

## SECOND DIVISION

[ G.R. No. 220447, November 25, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT  
PARAN Y GEMERGA, ACCUSED-APPELLANT.**

### D E C I S I O N

**INTING, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated December 22, 2014 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 01721 affirming the Decision<sup>[2]</sup> dated July 19, 2013 of the Regional Trial Court (RTC) of Bacolod City, Branch 52 in Criminal Case No. 06-29331. The, RTC found Albert Peran y Gemerga (appellant) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

#### *The Facts*

The indictment of appellant for violation of Section 5, Article II of RA 9165 stemmed from the following Information:<sup>[3]</sup>

That on or about the 29<sup>th</sup> day of June, 2006, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur buyer in a buy-bust operation one (1) folded notebook paper containing 1.32 grams of dried marijuana fruiting tops, in exchange marked money of one (1) P100.00 bill bearing Serial No. XU25004, in violation of the aforementioned law.

Act contrary to law.<sup>[4]</sup>

The prosecution alleged that on June 15, 2006, the Granada Police Station received an information from a concerned citizen that a certain "Pinut," a 20-year-old student, was selling marijuana at Don Generoso Villanueva National High School located at Brgy. Granada, Bacolod City. Acting on the information, Station Commander Police Inspector Renato C. Ofamen (P/Insp. Ofamen) ordered Senior Police Officer II Arnaldo N. Briñas ( SPO2 Briñas) to verify the information. SPO2 Briñas conducted a two-week surveillance of appellant and confirmed that the information was positive.<sup>[5]</sup>

On June 29, 2006 at around 6:30 a.m., P/Insp. Ofamen ordered SPO2 Briñas to conduct a buy-bust operation against appellant. In preparation thereof, SPO2 Briñas entered in the police blotter the details of their buy-bust money consisting of a

marked P100-bill with serial number XU250204.<sup>[6]</sup>

Therafter, SPO2 Briñas and his back-up, Police Officer II Arnold James Laguna, went to Patricia Homes Subdivision located in Brgy. Granada. Upon reaching the designated place, SPO2 Briñas positioned himself near a waiting shed. After about 30 minutes, appellant, wearing his school uniform, alighted from a public utility jeepney. SPO2 Briñas approached appellant and asked if he had marijuana. Appellant nodded his head. SPO2 Briñas gave appellant the marked P100-bill. In return, appellant handed SPO2 Briñas the marijuana wrapped in a notebook paper. Immediately, SPO2 Briñas introduced himself as a policeman and arrested appellant. Appellant was informed of the offense he committed and of his constitutional rights. SPO2 Briñas marked the sheet of paper where the marijuana was wrapped.<sup>[7]</sup>

SPO2 Briñas brought appellant to the Bacolod City Police Station 6 and recorded the incident in the police blotter. The seized marijuana was inventoried in the presence of *barangay* officials, *Kagawad* Gerson M. Nietes and *Kagawad* William D. Diocson. Photographs of the seized item,<sup>[8]</sup> together with the appellant were taken. On the same day, SPO2 Briñas brought the suspected marijuana to the Philippine National Police Crime Laboratory Office 6, Camp Montelibano, Bacolod City and was received by Police Senior Inspector Alexis A. Guinanao (PSI Guinanao). After examination, the seized item wrapped in a notebook paper tested positive for marijuana fruiting tops.<sup>[9]</sup>

For the defense, appellant alleged that he was a high school student at Don Generoso Villanueva National High School, *Barangay* Granada, Bacolod City. On June 29, 2006 at around 7:00 a.m., appellant was at Patricia Homes Subdivision, which is a kilometer away from his school. When he was about to ride a pedicab, a man placed his hand on his shoulder and introduced himself as a policeman. The policeman was not in uniform and was only wearing green shirt and shorts.<sup>[10]</sup>

Appellant was brought to the Granada Police Station. Inside one of the rooms, he was stripped and searched but nothing was recovered from appellant. Later, a *barangay* official arrived. Appellant was thereafter photographed while pointing at the money and marijuana placed on a table.<sup>[11]</sup> He learned that the policeman who arrested him was SPO2 Briñas.

On the basis of the testimonies of two witnesses presented in court, namely : a ) PSI Guinanao, the forensic chemical officer; and b) SPO2 Briñas, the poseur-buyer and arresting officer, the RTC convicted appellant in its Decision<sup>[12]</sup> dated July 19, 2013. The RTC ruled that the prosecution was able to prove beyond reasonable doubt the existence of all the elements of illegal sale of marijuana.<sup>[13]</sup> Moreover, the RTC found that the prosecution substantially complied with the chain of custody requirement under Section 21, Article II of RA 9165.<sup>[14]</sup>

In the Decision dated December 22, 2014, the CA affirmed the RTC ruling. Hence, this appeal.

#### *The Court's Ruling*

The appeal is with merit.

At the onset, it must be emphasized that an appeal of a criminal conviction opens the entire records of the trial to review. Consequently, the Court, in the course of its review, may also examine any error even if not assigned by the accused.<sup>[15]</sup>

The elements necessary in the prosecution of illegal sale of dangerous drugs are: (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. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the *corpus delicti*.<sup>[16]</sup>

In order to avoid planting, tampering, substitution and contamination of the *corpus delicti*, Section 21, Article II of RA 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases. However, Section 21, Article II of RA 9165 was amended by RA 10640,<sup>[17]</sup> which requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media.<sup>[18]</sup> Considering that the present case took place on June 29, 2006 prior to the amendment of RA 9165 by RA 10640, the old provision of Section 21, Article II of RA 9165 applies, to wit:

*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 drugs shall , **immediately after seizure and confiscation**, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof; (Emphasis supplied).

As could be gleaned from the foregoing, the seized drugs must be immediately inventoried and photographed in the presence of the accused or his representative, a representative from the media, the Department of Justice (DOJ), and any elected public official. All are required to sign the copies of the inventory and each should be given a copy thereof.

In the prosecution's attempt to show that the safeguards of Section 21, Article II of RA 9165 were complied with, they presented the testimony of SPO2 Briñas, who testified that the alleged buy-bust operation happened at 8:00 a.m. of June 29, 2006. After appellant's arrest, SPO2 Briñas averred that he immediately brought appellant to the police station where an inventory of the seized item was conducted