

THIRD DIVISION

[G.R. No. 210656, December 07, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSARIO BAYOT MAHINAY, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

On appeal is the 24 May 2013 Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00911 which affirmed *in toto* the 29 January 2008 Decision^[2] of conviction rendered by the Regional Trial Court of Cebu, in Criminal Case No. CBU-73919, for violation of Sections 5,^[3] Article II of Republic Act (R.A.) No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."^[4]

The Facts

On 6 July 2005, Rosario Bayot Mahinay (accused-appellant) is charged with the crime of selling dangerous drugs in violation of Section 5, Article II of R.A. No. 9165 docketed as Criminal Case No. CBU-73919. The accusatory portion of the information reads:

That on or about the 25th day of June at about 4:30 o'clock in the afternoon more or less, at Sitio Mananga, Tabunoc, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without authority of law, did then and there sell, deliver or give away to a poseur buyer, Ten (10) sticks of MARIJUANA Cigarettes, weighing 1.79 grams, a dangerous drug without license of prescription from any competent authority.

CONTRARY TO LAW.^[5]

Upon arraignment on 23 August 2005, accused-appellant entered a negative plea anent the charge pressed against him. Pre-trial is likewise terminated on the same date. Thereafter, trial on the merits followed.^[6]

Version of the Prosecution

In attestation to the information filed against the accused-appellant, the prosecution presented as witnesses, SPO4 Reynaldo Vitualia (SPO4 Vitualia), the buy-bust operation head, PSI David Alexander T. Patriana (PSI Patriana), the Forensic Chemist who examined the subject specimen, and PO3 Ramil Navarro (PO3 Navarro), who was in the buy-bust operation team. The testimonies of the presented witnesses are encapsulated as follows:

On 25 June 2005, at around 4:00 in the afternoon, while on duty at the police station at Sitio Mananga, Tabunoc, Talisay City, Cebu, Senior Police Officer 4, Reynaldo Vitualia (SPO4 Vitualia) with his team members PO3 Remberto Empeynado (PO3 Empeynado), PO3 Ramil Navarro (PO3 Navarro), PO2 Alexis Racaza (PO2 Racaza), SPO1 Archimedes Judilla (SPO1 Judilla) and POI Marciano Parayday (PO1 Parayday), received an information from their unnamed asset that one Rosario Bayot Mahinay is allegedly engaged in the sale of marijuana near the Mananga Bridge. After receipt of such information, the team conducted a briefing at Talisay City Police Station as regards the intended buy-bust operation against herein accused-appellant as the subject.^[7]

As agreed, a civilian asset designated as poseur buyer will proceed to the subject while the team is strategically positioned to monitor the transaction. At around 4:30 in the afternoon, approximately 15 meters away from the accused-appellant and the poseur buyer, the team witnessed the poseur buyer handed over the marked P100 bill to the accused-appellant. Consequently, the accused-appellant handed over the sticks of marijuana to the poseur buyer.^[8]

The poseur buyer performed the pre-arranged signal of scratching his head to notify the team that the transaction had transpired. At that juncture, the team immediately rushed towards the accused-appellant to arrest him.^[9] The accused-appellant attempted to run as the team of police officers was rushing towards him.^[10] In the course of apprehension, the team noticed another person who threw marijuana cigarette sticks on the ground while in the act of fleeing the scene. The team likewise arrested said man and identified him only by his family name Vergas, and a separate action was filed against him.^[11]

After being apprehended, the marked P100.00 bill was recovered from the accused-appellant by SPO4 Vitualia. The accused-appellant was apprised of the charge against him and was recited of his constitutional rights.^[12]

In less than two minutes, ten (10) sticks of marijuana cigarettes were recovered from the buy-bust operation and were personally received by SPO4 Vitualia as turned over by the poseur buyer. Immediately thereafter, SPO4 Vitualia marked all the marijuana cigarette sticks and labeled them respectively as "RBM-1" to "RBM-10," in representation of the initials of the accused-appellant's name. The marked articles were offered in evidence and were collectively marked as Exhibit "A" (Exh. "A").^[13]

SPO4 Vitualia then prepared a letter request for laboratory examination^[14] and brought the same to the PNP Crime Laboratory to be examined. Said request letter was signed by him on behalf of Mr. Audie Villacin who was their Chief of Police at that time.^[15]

Upon submission of the letter request for examination and the marijuana cigarette sticks to the PNP Crime Laboratory. PSI Patriana testified that the subject marijuana cigarette sticks were indeed the ones he examined. He narrated in depth the procedure of examination that he conducted upon the submitted specimen. He executed thereafter a report titled as "Chemistry Report No. D-905-2005"^[16] which yielded positive results and identified the same as marijuana.^[17]

Version of the Defense

To refute the allegations impressed upon and prove innocence of the accused-appellant, the defense presented him as lone witness.

The accused-appellant narrated that he was waiting alone in Mananga Bridge for his daughter who was delivering hanging rice ("*palitaw*") at Tabunok Market. Suddenly, two unknown persons approached him and handed him a P100 bill intended to buy marijuana. Upon receipt of the money, he immediately returned the same to them.
[18]

He recalled that one of the two persons was standing, and the other was sitting down. Suddenly, the person standing announced that there were police officers rushing towards them; thus, prompting the one seated to run away and throw a small plastic on the ground.
[19]

In a span of two minutes, the police officers arrived and arrested the accused-appellant and the one seated who threw a small plastic on the ground. Both of them were frisked and handcuffed. Accused-appellant was apprised of the charge against him but he disaffirmed the same. He insisted that he is not engaged in selling marijuana. After which, he was brought to a police station in Talisay City. In his direct examination, he testified that he buys scrap iron with his brother for a living. He claimed that the evidence was planted on him.
[20]

The Ruling of the Trial Court

In weighing the evidence and testimonies adduced, the trial court rendered a decision
[21] on 29 January 2008, finding accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165. It ruled that the prosecution has sufficiently satisfied all the elements to convict an accused. Moreover, the trial court held that there is a presumption of regularity in the performance of the functions of the police officers in answer to the allegation of the accused that there is an ill-motive on the part of the police officers manifested by the planting evidence on the accused. The dispositive portion is set forth as follows:

In sum, the testimonies of officers Vitualia (sic) and Navarro coupled with the presentation of the 10 sticks of marijuana (Exh. "A") and even the marked money (Exh. "F") are sufficient to establish the fact that accused did sell to a poseur buyer the said dangerous drug for P100.00

Foregoing considered this court finds the accused GUILTY as charged and hereby sentences him to Life Imprisonment and to pay a fine of P500,000.00.

The ten sticks of marijuana (Exh. "A") are confiscated in favor of the state for proper disposition.

SO ORDERED.
[22]

On appeal,^[23] the accused-appellant contended that the court *a quo* erred in convicting him and finding him guilty beyond reasonable doubt due to the non-compliance with the required procedure on the seizure and custody of drugs as embodied in Section 21, Paragraph 1, Article II of R.A. No. 9165.

The Ruling of the Court of Appeals

The appellate court affirmed *in toto* the ruling of the trial court. It held that the essential elements in illegal sale of drugs as stated in the title of the offense are satisfactorily complied with as gleaned from the records. The appellate court expounded that the integrity and evidentiary value of the seized articles have been preserved as evidenced by the unbroken link in the chain of custody of the seized illegal drugs from the commencement of the buy-bust operation, to the seizure of the subject articles and recovery of marked money and the forensic examination conducted until the submission of the same to the court. Such uninterrupted series of events is enough to determine the guilt of the accused.

Further, the Court of Appeals held that non-compliance with the procedural requirements as regards the inventory and taking of photographs is not fatal to the admissibility of evidence so long as there are justifiable grounds for non-compliance and that its integrity is preserved, the elements are sufficiently shown in the present case.

The dispositive portion of the decision of the Court of Appeals is shown as follows:

WHEREFORE, the instant appeal is DENIED. The Decision dated June 29, 2008 of the RTC is affirmed *in toto*.

SO ORDERED.^[24]

On appeal,^[25] the accused-appellant submitted his lone assigned error states that the appellate court erred in affirming *in toto* the decision of the trial court finding him guilty beyond reasonable doubt of the offense charged against him.

Our Ruling

Accused-appellant has consistently argued that the court *a quo* and the Court of Appeals have erroneously found him guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, grounded on the failure of the police officers to comply with procedural requirements of Section 21 of R.A. No. 9165; thus, his belief for acquittal.

He averred that the police officers who executed the buy-bust operation failed to make an inventory of the seized marijuana cigarette sticks as well as to take photographs of the same immediately after confiscation, thereby, failing to establish the unbroken links in the chain of custody of the seized articles *ergo* the absence of the *corpus delicti* or the body of the crime.

We are not persuaded.

Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165

states the manner of conducting the physical inventory and photographs of the seized items. The provision reads as follows:

(1) 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.*** (Emphasis supplied)

x x x x

Apparent from the above-quoted *proviso* is the clear allowance of the law for non-compliance of the procedure in handling seized articles. Fundamentally, non-compliance of the procedure for provided by law does not automatically exonerate the accused of his criminal liability for the offense committed.^[26]

In *People v. Montevirgen*,^[27] this Court held:

In other words, the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not ipso facto render inadmissible in evidence the items seized. There is a *proviso* in the implementing rules stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused. (Underscoring supplied)

Further as held in *People v. Glenn Salvador*^[28] citing *People v. Kamad*:^[29]

There are links that must be established in the chain of custody in a buy-bust situation, namely: "first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

The Court of Appeals, in its decision,^[30] has religiously elaborated the unbroken links in the chain of custody of the seized articles from herein accused-appellant, viz: