

SECOND DIVISION

[G.R. No. 227217, February 12, 2020]

JESSIE TOLENTINO Y SAMIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

REYES, A., JR., J.:

Before the Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated April 14, 2016 and Resolution^[3] dated September 9, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06902, which affirmed the Decision dated April 30, 2014 of the Regional Trial Court (RTC) of Tarlac City, Branch 64, in Criminal Case No. 16068, finding Jessie Tolentino y Samia (petitioner) guilty beyond reasonable doubt of violating Section 5,^[4] Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information dated February 16, 2009, the petitioner was charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165.^[5] The accusatory portion of the Information reads:

That on or about February 13, 2009 at around 1:30 o'clock in the afternoon, in the City of Tarlac, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and criminally sell, trade and deliver three (3) heat-sealed transparent plastic sachet containing dried Marijuana fruiting tops, a dangerous drugs (sic)[,] to a poseur buyer, weighing 2.700 grams more or less.

CONTRARY TO LAW.^[6]

On April 15, 2009, the petitioner was arraigned and entered a plea of not guilty. Pre-trial was held on June 2, 2009. Thereafter, trial on the merits ensued.^[7]

Version of the Prosecution

On February 13, 2009, at around 1:30 p.m., members of the Task Force *Bantay Droga*, including Senior Police Officer 2 Jorge G. Andasan, Jr. (SPO2 Andasan) and SPO1 Eduardo T. Navarro (SPO1 Navarro), with the participation of Romeo Dela Pena (Dela Pena) as the poseur-buyer, conducted a buy-bust operation in Barangay Ungot, Tarlac City against one alias "Kabasi," who was later identified as the petitioner. Three (3) marked one hundred peso bills, with serial numbers GQ000707,

LN468151 and FW278110, were prepared for use in the operation.^[8] Prior to their arrival in Barangay Ungot, Dela Pena informed the petitioner that he wanted to buy P300.00-worth of *marijuana*. Upon arrival, Dela Pena was only able to purchase P100.00-worth of *marijuana* due to stock shortage.^[9] After the successful drug trade, Dela Pena grabbed the petitioner which was the prearranged signal to effect an arrest. The petitioner was then informed of his rights and the buy-bust team proceeded to confiscate the marked money and the three (3) transparent plastic sachets containing marijuana. Petitioner was then brought to the house of the barangay captain of Ungot and SPO1 Navarro conducted an inventory of the said items thereat. During the inventory, photographs were taken and the confiscated items were marked as "ETN", "ETN-1", and "ETN-2", respectively. Subsequently, SPO1 Navarro brought the suspected drugs to the crime laboratory where they were received by Senior Inspector Jebie Timario. According to SPO1 Navarro, from the time the inventory was conducted until the subject items were brought to the laboratory for analysis, he had exclusive possession of the same.^[10]

On cross examination, SPO1 Navarro admitted that although he did not actually witness the drug deal, he was positioned approximately 50 meters away from them and that he saw Dela Pena grab the petitioner which was the pre-arranged signal that an exchange took place.^[11]

SPO2 Andasan, one of the arresting officers involved in the buy-bust operation, corroborated the testimony of SPO1 Navarro as to the circumstances pertaining to the arrest of the petitioner. According to SPO2 Andasan, when the illicit drug deal occurred, he was positioned only about 15 meters away. When the petitioner was arrested, SPO1 Navarro read him his rights and then Dela Pena handed over the confiscated items to SPO1 Navarro. Thereafter, the arresting team proceeded to the house of the barangay captain to conduct inventory.^[12]

Dela Pena, the designated poseur-buyer in the buy-bust operation, testified that he knew the petitioner because he had previous dealings with the latter at the market. On the day of the operation, he went to the house of the petitioner located in Barangay Ungot and transacted with the latter. When the exchange was consummated, he grabbed the petitioner and thereafter, SPO1 Navarro and SPO2 Andasan arrested the latter.^[13]

Version of the Defense

Petitioner testified that at around 1:30 p.m. on February 13, 2009, he was away from home as he was working with a certain Roberto Dela Rosa and making door jambs. When his son informed him that there were visitors at their house, he immediately went home. When he arrived at his house in Barangay Ungot, a certain Bong Vargas (Vargas) alighted from a tricycle and asked him for some *marijuana* but the petitioner replied that he was not familiar with the item. Vargas fled and DelaPena appeared, pointed a gun at the petitioner and his son, fired the gun twice and handcuffed the petitioner. While handcuffed, the petitioner saw SPO2 Andasan and SPO1 Navarro with *marijuana* in their possession. He was then brought to the house of the barangay captain of Ungot where he was made to sign a document. Subsequently, the petitioner was taken to a nipa house where a certain Eduardo General hit him on the head and was made to sign more documents. Thereafter, he

was placed under detention.^[14]

Petitioner filed a case against SPO2 Andasan and SPO1 Navarro because he believed that he was wrongfully accused and detained. He also affirmed that he executed a *Sinumpaang Salaysay* dated January 27, 2010 wherein he denied having sold illegal drugs.^[15]

Jaycee Tolentino (Jaycee), another witness for the defense and the son of the petitioner, corroborated his father's testimony that the latter did not sell illegal drugs. According to Jaycee, the petitioner refused to accept the P100.00-bill Dela Pena attempted to give his father. When his father was handcuffed, the latter was frisked by Dela Pena but no illegal items were found in his possession. After the arrest, he went with his father and the arresting officers to the house of the barangay captain of Ungot and thereat, SPO1 Navarro produced three plastic sachets and a P100.00-bill. Photographs were taken thereafter. Jaycee also affirmed that he executed a *Sinumpaang Salaysay* stating what he witnessed when his father was arrested.^[16]

Julie Tolentino, another witness for the defense, likewise corroborated the allegation that the petitioner filed an administrative case against SPO2 Andasan and SPO1 Navarro.^[17]

Jimmy Estrada (Estrada), the final witness for the defense, testified that at around 1:30 p.m. on February 13, 2009, he was outside the house of his friend who also lives in Barangay Ungot. The said house was approximately 20 meters away from the house of the petitioner. According to Estrada, he saw Jaycee and the petitioner talking and when the latter left, a tricycle appeared and one of the passengers thereof approached the petitioner and pointed a gun at the latter and then fired it in the air. Later, a motorcycle with two passengers arrived and one of the passengers raised his hand holding a small plastic sachet and said "positive."^[18]

On April 30, 2014, the RTC rendered a Judgment finding the petitioner guilty beyond reasonable doubt of the crime charged. The trial court opined that the essential elements of the crime charged were established by the evidence of the prosecution.

^[19] The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing, this Court finds the [petitioner] guilty beyond reasonable doubt of the crime charged (Illegal Sale of Dangerous Drugs) and hereby sentences him to suffer the penalty of life imprisonment. Likewise, he is ordered to pay a fine of P500,000.00

The Branch Clerk of Court is hereby directed to immediately transmit to the PDEA the subject item for proper disposal.^[20]

On appeal, the CA affirmed the findings of the RTC and held that on the basis of the evidence presented by the prosecution, there is no iota of doubt that the identity and integrity of the seized dangerous drugs or the *corpus delicti* have been safeguarded and preserved.^[21] The appellate court further ratiocinated that it is of no moment that representatives from the Department of Justice (DOJ) and the media were not present to witness the seizure and inventory of these items because the Implementing Rules and Regulation (IRR) of R.A. No. 9165 offers flexibility with

regard to compliance with the "Chain of Custody" rule, as long as the integrity and evidentiary value of the seized items are properly preserved.^[22] The decretal portion of the Decision^[23] dated April 14, 2016 reads:

WHEREFORE, premises considered, the instant Appeal is **DENIED** for lack of merit. The challenged Decision dated 30 April 2014 of the [RTC], Branch 64 of Tarlac City in Criminal Case No. 16068 is **AFFIRMED**.

SO ORDERED.^[24]

Hence, the present petition.

The issue for the Court's resolution is whether or not the petitioner's conviction for Illegal Sale of Dangerous Drugs should be upheld.

Ruling of the Court

There is merit to the petition.

In order to sustain a conviction for Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.^[25]

Petitioner maintains that he should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.

In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,^[26] are material, as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. Specifically, Section 21 as amended provides the following rules:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical**

inventory of the seized items 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, **with an elected public official and a representative of the National Prosecution Service or the media** 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, finally*, That non-compliance of 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 and custody over said items.

x x x x (Emphases ours)

It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly, (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21^[27] of R.A. No. 9165 could be impracticable for the law enforcers' compliance,^[28] and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items.

The Court reiterates though that a failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its noncompliance has serious effects and is fatal to the prosecution's case. As the Court declared in *People v. Que*:^[29]

People v. Morales explained that failure to comply with paragraph 1, Section 21, Article II of [R.A. No.] 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*. It "produce[s] doubts as to the origins of the [seized paraphernalia]."

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. non-compliance with them [tarnishes] the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. x x x.^[30] (Citations omitted)