

## THIRD DIVISION

[ G.R. No. 205414, April 04, 2016 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO DELA CRUZ Y GUMABAT @ "EDDIE", APPELLANT.**

### DECISION

**PERALTA, J.:**

For the Court's consideration is the Decision<sup>[1]</sup> dated March 19, 2012 of the Court of Appeals (CA) in CA-G.R. CR HC No. 04587 affirming the Decision<sup>[2]</sup> dated August 2, 2010 of the Regional Trial Court (RTC) of Manila, Branch 2, in Criminal Case No. 09-271907, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

In an information filed on November 5, 2009, appellant Eduardo dela Cruz y Gumabat was charged with illegal sale of dangerous drugs under Section 5 of Article II of RA No. 9165, the accusatory portion of which reads:

That on or about October 23, 2009, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there wilfully, unlawfully and knowingly sell or offer for sale to poseur-buyer, one (1) Blister pack with label "Valium" containing Ten (10) round blue tablets weighing ONE POINT SEVEN TWO ZERO (1.720) grams which after a qualitative examination, gave positive result to the test of diazepam, a dangerous drug.

Contrary to law.<sup>[3]</sup>

Upon arraignment, appellant pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.<sup>[4]</sup>

The factual antecedents, as narrated by the witnesses of the prosecution, namely, PO1 Jaycee John Galotera, who acted as the poseur-buyer; PO1 Roderick Magpale, who was the investigator-on-duty at the Special Operation and Task Unit; and PO3 Ryan Sulayao, who acted as the perimeter back-up, are as follows:

At around 7:30 p.m. on October 22, 2009, a confidential informant arrived at the Jose Abad Santos Police Station, Manila Police District and informed PO1 Ronnie Tan, PO3 Ryan Sulayao and PO3 Eric Guzman about the illegal drug activities being conducted by appellant along Solis Street, Tondo, Manila. Said informant claimed to have gained access to appellant. Consequently, the police officers immediately informed their station commander, P/Supt. Remigio Sedanto, who tasked the unit to conduct a buy-bust operation, to be led by P/Inspector Jeffrey Dallo, with PO1

Galotera acting as poseur-buyer, and the rest of the team to serve as back-up. P/InspectorDallo gave PO1 Galotera three (3) pieces of One Hundred Peso (P100.00) bills to be utilized as buy-bust money, which PO1 Galotera marked with his initials "JJG." The team also agreed that PO1 Galotera's removal of his ball cap constitutes the signal indicating that the transaction has been consummated and that the appellant may be arrested. After a thorough briefing and coordination with the Philippine Drug Enforcement Agency (PDEA), the team left the station and proceeded to the target area at around 12:20 a.m.[5]

PO1 Galotera and the confidential informant went straight to the destination aboard a motorcycle, while PO1 Tan, PO3 Sulayao, and PO3 Guzman, aboard a separate motorcycle, positioned themselves about ten (10) meters away from PO1 Galotera and the informant. PO1 Galotera and the informant then walked along an alley on Solis Street towards Villanueva Street and saw two (2) men standing at a dark portion thereof. As they approached said men, the confidential informant whispered to PO1 Galotera that the person on the right was appellant. Thereafter, appellant asked the informant what he needed.[6] In reply, the informant told appellant that he and his companion, PO1 Galotera, needed "Valium," which contains Diazepam, a dangerous drug. Appellant then asked how much Valium they need, to which PO1 Galotera answered, "hang banig lang." PO1 Galotera then handed the marked money in the amount of Three Hundred Pesos (P300.00) to appellant, who placed the same in his front left pocket. Thereafter, appellant pulled out one blister pack containing ten (10) pieces of round, blue tablets from his right pocket and handed the same to PO1 Galotera. Believing that what he received was Valium based on its appearance, PO1 Galotera executed the pre-arranged signal. Upon seeing the signal, PO3 Guzman proceeded to assist PO1 Galotera, who immediately grabbed appellant. Appellant's companion, who tried to escape, was also subdued by PO3 Guzman. PO1 Galotera then apprised appellant of the nature of his arrest and read him his constitutional rights. He also marked the seized tablets with the initials "EDG" corresponding to appellant's name.

Afterwards, he turned over the appellant and the seized evidence to PO1 Roderick Magpale, an investigator of the Anti-Illegal Special Operation Task Unit at the Police Station. PO1 Magpale then took pictures of appellant and the seized evidence, prepared the Booking and Information Sheet, and forwarded the seized tablets to the forensic laboratory for examination. Accordingly, Forensic Chemist Erickson L. Calabocal, conducted a chemistry examination and in his Chemistry Report No. D-787-09, found that the ten (10) round, blue tablets seized from appellant tested positive for Diazepam, a dangerous drug.[7] During trial, however, Calabocal's testimony was dispensed with after the parties stipulated on the existence and due execution of Chemistry Report No. D-787-09.[8]

Against the foregoing charges, appellant testified on his own version of facts, and further presented the testimonies of his mother, Leonora dela Cruz, and one Roberto Balatbat.[9]

Appellant testified that he was a jeepney driver by profession and a resident at Solis Street, Tondo, Manila. At around 3:00 p.m. on October 23, 2009, he went to see his friend, Nicanor Guevarra, to convince him to place a bet on the "karera." He found him at the tricycle terminal at Solis Street corner Callejon Villanueva, playing *cara y cruz* and joined him. Suddenly, the policemen arrived. They tried to run but were

eventually arrested. Appellant requested that he be brought to the *barangay* hall, but the policemen brought him directly to the police station. He thought that he was only being accused of illegal gambling for playing *cara y cruz*. It turned out, however, that he was being charged with illegal sale of dangerous drugs.<sup>[10]</sup>

After appellant, the defense presented appellant's mother who denied that her son was into selling dangerous drugs. According to her, at around 3:00 p.m. on October 23, 2009, appellant asked her permission to leave the house to place a bet. However, she later learned from her granddaughter that her son had been arrested.

Next was Roberto Balatbat, a tricycle driver residing at Solis Street, Tondo, Manila, who testified that on that day, he was at the tricycle terminal on Solis Street playing *cara y cruz*. When the four (4) police officers arrived, he quickly ran away leaving behind appellant and Guevarra, who were arrested. He denied that any sale of dangerous drugs transpired at the time and place of appellant's arrest.<sup>[11]</sup>

In its Decision dated August 2, 2010, the RTC gave credence to the testimonies of the police officers as they were given in a clear and convincing manner showing that the officers were at the place of the incident to accomplish exactly what they had set out to do, which was to conduct a legitimate buy-bust operation on appellant.

<sup>[12]</sup> It found that unless the members of the buy-bust team were inspired by any ill motive to testify falsely against appellant, their testimonies deserve full faith and credit, particularly in light of the presumption that they have performed their duties regularly. Indeed, the positive identification of appellant by the prosecution witnesses prevails over appellant's denial, which is inherently a weak defense.<sup>[13]</sup>

The trial court, therefore, disposed of the case as follows:

WHEREFORE, from the foregoing, judgment is hereby rendered, finding the accused, Eduardo dela Cruz y Gumabat @ Eddie, GUILTY, beyond reasonable doubt of the crime charged. He is hereby sentenced to life imprisonment and to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

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

Appellant appealed his conviction arguing that his warrantless arrest was unlawful for he was not, in fact, caught selling dangerous drugs but was merely committing the offense of illegal gambling. Thus, the ten (10) tablets of Valium allegedly seized from him is inadmissible as evidence.<sup>[15]</sup> Appellant also argued that there was no showing that he was informed of the reason for his arrest, of his constitutional right to remain silent and to be assisted by a counsel of his choice.<sup>[16]</sup> Appellant further faulted the prosecution for not only failing to present the buy-bust money as evidence in court<sup>[17]</sup> but also failing to show proof that the confiscated Valium was subjected to a qualitative examination.<sup>[18]</sup> He noted that the chemist who supposedly conducted the laboratory examination on the drug did not know the

source from which it came.<sup>[19]</sup>

On March 19, 2012, the CA sustained appellant's conviction. At the outset, it noted that it was only in appellant's appeal that appellant raised for the first time the issue of the irregularity of his arrest. At no time before or during his arraignment did he object to the same. As such, jurisprudence dictates that he should be estopped from assailing said irregularity, for issues not raised in the lower courts cannot be raised for the first time on appeal without offending the basic rules of fair play.<sup>[20]</sup> Even assuming that the police officers failed to inform appellant of his rights under custodial investigation, the appellate court held that such would not necessarily result in appellant's acquittal because his conviction was based not on any extrajudicial confession but on the testimony of PO1 Galotera who clearly and convincingly narrated the material details of the buy-bust operation that led to appellant's arrest.<sup>[21]</sup>

On appellant's main contention that the police officers should have obtained a judicial warrant to validly effect his arrest, the appellate court held that the instant case falls within one of the settled exceptions: an arrest made after an entrapment operation. This is because such warrantless arrest is considered valid under Section 5(a),<sup>[22]</sup> Rule 113 of the Revised Rules on Criminal Procedure. The CA explained that buy-bust operations, such as the one conducted herein, is a form of entrapment where means are resorted to for the purpose of capturing lawbreakers in the execution of their own, criminal plan. In upholding the validity of the operation, the "objective test" demands that the details of the purported transaction be clearly shown, beginning 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.<sup>[23]</sup> Here, the appellate court found that said requirements were adequately met for as observed by the trial court, the testimonies presented by the prosecution were given in a clear, straightforward and convincing manner.

As for the failure by the prosecution to offer as evidence the marked money, the CA cited jurisprudence holding that the absence of the marked money does not create a hiatus in the prosecution's evidence, as long as the sale of the dangerous drug is adequately proved.<sup>[24]</sup> Furthermore, the appellate court rejected appellant's contention that there was no proof that the Valium that was subjected to qualitative examination was the same Valium seized from him during the buy-bust operation. According to the appellate court, the unbroken chain of custody of the ten (10) Valium tablets was established by the prosecution through the testimonies of PO1 Galotera and PO1 Magpale. Thus, in the absence of any bad faith or proof that the evidence has been tampered with, the integrity of the evidence is presumed to have been preserved.<sup>[25]</sup>

Aggrieved, appellant filed a Notice of Appeal<sup>[26]</sup> on April 4, 2012. Thereafter, in compliance with the Resolution of the Court, dated March 13, 2013, notifying the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice, appellant filed his Supplemental Brief on June 14, 2013 raising the following errors:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE BY THE ARRESTING OFFICERS OF THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE IDENTITY OF THE *CORPUS DELICTI*.<sup>[27]</sup>

Appellant maintains that the instant case does not fall under the exceptions to the requirement of obtaining a judicial warrant prior to making an arrest under Section 5, Rule 113 of the Revised Rules on Criminal Procedure. According to appellant, for *in flagrante* warrantless arrests to be lawful, the following elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. But here, appellant asserts that he was not exhibiting any strange actuation at the time of his arrest, merely playing *cara y cruz* with a friend. Thus, absent any physical act on the part of the accused, positively indicating that he had just committed a crime or was committing or attempting to commit one, no reasonable suspicion would be sufficient enough to justify his arrest and subsequent search without a warrant.<sup>[28]</sup>

Next, appellant asseverates that the prosecution foiled to establish, with moral certainty, that the item seized from him was the very same item presented and proved in court because of its non-compliance with the requirements under Section 21 of RA No. 9165 mandating the arresting team to conduct a physical inventory of the items seized and photograph the same in the presence of: (1) the accused; (2) a representative from the media; (3) a representative from the Department of Justice (DOJ); and (4) any elected public official who shall further be required to sign the copies of the said inventory. According to appellant, no physical inventory nor photograph was ever taken in this case.<sup>[29]</sup>

Furthermore, while appellant recognizes the jurisprudential teaching that non-compliance with Section 21 of RA No. 9165 is not fatal so long as: (1) there is justifiable ground therefor; and (2) the integrity and evidentiary value of the seized items were properly preserved by the apprehending team, he stressed that said conditions were not established in this case. Not only did the prosecution fail to adequately explain its failure to comply with said requirements, it likewise failed to show the preservation of the integrity and evidentiary value of the seized items. Appellant asserts that this is due to a gaping hole in the chain of custody of the seized items arising from the prosecution's failure to show how the seized drugs were transported from the place of arrest to the police station, or from the time they were delivered to the laboratory until their eventual presentation in court.

The appeal is unmeritorious.

To secure a conviction for the crime of illegal sale of regulated or prohibited drugs, the following elements under Section 5, Article II of RA No. 9165 should be