

SECOND DIVISION

[G.R. No. 194253, February 27, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAGSALIN DIWA Y GUTIERREZ, ACCUSED-APPELLANT.**

R E S O L U T I O N

PEREZ, J.:

Before us is an appeal *via* a Notice of Appeal of the Court of Appeals Decision^[1] in CA-G.R. CR.-H.C. No. 03219 affirming the Decision^[2] of the Regional Trial Court (RTC), Branch 120, Caloocan City, which, in turn, convicted accused-appellant Magsalin Diwa (Diwa) of violation of Sections 5 and 11 of Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Diwa was charged in two separate Informations for illegal sale and illegal possession of *marijuana*, a dangerous drug:

CRIM CASE NO. 68962
Violation of Section 5, Art. II, RA 9165

That on or about the 20th day of August 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver to PO3 RAMON GALVEZ, who posed as buyer ONE (1) folded newspaper print containing 72.90 grams of dried suspected *marijuana* fruiting tops for one (1) pc. one hundred peso bill with serial number #FJI62290 knowing the same to be a dangerous drug.^[3]

CRIM CASE NO. 68963
Violation of Section 11, Art. II, RA 9165

That on or about the 20th day of August 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) yellow plastic bag with one (1) folded newspaper print containing 288.49 grams of dried suspected *marijuana* fruiting tops, knowing [the same] to be a dangerous drug of the provisions of the above-cited law.^[4]

During arraignment, Diwa pleaded not guilty to both charges.

At the pre-trial, the prosecution and defense admitted the identity of the accused

(Diwa) and the jurisdiction of the RTC, and stipulated on the testimony of prosecution witness, P/Insp. Jesse Dela Rosa, Forensic Chemical Officer of the Northern Police District-Philippine National Police (PNP) Crime Laboratory Office, Caloocan City Police Station, to wit:

- (1) That the witness was the one who conducted qualitative examination on the specimens submitted which gave positive results for the presence of dangerous drugs;
- (2) That he reduced his findings in writing which is Physical Science Report No. D-1097-03; and
- (3) That under his present oath, the witness confirms that the signature above the name P/Insp. Jesse Abadilla Dela Rosa is his signature.^[5]

The foregoing charges were preceded by facts contrarily presented by the parties.

The prosecution's version, initially testified to by PO3 Ramon Galvez (PO3 Galvez) and corroborated by SPO1 Fernando Moran (SPO1 Moran), follows:

On 20 August 2003, an informant came to the Caloocan City Police Station and reported the rampant selling of prohibited drugs by a certain Magsalin Diwa along North Diversion Road, Service Road, *Bagong Barrio*, Caloocan City. Upon receiving the information, P/Insp. Cesar Gonzalez Cruz (P/Insp. Cruz) forthwith formed a group to conduct surveillance on the pinpointed area and to arrest possible violators of the Dangerous Drugs Act.

The police operatives were composed of PO3 Rodrigo Antonio, SPO1 Wilson Gamit, PO3 Manuel de Guzman, PO1 Rolly Montefrio, SPO1 Moran and PO3 Galvez. The team assigned PO3 Galvez as the *poseur-buyer* and agreed on a pre-arranged signal of identifying accused, *i.e.*, the informant throws his cigarette in front of Diwa. Thereafter, P/Insp. Cruz handed over to PO3 Galvez a One Hundred Peso-bill dusted with ultra-violet powder, which PO3 Galvez then marked with his initials "RG."

On the same date, at 8:30 in the evening, the police operatives proceeded to North Diversion Road, Service Road, *Bagong Barrio*, Caloocan City. The team of police operatives positioned themselves, with PO3 Galvez at a distance of about five (5) meters from the informant and the other policemen at ten (10) meters away from where PO3 Galvez was situated. Prompted by the informant's execution of the pre-arranged signal, PO3 Galvez approached Diwa and asked him, "*Pre, may chongke (street name for Marijuana) ka pa ba?*" to which Diwa replied "*Meron, magkano ba ang kukunin mo?*" PO3 Galvez answered back "*Piso lang,*" which, in street lingo, meant One Hundred Pesos (P100.00) worth of *marijuana*.

PO3 Galvez paid Diwa with the One Hundred Peso-bill dusted with ultra-violet powder. Diwa held the marked money in his right hand, reached for a yellow "SM Supermarket" plastic bag beside him, and got a portion of a bunch of *marijuana* wrapped in a newspaper, which portion he gave to PO3 Galvez. At once, as soon as the buy-bust deal was consummated, PO3 Galvez scratched his head, the pre-arranged signal for the other policemen to approach them, and instantaneously grabbed Diwa's hands. Seeing PO3 Galvez's signal, the waiting police operatives rushed towards him. PO3 Galvez introduced himself as a policeman to Diwa,

recovered the buy-bust money and marked the *marijuana* he bought from the latter, "MDG," Diwa's initials. SPO1 Moran then confiscated the yellow "SM Supermarket" plastic bag which contained more *marijuana*. After informing Diwa of his constitutional rights, the team brought Diwa to the police station for investigation.

The items confiscated from Diwa were sent to the Crime Laboratory Office of Caloocan City for examination. P/Insp. Jesse Dela Rosa conducted a laboratory test on the specimen submitted by the police operatives, and subsequently issued Physical Sciences Report No. D-1097-03 containing the following entries:

SPECIMEN SUBMITTED:

A- One (1) yellow plastic bag with markings SM Supermarket containing the following;

A-1 = One (1) folded newspaper print with markings 'MDG-1 08-20-03 BUY BUST' containing 72.90 grams of dried suspected Marijuana fruiting tops.

A-2 = One (1) folded newspaper print with markings 'MDG-2 08-20-03' containing 288.49 grams of dried suspected Marijuana fruiting tops.

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of a dangerous drug. x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen A-1 and A-2 gave POSITIVE result to the test for Marijuana, a dangerous drug. x x x

CONCLUSION:

Specimen A-1 and A-2 contain Marijuana, a dangerous drug. x x x^[6]

PO2 Randolph Hipolito (PO2 Hipolito), the investigator-in-case, was likewise presented by the prosecution, but his testimony was eventually dispensed with because the prosecution and defense entered into another stipulation, that PO2 Hipolito prepared the Referral Slip, Request for Laboratory Examination and the *Pinagsamang Salaysay*.

Accused-appellant Diwa proffered an entirely different story. He claimed that on the inauspicious date of 20 August 2003, he was in front of his house, fetching water, when SPO1 Moran, whom Diwa did not know at the time, approached him and inquired about a certain Brenda. Not knowing who Brenda is, and having told SPO1 Moran so, Diwa was surprised to be whisked away by SPO1 Moran. SPO1 Moran first took Diwa to Balintawak, EDSA, where they transferred to another vehicle;

thereafter, Diwa was brought to the Caloocan City police station.

At the precinct, Diwa was detained for two (2) days, and in the interim was supposedly brought to the hospital for medical examination. Further, the policemen allegedly demanded One Hundred Thousand Pesos (₱100,000.00) from Diwa in exchange for his release. When Diwa told the police that he had no money, Diwa was detained for another day, and the next day was brought to the prosecutor's office for inquest. He was then returned to the Caloocan City Jail.

On the whole, Diwa denied all the allegations against him; he denied ownership of the *marijuana*, claiming that he only saw these when he was brought before the prosecutor's office. Diwa only admitted to the money, Forty Pesos (P40.00) that was taken from him, which was purportedly used for his fare in going to the hospital for check-up. He claimed to have never met PO3 Galvez, and his supposed arrest by the latter during a buy-bust operation never happened.

However, on cross-examination, Diwa admitted that PO3 Galvez was present during his arrest. On re-direct examination, Diwa failed to clarify his inconsistent statements. Lastly, Diwa claimed that he was brought to a dark room in the Drug Enforcement Unit where his hands were held, rubbed and examined.

On 11 February 2008, the RTC rendered a Decision finding Diwa guilty beyond reasonable doubt for violation of Sections 5 and 11 of Republic Act No. 9165:

Premises considered, this court finds and so holds the accused Magsalin Diwa GUILTY beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:

- (a) In Crim. Case No. C-68962, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00); and
- (b) In Crim. Case No. C-68963, the penalty of imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,00.00).

The drugs subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.^[7]

On appeal, the appellate court affirmed the conviction of accused-appellant and the penalty imposed on him by the RTC.

Gaining no reprieve before the lower courts, Diwa comes to us assigning the following errors:

I. THE [LOWER COURTS] GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE SELF-SERVING TESTIMONIES OF POLICE OFFICERS RAMON GALVEZ AND FERNANDO MORAN.

II. THE [LOWER COURTS] GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME[S] CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[8]

Accused-appellant hinges his appeal on PO3 Galvez's and SPO1 Moran's failure to follow the procedure for the custody and disposition of the *marijuana*, outlined in Section 21^[9] of Republic Act No. 9165, after these were seized and confiscated. Diwa points out that, on cross-examination, PO3 Galvez and SPO1 Moran did not know what was done to the seized and confiscated *marijuana* fruiting tops. Thus, the prosecution failed to establish that the seized items were *marijuana*, in short, dangerous drugs. Corollary thereto, Diwa theorizes that it was possible that, not having had the money to pay the police for his release, the actual items seized from Diwa were replaced with the *marijuana* dried fruiting tops to justify his arrest.

As the lower courts were, we are not convinced. We find no cause to disturb their factual findings that a buy-bust transaction took place between PO3 Galvez and Diwa, resulting in the latter's lawful arrest for illegal sale and illegal possession of *marijuana*.

On more than one occasion, we have ruled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are accorded great weight.^[10] This is because the trial judge has the distinct advantage of closely observing the demeanor of the witnesses, as well as the manner in which they testify, and is in a better position to determine whether or not they are telling the truth.^[11] On that score alone, Diwa's appeal ought to have been dismissed outright.

As found by the lower courts, the prosecution proved beyond reasonable doubt the elements of illegal sale of dangerous drugs: (1) the accused sold and delivered a prohibited drug to another and (2) knew that what was sold and delivered was a prohibited drug;^[12] and illegal possession of dangerous drugs: (1) the accused is in possession of the object identified as a prohibited or regulatory drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.^[13]

For the reversal of his conviction, Diwa of course relies on the presumption of innocence in his favor, and on the corresponding argument that the details of the purported transaction between him and PO3 Galvez were not clearly and adequately shown. In this regard, we study the testimony of PO3 Galvez:

FISCAL GRAVINO:

Do you recall where were you on August 20, 2003?

A: I was in the office.

Q: And do you remember if you had an operation on that date?

A: Yes, Ma['a]m.

Q: Can you recall what is (*sic*) that operation all about?

A: We conducted buy bust operation[.]

Q: Who ordered you to conduct buy bust operation?