

## TENTH DIVISION

[ CA-G.R. CR-H.C. No. 06230, November 25, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE BAUTISTA Y CAÑAS @ JOEY, ACCUSED-APPELLANT.**

### DECISION

**VELOSO, J.:**

#### *The Case*

On appeal<sup>[1]</sup> by accused Jose Bautista y Cañas @ Joey (“**accused-appellant**”) is the **May 06, 2013 Decision**<sup>[2]</sup> of the Regional Trial Court of Valenzuela City (“**RTC**”) <sup>[3]</sup> in Crim. Case Nos. 504-V-12 and 505-V-12, entitled “*PEOPLE OF THE PHILIPPINES, [Plaintiff], -versus- Jose Bautista y Canas [sic] @ Joey, Accused.*”, the dispositive part of which reads:

“WHEREFORE, in Criminal Case No. 504-V-12, accused JOSE BAUTISTA y CANAS [sic], also known as JOEY, is hereby found GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, and hereby imposed the penalty of life imprisonment and a fine of P500,000.00. In the service of his sentence, said accused may be credited with the period that he has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code, as amended, and applicable rules.

In Criminal Case No. 505-V-12, the accused is found NOT GUILTY of violation of Section 11, Article II of RA 9165, due to insufficiency of evidence.

The Acting Branch Clerk of Court is hereby directed to turn over with dispatch the drug specimen of these cases to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.”<sup>[4]</sup>

#### *The Facts*

The pertinent facts, as culled from the findings of the RTC, are as follows:

"At around 8:00 a.m. of May 12, 2012, PCI Allan Ruba, Chief of the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) of Valenzuela City, called a meeting among police officers regarding the infotext from the Mayor. Present at the meeting were SPO2 Carlito Espiritu, PO2 Freddie Lim, PO1 Raya, PO1 Edgardo Llacuna and PO2 Ringo Recto. PCI Ruba showed them the infotext, which stated that certain persons; namely, Joey, Ryan Cabral, Jona, Onyo, Barok Santos, and Berlin Carillo, were selling drugs in Dulong Tangke. He tasked the team leader, SPO2 Carlito Espiritu, to conduct a surveillance in Dulong Tangke. SPO2 Espiritu contacted his regular confidential informant (RCI) to verify the information. At about 10:00 a.m., the regular confidential informant who was contacted by SPO2 Espiritu arrived at the SAID office and informed the police that Joey was positive in the reported area while the other names listed in the infotext were not. Hence, the police operatives planned a buy-bust operation. PO2 Recto was tasked to act as the poseur buyer. PCI Ruba provided him with three P100.00 bills. PO1 Llacuna, on the other hand, would pretend to be a DVD vendor while acting as backup security. At around 12:01 p.m., the RCI informed the operatives that Joey was selling shabu in Dulong Tangke, Malinta, Valenzuela City. Before leaving the office, PO2 Recto placed the marking 'R', 'R1' and 'R2' on the peso bills. PO2 Freddie Lim recorded the information, the dispatch and the three P100.00 buy-bust bills in the blotter.

SPO2 Espiritu, PO2 Lim, PO1 Raya, PO1 Llacuna and PO2 Recto proceeded to the target area. There was no jump-off, i.e., the police officers were not frisked prior to the operation. Upon their arrival in Dulong Tangke, they were approached by the RCI and they agreed that they will walk towards the store. Together with said RCI, PO2 Recto walked to the store, while PO1 Llacuna was backing him up as his security. After walking for a few minutes, the RCI whispered to PO2 Recto and pointed to the target person about 10 meters away. The latter was standing in front of a store. The RCI introduced PO2 Recto to the suspect as a call center agent. He also mentioned that PO2 Recto wanted to 'score.' PO2 Recto then asked the suspect, '*Tol, may panggising ka ba dyan?*' The latter replied, '*Meron 'tol, hindi tayo nawawalan dito. Magkano ba?*' PO2 Recto said, '*Pang-tres lang 'Tol.'*' When the suspect replied that he has some, PO2 Recto handed him P300.00. The accused immediately placed the money inside his pocket and took a small striped coin purse pinned under the left sleeve of his shirt. He took out one rectangular plastic transparent plastic sachet containing white crystalline substance from the coin purse and gave it to PO2 Recto. After getting the plastic sachet, PO2 Recto held the hand of the accused and introduced himself as a police officer. PO1 Llacuna assisted him in handcuffing the suspect, herein accused Joey Bautista. Thereafter, PO2 Recto searched the accused and found in his pocket the three P100.00 buy-bust money and another P200.00. PO2 Recto also took the coin purse from the accused and found another sachet inside. He informed the accused of his rights and violation. SPO2 Espiritu then called for a kagawad but was told to go instead to the barangay hall.

On the way to the barangay hall, PO2 Recto was in possession of the coin

purse, the three P100.00 bills and the plastic sachet. The operatives waited for the kagawad for a while. When Kagawad Clariño arrived at 3:30 p.m., PO2 Recto gave PO1 Llacuna the evidence bag containing the confiscated evidence. PO2 Recto placed the markings 'JBC,' his signature and the date on the confiscated evidence. He marked the two plastic sachets, specifically with 'JBC 1' and 'JBC 2'; the buy bust money, with 'JBC 3', 'JBC 4' and 'JBC 5'; and the two other recovered P100.00 bills, with JBC 6' and 'JBC 7'. PO1 Llacuna filled up the inventory form. Present during the inventory were the kagawad, PO2 Recto, PO1 Llacuna and the accused. There were no representatives from the media and the DOJ. After the inventory, from the barangay hall to the police headquarters, PO1 Recto was in possession of the coin purse and the two plastic sachets, which he placed in a small evidence bag. At the headquarters, he turned over the evidence, including the money, to PO1 Llacuna who was the investigator. As proof of the turnover, they signed the Chain of Custody Form prepared by PO1 Llacuna. The latter also prepared the documents for the drug test and laboratory examination and, then, personally forwarded them to the PNP Laboratory Office at the third floor of the Valenzuela City Police Headquarters. PO1 Montero signed the Chain of Custody form when PO1 Llacuna turned over the evidence to the laboratory. PCI Lourdeliza Cejes also signed the form when PO1 Montero turned them over to her.

During his testimony in court, PO2 Ringo Recto identified his signatures in the inventory, and the Chain of Custody Form. He also identified the brown envelope in which he had placed the two plastic sachets; the three P100.00 bills used as buy-bust money; the two plastic sachets recovered from Joey Bautista; and his Sinumpaang Salaysay ng Pag-aresto. He further claimed that on May 11, 2012, at around 7:50 p.m., he coordinated with the PDEA. He prepared and signed a Coordination Form and a Pre-Operation Report. The duration of the coordination was one day, so the PDEA was not informed anymore of the operation against the accused.

PO1 Edgardo Llacuna also identified the following documents he had allegedly prepared: the Chain of Custody form, the request for laboratory examination, the request for drug test of the arrested suspect; the Spot Report, a Coordination Form and a Pre-Operation Report, the Booking Sheet, and the Investigation Data Form.

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The version of the defense is as follows:

On May 12, 2012, at around 12:00 noon, the accused, who is a tricycle driver, was at the Malinta Petron Toda tricycle terminal. He was queuing for his turn to take passengers when two male persons approached and arrested him. He asked them why he was being arrested and what his violation was. The male persons asked if he was Joey. After he replied in the affirmative, they suddenly frisked him. They asked him if he was selling shabu. The accused told them that he was not selling. Nonetheless, they took his black wallet containing money in the amount

of P7,700.00, which was sent to him by his mother as allowance. The male persons brought him to a warehouse in the old detention center. They were making him admit that he has a boss. But, he told them that he does not have any boss and asked them who is the boss they were referring to. He told them that he was just a tricycle driver. After more than an hour in that warehouse, the accused was brought to Polo for medical examination. Thereafter, he was brought to Barangay Malinta. The male persons who arrested him asked the barangay kagawad to sign a document and, then, they brought out two small heat-sealed transparent plastic sachets. They were compelling the accused to admit that the sachets were his, but he insisted that they were not. After that, they took his picture. Then, they subjected him to a drug test at the new city hall. The accused learned that the result of his drug test was negative. After the drug test, he was brought to the detention cell." [5] (citations omitted)

### ***The Ruling of the RTC***

On **May 06, 2013**, the RTC convicted the accused-appellant of illegal sale of shabu but acquitted him of illegal possession thereof, ratiocinating:

"Well settled is the principle that in criminal cases, the burden of proof lies on the prosecution. A finding of guilt must rest on the strength of the prosecution's own evidence, not on the weakness or even absence of evidence for the defense. Moreover, the quantum of proof required by law for a criminal conviction is proof beyond reasonable doubt.

After a careful examination of the evidence on record, the Court finds it sufficient to prove beyond reasonable doubt the guilt of the accused for illegal sale, but not for illegal possession, of a dangerous drug.

Section 11 of RA 9165 penalizes possession of dangerous drugs. The essential elements to be proven in order to justify a conviction of this offense are: (1) the accused is in possession of a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.

On the other hand, Section 5 of RA 9165 penalizes the sale, trading, administration, dispensation, delivery, distribution and transportation of dangerous drugs and/or controlled precursors and essential chemicals. In the prosecution for illegal sale or delivery of a dangerous drug, the following elements must be proved: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Also material to a prosecution for illegal sale or delivery of prohibited drugs is proof that the transaction actually took place and the presentation in court of the *corpus delicti* as evidence.

The actual sale and delivery of a dangerous drug by the accused to PO2

Recto, who posed as a call center agent, was duly proven by the prosecution. As recounted in detail by PO2 Recto, the sale transpired as follows:

Q. After you parked your motorcycle in Dulong Tangke, what happened next?

A. Lumapit na po yung RCI sa amin pumunta sa area kung saan namin siya *pinapunta pagkatapos nag plano na kami na maglalakad na kami sa area ng tindahan sa may Dulong Tangke. Kasama ko po yung RCI nakaalalay naman yung aking back up security na si PO1 Llacuna papunta na doon sa may tindahan.*

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Q. What happened next when you arrived there? You were supposed to buy illegal drugs from this Joey, what happened next?

A. We were walking and after a few minutes our RCI whispered to me and pointed to me the target person Joey.

Q. How far was this alias Joey from you when the RCI pointed him out to you?

A. About 10 meters, sir.

Q. By the way, this Joey, is he a male?

A. Male, sir.

Q. What was this Joey doing when he was pointed to you by your RCI?

A. He was just standing in front of a store.

Q. What was he wearing if you can still remember?

A. He is wearing shorts and t-shirt.

Q. What was he holding, if any, when you first saw him after he was pointed to you by the RCI?

A. None, sir.

Q. What happened next when he was pointed out to you?

A. *Inintroduce po ako nung RCI na call center agent ako. Pagkatapos nakipag usap ako sa kanya. Sinabi nung RCI na iiscore nga daw ako. Kaya tinanong ko siya, 'Tol, may panggising ka ba diyan?' Sumagot siya sa aking [sic] ng 'Meron tol, hindi tayo nawawalan dito. Magkano ba?' Sabi ko, 'Pang-tres lang Tol.'*

Q. What were the words in Tagalog that you told this Joey when how much money you are going to deliver to him?

A. *Pang-tres.*