

THIRD DIVISION

[G.R. No. 223142, January 17, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO SANTOS Y ZARAGOZA, ACCUSED-APPELLANT.**

DECISION

MARTIRES, J.:

This resolves the appeal of accused-appellant Rolando Santos y Zaragoza (*Santos*) seeking the reversal and setting aside of the 6 August 2014 Decision^[1] and 2 March 2015 Resolution^[2] of the Court of Appeals, Fourth Division (CA) in C.A.-G.R. CR-HC No. 05851, affirming the Decision^[3] of the Regional Trial Court (RTC), Branch 120, Caloocan City, in Criminal Case Nos. C-82010 and C-82011 finding him guilty of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia under Republic Act (R.A.) No. 9165, respectively.

THE FACTS

Accused-appellant Santos was charged before the RTC of Caloocan City with three (3) counts of violation of certain provisions of R.A. No. 9165, viz:

**Crim. Case No. C-82009
(Violation of Sec. 6, Art. II of R.A. No. 9165)**

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously maintain in his house at 21 Tagaytay St., Caloocan City, a drug den, dive or resort where dangerous drugs are habitually dispensed for use by the customers and addicts.^[4]

**Crim. Case No. C-82010
(Violation of Sec. 11, Art. II of R.A. No. 9165)**

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody, and control dried crushed leaves and seeds wrapped in a newsprint and contained in transparent plastic "tea bag" marked "ELS-21-8-09-06" weighing 1.0022 grams, when subjected for laboratory examination gave positive result to the tests for Marijuana, a dangerous drug.^[5]

**Crim. Case No. C-82011
(Violation of Sec. 12, Art. II of R.A. No. 9165)**

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously have in his possession, custody, and control several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent "tea bag," and a plastic tube intended for sniffing Methamphetamine Hydrochloride, a dangerous drug.^[6]

In relation to Criminal Case No. C-82009 where Santos was charged for maintaining a drug den, Imee Baltazar Loquinario-Flores (*LoquinarioFlores*) who was found inside the house of Santos during the service of the search warrant, was charged with violation of Sec. 7, Art. II of R.A. No. 9165.^[7]

When arraigned, both Santos and Loquinario-Flores pleaded not guilty.^[8] Joint trial of the cases thereafter ensued.

Version of the Prosecution

The prosecution tried to prove its cases against Santos through the testimony of Special Investigator Elson Saul (*Saul*), Agents Jerome Bomediano (*Bomediano*), Henry Kanapi (*Kanapi*) and Atty. Fatima Liwalug (*Atty. Liwalug*), all from the Reaction, Arrest and Interdiction Division (*RAID*) of the National Bureau of Investigation (*NBI*), and Nicanor Cruz, Jr. (*Cruz*), of the NBI Forensic Chemistry Division (*FCD*).

Prior to the application on 20 August 2009 by Atty. Liwalug for a search warrant before the RTC, Manila, the RAID-NBI received information from their confidential informant that there was a group of individuals at Tagaytay St., Caloocan City, selling drugs and using minors as runners. After Atty. Liwalug interviewed the informant, she, along with an NBI team and the technical staff of *Imbestigador*, a GMA Channel 7 investigative program, went to the reported area to conduct surveillance. The actual surveillance, where videos were taken of the buying, selling, and use of drugs in the different houses on Tagaytay St., lasted for two weeks. During the first test-buy, Bomediano was able to buy shabu from Santos alias "Rolando Tabo." Two informants were used by the NBI for the surveillance but the spy camera was attached to only one of them. The informants were able to buy drugs from Santos and to use them inside his house.^[9]

The first video,^[10] taken by the staff of *Imbestigador*, showed the informants going inside a makeshift house on Tagaytay St. which, according to one of the informants, was owned by Santos. He was shown standing in front of a table while preparing the paraphernalia to sniff shabu. Also shown in the video was Jenny Coyocot, the adopted daughter of Santos, who, according to the informant, sold foil for the price of P2.00 per strip. The second video^[11] depicted Erwin Ganata Ayon telling Jack, one of the occupants in Santos' house, "pasok kami sa bahay ni Tabo."^[12] The videos were turned over by Mean de Chavez of *Imbestigador* to Atty. Liwalug.^[13]

On 21 August 2009, Kanapi, Saul, Bomediano, and SI Junnel Malaluan, armed with

a search warrant,^[14] proceeded to the house of Santos on Tagaytay St. Kanapi and Malaluan guarded the perimeter of Santos' house to ensure that no one could exit from or enter the house during the service of the search warrant. Previous to the service of the warrant, the NBI RAID coordinated^[15] with the Department of Justice (DOJ), the officials of the barangay, and the media.^[16]

Saul knocked on the door of Santos' house. When nobody answered despite several minutes of waiting, the NBI team broke open the door. Saul, Bomediano, Malaluan, and the *Imbestigator* team proceeded to the second floor where they found a person who identified himself as Rolando Santos. Saul told Santos that the team was from the NBI and that they were to serve a search warrant on him, which copy was actually shown to Santos. The team waited for the representatives from the DOJ and the barangay before conducting the search.^[17]

During the conduct of the search at the living room on the second floor of the house, Saul found inside the bedroom and beside the bed of Santos several used and unused foil strips either crumpled or rolled, the size of a cigarette stick. The foil strips,^[18] numbering fourteen, were found inside a baby powder container.^[19] He also found unused small plastic sachets.^[20] Saul placed the foil and plastic sachets on the center table in the living room. When Saul frisked Santos, he found marijuana leaves wrapped in paper on the right pocket of his pants. Saul informed Santos of his constitutional rights and placed the marijuana leaves on top of the center table. Saul searched the rooms on the second floor but found nothing. From a trash can in the kitchen, Saul found used small transparent sachets which he also placed on the center table. Loquinario-Flores, who was caught on video selling to the informant aluminum foil to be used with drugs, and two minor children were found on the first floor of the house. The children admitted that they were part of a gang in the area.^[21]

Santos, Assistant City Prosecutor Darwin Cañete, Kagawad Magno Flores, and media representative Eugene Lalaan of *Imbestigator* witnessed the inventory^[22] of the seized items by Saul and when he marked them. Santos, Loquinario-Flores, and the two minors were brought to the NBI office. When Saul returned to the NBI office after the operation, he submitted the seized items to the NBI forensic chemist. A joint affidavit of arrest^[23] was thereafter executed by Saul, Malaluan, Bomediano, and Kanapi.^[24]

The testimony of Cruz, the forensic chemist, was dispensed with after the parties agreed to stipulate on the matters he would testify and after a short cross-examination by the defense.

Version of the Defense

The version of the defense was established through the testimony of Loquinario-Flores, Santos, and Renamel Destriza (*Destriza*).

On 21 August 2009 at about 3:00 p.m., while Santos was alone at home playing his guitar, the NBI team armed with long firearms suddenly arrived looking for a certain Roland Tabo. Santos was made to lie face down and thereafter was frisked. The team took Santos' money amounting to P140.00 and his house was searched in the

presence of a kagawad from Quezon City but the search team found nothing. As a result, the team brought out foil, lighters, and marijuana and took pictures. Loquinario Flores was inside the house that time as she was called by Destriza to help bring down from the second floor an elderly who was hit by the door when the NBI team forcibly opened it. Loquinario-Flores was no longer allowed to leave while Destriza, who was carrying a child that time, was allowed to go out of the house. Santos, Loquinario-Flores, and the other persons arrested were brought to the NBI office. It was only during the inquest held the following day that Santos was informed that he was being charged of violating the provisions of R.A. No. 9165 and allowed to see the items allegedly seized from him.^[25]

The Ruling of the RTC

The RTC^[26] ruled that the entry in the house of Santos by the NBI team and the subsequent confiscation of the paraphernalia and marijuana were valid and legal since the team had a search warrant. Moreover, it held that the search was conducted following proper procedure. Thus, the RTC resolved the cases as follows:

Premises considered, this court finds and so holds the accused **Rolando Santos y Zaragoza GUILTY** beyond reasonable doubt for violation of Sections 6, 11 and 12, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:

(1) In **Crim. Case No. C-82009**, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00);

(2) In **Crim. Case No. C-82010**, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,000.00); and

(3) In **Crim. Case No. C-82011**, the penalty of Imprisonment of six (6) months and one (1) day to four (4) years and a fine of Ten Thousand Pesos (P10,000.00).

Further, in Crim. Case No. C-82012, accused Imee Baltazar Loquinario-Flores was likewise found GUILTY beyond reasonable doubt for violation of Section 7 of the above-cited law and imposes upon her the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,000.00).

The drugs and drug paraphernalia subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.

The Ruling of the CA

Feeling aggrieved with the decision of the RTC, Santos appealed before the Court of Appeals.

In Criminal Case No. C-82009, the CA, Fourth Division^[27] ruled that the RTC should not have given much weight to the video footages because these were not identified and authenticated by the confidential informant who took them. It held that the prosecution failed to present any witness who had personal knowledge and who could have testified that Santos' house was a drug den. The team, on the other hand, failed to show that Santos or any other person was committing illegal activities inside the house. It found that the testimony of the confidential informant was essential and indispensable for the conviction of Santos because the NBI agents did not have any personal knowledge as to the alleged illegal activities in the house that would characterize it as a drug den.^[28]

In Criminal Case No. C-82012, because of its ruling that the prosecution failed to establish that Santos was maintaining a drug den, the CA held that it necessarily followed that Loquinario-Flores, pursuant to Sec. 11 (a), Rule 122^[29] of the Rules of Court, must be exonerated of the charge against her for violating Sec. 7, Art. II of R.A. 9165. Despite the fact that Loquinario-Flores did not appeal, the CA relied on the dictum that everything in an appealed case is open for review by the appellate court.^[30]

In Criminal Case Nos. C-82010 and C-82011, the CA held that the prosecution was able to show the guilt of Santos beyond reasonable doubt. It held that the testimony of Saul was straightforward and that there was no proof that he had ill motive to testify against Santos. On the other hand, it found the defense of frame-up put up by Santos was self-serving which failed to rebut the overwhelming evidence presented by the prosecution; and that the alleged inconsistencies in the testimonies of Kanapi and Bomediano were on trivial and immaterial details that do not affect their credibility.^[31] Hence, the appeal of Santos was decided as follows:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The Decision dated 26 September 2012 of the lower court is **MODIFIED** as follows:

1. The judgment in **Criminal Case No. C-82010** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 is hereby **AFFIRMED**;
2. The judgment in **Criminal Case No. C-82011** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of Illegal Possession of Drug Paraphernalia under Section 12, Article II of RA 9165 is hereby **AFFIRMED**;
3. The judgment in **Criminal Case No. C-82009** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of maintaining a Drug Den under Section 6, Article II of RA 9165 is **REVERSED** and **SET ASIDE**. Appellant Rolando Santos y Zaragoza is hereby **ACQUITTED** in Criminal Case No. C-82009 for insufficiency of evidence.
4. The judgment in **Criminal Case No. C-82012** finding the accused **Imee Baltazar Lquinario-Flores** guilty beyond reasonable doubt