

FIRST DIVISION

[G.R. No. 189296, March 11, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RECTO
ANGNGAO Y MAKAY AND ROBERT CARLIN Y PECDASEN,
ACCUSED, RECTO ANGNGAO Y MAKAY, ACCUSED-APPELLANT.**

D E C I S I O N

BERSAMIN, J.:

The State bears the burden of establishing the chain of custody of the dangerous drugs confiscated during a buy-bust operation. The evidence of the chain of custody must meet the test of proof beyond reasonable doubt.

The Case

In its decision promulgated on November 28, 2008,^[1] the Court of Appeals (CA) affirmed the conviction of Recto Angngao y Makay *aka* Amboy under the judgment rendered on December 14, 2006 by the Regional Trial Court, Branch 61 (RTC), in Baguio City for the illegal sale of 250 grams of marijuana resin or hashish (Criminal Case Nos. 22317-R), and for the illegal possession of 500 milliliters of hashish oil (Criminal Case Nos. 22318-R), and sentencing him in each case to life imprisonment and to pay a fine of P500,000.00.^[2]

Hence, this appeal.

Antecedents

According to the CA, the established antecedent facts are as follows:

On 23 November 2003, SPO4 Marquez Madlon, member of the Philippine Drug Enforcement Agency in the Cordillera Autonomous Region (PDEA-CAR), received a call on his cellular phone from a caller who identified himself as Amboy. Amboy, who turned out to be appellant Recto Angngao y Makay, was asking for the whereabouts of a certain Jun Buguias, from whom he allegedly got SPO4 Madlon's number. Recalling that Buguias was one of those arrested by the PDEA-CAR for selling marijuana hashish, SPO4 Madlon took interest in the caller and made up a story by telling him that he was also waiting for Buguias to deliver to him his order of marijuana hashish. Believing SPO4 Madlon's story, appellant disclosed that he had marijuana resin which was supposed to be delivered to Buguias. Appellant likewise proposed that SPO4 Madlon should deal with him directly since Buguias is (sic) nowhere to be found. Appellant offered SPO4 Madlon to sell two hundred fifty (250) grams of marijuana resin for Fifty Thousand Pesos (P50,000.00) and one (1) liter

of marijuana hashish oil for One Hundred Fifty Thousand Pesos (P150,000.00). He agreed to deliver them to SPO4 Madlon on the same day, between 7:30 and 8:30 in the evening at the Petron Gasoline Station in Baguio General Hospital along Marcos Highway.

Forthwith, SPO4 Madlon reported his conversation with appellant to his superior, Police Supt. Danilo Flordeliza, Regional Director of PDEA-CAR.

Acting on SPO4 Madlon's report, P/Supt Flordeliza conducted a briefing for a buy-bust operation. A buy-bust team was thereafter formed with Police Senior Inspector Edgar Apalla as the team leader, SPO4 Arthur Lucas as the back-up guard, SPO2 Cabili Agbayani as the seizing officer, Police Officer Akia as the arresting officer and SPO4 Madlon as the *poseur buyer*. The group brought with them the buy-bust money consisting of ten (10) Five Hundred (P500.00) peso bills, amounting to Five thousand Pesos (P5,000.00), mixed with one (1) bundle of boodle money.

Around 7:15 in the evening, SPO4 Madlon proceeded to the target area on board a rented Tamaraw FX Taxi, while the rest of the police operatives used another vehicle. Upon arriving at the Petron Gasoline Station, SPO4 Madlon called up appellant and informed him that he was already at the area waiting for him.

After waiting for a while, SPO4 Madlon noticed a tamaraw FX Taxi at the vicinity of the gasoline station. A man with a backpack alighted from the vehicle. He was with another man and he seemed to be looking for somebody. To make sure that it was appellant, SPO4 Madlon dialed appellant's cellphone number. The man, who turned out to be appellant, answered the call. SPO4 Madlon therefore instructed him to meet him at the Pancake House located within the vicinity of the Petron gasoline Station.

SPO4 Madlon sat and waited outside the Pancake House. Thereafter, appellant arrived and introduced his companion, who was later identified as appellant's co-accused Robert Carlin y Pecdasen. Carlin sat beside SPO4 Madlon while appellant took a seat opposite SPO4 Madlon. SPO4 Madlon then inquired about their transaction and asked appellant if he could get a discount on the price of the marijuana resin. Appellant refused. SPO4 Madlon then told appellant that he wanted to inspect the marijuana resin and check if it was of good quality. Appellant was at first hesitant but later on prevailed upon to bring out a brick of marijuana resin from his backpack. He showed it to SPO4 Madlon, who after confirming that it was indeed marijuana resin, took out the buy-bust money and gave it to Carlin. Carlin, who, all the while was merely observing the transaction, handed over the money to appellant. Thereafter, SPO4 Madlon stood up, as a pre-arranged signal to the police operatives that the transaction had been completed.

The back-up police officers, who were strategically positioned from a seeing distance, rushed to the aid of SPO4 Madlon and arrested appellant and Carlin. Upon frisking appellant, the police operatives recovered from him the buy-bust money and a bottle of dark-green viscous liquid

suspected to be marijuana hashish oil. The confiscated items were marked with the initials "MKM" representing the initials of SPO4 Marquez Kilit Madlon, "CJA" for SPO2 Cabili Julian Agbayani, "AAL" for SPO4 Arthur Apil Lucas and "DEA" for Police Officer Daniel Esteban Akia.^[3]

The confiscated substances, when brought to the Benguet Provincial Crime Laboratory Office in Baguio City for processing and identification, tested positive for *marijuana*, a dangerous drug. The brick of *marijuana* resin weighed 251.02 grams, while the bottle containing the dark green glutinous substance contained 450 milliliters of *marijuana* hashish oil.^[4]

The Office of the City Prosecutor of Baguio City filed in the RTC two informations against Angngao and Robert Carlin y Pecdasen, charging them with the illegal sale of *marijuana* resin and illegal possession of *marijuana* hashish oil in violation of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

During the trial, Angngao denied the accusations, clarifying that he had been working as a construction worker in Quirino Hill, Baguio City at the time, and that on the day of the arrest, was visiting his cousin who had been confined at the Baguio City General Hospital; and that he was then suddenly accosted and arrested by police officers in the Pancake House near the hospital where he was having a snack.^[5]

For his part, Carlin, also denying the charges, insisted that he did not know Angngao; that he was only accompanying a townmate who visited a friend confined at the Baguio City General Hospital; that after coming from the hospital, he and his friend had gone to the Pancake House to eat when a commotion occurred inside the restaurant caused by police officers arresting a customer, who turned out to be Angngao; and that the policemen then turned to him and arrested him allegedly for being the cohort of Angngao.^[6]

Judgment of the RTC

On December 14, 2006,^[7] the RTC convicted Angngao but acquitted Carlin, viz.:

WHEREFORE, judgment is rendered in Criminal Case No. 22317-R finding the accused Recto Angngao y Makay **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer Life Imprisonment and to pay a fine of P500,000.00 and the costs, and Criminal Case No. 22318-R finding the accused Recto Angngao y Makay likewise **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer Life Imprisonment and to pay a fine of P500,000.00 and the costs.

The accused Roberty (sic) Carlin is **ACQUITTED** on grounds of reasonable doubt and is **ORDERED RELEASED** from custody unless otherwise being held lawfully for some other offense requiring continued detention.

SO ORDERED.^[8]

Decision of the CA

On November 28, 2008,^[9] the CA promulgated its assailed judgment affirming the conviction of Angngao handed down by the RTC, to wit:

WHEREFORE, the Decision of the Regional Trial Court of Baguio City, Branch 61, dated 14 December 2006, in Criminal Cases Nos. 22317-R and 22318-R, is **AFFIRMED**.

SO ORDERED.

Issues

In this appeal, Angngao claims that the CA:^[10]

I.

x x x GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

II

x x x GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTIONS'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUGS.

In the appellee's brief filed in the CA, which the Office of the Solicitor General (OSG) adopted in this appeal, the State seeks the affirmance of the decision of the CA by insisting that the police officers who comprised the entrapment team were entitled to the presumption of the regularity of the performance of their official duty.

Ruling of the Court

The appeal is meritorious.

To ensure a conviction for the illegal sale of dangerous drugs, the following elements constituting the crime must be present, namely: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. Such prosecution for the sale of illegal drugs requires more than the hasty presentation of evidence to prove each element of the crime. The presentation of the drugs as evidence in court is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs are the *corpus delicti* of the crime.^[11] As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the dangerous drugs offered in court as evidence were the same substances bought during the buy-bust operation.^[12] This requirement is complied with by ensuring that the custody of the seized drugs from the time of confiscation until presentation in court is safeguarded under

what is referred to as the chain of custody by Republic Act No. 9165, whose objective is to remove unnecessary doubts concerning the identity of the evidence.
[13]

Should the State not definitively establish that the dangerous drugs presented in court were the very same substances actually recovered from the accused, the criminal prosecution for drug pushing should fail because the guilt of the accused was not established beyond reasonable doubt.^[14] According to *People v. Catalan*,^[15] the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 if the dangerous drugs are missing, or if there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court. Indeed, the non-presentation of the dangerous drugs that constitute the *corpus delicti* would render the conviction unfounded.

As the means for the establishment of the chain of custody, Section 21 (1) of R.A. No. 9165 provides thus:

(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.

Complementing Section 21 (1) of R.A. No. 9165 is the following guideline under the Implementing Rules and Regulations (IRR) of R.A. No. 9165, to wit:

(a) The apprehending officer/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: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

The manner and timing of the marking of the seized drugs or related items in accordance with the foregoing statutory rules are crucial in proving the chain of