the arrest report, as well as the requests for laboratory examination of the suspected dried marijuana marked as "LQE" and dated 08-14-2005, and for medical examination of appellant. The latter requests were forwarded to Jude Mendoza of the PNP Crime Laboratory Region 7. As shown by Chemistry Report No. D-1192-2005, the specimen was found positive for marijuana.

On the other hand, appellant was the sole witness for the defense. According to the defense, on August 14, 2005 at around 11 o'clock in the morning, appellant was riding a motorcycle (*habal-habal*), together with its driver, on his way to Barangay Cambuhawe, Sitio Lacdon, Balamban, to visit his cousin, Lito Lapinid. When they reached the Mount Manunggal area, their motorcycle was flagged down by two (2) unknown men. Once the motorcycle stopped, the driver was asked if he had a driver's license and where they were going. The driver showed his license and replied that appellant was going to Balamban. Appellant was also asked for his identification card and community tax certificate, but he failed to show them as he

left them at home. Upon being asked where he was residing, appellant replied that he was a resident of San Fernando. Thereafter, the two men, who turned out to be police officers, frisked him and the driver but found nothing. When the two men requested appellant to come with them to the police station to verify his residence, he hesitated and protested, but was nonetheless forced to go.

Once at the police station, appellant saw one of the two men bring a black bag and was told to admit that he owned it. Appellant vehemently refused to admit its ownership as the bag contained marijuana. One of the police officers also told him that if he will admit ownership of the bag, they will charge him with violation of Section 11 of R.A. 9165, and he would be able to post bail; otherwise, he would be charged with violation of Section 5 and would not be able to post bail. When appellant still refused to admit ownership of the bag, one of the police officers boxed him once on the right side of his body. Appellant was then forced to sign the booking sheet and arrest report. When informed that he was being charged with selling of illegal drugs, appellant told the police that they broke his heart and that they had no pity on him despite the fact that he has a family.

On August 10, 2009, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court hereby renders judgment finding the accused, Lee Quijano Einad, **GUILTY** beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 for the sale of 2,722 grams of marijuana and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and [to pay] a fine of Five Hundred Thousand Pesos (P500,000.00).

The confiscated dried marijuana leaves are hereby ordered confiscated in favor of the government, to be turned over to the Office of the Provincial Prosecutor of Cebu, which, in turn, shall coordinate with the proper government agency for the proper and immediate disposition and destruction of the same.

SO ORDERED.^[4]

The trial court found that the testimonial and documentary evidence presented by the prosecution, all tending to prove that appellant was arrested in the course of a buy-bust operation, deserves more credence than his self-serving and bare defense of denial. Having caught appellant *in flagrante delicto* selling dangerous drugs to the police officers themselves, his warrantless arrest by the PDEA agents and the incidental search and seizure of the buy-bust money from him, are both valid.

The trial court ruled that the prosecution has adequately shown that an illegal sale of drugs took place between the PDEA agents and appellant. It pointed out that the identities of the poseur-buyer (P/Insp. Bañares), the seller (appellant), the object (2,722 grams of marijuana), and the consideration (buy-bust money), the delivery or receipt of the thing sold and payment therefor are likewise established through the credible testimonies of P/Insp. Bañares and Demauero, who were the main members of the buy-bust team, and the presentation of the said marijuana and buy-bust money during the trial of the case.

The trial court added that without proof of motive to falsely impute a serious crime against appellant, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over his defenses of denial and frame-up.

The trial court likewise ruled that the police officers have substantially complied with the requirement of Section 21 of R.A. 9165, as indicated by the following circumstances: (a) immediately after appellant's arrest, the marking and physical inventory of the confiscated marijuana and black bag were immediately conducted by the arresting officers in the presence of Barangay Captain Clemente Rosales and mediaman Edgar Escalante as shown by the Certificate of Inventory; (b) the confiscated items were immediately turned over to the PNP Regional Crime Laboratory for quantitative and qualitative examination on the same day of confiscation; and (c) the forensic laboratory examination results was also issued within 24 hours from receipt of the subject specimen.

The trial court further noted that the fact that the specimen was not photographed is a minor lapse which does not affect the integrity of the confiscated items, and that the failure to immediately mark and inventory the drugs in the very place where they were confiscated is also justifiable because the arrest and seizure of the illegal drugs were made in the course of a buy-bust operation which was conducted in the middle of a national highway. Hence, the immediate marking and inventory of the items in the PDEA Office is justifiable and reliable in view of the presence of a public official and a member of the media.

Aggrieved by the RTC decision, appellant filed an appeal before the CA, raising the sole issue:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[5]

In his Brief, appellant argued that the testimonies of the prosecution witnesses are bereft of anything to show who had custody of the seized marijuana from the crime scene to the police station, until it reached the crime laboratory for examination, and who made the marking "LQE" on the seized item at the police station. He also faulted the police officers for failing to mark the marijuana immediately after they were seized from him. He contended that these gaps in the chain of custody of the marijuana allegedly seized from him created doubt as to the integrity of the evidence - the *corpus delicti* itself. He added that no justifiable reason was offered as to the arresting officer's non-compliance with the procedural requirements of Section 21, Article II of R.A. 9165, and its implementing rules and regulations on the custody and disposition of seized dangerous drugs, and that the prosecution failed to prove that the integrity and evidentiary value of the seized drugs have been preserved.

Appellant further pointed out the following inconsistencies in the testimonies of the prosecution witnesses: (a) P/Insp. Demauro testified that the first surveillance operation was done in San Fernando where appellant was residing, but later stated that they went instead to Carcar to confirm appellant's illicit trade, and avoided San Fernando; (b) As to time when the alleged buy-bust operation was conducted,

P/Insp. Demauero testified that it happened at around 11:45 o'clock in the morning, while P/Insp. Bañares stated that it was held at around 7 o'clock in the morning; and (c) P/Insp. Demauero stated that during the buy-bust operation, he was hiding but peeped out so he had a clear view of the suspect and the poseur-buyer, contrary to P/Insp. Bañares' claim that P/Insp. Demauero was in front of the store.

In its Appellee's Brief, the Office of the Solicitor General (OSG) insisted that all the elements for the successful prosecution of illegal sale have been proven, to wit: (1) the buyer was clearly identified as P/Insp. Bañares and the seller as appellant; (2) the object of the sale was established to be marijuana, weighing 2,722 grams; (3) the marijuana was, in fact, delivered by appellant to the poseur-buyer; and (4) payment was made using the marked money, which was given to appellant during the buy-bust operation. It also asserted that there was substantial compliance with the procedural requirements on the custody and disposition of seized dangerous drugs, and that the integrity of the drugs seized from appellant was preserved.

The OSG claimed that the chain of custody of the seized drugs was not shown to have been broken, thus:

x x x The factual milieu of the case reveals that after P/Insp. Arceliano Bañares seized and confiscated the dangerous drugs, as well as the marked money, accused-appellant was immediately arrested and brought to the police station where the plastic bag of suspected dried marijuana was marked with "LQE." Immediately thereafter, the confiscated substance, [together] with a letter of request for examination, was submitted to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug. The specimen submitted was positive for marijuana, a dangerous drug. Thus, it is without doubt that there was an unbroken chain of custody of the illicit drug purchased from accused-appellant. Notably, after the arrest of the accused-appellant, inventory and marking were made in the presence of the Barangay Captain and mediamen as evidenced by the Certificate of Inventory. Furthermore, P/Insp. Arceliano Bañares and Leoncio Demauero, and the accused-appellant himself, were together when the confiscated plastic bag were delivered x x x for investigation and laboratory examination.^[6]

In the Decision dated February 28, 2012, the CA dismissed the appeal and affirmed the RTC decision.

The CA agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. The CA noted that P/Insp. Bañares, who acted as poseur-buyer, positively identified appellant as the person who sold marijuana to him. It added that the testimony of P/Insp. Bañares was corroborated by P/Insp. Demauero who testified that he witnessed the sale of illegal drugs, *i.e.*, the actual exchange of the marijuana and buy-bust money (consisting of the boodle money with the two (2) P100.00 bills with serial nos. DQ547867 and GM030950 placed on its top and bottom), because he was about 20 meters away from where the transaction took place. It also pointed out that the object of the sale, one plastic bag of dried marijuana with the weight of 2,722 grams, and the marked money, were presented and identified at the trial.

The CA also rejected appellant's argument that the prosecution was unable to