

SECOND DIVISION

[G.R. No. 215192, July 27, 2016]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNABE M. BARTOLINI, APPELLANT.

D E C I S I O N

CARPIO, J.:

The Case

On appeal is the 13 August 2014 Decision^[1] of the Court of Appeals in CA-G.R. CR-HC No. 00550-MIN. The Court of Appeals affirmed the 16 November 2006 Judgment^[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, convicting appellant Bernabe M. Bartolini (Bartolini) for violating Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The Information dated 21 September 2004 reads:

That on or about the 22nd day of June 2004 at about 7:20 o'clock in the evening, more or less, at Barangay Sugbongcogon, Municipality of Tagoloan, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess and to sell any dangerous drugs, knowingly, willfully and feloniously did then and there sell and convey to a third person twenty-six (26) pieces of white rolled Marijuana sticks, having a total weight of 2.2 grams, which when examined gave positive result to the test of the presence of Marijuana, a dangerous drug.

Contrary to and in violation of Section 5, Article II of RA 9165.^[3]

Upon arraignment, Bartolini entered a plea of not guilty.

The facts, as culled from the records, are as follows:

On 12 June 2004, the Provincial Anti-Illegal Drugs Special Operation Task Unit (PAID-SOTU) of Misamis Oriental conducted a test-buy operation on Bartolini and was able to buy two marijuana sticks from the latter. The following day, the PAID-SOTU tried to conduct a buy-bust operation but failed because Bartolini could not be found within the area.

On 22 June 2004, at around 7:00 in the evening, the PAID-SOTU conducted a buy-bust operation against Bartolini in Sugbongcogon, Tagoloan, Misamis Oriental. The buy-bust team was composed of SPO4 Lorenzo Larot (SPO4 Larot) as team leader,

SPO3 Wilfred Saquilayan, PO3 Arthur Catalan, PO3 Juancho Dizon (PO3 Dizon), PO2 Roel Sereno, and Barangay Kagawad Leonardo Abenque (Barangay Kagawad Abenque). They also had a confidential informant to act as the poseur-buyer to help with the operation. Marked money in the amount of Eighty Pesos (P80), composed of one Fifty Peso bill, one Twenty Peso bill, and one Ten Peso bill, was given to the poseur-buyer.

The members of the buy-bust team were inside a store pretending to be customers while the poseur-buyer was about two meters outside of the store. Bartolini approached the poseur-buyer and thereafter, SPO4 Larot saw the decoy show and give the marked money to Bartolini. Bartolini then went to his house and came back giving the decoy 26 sticks of marijuana. The decoy then placed his white towel on his shoulder, which was the prearranged signal that the transaction took place. The buy-bust team then rushed to Bartolini and arrested him. They recovered the marked money and three stalks of marijuana from Bartolini. The buy-bust team, together with Bartolini, went to the Tagoloan Police Station where the seized items were marked by SPO4 Larot. The Certificate of Inventory was also prepared by SPO4 Larot and was signed by SPO4 Larot, Bartolini, and Barangay Kagawad Abenque.

SPO4 Larot prepared the request for: (1) the laboratory examination of the 26 sticks and 3 stalks of marijuana; (2) the drug test for Bartolini; and (3) the test for ultra-violet radiation of the marked money and the body of Bartolini. The Chemistry Reports from the Philippine National Police Crime Laboratory showed that: (1) the sticks tested positive for the presence of marijuana; (2) Bartolini tested positive for marijuana; and (3) the marked money and the hands of Bartolini were positive for bright green ultra-violet fluorescent powder.

Bartolini, for his defense, stated that on 22 June 2014, at around 7:00 in the evening, he was on his way home when he met two acquaintances -Dodong and Lito, whom he inquired regarding a job at Swift Processing Plant. During the course of their conversation, two persons walked towards them and put him under arrest. These persons were SPO4 Larot and PO3 Dizon. PO3 Dizon thereafter asked him if he was Roger Patok, and when Bartolini denied that he was Roger Patok, PO3 Dizon continued to insist that he was. After asking where Bartolini lived, they went inside his house and searched it. Bartolini saw SPO4 Larot pull something from his pocket and place a white cellophane on the stove of his kitchen. He was then brought to the highway where he was handcuffed, and thereafter, he was brought to the police station where he was made to hold money bills, one One Hundred Peso bill and one Ten Peso bill, and to urinate.

Bartolini strongly denied the accusations against him and contended that he is merely a victim of a frame-up by the police and no such buy-bust operation ever happened.

The Ruling of the RTC

In a Judgment dated 16 November 2006, the RTC found Bartolini guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165,^[4] to wit:

WHEREFORE, in view of the foregoing, the Constitutional presumption of innocence of accused having been overcome by substantial evidence

beyond reasonable doubt, this Court finds accused BERNABE M. BARTOLINI, "guilty" beyond reasonable doubt for Violation of Section 5, Article II of R.A. 9165 and without any aggravating nor mitigating circumstance, hereby sentences accused to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

Accused is credited in the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The twenty-six (26) pieces of white rolled Marijuana sticks are forfeited in favor of the government to be dispensed in accordance with law.

SO ORDERED.^[5]

Bartolini filed his Notice of Appeal^[6] which was given due course by the RTC.

The Ruling of the Court of Appeals

In a Decision dated 13 August 2014,^[7] the Court of Appeals affirmed the decision of the RTC finding Bartolini guilty of violating Section 5, Article II of RA 9165. The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court is AFFIRMED.^[8]

Bartolini filed his Notice of Appeal dated 18 September 2014 with the Court of Appeals.^[9]

The Issue

The issue to be resolved in this appeal is whether or not the Court of Appeals gravely erred in finding Bartolini guilty of violating Section 5, Article II of RA 9165. Bartolini argues that the non-compliance with Section 21, Article II of RA 9165 and the failure to establish the *corpus delicti* of the offense and the unbroken chain of custody should necessarily result in the reversal of his conviction.

The Ruling of the Court

The appeal is meritorious.

For a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.^[10] In this case, we find that the prosecution failed to prove these elements beyond reasonable doubt.

Specifically, Bartolini argues that the *corpus delicti* of the crime was not established,

and the unbroken chain of custody was likewise not established. We find merit in his arguments.

In a case involving dangerous drugs, the substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.^[11] In *People v. Gatlabayan*,^[12] this Court held that it is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.

We find that the prosecution failed to establish the *corpus delicti* of the crime beyond reasonable doubt as there were significant gaps in the chain of custody. The requirement of an unbroken chain of custody is to ensure that unnecessary doubts on the identity of the evidence - the dangerous drugs - are removed.^[13] The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.^[14] The succeeding links in the chain are the different processes the seized item will go through under the possession of different persons. This is why it is vital that each link is sufficiently proven to be unbroken - to obviate switching, planting, or contaminating the evidence.^[15]

In this case, we find that the prosecution failed to sufficiently establish the first link in the chain of custody. There was a failure to mark the drugs immediately after the items were seized from Bartolini. The items were marked only at the police station and the prosecution offered no reasonable explanation as to why the items were not immediately marked after seizure. We have previously held that the failure to mark the drugs immediately after seizure from the accused cast doubt on the prosecution's evidence, which warrants an acquittal on reasonable doubt.^[16] In this case, SPO4 Larot admitted that the items were marked only at the Tagoloan Police Station where Bartolini was brought after he was arrested:

Q It was only in Tagoloan Police Station where you brought the suspect later after his arrest and where you marked the twenty-six sticks and three (3) stalks of marijuana?

A Yes, Ma'am.

Q At the police station?

A Yes, Ma'am.^[17]

This Court has been consistent in holding that the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties.^[18] This is consistent with the provisions of RA 9165 which state:

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, 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;

x x x x (Emphasis supplied)

There have been cases when the Court relaxed the application of Section 21 and held that the subsequent marking at the police station is valid. However, this non-compliance is not fatal only when there are (1) justifiable grounds and (2) the integrity and evidentiary value of the seized items are properly preserved.^[19] And while the amendment of RA 9165 by RA 10640^[20] now allows the conduct of physical inventory in the nearest police station, the principal concern remains to be the preservation of the integrity and evidentiary value of the seized items. In this case, however, the prosecution offered no explanation at all for the non-compliance with Section 21, more particularly that relating to the immediate marking of the seized items. This non-explanation creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Bartolini.

The prosecution also failed to offer any explanation as to why no media representative was present, despite the fact that the police had already conducted a test-buy operation a few days before. As testified by SPO4 Larot, there was no representative from the media during the inventory and taking of photographs of the seized items as required in Section 21:

ATTY. MALANOG:

Q So you took pictures of the marijuana sticks and stalks?

A Yes, Ma'am.

Q Where?

A Tagoloan Police Station.

Q In the presence of the accused?

A Yes, Ma'am.

Q Was there a media representative present?

A There was no media representative[.] But there were barangay officials present.

Q But, are you aware of Section 21, RA 9165, that when you took pictures as a result of the entrapment operation, you are supposed to get a media representative to witness the inventory of the items seized?

x x

x x