

FIRST DIVISION

[G.R. No. 240230, November 28, 2019]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO DIVINAGRACIA, JR. Y DORNILA, *** A.K.A. "ENSOL"
AND ROSWORTH SY Y BERSABAL, A.K.A. "RORO", ACCUSED-
APPELLANTS.**

DECISION

REYES, J. JR., J.: **

The Case

Before this Court is an appeal from the Decision^[1] dated January 12, 2018 of the Court of Appeals (CA) CA-G.R. CR HC No. 08978 which affirmed the Amended Decision^[2] dated September 6, 2016 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, finding accused-appellants Rogelio Divinagracia, Jr. y Dornila, alias "Ensol" (Divinagracia) and Rosworth Sy y Bersabal, alias "Roro" (Sy) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts

The CA summarized the facts of the case as follows:

Two (2) Informations dated 17 April 2013 were filed against [accused-appellants] which charged them with violation of Section 5, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for the illegal sale of dangerous drugs; and against [Sy] for violation of Section 12, Article II, of Republic Act No. 9165, for the possession of a drug paraphernalia.

The Informations read:

Criminal Case No. 11[-0464]

That on or about the 25th day of April, 2011 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) self-sealing transparent plastic bag marked as 'EP' weighing 14.58 grams of Marijuana fruiting tops to police Poseur[-]Buyer PO3 Edwin Plopinio, the

content of said plastic bag when tested was found positive to be Marijuana, a dangerous drug.

Criminal Case No.11-0465

That on or about the 25th day of April, 2011 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously possess or have under his control one (1) improvised glass pipe marked as 'RB', an equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing an[y] dangerous drug into the body, in violation of the above-cited law.

[Accused-appellants] were arraigned on 5 May 2011, wherein they pleaded not guilty.

During the trial, the Prosecution presented the following witnesses: Police Officer Edwin Plopinio (**PO3 Plopinio**); Police Inspector Richard Allan Mangalip (**P/Insp. Mangalip**); Police Officer Rolly Burgos (**PO2 Burgos**); Kagawad Cho Villar (**Kagawad Villar**); and Police Officer Mildred Kayat (**PO3 Kayat**).

The Prosecution alleged the following facts:

On 25 April 2011, at around 6:50 p.m., PO3 Plopinio was stationed at the Station Anti-Illegal Drugs Special Operation Task Group (SAIDSOTG), Parañaque City, when a confidential informant arrived and informed them that a certain alias Ensol (later on identified as [Divinagracia]), was selling marijuana in Barangay Don Bosco, Parañaque City.

In response to the information, Police Inspector Roque Tome, the Chief of SAID-SOTG, ordered the team of PO3 Plopinio, PO3 Sarino, PO2 Julaton, PO2 Del Rosario, PO2 Ocampo and PO2 Burgos to conduct a buy-bust operation and to arrest [Divinagracia]. PO3 Plopinio was assigned as the poseur-buyer, PO2 Burgos as the immediate back-up, and the others as perimeter back-ups. PO3 Plopinio was provided with a five hundred peso bill with serial number KA281867, on which he placed his initials "EP."

At around 8:45 p.m., the policemen went to Brgy. Don Bosco in Parañaque City. Before heading to the target location, PO3 Plopinio and the informant went out of the vehicle and walked towards Doña Soledad Extension, while the rest of the policemen followed behind. When PO3 Plopinio and the informant saw two (2) male persons standing near a parked van on the road, the informant identified the man wearing a white shirt as [Divinagracia]. PO3 Plopinio claimed that when they approached [Divinagracia], the informant introduced PO3 Plopinio to [Divinagracia] as a user of marijuana and that PO3 Plopinio will buy marijuana worth five hundred pesos (Php 500.00). [Divinagracia] replied "*tamang-tama mayroon pang isang (1) plastic itong kasama ko (just in time, my friend*

still has one (1) plastic with him." Thereafter, PO3 Plopinio handed the marked money to [Divinagracia] who placed the marked money inside the latter's right pocket. Afterwards, [Divinagracia] asked his friend (who was later on identified as [Sy]) to and over a zip-lock plastic sachet containing suspected marijuana fruity tops.

When PO3 Plopinio receive the zip-lock plastic sachet from [Divinagracia], he performed the pre-arranged signal (to reverse the cap he was wearing) In order to signal the other policemen that the sale has been consummated. Immediately after executing the pre-arranged signal, PO3 Plopinio introduced himself as a policeman and arrested [Divinagracia], while PO2 Burgos rushed towards [Sy] and arrested the latter.

When PO3 Plopinio ordered the appellants to empty their pockets, [Divinagracia] surrendered the marked money from his right pocket. On the other hand, [Sy] surrendered an improvised glass pipe which contained suspected marijuana. Thereafter PO3 Plopinio conducted an inventory of the seized items. PO3 Plopinio marked the zip-lock plastic sachet with his initials "EP", while the improvised glass pipe was marked with PO2 Burgos' initials "RB". The Receipt/Inventory of Property Seized was signed by PO3 Plopinio and Kagawa Villar, the Kagawad of Brgy. Don Bosco, Parañaque City. PO2 Julaton took pictures of the proceedings and the seized items.

Afterwards, the police took [accused-appellants] to the police station and prepared the Request for Drug Test of [accused-appellants], as well as the Request for Laboratory Examination of the zip-lock plastic sachet containing suspected marijuana and the improvised glass pipe. PO3 Plopinio prepared the Chain of Custody Form which stated that he transferred the seized items to PO2 Julaton, the investigating officer, for documentation.

On 26 April 2011, both the [accused-appellants] and the seized items were taken to the PNP Crime Laboratory for laboratory examination. At 12:20 a.m., PO3 Plopinio delivered the Request for Laboratory Examination and transferred custody over the seized items to PO3 Kayat of the PNP Crime Laboratory. Immediately afterwards, PO3 Kayat gave the seized items to P/Insp. Mangalip for laboratory testing.

Thereafter, P/Insp. Mangalip issued Physical Science Report No. D-190-11S which stated that he received the seized items at "0020H 26 April 2011" and that the laboratory examination conducted on the seized items marked as "EP" and "RB" resulted positive for the presence of Marijuana, a dangerous drug.

PO2 Burgos corroborated the material allegations of PO3 Plopinio. PO2 Burgos testified that he is the immediate backup of PO3 Plopinio, and that he is the one who arrested [Sy].

Kagawad Villar testified that he was the Barangay Kagawad of Barangay Don Bosco, Parañaque City, at the time of the incident. He claimed that in

the evening of 25 April 2011, he was in his house when he received a radio call from the radio operator of Brgy. Don Bosco that a buy bust operation was held at Doña Soledad extension and that the arresting team was asking him to witness the inventory. When he arrived at the scene of the crime, he saw Police Inspector Roque Tome, the Chief of SAID-SOTG, and his men with the [accused-appellants]. He further claimed that he saw a plastic sachet containing dried marijuana leaves, a small pipe, and a five hundred peso bill. He averred that he signed the Receipt/Inventory of Property Seized, which stated the items seized from the [accused-appellants].

When the Prosecution offered the testimonies of PO3 Kayat and P/Insp. Mangalip, the following facts were stipulated by the parties:

PO3 Kayat:

that he was the one who received the request for laboratory examination together with the specimen reflected in the said request; that his name is shown in the rubber stamp by the PNP Crime Lab as the one who received from Officer Plopinio the request for laboratory examination; that on the very same day that he received the request together with the specimen, he immediately turned over the same to Forensic Chemist Richard Allan Mangalip for laboratory examination as shown in Physical Science Report No. D-190-11S and Chemist Mangalip received the said request on the same time and date received by Officer Kayat x x x

P/Insp/ Mangalip:

that he received a request for Laboratory Examination on April 26, 2011 at 0020H; that he conducted an examination on one (1) self-sealing transparent plastic bag containing dried suspected marijuana fruiting tops and one (1) self-sealing transparent bag containing one (1) improvised glass pipe without markings containing partially burnt dried suspected marijuana leaves; that he reduced his findings by way of Physical Science Report No. D-190-IIS in connection with the laboratory examination he conducted resulting therein that the specimen gave positive result to the test for the presence of marijuana; that he would be able to identify the specimen; that he would be able to identify the result together with his signature and the signature of superiors.

On the other hand, the Defense presented the [accused-appellants] as witnesses. The facts according to the Defense, are as follows:

[Sy] testified that on 25 April 2011, at about 9:30 p.m., he alighted from a tricycle at the Doña Soledad extension when he saw a certain Police Officer Ocampo (**PO2 Ocampo**). [Sy] claimed that PO[2] Ocampo was his former arresting officer in a different case. [Sy] claimed that PO2 Ocampo demanded [P]20,000.00 from him. [Sy] averred that when he

replied that he does not have any money, he was suddenly handcuffed by PO2 Ocampo and ordered to go with the latter. Thereafter, a vehicle suddenly parked in front of them. [Sy] claimed that he did not know [Divinagracia] and that he only came to know about the latter when he met [Divinagracia] who was inside the vehicle.

During his cross-examination, [Sy] admitted that he did not report the alleged extortion to the authorities and that he did not file any case against PO2 Ocampo.

[Divinagracia] testified that on 25 April 2011, at around 9:00 p.m., he was walking home from work when four (4) persons approached him and introduced themselves as police officers. He claimed that he was asked by the police officers if he was "Nognog", and when he told the police officers that he was not Nognog, he was asked by the police officers to go with them for verification purposes. When [Divinagracia] refused to go with the police officers, he was immediately held by two (2) police officers and was boarded into a red vehicle. He claimed that the four (4) officers took him at Taiwan Street, Doña Soledad, where he saw another group of police officers and another person who was handcuffed. [Divinagracia] was taken outside of the vehicle and was handcuffed together with the other person who turned out to be [Sy]. Afterwards, the police took out a plastic sachet containing dried leaves and took pictures of the said plastic sachet with them. Thereafter, a [barangay] personnel arrived and was told by the police officers that they caught Nognog (referring to [Divinagracia]). However, the [barangay] personnel told the police officers that [Divinagracia] is not Nognog because the former knows who Nognog is. [Divinagracia] noticed that the [barangay] personnel and one of the police officers talked to each other and thereafter, he and [Sy] were taken to the Police Station where they were detained.

During his cross-examination, [Divinagracia] admitted that prior to the incident, he had no encounter or misunderstanding with the police officers who arrested him. Moreover, he admitted that he did not bother to know the names of the police officers who arrested him, nor did he bother to file a case against the said police officers.^[3]

The Ruling of the RTC

On August 20, 2016, the RTC rendered a Decision finding the accused-appellants guilty in Criminal Case No. 11-0464 for the illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, thereby sentencing them to suffer the penalty of imprisonment of 12 years and one day as minimum to 17 years as maximum, and to pay a fine of P400,000.00. As regards Criminal case No. 11-0465, however, Sy was acquitted of the charge for violation of Section 12, Article II of the same law.^[4]

On September 6, 2016, the RTC rendered an Amended Decision^[5] amending the original penalty imposed upon the accused-appellants in its August 20, 2016 Decision to life imprisonment and a fine of one million pesos each.^[6]