

## FIRST DIVISION

[ G.R. No. 216753, February 07, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. JESUS DUMAGAY Y SUACITO, ACCUSED-APPELLANT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

"[B]etter to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit."<sup>[1]</sup>

This is an appeal filed by appellant Jesus Dumagay y Suacito from the October 23, 2014 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 00985-MIN, affirming the August 26, 2011 Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Zamboanga City, Branch 13 in Criminal Case No. 6030 (22827), finding the appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

#### ***The Factual Antecedents***

Appellant was charged with violation of Section 5, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an Information<sup>[4]</sup> which reads:

That on or about October 14, 2006 in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court. the above named accused, not being authorized by law to sell, deliver, give away to another. transport or distribute, any dangerous drug, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 JOSEPH RICHMOND C. JIMENEA, PNP, RIID-PRO 9, PDEA, who acted as poseur-buyer, twenty (20) vials of 1 ml. Morphine, one (1) vial of 200 ml. Nandrolone Decanoate, two (2) syringes, which accused knowing the same to be dangerous drugs.

That further, the accused was at the time of his apprehension in possession of an unlicensed .45 Caliber pistol (Homemade) with Serial Number 112074 with two (2) magazines and thirteen (13) live ammunition for caliber .45 and a Lifan Mitsukoshi Motorcycle with Plate No. JH 7640 and Chassis No. LF3XCH7AXIAOOA363, which he used, in furtherance of the crime charged as special aggravating circumstances.

CONTRARY TO LAW.<sup>[5]</sup>

Appellant pleaded not guilty to the crime charged.<sup>[6]</sup>

## ***Version of the Prosecution***

During the trial, the prosecution presented PO3 Joseph Richmond Jimenea (PO3 Jimenea) and SPO4 Roy Bello Rosales (SPO4 Rosales) as witnesses.<sup>[7]</sup> However, the presentation of SPO1 Melvin Gallego (SPO1 Gallego), the investigating officer, and Police Chief Inspector Mercedes D. Diestro (PCI Diestro), the forensic chemist, were dispensed with since the prosecution and the defense already agreed to a stipulation of facts.<sup>[8]</sup> They stipulated that SPO1 Gallego was the investigator who received the appellant and the seized items; that he conducted an inventory of the items and took pictures thereof; and that he prepared the Investigation Report and the Request for Laboratory Examination.<sup>[9]</sup> They also stipulated that Diestro received the Request for Laboratory Examination of the vials conducted the examination thereon, which yielded a positive result for the presence of morphine.<sup>[10]</sup>

PO3 Jimenea testified that he was a member of the Philippine National Police (PNP) assigned at the Regional Intelligence & Investigation Division (RIID) PRO 9, Special Operations Group (SOG) in Zamboanga City;<sup>[11]</sup> that on October 13, 2006, a confidential informant (CI) informed him that a certain "Buboy," later identified as appellant was selling morphine;<sup>[12]</sup> that he relayed the information to Police Chief Inspector Aderito B. Lacerna (PCI Lacerna), who instructed him to confirm the report;<sup>[13]</sup> that at about 5:00 p.m. of the same day, the CI called up appellant to buy morphine;<sup>[14]</sup> that appellant agreed to meet them at about 7:00 p.m. of the same day at Suterville Intersection at San Roque near the gasoline station;<sup>[15]</sup> that at around 7:00 p.m., appellant arrived on board a red motorcycle at the side of the gasoline station;<sup>[16]</sup> that appellant talked with the CI in *Chavacano* dialect;<sup>[17]</sup> that appellant asked if he was the buyer of the morphine;<sup>[18]</sup> that appellant showed him one vial of morphine and asked how much he intends to buy;<sup>[19]</sup> that he told him that he intends to purchase P3,000.00 worth of morphine;<sup>[20]</sup> that appellant informed him that the said amount was good for 20 vials of morphine;<sup>[21]</sup> that they exchanged cellphone numbers and agreed to meet at noon the next day near Western Mindanao Command (WESMINCOM);<sup>[22]</sup> that he and the CI returned to their office to inform PCI Lacerna about the agreement with appellant;<sup>[23]</sup> that PCI Lacerna then informed SPO4 Rosales, the team leader of the SOG, to notify the other police operatives to be present at the office at 8:00 a.m. of October 14, 2006 for the briefing of the operation;<sup>[24]</sup> that during the briefing, he was given the buy-bust money, which was placed inside a white envelope;<sup>[25]</sup> that it was also agreed that the prearranged signal would be a "thumbs up" sign;<sup>[26]</sup> that around 10:00 a.m. that day, appellant contacted him and informed him that the morphine was ready for delivery at noon time in the vicinity of WESMINCOM;<sup>[27]</sup> that at 11:30 a.m., he left ahead of the team while the other members followed and proceeded to the vicinity of WESMINCOM and positioned themselves at the vicinity of Paradise Bakery;<sup>[28]</sup> that when appellant arrived on board his red motorcycle, appellant approached him and brought him to a corner so as not to be seen by passersby;<sup>[29]</sup> that when appellant asked for the money, he gave him the white envelope containing the marked money;<sup>[30]</sup> that appellant in turn, took from his pocket the morphine placed inside a plastic bag;<sup>[31]</sup> that after checking if the 20 vials were indeed morphine, he immediately made a "thumbs up" sign;<sup>[32]</sup> that SPO4 Rosales

and PO3 Rommel Lamberte (PO3 Lamberte) and the other operatives immediately ran towards them to arrest appellant;<sup>[33]</sup> that when appellant tried to flee, he immediately arrested him and informed him that he was a police officer;<sup>[34]</sup> that appellant tried to escape and drew his gun; that they grappled for the gun causing them to fall on the ground; that appellant was subdued due to the timely arrival of SPO4 Rosales and PO3 Lamberte;<sup>[35]</sup> that SPO4 Rosales confiscated the .45 pistol and the marked money from the pocket of appellant;<sup>[36]</sup> that he informed appellant of the reason for his arrest and advised him of his constitutional rights; and later, brought him to their office in Camp Abendan, Mercedes;<sup>[37]</sup> and that at the PNP office, he marked the seized items with his initials "JRCJ" and turned them over to SPO1 Gallego, their investigating officer.<sup>[38]</sup>

SPO4 Rosales corroborated PO3 Jimenea's testimony and further testified that, after arresting appellant, they proceeded to the office, where he placed his initials "RBR" on the marked money which he later submitted to their investigator SPO1 Gallego as shown in the Certificate of Inventory dated October 14, 2006, signed by P/Insp Larry Domingo (PI Domingo), the representatives from the media and the Department of Justice (DOJ), and appellant himself;<sup>[39]</sup> that the said items were marked with SPO1 Gallego's initials, "MRG";<sup>[40]</sup> that these items were photographed by SPO1 Gallego and then brought to the PNP Regional Crime Laboratory Office-9, Zamboanga City on the same day for laboratory examination;<sup>[41]</sup> that the contents of the 20 vials seized from appellant were subjected to laboratory examination at the PNP Regional Crime Laboratory Office by Forensic Chemist PCI Diestro;<sup>[42]</sup> that the Chemistry Report<sup>[43]</sup> confirmed that the vials contained morphine;<sup>[44]</sup> and that as a result, an Investigation Report was prepared by SPO1 Gallego, recommending the filing of cases in court against appellant for violation of Section 5, Article II of RA 9165 and of RA 8294.<sup>[45]</sup>

### ***Version of the Appellant***

Appellant, on the other hand, denied the accusations against him and testified that he was at the area to meet a certain "Bill," a member of the American Navy, to run errands for him;<sup>[46]</sup> that while waiting for Bill, he went inside the canteen located at the back of the gas dump;<sup>[47]</sup> that when he came out, he saw four policemen positioned outside the canteen;<sup>[48]</sup> that he was approached, manhandled and hit continuously by the policemen;<sup>[49]</sup> that there were several witnesses, among them was Sgt. Rogelio Necesario (Sgt. Necesario);<sup>[50]</sup> and that he was brought to the police station, where the policemen demanded money from him.<sup>[51]</sup>

Sgt. Necesario testified that he has been a member of the Philippine Army since October 27, 1997;<sup>[52]</sup> that appellant used to run errands for the American soldiers who joined the Balikatan Exercises;<sup>[53]</sup> that on the said date, he was at the gas dump located at WESMINCOM;<sup>[54]</sup> that he saw appellant enter the canteen; and that after a few minutes, he saw him board the PDEA van blind-folded, handcuffed, with plaster on his mouth, and lying face down on the floor.<sup>[55]</sup> On cross-examination, he clarified that, from where he was positioned at that time, he could not see what was inside the canteen; and that about five minutes elapsed from the

time he saw appellant enter the canteen and the time he saw him again inside the van.<sup>[56]</sup>

### ***Ruling of the Regional Trial Court***

On August 26, 2011, the RTC rendered a Decision finding appellant guilty of the crime charged. The dispositive portion of the Decision reads:

WHEREFORE, the foregoing considered, this Court finds accused JESUS DUMAGAY y SUACITO GUILTY beyond reasonable doubt of the crime of "VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165["] and hereby sentences him to suffer a penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (Php 500,000) without subsidiary imprisonment.

The dangerous drug subject of this case is ordered confiscated for proper disposal.

SO ORDERED.<sup>[57]</sup>

### ***Ruling of the Court of Appeals***

Appellant appealed the RTC Decision arguing that there was no valid buy-bust operation and that the police officers failed to comply with Section 21 of RA 9165, or the Chain of Custody Rule.<sup>[58]</sup>

On October 23, 2014, the CA rendered a Decision affirming the RTC Decision. The CA ruled that based on the evidence presented there was a valid buy-bust operation.<sup>[59]</sup> As to the chain of custody, the CA noted that the non-compliance with the Chain of Custody Rule was never raised during the trial of the case.<sup>[60]</sup> In any case, the CA found that the Chain of Custody Rule was followed notwithstanding the non-presentation of SPO1 Gallego and PCI Diestro.<sup>[61]</sup> It also ruled that although the RTC committed an error in describing the dangerous drug as "methamphetamine hydrochloride" instead of morphine during the August 4 and 7, 2008 hearings and in its August 4, 2008 Order, such erroneous description does not affect the actual evidence presented and offered by the prosecution, which are the vials of morphine recovered from appellant.<sup>[62]</sup>

Hence, appellant filed the instant appeal, raising the same arguments he had in the CA.

On August 3, 2015, the Court required both parties to file their respective supplementary briefs; however they opted not to file the same.<sup>[63]</sup>

### ***The Court's Ruling***

The appeal is meritorious.

Appellant contends that there was no valid buy-bust operation as he was allegedly instigated or induced to commit the crime by the CI,<sup>[64]</sup> and that the prosecution failed to show that the Chain of Custody Rule was followed since the investigating

officer and the forensic chemist failed to testify in court.<sup>[65]</sup> He likewise puts in issue the error of the RTC in describing the dangerous drug subject of this case as "methamphetamine hydrochloride," instead of morphine during the August 4 and 7, 2008 hearings and in the August 4, 2008 Order.<sup>[66]</sup>

***There was a valid Buy-Bust Operation.***

There is instigation when "the accused is lured into the commission of the offense charged in order to prosecute him."<sup>[67]</sup> On the other hand, "[t]here is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime."<sup>[68]</sup> A buy bust operation is a form of entrapment used to apprehend drug peddlers.<sup>[69]</sup> It is considered valid as long as it passes the "objective test," which demands that 'the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.'<sup>[70]</sup>

In the instant case, the CA correctly found that there was a valid buy bust operation as the prosecution was able to establish details of the transaction from the initial contact of the poseur-buyer and the appellant up to the consummation of the sale by the delivery of the morphine. The identities of the poseur-buyer and the appellant as the seller of the morphine, and the details of the procedure employed by the police operatives in conducting; the buy-bust were clearly established by the prosecution. The fact that the poseur-buyer, through the CI, solicited morphine from appellant is not prohibited by law and does not render the buy bust operation invalid as, under prevailing jurisprudence, "a police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a 'decoy solicitation,' is not prohibited by law and does not render the buy-bust operation invalid."<sup>[71]</sup>

However, while there was a valid buy-bust operation, the Court finds that the prosecution failed to establish an unbroken chain of custody of the seized items, *i.e.*, there were missing links.

***The Prosecution failed to establish an unbroken chain of custody of the seized items.***

Chain of custody is "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."<sup>[72]</sup>

Section 21 Article II of RA 9165, as amended by RA 10640,<sup>[73]</sup> reads:

Section 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the