

FOURTH DIVISION

[CA-G.R. CR HC No. 06616, March 27, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN LACBAYO Y REYES, ACCUSED-APPELLANT,

D E C I S I O N

ABDULWAHID, J.:

This is an appeal from the *Judgment*^[1] dated November 22, 2013, of the Regional Trial Court, Branch 75, of Olongapo City, in Criminal Case Nos. 699-12 to 700-12, finding herein accused-appellant Alvin Lacbayo y Reyes guilty beyond reasonable doubt of violation of Section 5 of Republic Act (RA) No. 9165, for which he is sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus cost, and of Section 11 of RA 9165, for which is sentenced to suffer the penalty of imprisonment from 12 years and 1 day to 14 years and 8 months and to pay a fine of P300,000.00 plus cost.

The instant case arose from two *Informations*, both dated August 22, 2012 and filed by the Assistant City Prosecutor of Olongapo City, the accusatory portions of which read, as follows:

Criminal Case No. 699-2012^[2]

That on or about the seventeenth (17th) day of August, 2012, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully and knowingly sell and deliver to PO2 Wilmon Jaudian P200.00 (SN-NW851856) worth of Marijuana fruiting tops, a dangerous drug, weighing Three Grams and Seventy-Two Thousandths (3.072) of a gram with markings "EXH-"A", WJ ADR" placed in one (1) heat-sealed transparent plastic sachet.

CONTRARY TO LAW.

Criminal Case No. 700-2012^[3]

That on or about the seventeenth (17th) day of August, 2012, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his effective possession and control Two Grams and Two Hundred Thirty-One Thousandths (2.231) of a gram of Marijuana fruiting tops placed in one (1) heat-sealed transparent plastic sachet with markings "EXH-B, RG ADR", said accused not having the corresponding license or prescription to possess said dangerous drug.

CONTRARY TO LAW.

During arraignment held on September 4, 2012, accused-appellant pleaded not guilty to the crimes charged.^[4] Pre-trial conference was thus held and terminated on September 18, 2012, during which the prosecution and the defense stipulated solely on the identity of the accused-appellant.^[5] Thereafter, trial on the merits of the case ensued. The prosecution presented three witnesses, namely: (1) PO2 Wilmon Jaudian; (2) PO2 Ryan Garcia; and (3) SPO2 Allan delos Reyes. On the other hand, the parties agreed to dispense with the testimony of forensic chemist Maria Cecilia Tang, on the basis of the following stipulations: (a) that she is a forensic chemist assigned at the PNP Crime Laboratory in Olongapo City; (b) that she examined the specimens subject matter of these cases; (c) that based on her examination, the specimens were found positive for marijuana as shown by the Chemistry Report marked as Exhibit "F", with the qualification that the same were not taken from the possession of the accused; (d) that after examining the specimen, she placed a masking tape on the specimens and placed her initials MCGT; and (e) that upon the request of the Prosecutor's Office, the Evidence Custodian of the Olongapo City Crime Laboratory Office submitted to the Prosecutor's Office the specimen subject matter of these cases.^[6] On the other hand, accused-appellant and his sister-in-law, Myla Aglibot, testified for the defense.

PO2 Wilmon Jaudian testified that he was a police officer assigned to the Olongapo City Anti-Illegal Drugs Special Operation Team (CAIDSOT).^[7] On August 17, 2012, the team executed a buy-bust operation, with accused-appellant as the subject, on the basis of reports received from civilian assets that accused-appellant was involved in selling marijuana fruiting tops at Balic-Balic, Sta. Rita, Olongapo City. Prior to the buy-bust report, PO2 Jaudian and Philippine Drug Enforcement Agency (PDEA) Agent William Dulay conducted surveillance on accused-appellant for four days, whereupon they observed the latter, along with several other persons, involved in using marijuana.^[8] Thus, the buy-bust operation was organized, with PO2 Jaudian being assigned as poseur-buyer and PO2 Ryan Garcia as back-up. PS/Insp. Julius Jimenez, SPO2 Allan delos Reyes, PO2 Owen Cruz, PO2 Ryan Moran, PO2 Sagcal and PDEA Agent Dulay were tasked to provide area security.^[9] The CAIDSOT likewise coordinated with the PDEA regarding the operation, as evidenced by the pre-operation^[10] and coordination^[11] forms and the Certificate of Coordination^[12] issued by the PDEA. Thus, upon arrival at Balic-Balic, Sta. Rita, Olongapo City, at 3:30 pm on August 17, 2012, PO2 Jaudian and the civilian asset went to the reported place near a sari-sari store to wait for accused-appellant. After several minutes, accused-appellant arrived and talked to the civilian asset, who later introduced PO2 Jaudian as a marijuana user. Accused-appellant offered to sell marijuana to PO2 Jaudian, who agreed, and the former handed the latter one transparent plastic sachet containing the suspected marijuana in exchange for a P200.00 bill, which PO2 Jaudian had pre-marked with his initials, "WJ".^[13] Thereupon, PO2 Jaudian executed the pre-arranged signal by rubbing his face with a towel, and PO2 Garcia immediately arrived at the scene and frisked accused-appellant. During the search, PO2 Garcia recovered the marked money, a transparent plastic sachet, a firearm (*sumpak*), and a .22 caliber ammunition for the *sumpak*.^[14] Thereafter, they brought accused-appellant to Police Station 1, where PO2 Jaudian marked the sachet of marijuana sold to him with his initials, in front of

accused-appellant and the rest of the buy-bust team. He turned over the sachet, along with the P200.00 bill now marked by both his and PO2 Garcia's initials, "RG", to the investigator SPO2 Allan delos Reyes, who likewise affixed his initials, "ADR", on both items. SPO2 Delos Reyes, in turn, conducted the inventory in the police station, with the buy-bust team, accused-appellant and the representatives of the Barangay Office and the Department of Justice (DOJ) as witnesses, and the inventory, as well as the marijuana sold to PO2 Jaudian, were photographed.^[15] It was SPO2 Delos Reyes who eventually turned over the sachet of marijuana to the crime laboratory for analysis, as evidenced by the request for laboratory examination.^[16]

During cross-examination, PO2 Jaudian admitted that they did not actually see accused-appellant handing marijuana to other people during surveillance. In addition, he confirmed that PDEA Agent Dulay was present during the arrest of accused-appellant, up to the time that the specimen was marked and the inventory was conducted.^[17]

PO2 Ryan Garcia, meanwhile, testified that he was likewise a member of the CAIDSOT. He corroborated PO2 Jaudian's testimony on the essential facts surrounding the buy-bust operation, confirming that he was tasked to be the back-up officer for said operation.^[18] During the operation, PO2 Garcia stationed himself near a mormon church, which was around ten meters, more or less, from the sari-sari store located in a small alley, by which PO2 Jaudian and the civilian asset were waiting for accused-appellant. From his position, PO2 Garcia was able to see accused-appellant approaching PO2 Jaudian and the civilian asset in the alley and the civilian asset introducing PO2 Jaudian to accused-appellant. Eventually, PO2 Garcia saw PO2 Jaudian wipe his face with a towel, prompting the former to rush to the scene and immediately frisk accused-appellant.^[19] PO2 Garcia likewise confirmed that he recovered another sachet of marijuana from accused-appellant's left pocket, the buy-bust money from his right pocket, and a .22 caliber bullet and a homemade *sumpak* from the back of his shorts. PO2 Garcia retained custody of said items on the way to the police station, where he marked the same, including the sachet of marijuana taken from accused-appellant's pocket and the P200.00 bill, with his initials, "RG", in front of his team and accused-appellant. Thereafter, PO2 Garcia turned over the sachet to SPO2 Delos Reyes, as the Duty Investigator at that time, who likewise affixed his initials, "ADR", on the sachet before turning it over to the crime laboratory for examination, along with the other confiscated evidence.^[20]

During cross-examination, PO2 Garcia admitted that no commotion occurred while arresting the accused, and that nothing happened to prevent the team from marking the confiscated items at the scene of the arrest. However, he alleged that the place was surrounded by people, thus, they decided to mark the items at the police station. He likewise testified that they brought accused-appellant and the confiscated evidence to Police Station 1, and not to the Police Station 5, which was closer to the crime scene, because Police Station 1 was closer to the Hall of Justice and the other government agencies.^[21]

Finally, the prosecution presented SPO2 Allan Delos Reyes, who was likewise part of the CAIDSOT and the team which conducted the buy bust operation and was present during the arrest.^[22] He corroborated the respective testimonies of PO2

Jaudian and PO2 Garcia, and confirmed that the two officers turned over the sachets of marijuana fruiting tops to him at the police station. SPO3 Delos Reyes then marked the sachets with his initials, "ADR", photographed the same, then prepared the Inventory Receipt and Chain of Custody^[23] before the accused-appellant, the members of the CAIDSOT, DOJ representative Mrs. Emelita Reyes, and Barangay official, Mr. Linus Bacay. At that time, there was no media representative available. ^[24] After the inventory, SPO3 Delos Reyes turned over the confiscated evidence, particularly the suspected illegal drugs, to the crime laboratory for analysis, pursuant to a written request for laboratory examination.^[25]

On the other hand, accused-appellant testified that, on August 17, 2012, at around 3:00 in the afternoon, he was in his house with his grandmother and sister-in-law. He was sleeping when somebody knocked on the door, waking him up. He saw, through the window, two men standing outside his house, and when he opened the door, he was surprised to see a gun aimed at him.^[26] They asked him to bring out Romar Lozada, who was also from their place, but accused-appellant said that Romar Lozada was not around. He was then instructed to get out of the house and, when he complied, one of the men entered and began searching for Lozada inside the house. They did not find anything, but they took two cellphones, a USB and the piggybank of accused-appellant's daughter. They then handcuffed accused-appellant and brought him to jail. ^[27] The entire incident was witnessed by accused-appellant's grandmother.^[28]

During cross-examination, accused-appellant also testified that only PO2 Jaudian and PO2 Garcia were there to arrest him and that it was PO2 Jaudian who took the USB, cellphone and piggybank. He also admitted that he had never met the two officers before and that he did not know of any reason why they would implicate him in the illegal drugs case.^[29]

Finally, the defense presented Myla Aglibot, accused-appellant's sister-in-law. At the beginning of her testimony, she testified that she resided in the same house as accused-appellant^[30], but later said that she resided in the house adjacent to accused-appellant's^[31]. She testified that, on August 17, 2012, at around 3:00 in the afternoon, she was at home, washing clothes, while accused-appellant was sleeping.^[32] Suddenly, a male person, a certain Romar who was also from Balic-Balic, arrived and ran to the back portion of their house, going up the hill. Three other male persons followed and asked Aglibot if she had seen Romar, to which Aglibot said yes and that he just passed by her house. The men then knocked on the door of accused-appellant's house, which was opened by accused-appellant himself. One of the men entered the house and later returned, carrying a cellphone and a piggy bank belonging to accused-appellant.^[33]

On November 22, 2013, the RTC rendered the assailed *Decision*, finding accused-appellant guilty beyond reasonable doubt of the charges against him and sentenced to suffer the penalty of imprisonment, *viz*:^[34]

WHEREFORE, judgment is rendered as follows:

1. In ***Criminal Case No. 699-12***, the Court finds ***ALVIN LACBAYO y REYES GUILTY*** beyond reasonable doubt of **Violation of Sec. 5, RA**

9165 and sentences him to suffer the penalty of **life imprisonment** and to **pay a fine of P500,000.00 plus cost**, without subsidiary imprisonment in case of insolvency;

2. In ***Criminal Case No. 700-12***, the Court finds ***ALVIN LACBAYO y REYES GUILTY*** beyond reasonable doubt of **Violation of Section 11, RA 9165** and sentences him **to suffer the penalty of imprisonment from twelve (12) years and one day to fourteen (14) years and eight (8) months and to pay a fine of P300,000.00 plus cost, without subsidiary imprisonment in case of insolvency.**

The accused shall also suffer the accessory penalties under Section 35, RA 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The sachets of marijuana marked Exhs. "G to G-1" of the Prosecution are ordered confiscated in favor of the government and to be disposed of in accordance with law.

SO DECIDED.

Aggrieved, accused-appellant raised the instant case on appeal before this Court on the basis of a lone assignment of error, to wit:^[35]

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF SECTIONS 5 AND II, ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

The instant appeal is meritorious.

Time and again, the Supreme Court has held that, in establishing the guilt of an accused in an illegal drugs cases, it is imperative that the prosecution sufficiently establish the chain of custody of the seized drug from the time of its seizure up to the time of its presentation in court, in order to prove the continued identity and integrity of the seized illegal drug. "A substantial gap in the chain of custody renders the identity and integrity of the *corpus delicti* dubious."^[36] Thus, in *Lopez vs. People*, the Supreme Court further held, as follows: ^[37]

In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. To successfully prosecute a case involving illegal drugs, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same