

## THIRD DIVISION

[ G.R. No. 204441, June 08, 2016 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. MICHAEL KURT  
JOHN BULAWAN Y ANDALES, RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

Before the Court is an appeal assailing the Decision<sup>[1]</sup> dated 25 October 2012 of the Court of Appeals in CA-G.R. CR No. 00798-MIN, which affirmed with modification the Judgment<sup>[2]</sup> dated 24 August 2010 of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 25 in Criminal Case No. 2008-714, effectively finding (accused-appellant) Michael Kurt John Bulawan y Andales guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) or the *Comprehensive Dangerous Drugs Act of 2002*.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, as follows:

That on November 10, 2008, at more or less 10:55 in the evening at Gusa National Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer to sell and give away to the arresting officer 101 Rodolfo S. de la Cerna, Jr., acting as poseur buyer, one (1) pack of dried marijuana fruiting tops with stalks wrapped in a magazine paper weighing 13.98 grams, which upon qualitative examinations conducted thereon, give positive result to the test for the presence of aforesaid dangerous drug.<sup>[3]</sup>

Upon arraignment, accused-appellant, duly assisted by counsel, pleaded not guilty to the charge.<sup>[4]</sup> Trial on the merits followed.

The prosecution relied on the testimony of 101 Rodolfo S. De La Cerna, Jr. (101 de la Cerna) of the Philippine Drug Enforcement Agency (PDEA), who testified as follows:

*That he executed an Affidavit in connection with this case [Exh. "F"]. On November 10, 2008, at about 10:55 in the evening, he was along Gusa [National Highway, particularly in front of "Starwood" acting as a poseur*

buyer for marijuana. That the said operation was headed by I01 Neil Pimentel and they were backed up by P03 Benjamin Jay Reycitez and I01 Gerald Pica. He was with their confidential informant who informed him that there was already a transaction negotiated earlier for the purchase of [P]1,000.00 worth of marijuana. They waited for the subject of the buy-bust for about five minutes. The accused arrived and he was introduced to him by their CI. After he was introduced, the accused handed to him the marijuana wrapped in a magazine paper. After the accused gave him the marijuana, he inspected it if to verify if it was indeed marijuana and after confirming it, he made a "miss-call" signal to their team leader who was inside the vehicle which was parked about 10 to 15 meters away from them. He then immediately announced that he is a PDEA agent and he informed the accused of the latter's violation. On questioning of the Court, he testified that there were only three of them, two [2] from the PDEA [he and Pimentel] and one [1] from the CAIDTF [Reycitez]. He ordered them to "appraise the rights " of the accused when the latter was already arrested. When asked by the Court why he was the only person who executed the Affidavit, he answered that he was the poseur buyer and that he was responsible for the arrest of the accused, and it was already dark, it was already 11:00 o'clock in the evening. He however testified that *it is not a normal procedure in the office that only one officer will execute an affidavit. He further testified that he did not prepare the buy bust money in the amount of [P]1,000.00 and that when he met the accused, he had no [P]1,000.00 with him and that he arrested the accused when the latter showed him the marijuana. He then informed the accused of his rights and when the other members arrived, he conducted an inventory [Exhibit "G"] right at the place, and then proceeded to the Office where he made the markings "RDC". He prepared a laboratory request for examination [Exh. A] and he delivered the request including the specimen [Exhibit B] as well as the accused to the crime laboratory for examination. The result was positive [Exhibit "C" and Exhibit "D"]. He also took photographs of the accused [Exhibit "H"]. Finally, he identified the accused who answered with the name Michael Kurt John Bulawan.*<sup>[5]</sup>

On cross examination, the witness testified that:

*Before he arrived at Gusam the CI had already contacted the accused and that he did not give any money to the accused. He did not also bring any money for the buy-bust operation and that the accused delivered the marijuana even without first receiving the money; that there was no pre-payment prior to the agreed time of delivery and that he did not promise the accused that he will pay after the delivery. Fie brought cellphone during the operation while the rest of the team brought with them their firearms and some documents. The mediamen arrived at the office, not at the place where the operation tookplace.*<sup>[6]</sup>

The defense, on the other hand, hinged their case on the testimony of accused-

appellant, to wit:

*That on November 10, 2008 at about 10:00 o'clock in the evening, he was at his house preparing to sleep when he received a text message from his friend Joey Maalyao of Camella requesting him to go out from his house and inviting him to attend the birthday party of the classmate of his wife, a nursing student. He told Joey that he will not go out because he was tired as he had just took (sic) an exam. However, Joey insisted so he went out of his house and saw the service vehicle of Joey, a Tamaraw FX parked at about 500 meters away. His house is in the interior part. He then approached the vehicle and he became aware that there were companions inside the tinted vehicle and he asked Joey who were these persons and Joey answered that they were his cousins. There were about four of them inside the vehicle, one was the driver, one was at the passenger side and there were two at the back. Joey was seated at the front seat. When he was informed by Joey that they were his cousins, he went inside the vehicle. When the engine started, and was in the vicinity of Lapasan the men inside started to search him bodily and they got his wallet inside the vehicle. When the engine started, and was in the vicinity of Lapasan the men inside started to search him bodily and they got his cellphone, wallet, and coins. They held his neck and hands and told him it was an arrest. He then asked Joey was (sic) offense had him (sic) committed against him and why his companions were searching him and Joey told him to be considerate since he was just pressured by those men. One of the men beside him handed marijuana to him and to use it inside the vehicle. Then he was brought to the office and they took his picture in front of the vehicle of his friend. The man who took the picture, he identified later as 101 De la Cerna. That de la Cerna took out something from the vehicle owned by Joey and forced him to point them out. He was then handcuffed by de la Cerna and was forced again to point out to the items which were wrapped with a newspaper, then he was brought back to the office and was detained thereat. At about 2:00 o'clock dawn he was brought to the PNP Crime laboratory at Patag, and Joey was with them, then he was brought back to their office. He stayed in the office for three days. They parted ways with Joey when he was already committed at the BJMP in Lumbia. He was later informed that the PDEA agents did it to him in exchange for Joey because Joey was arrested in Carmen. He learned of this information from his friend who is a neighbor of Joey in Camella and who visited him at Lumbia.*<sup>[7]</sup>

After weighing the evidence, the RTC convicted accused-appellant of illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165. The RTC found that although the identity of the alleged buyer, seller, and object were established, two elements of illegal sale of dangerous drugs were still missing - the consideration and the payment. As testified to by 101 de la Cerna himself, he did not bring any buy-bust money and that there was no payment of the alleged marijuana he received from accused-appellant.<sup>[8]</sup>

Nevertheless, the RTC found accused-appellant liable for possession of dangerous drugs, which crime is necessarily included in the offense charged. The RTC then

disposed of the case in this manner:

**WHEREFORE**, premises considered, this Court finds the accused **MICHAEL KURT JOHN BULAWAN Y ANDALES GUILTY BEYOND REASONABLE DOUBT** of the offense defined and penalized under **Section 11, Article II of R.A. 9165**, the offense proved which is included in the offense charged in the Information, and hereby sentences him to suffer the penalty of imprisonment for twelve [12] years and one [1] day to thirteen [13] years, and to pay the Fine of Three Hundred Thousand Pesos [P300,000.00], without subsidiary penalty in case of insolvency.

The accused shall be entitled to be credited in full of his preventive detention and the period of his actual incarceration shall be deducted from the number of years with which the accused is to serve his sentence.

**SO ORDERED.**<sup>[9]</sup>

Accused-appellant went before the Court of Appeals. After a review of the records, the appellate court found accused-appellant guilty of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165.

Citing *People v. Conception*,<sup>[10]</sup> the Court of Appeals held that Section 5, Article II of R.A. No. 9165 covers not only the sale of dangerous drugs but also the mere act of delivery after the offer to buy by the entrapping officer has been accepted by the seller.<sup>[11]</sup>

The Court of Appeals further held that, in convicting accused-appellant of Section 5, Article II of R.A. No. 9165, accused-appellant's right against double jeopardy was not violated. Citing *US v. Abijan*,<sup>[12]</sup> the appellate court held that when an accused appeals from the sentence of the trial court, he waives his constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render judgment as the law and justice dictate, whether favorable or unfavorable to them, and whether they are assigned as errors or not.<sup>[13]</sup>

Thus, the Court of Appeals ruled:

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 25, Cagayan de Oro in Criminal Case No. 2008-714 is AFFIRMED with MODIFICATION that accused-appellant MICHAEL KURT JOHN BULAWAN y ANDALES is found guilty of violating Section 5, Article II of Republic Act No. 9165 otherwise known as the Dangerous Drugs Act of 2002. He is hereby sentenced to suffer the penalty of life imprisonment, without eligibility of parole, and to pay the fine of Five Hundred Thousand Pesos ([P]500,000.00).

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

Accused-appellant is now before the Court, raising the following issues:<sup>[15]</sup>

I.

THE COURT OF APPEALS ERRED IN RULING THAT A BUY-BUST OPERATION WAS ACTUALLY CONDUCTED.

II.

THE COURT OF APPEALS ERRED IN RULING THAT THE CHAIN OF CUSTODY OF THE CORPUS DELICTI WAS ESTABLISHED SUFFICIENTLY.

III.

THE COURT OF APPEALS ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES OF THE ARRESTING OFFICERS.

IV.

THE COURT OF APPEALS ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.

V.

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT OF A CRIME NOT CHARGED IN THE INFORMATION.

In sum, accused-appellant argues that his guilt was not established beyond reasonable doubt, and that he cannot be convicted of delivery or possession of dangerous drugs when such was not charged in the Information.<sup>[16]</sup>

After a thorough review of the records, we acquit accused-appellant.

Accused-appellant is charged, particularly, with unlawfully selling and/or offering to sell or give away marijuana.<sup>[17]</sup>

For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165; the following elements must be present: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.<sup>[18]</sup>

In the case at bar, it is readily apparent that no sale was consummated as the consideration, much less its receipt by accused-appellant, were not established. As