

FIRST DIVISION

[G.R. No. 238873, September 16, 2020]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SUNDARAM MAGAYON Y FRANCISCO, DEFENDANT-APPELLANT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision dated January 26, 2018^[1] of the Court of Appeals in CA-G.R. CR-HC No. 01411-MIN affirming the trial court's verdict of conviction against appellant Sundaram Magayon y Francisco for violation of Section 11, Article II of Republic Act 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings before the Trial Court

The prosecution filed two (2) separate Informations against appellant for violation of Sections 5 and 11 of RA 9165, docketed as Crim. Case 10738 and 10739. Since appellant was already acquitted in Criminal Case 10738, this Decision will only focus on Crim. Case 10739. The Information reads:

That on or about the evening of August 3, 2004 at 6th Street, Guingona Subdivision, Barangay 25, JP Rizal, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody two hundred seventy six point nine six six two (276.9662) grams of dried marijuana fruiting tops and one bundle of marijuana stalks weighing one hundred four point three four zero three (104.3403) grams, which is a dangerous drug.

CONTRARY TO LAW: (Violation of Sec. 11, Art. II, of RA No. 9165).^[2]

On arraignment, appellant pleaded not guilty.^[3]

During the trial, PO2 Rey Gabrielle Busa Maderal (PO2 Maderal),^[4] Barangay Kagawad Carmelita Torres Mangasep (Barangay Kagawad Mangasep), and Police Senior Inspector (PSI) Norman Gales Jovita (PSI Jovita) testified for the prosecution.^[5] On the other hand, Richard Bentoso Amado (Amado) and appellant himself testified for the defense.^[6]

Version of the Prosecution

PO2 Maderal testified that on August 3, 2004, about 6 o' clock in the evening, he, SPO4 Inocencio Amora (SPO4 Amora), PO3 Estelito Gono (PO3 Gono), PO2 Jaime delos Santos (PO2 delos Santos) and several other police officers conducted a buy-bust operation on appellant residence on 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City.

PO2 delos Santos accompanied the confidential asset to the store which formed part of appellant's house. He (PO2 Maderal) stood near the store where he could clearly see the asset and PO2 delos Santos. When he saw the asset exchange the one hundred peso (P100.00) marked money with a teabag-sized packet of alleged marijuana from appellant, he and his companions closed in and arrested appellant.

The *poseur*-buyer handed the packet of marijuana to PO2 delos Santos who, in turn, gave it to him (PO2 Maderal) for safekeeping. He recovered the marked money from appellant's "wife"^[7] who received it from appellant right after the transaction. He and the other police officers informed appellant he was being arrested for illegally selling marijuana.^[8]

SPO4 Amora informed appellant of the search warrant they had on his premises.^[9] They waited for barangay officials and media personnel to arrive before they commenced the search.^[10] Appellant and his "wife," too, were present during the search. The search yielded seventy-four (74) small packets^[11] of marijuana in different parts of the house including the store. Inside appellant's room, they found a plastic bag of marijuana and marijuana inside a yellow plastic ice cream container.

In the presence of the barangay officials and the appellant, he prepared the inventory of the seized items. He further identified the pictures taken during the search including those of the seized items.^[12]

He also prepared the certificate of orderly search which the witnesses from the barangay and the media signed. But since appellant refused to sign the certificate, the words "not willing to sign" were written on the space provided for appellant's signature. Thereafter, appellant, his "wife," and the seized items were brought to the police station for booking and investigation. He kept custody of the items.^[13]

At the police station, he and the other arresting officers prepared the booking, indorsement to the PNP Crime Laboratory of the items, return on the search warrant, and affidavit of apprehension.^[14]

He was among those who signed the affidavit of apprehension. He identified his and his companions' signatures thereon. The seized items were surrendered to the court which issued the search warrant. Subsequently, with leave of court, the items were submitted to the crime laboratory for chemical examination. He himself delivered the items to the crime laboratory on the same day. He affirmed that the items he delivered were the same items recovered from appellant.^[15]

On cross, he testified that SPO4 Amora, PO2 delos Santos and the police asset applied for a search warrant around 11 o' clock in the morning of August 3, 2004 after they did a test buy earlier that day. During the buy-bust, the police operatives were already accompanied by some barangay kagawads. They started the search of the premises only after the other barangay officials had arrived, together with the staff of DXBC and ABS-CBN.^[16] In response to the trial court's clarificatory

questions, PO2 Maderal averred that he clearly saw the exchange of illegal drugs and money between appellant and the *poseur*-buyer as he observing them from just beside the store.^[17]

Barangay Kagawad Mangasep testified that in the afternoon of August 3, 2004, a police officer, whose name she could no longer recall, came to her house and requested her to witness a raid that he and his companions were about to conduct.^[18] When she arrived at the place, Kagawad Sisora, other police officers, and media personnel were already there. Only then did the search begin.^[19]

After the search and seizure had ended, the police officers gathered and inventoried all the things they found and seized. Photographs of the seized items were taken before the same were brought to the police station.

Barangay Kagawad Mangasep signed an inventory and certification. She also identified her signature and those of her fellow barangay kagawad and the media personnel.^[20] On cross, she admitted she was not present during the buy-bust operation.^[21] During the search, she, Kagawad Manuel Sisora (Kagawad Sisora), two (2) media personnel, some police officers, appellant and his "live-in partner" were present.^[22]

Forensic Chemist **PSI Jovita** testified that he received three (3) laboratory requests from Police Chief Inspector (PCI) Martin Mercado Gamboa (PCI Gamboa) in connection with the buy-bust against appellant and the search of his premises. These requests referred to the: 1) request for examination of one (1) tea bag of purported marijuana recovered during a test buy; 2) request for examination of one (1) tea bag of suspected marijuana subject of a buy-bust operation with marking "RBM-A1-08-03-04" (BUY-BUST); and 3) request for examination of seventy four (74) tea bags/packets of alleged marijuana, marked as "RBM-A1-08-03-04 up to RBM-A19-08-03-04," "RBM-B1-08-03-04 up to RBM-B26-08-03-04," "RBM-C1-08-03-04 up to RBM-C29-08-03-04," and a plastic bag and a plastic ice cream container also containing suspected marijuana. These items came from the search done on the premises.^[23] He immediately marked the items, as follows:

1. Chemistry Report D-125-2004

Specimen A-1 for one (1) heat-sealed transparent plastic sachet with
- markings "RBM-A1-08-03-04"

2. Chemistry Report D-126-2004

Specimen A-1 for one (1) heat-sealed transparent plastic packet with
- markings "RBM-A1-08-03-04 BUY-BUST"

3. Chemistry Report D-127-2004

Specimen A-1 for one (1) leather bag color black with markings "RBM-
- A-19 - A-08-03-04" containing nineteen (19) heat sealed
transparent plastic packets with markings "RBM-A1-08-
03-04" up to "RBM-A19-08-03-04"

Specimen B-1 for one (1) knot-tied plastic bag color white and red with
- B-26 - markings "RBM-B-08-03-04" containing twenty-six (26)

heat sealed transparent plastic packets with markings "RBM-B1-08-03-04" up to "RBM-B26-08-03-04"

Specimen C-1 for one (1) knot-tied plastic bag color white and red with
- C-29 - markings "RBM-C-08-03-04" containing twenty-nine (29)
heat sealed transparent plastic packets with markings
"RBM-C1-08-03-04" up to "RBM-C29-08-03-04"

He weighed and tested the specimens and found them positive for marijuana. He recorded his findings in three (3) separate chemistry reports,^[24] which he identified in open court. He brought all the items when he testified in court. When asked by the prosecutor what assurance he could give the court pertaining to the identity and integrity of these items, he replied that the items bore his markings which he personally inscribed as soon as he received them.^[25]

After the prosecution witnesses had completed their testimony, the prosecution offered in evidence: 1) Search Warrant No. 416-2004 dated August 3, 2004; 2) Return on the search warrant; 3) Joint Affidavit of Apprehension; 4) Certificate of Inventory; 5) Certification stating that the raid conducted pursuant to the search warrant was done in a proper and orderly manner; 6) photocopy of the P100.00 marked money; 7) request for laboratory examination of one (1) packet/teabag of suspected marijuana; 8) photocopy of the police blotter entry on the buy-bust operation/raid conducted; 9) Chemistry Report No. D-126-2004 on one (1) plastic bag of marijuana fruiting tops weighing 6.3253 grams; 10) Chemistry Report No. D-127-2004 on the seventy four (74) packets, one (1) cellophane bag, and one (1) plastic ice cream container of marijuana which were recovered during the search; 11) a piece of coupon bond containing three (3) photographs of the marked money and the packet of suspected illegal drugs taken from a room; 12) a piece of coupon bond containing three (3) photographs of the plastic packets of marijuana; 13) a piece of coupon bond containing two (2) photographs: one showing appellant's mug shot and another showing the house and store subject of the raid; 14) a piece of coupon bond containing three (3) photographs of the seized items and inventory; 15) request for laboratory examination of the suspected marijuana; 16) request for withdrawal of the seized items from the court for laboratory examination; 17) cellophane pack containing 6.3253 grams of marijuana subject of the buy-bust; 18) cellophane bag containing the seventy four (74) packets of marijuana and the rest of the items subject of the search;^[26] 19) appellant's Counter-Affidavit dated February 2, 2005;^[27] and 20) appellant's Counter-Affidavit dated August 14, 2004.^[28]

Version of the Defense

Amado testified that on August 3, 2004, he went to Purok 7, Barangay Obrero, Butuan to take his lunch. A festivity was ongoing there.

Appellant's sister-in-law is Amado's cousin. Hence, he knew appellant because they had already met before. That day, they had a drinking session in the house of Amado's cousin. Around 2 o' clock in the afternoon, appellant asked him to accompany appellant in going to the rented house of the appellant's girlfriend on 6th Street, Guingona Subdivision.

Amado and appellant reached the place around 3 o'clock in the afternoon. The house had a store. It was the first time he met appellant's girlfriend. He only knew her as "Che-che." Appellant went inside the store where his girlfriend was while Amado stayed outside about five (5) meters away.

After appellant and his girlfriend briefly talked, Amado asked appellant if he could use the toilet inside Che-che's rented house. But appellant told him the owner of the house would not allow it. Appellant instead asked him to use the toilet in the house of appellant's sister around thirty (30) meters away.

Amado left the house of Che-che and proceeded to the house of appellant's sister. After relieving himself, he returned to the store. There, he was surprised to see people setting up a cordon around the place. A person went inside the store. Later, appellant, who was already handcuffed, and his girlfriend were brought outside. The police did a search inside the store. Appellant and his girlfriend were boarded into the patrol car.^[29]

Appellant testified that on August 3, 2004, he visited his brother at the latter's residence in Barangay Obrero, Butuan City. While he and his brother were drinking, Amado arrived and joined them. Sometime after, he asked Amado to go with him to the rented house of his girlfriend in Guingona Subdivision. His girlfriend's rented house was attached to a store. He decided to see his girlfriend to ask for money to buy additional bottles of "Tanduay" for himself and his companions. They headed to his girlfriend's house on board Amado's motorcycle and got there in ten (10) minutes.^[30]

He went inside the store and asked his girlfriend for a bottle of "Tanduay." Meanwhile, someone also came to buy a "Sprite." Then they heard three (3) knocks on the door. It was a man holding a folder. The man showed him the folder on which the words "search warrant" were written. He was surprised to see his name on the "search warrant."

The man, together with three (3) others, searched the store. They recovered marijuana from his girlfriend's bag and a one hundred peso (P100.00) bill from his girlfriend's wallet. They compared the bill with a photocopy they had at that time. They laid the items on the table, wrote on a piece of paper "Certificate of Inventory," and listed all the items they were able to recover. They made him sign a document. They later called for Barangay Kagawad Mangasep who was also made to sign a document. They gathered all the items on the table and brought him to the police station.^[31]

There, a media person arrived and he was forced to answer questions in the presence of his girlfriend and the men who had arrested him. One (1) of the questions was whether he owned the seized items. He did not answer. Someone advised him to secure the services of a lawyer. Another advised him to admit his ownership of the items so that he and his girlfriend would be set free. Two (2) men also advised him not to admit to anything. Since he was so confused, he said he would consult a lawyer first.^[32]

On cross, he stated that Syntyche Litera ("Cheche") had only been his girlfriend for about a month when the buy-bust and search happened. Cheche was previously married to Noel Lanciola. It was Cheche who rented the place where the raid took place. As far as he knew, Cheche was the only one who resided there.