

## THIRD DIVISION

[ G.R. No. 230228, December 13, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MANUEL DELA ROSA Y LUMANOG @ "MANNY", ACCUSED-APPELLANT.**

### DECISION

**GESMUNDO, J.:**

On appeal is the Decision,<sup>[1]</sup> dated August 12, 2016, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06607, which affirmed the Decision<sup>[2]</sup> dated November 19, 2013, of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 39 (RTC) in Criminal Case No. CR-09-9515 finding accused-appellant Manuel dela Rosa y Lumanog (*accused-appellant*) guilty of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

In an Information,<sup>[3]</sup> dated May 3, 2009, accused-appellant was charged with the crime of illegal sale of marijuana weighing 0.682 gram. On July 22, 2009, he was arraigned and he pleaded "not guilty."<sup>[4]</sup> Thereafter, trial ensued.

#### *Version of the Prosecution*

The prosecution presented IO1 Noe Briguel (*IO1 Briguel*), PCI Rhea Fe Dela Cruz Alviar (*PCI Alviar*) and IO1 Ed Bryan Echavaria (*IO1 Echavaria*) as its witnesses. Their combined testimonies tended to establish the following:

On March 28, 2009, at around 9:00 o'clock in the morning, a confidential informant reported to PCI Marijane Ojastro (*PCI Ojastro*) of the Philippine Drug Enforcement Agency Regional Office IV-B (*PDEA IV-B Office*) located at Filipiniana Complex, Calapan City, that accused-appellant was selling marijuana at White Beach, Puerto Galera, Oriental Mindoro. The informant said that he could introduce an agent to accused-appellant as a buyer of marijuana.

Based on the said information, PCI Ojastro directed the conduct of a buy-bust operation against accused-appellant with IO1 Mary Grace Cortez as the team leader. IO1 Briguel was designated as poseur-buyer using a P200.00 bill bearing serial numbers EC235898 and a P100.00 bill bearing serial numbers QC609916, which were marked with "NSB."<sup>[5]</sup> IO1 John Rick Jabano (*IO1 Jabano*) and IO1 Echavaria were assigned as arresting officers. A Pre-Operation Report<sup>[6]</sup> was prepared.

The team left for Puerto Galera at around 1:00 o'clock in the morning of March 29, 2009 and they stayed for a while in Sabang. IO1 Briguel, however, testified that they arrived at Puerto Galera on March 30, 2009. At about 3:00 o'clock in the afternoon of that day, IO1 Briguel and the informant proceeded to the Island Tattoo shop while the other operatives positioned themselves in the area.

Arriving thereat, the informant introduced IO1 Briguel to accused-appellant. IO1 Briguel asked accused-appellant, a tattoo artist, to put a henna tattoo on his right shoulder. As accused-appellant was doing the tattoo, IO1 Briguel asked him: "*Manny, pwede bang umiskor?*" to which he replied: "*Meron.*" IO1 Briguel told accused-appellant that he was going to buy P300.00 worth of drugs, and handed the marked money to accused-appellant, who, in turn, handed to IO1 Briguel folded dried banana leaves containing suspected dried marijuana leaves. Thus, IO1 Briguel made the pre-arranged signal of removing the handkerchief wrapped around his head. Immediately, IO1 Jabano and IO1 Echavaria arrived and arrested accused-appellant. IO1 Briguel frisked him and the marked money was recovered from him.

Subsequently, accused-appellant was boarded into the service vehicle of the PDEA to avoid any commotion at the shop. While inside the vehicle, IO1 Briguel marked the seized marijuana with his initials and the date of the arrest. He then testified that he placed the suspect dried marijuana leaves in his pocket.

The team then proceeded back to the PDEA IV-B Office at Calapan City, which was 54 kilometers away from Puerto Galera. There, IO1 Briguel conducted the Inventory, [7] which was witnessed by Barangay Chairperson Anacleto Vergara (*Brgy. Captain Vergara*) and media representative Dennis Nebrejo (*Nebrejo*). Photographs were likewise taken during the marking and inventory of the seized item.

IOI Briguel then brought the suspected marijuana and the Request for Laboratory Examination [8] to the Philippine National Police (PNP) Crime Laboratory Regional Office in Camp Efigenio C. Navarro, Calapan City for forensic examination. Based on Chemistry Report No. D-010-09 [9] prepared by PCI..Alviar, the specimen weighed 0.682 gram and it tested positive for marijuana.

#### *Version of the Defense*

The defense presented accused-appellant as its sole witness. He testified that on the date of the said arrest, he was inside his tattoo shop, located beside a bar and restaurant at White Beach, Puerto Galera, Oriental Mindoro. While accused-appellant was attending to several customers, a man suddenly approached him and asked if he was Manny. When he replied in the affirmative, the said man asked him to go with him. When accused-appellant refused, the man pulled out a .45 caliber pistol from his waist and threatened him that he would make a scene at his shop. Reluctantly, accused-appellant accompanied the man to a van parked away from his shop. While inside the van, the man handcuffed accused-appellant and brought him to the PDEA IV B Office. For unknown reasons, accused-appellant was incarcerated therein for a month before a case was filed against him. He presupposed that he was arrested and detained because he was associated with a certain Cris Pelino, who was also arrested earlier due to drug related charges.

#### *The RTC Ruling*

In a decision, dated November 19, 2013, the RTC found accused-appellant guilty beyond reasonable of the crime of violation of Section 5, Article II of R.A. No. 9165. Accordingly, the trial court sentenced accused appellant to the penalty of life imprisonment and to pay a fine of P500,000.00.

The RTC held that the prosecution was able to prove the identity of the buyer, the seller, the object and the consideration in the illegal sale of the marijuana. It also

held that the delivery of the said drug by accused-appellant and the payment thereof by IO1 Briguel during the buy-bust operation were duly established. The RTC further ruled that it was reasonable for the PDEA to conduct the inventory of the seized item at their office in Calapan, Mindoro to prevent a commotion at the place of the arrest.

Aggrieved, accused-appellant appealed before the CA arguing in his Brief for the Accused-Appellant<sup>[10]</sup> that: the testimonies of the prosecution witnesses were inconsistent because IO1 Briguel testified that the buy-bust was conducted on March 30, 2009, while IO1 Echavaria testified that it was conducted on March 29, 2009; that the *sinumpaang salaysay* of IO1 Briguel, IO1 Echavaria and IO1 Jabano alleged that the buy-bust was conducted on March 30, 2009; that the integrity and evidentiary value of the confiscated item was not secured because it was merely wrapped in a banana leaf and it was not placed in an envelope or evidence bag; that there was an inconsistency as to who received the confiscated drug at the crime laboratory; and that the crime laboratory was not secured at the time of the examination because any personnel and policemen could enter the premises and even sleep there.

In their Brief for the Appellee,<sup>[11]</sup> the Office of the Solicitor General (OSG) countered that all the elements of the crime of illegal sale of dangerous drugs were established; that the confiscated drug was properly inventoried in the presence of accused-appellant, media representative, and an elected official; that the custody of the drug was duly accounted for; and that accused-appellant failed to refute the evidence against him.

#### *The CA Ruling*

In its decision, dated August 12, 2016, the CA dismissed the appeal. It held that the RTC correctly ruled that all the elements of the crime of illegal sale of dangerous drugs were duly proven. Likewise, the CA held that full faith and credence must be given to the testimonies of the PDEA agents pursuant to the presumption of regularity in the performance of their official duty. It observed that the buy-bust actually happened on March 29, 2009 based on the evidentiary documents of the prosecution.

Further, the CA highlighted that the prosecution was able to prove that there was substantial compliance with the chain of custody rule. It stated that the drug was marked by IO1 Briguel; that he also prepared the inventory and PCI Ojastro prepared the request for laboratory examination; that the marked item was delivered by IO1 Briguel to the crime laboratory; that it tested positive for marijuana; and that the same marked item was presented in court. The CA concluded that there was no compromise in the integrity and evidentiary value of the seized drug.

Hence, this appeal.

#### **Issue**

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,<sup>[12]</sup> dated July 12, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desire. In its Manifestation (In Lieu of

Supplemental Brief),<sup>[13]</sup> dated August 24, 2017, the OSG manifested it will no longer file a supplemental brief considering that its Brief for the Appellee had already amply discussed the assigned errors. In his Manifestation (In Lieu of a Supplemental Brief),<sup>[14]</sup> dated September 15, 2017, accused-appellant stated that he will no longer file a supplemental brief since no new issue material to the case that were not elaborated upon in his appellant's brief were discovered.

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

The appeal has merit.

*There are inconsistent dates  
when the alleged transaction  
took place*

The essential elements that have to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor.

Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.<sup>[15]</sup>

In this case, the Court agrees with accused-appellant that the prosecution witnesses presented inconsistent dates regarding the occurrence of the alleged drug transaction. On March 3, 2010, IO1 Briguel, the poseur-buyer, testified in his direct examination as follows:

Q: Now, tell us Mr. Witness prior to the conduct of the operation what did your office receive in connection with the same, if any?

A: On **March 28, 2009** one of our confidential informants went to our office and talked to our OIC Marijane T. Ojastro and informed her that he knew of somebody selling illegal drugs.

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Q: After you have already formed the team, you as the poseur buyer, IO1Jabano and IO1Echavaria as arresting officers and Mary Grace Cortez the team leader, what did you agree on in connection with [sic] effecting the operation?

A: We set the date on within which we should be proceeding to Puerto Galera to proceed with our operation and we agreed that we should go to the said place on **March 30**.

Q: Before going to that place on **March 30** what preparations did you make if any?

A: Prior to that date and if I am not mistaken that was on **March 29** we had a briefing regarding the operation and we also prepared the pre-operational report ma'am.

Q: So tell us in that early morning of March 30, how did you proceed to Puerto Galera?

A: We proceeded to Puerto Galera on board our service the Toyota Revo ma'am.<sup>[16]</sup> (emphases supplied)

It is clear from the testimony of IO1 Briguel that they met their confidential informant in the PDEA office on March 28, 2009. Then, on March 29, 2009, the buy-bust team had a briefing regarding the operation and it was then that they prepared the pre-operation report. Finally, on March 30, 2009, the team proceeded to Puerto Galera for the buy-bust operation. The said testimony reflects the statements in the IO1 Briguel's *Sinumpaang Salaysay*,<sup>[17]</sup> dated April 1, 2009. Likewise, the said dates are reflected in the *Magkasanib na Sinumpaang Salaysay*,<sup>[18]</sup> similarly dated April 1, 2009, of IO1 Jabano and IO1 Echavarria.

Later, on September 7, 2010, IO1 Briguel retracted his statement and, instead, insisted that the buy-bust operation occurred on March 29, 2009 based on his *Karagdagang Sinumpaang Salaysay*,<sup>[19]</sup> to wit:

Q: My question now, Mr. Witness, why did you have to execute a Karagdagang Sinumpaang Salaysay when you have already executed a sworn statement with respect to this case?

A: When we filed the case we found out that what is written during the operation was March 30. The date of operation was March 29.

Q: Now, what was the date indicated in all other documents aside from your Sinumpaang Salaysay?

A: Not all, ma'm.

Q: So, you are telling us that the correct date of your operation was March 29, 2009 but what you have indicated in your Sinumpaang Salaysay is March 30 as the date of your operation. Now my question is, in what other documents did this March 30, 2009 appeared?

A: In the laboratory result wherein March 29 was indicated.

Q: So you are telling us that it is only in your original initial Sinumpaang Salaysay that March 30 was indicated?

A: Yes, ma'm, and the Sinumpaang Salaysay of the two (2) arresting officers.<sup>[20]</sup>

The *Karagdagang Sinumpaang Salaysay* of IO1 Briguel, however, contains questionable circumstances. The said document was simply dated April 2009 without indicating the exact day of execution. It was also notarized on April 2, 2009. Assuming *arguendo* that the said *Karagdagang Sinumpaang Salaysay* was notarized on April 2, 2009, then it is dubious as to why IO1 Briguel did not mention the said document at all when he initially testified on March 3, 2010. It was only on September 7, 2010 that IO1 Briguel suddenly remembered that he executed such crucial affidavit. The only plausible explanation is that the incomplete affidavit did not exist as of March 3, 2010.