

FIRST DIVISION

[G.R. No. 201156, January 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSELITO MORATE Y TARNATE, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

The accused-appellant Joselito Morate appeals from the Decision^[1] dated October 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04197 denying his appeal from the Joint Decision^[2] dated September 7, 2009 of the Regional Trial Court (RTC) of Tabaco City, Branch 17 in Criminal Case Nos. T-4466 and T-4467, which found him guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Informations filed against the accused-appellant in the trial court read:

I. Criminal Case No. T-4466 (For violation of Section 11, Article II, Republic Act No. 9165)

That on or about 12:05 o'clock in the afternoon of April 25, 2006 at P-5, Cormidal[,] Tabaco City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, did then and there willfully, unlawfully, knowingly and criminally possess and have in [his] control dried "MARIJUANA LEAVES" with fruiting tops, contained in One (1) heat-sealed transparent plastic sachet containing 0.3035 gram, without the necessary government authority, to the detriment of the public welfare.^[3]

II. Criminal Case No. T-4467 (For violation of Section 5, Article II, Republic Act No. 9165)

That on or about 12:05 o'clock in the afternoon of April 25, 2006 at P-5, Cormidal, Tabaco City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, did then and there willfully, unlawfully, knowingly and criminally sell, deliver and give away to a poseur-buyer three (3) heat-sealed transparent plastic sachets of MARIJUANA LEAVES with fruiting tops, with a total weight of 1.0291 grams, without the necessary government authority, to the detriment of public welfare.^[4]

The accused-appellant pleaded not guilty to both charges when arraigned.^[5] After

pre-trial was conducted, trial ensued.

The prosecution established that, sometime in April 2006, the Philippine National Police (PNP) in Tabaco City received confidential information that a certain "Palito" of Purok 5, Cormidal, Tabaco City is engaged in the illegal sale of marijuana. Accordingly, Police Senior Inspector (PSInsp.) Fernando Bolanga, Chief of the Tabaco City Central Police Station's Investigation and Detective Management Division, instructed Police Officer (PO) 1 Macneil Manamtam to build up a case about the matter. Going undercover, PO1 Manamtam met with his asset, "Edwin," on April 17, 2006 and made inquiries. The latter informed PO1 Manamtam that "Palito" is accused-appellant Joselito Morate. "Edwin" confirmed that the accused-appellant is indeed involved in the sale of illegal drugs. PO1 Manamtam signified his intention to buy drugs from accused-appellant and asked "Edwin" to make the necessary arrangements. "Edwin" made an assurance that he can facilitate the transaction. He subsequently told PO1 Manamtam that they could buy drugs from the accused-appellant on April 25, 2006 at the canteen near the TMG outpost at the pier in Cormidal, Tabaco City.^[6]

PO1 Manamtam reported to PSInsp. Bolanga and informed the latter that he would be having a transaction with the accused-appellant. In the morning of April 25, 2006, PSInsp. Bolanga called his men for a pre-operation briefing to plan how the buy-bust would be conducted.^[7] PO1 Manamtam was designated as poseur-buyer. He was given two pieces of P50.00 bills as marked money. Senior Police Officer (SPO) 1 Remus Navarro, SPO3 Benigno Dilla, SPO4 Benito Bognalos, PO3 Pedro Antonio Eva III and PO1 Anacito Colarina were to serve as back-up.^[8] With them was PO1 Alden Bayaban, an agent of the Philippine Drug Enforcement Agency (PDEA) detailed at the Tabaco City Police Station.^[9] The team then proceeded to the venue of the transaction in Cormidal, Tabaco City.^[10]

As agreed upon, PO1 Manamtam met "Edwin" in a canteen. The accused-appellant arrived later and "Edwin" introduced PO1 Manamtam as a prospective buyer of marijuana. When the accused-appellant asked how much PO1 Manamtam intended to buy, the latter answered that he would buy P100.00 worth of marijuana. When the accused-appellant demanded immediate payment, PO1 Manamtam initially hesitated but eventually obliged and handed the marked money to the accused-appellant. The accused-appellant left but returned shortly thereafter. He then asked PO1 Manamtam and "Edwin" to go with him to a nearby basketball area where the accused-appellant produced four transparent plastic sachets containing dried leaves and handed three sachets to PO1 Manamtam. The police officer asked the accused-appellant to place the sachets inside the former's backpack. The accused-appellant then showed PO1 Manamtam and "Edwin" another sachet for use by the three of them. The accused-appellant instructed "Edwin" to look for some aluminium coated paper. "Edwin" obliged and left. Meanwhile, PO1 Manamtam sent a text message to the other members of the buy-bust team informing them that the sale had been consummated.^[11]

Upon receiving PO1 Manamtam's message, PO1 Bayaban and PO3 Eva rushed in to arrest the accused-appellant. The accused-appellant noticed the approaching police officers and dropped the sachet that he was holding. PO3 Eva saw what the accused-appellant did and picked up the sachet from the ground. Thereafter, he proceeded to bodily search the accused-appellant to look for the marked money but

did not find it.^[12]

The accused-appellant was arrested. The team also made it appear that PO1 Manamtam was arrested with the accused-appellant to protect PO1 Manamtam's identity. The accused-appellant and PO1 Manamtam were then brought to the police station.^[13]

Upon arrival at the police station, the items confiscated during the buy-bust were counted, marked and inventoried. In particular, PO1 Manamtam marked the three sachets that the accused-appellant handed him as "MCM A," "MCM B," and "MCM C," respectively, while PO3 Eva marked the sachet that the accused-appellant dropped on the ground as "PAE III." The marking and inventory of the seized items were witnessed by Barangay Kagawad Julio Marbella of Cormidal, Tabaco City and Emmanuel Cea III, a local newsman, both of whom signed the Certification of Inventory. The seized items were all transferred to PO3 Eva as the evidence custodian.

PO3 Eva thereafter prepared a Receipt of Seized Evidence/Property before handing the seized items to PO1 Reynaldo Borrromeo who signed the receipt upon taking hold of the items. PO1 Borrromeo proceeded to the PNP Crime Laboratory in Legazpi City bringing with him the seized items and a Request for Laboratory Examination.

The seized items were received by the PNP Crime Laboratory in Legazpi City where PSInsp. Josephine Macura Clemen, a forensic chemist, examined them. The results of her examination showed that the sachet which the accused-appellant dropped on the ground and picked up by PO3 Eva contained 0.3035 gram of marijuana fruiting tops,^[14] while the three sachets which the accused-appellant sold to PO1 Manamtam contained marijuana with an aggregate weight of 1.0291 grams.^[15]

PSInsp. Clemen subsequently presented the seized drugs to the trial court as the prosecution's evidence in the course of her testimony.^[16]

For his part, accused-appellant's defense was denial. According to him, after finishing his work at around noon of April 25, 2006, he went out of the premises of the Tabaco Pier to go home. He was suddenly accosted by SPO3 Eva and Edwin Morate. He was familiar with SPO3 Eva as he frequently sees the latter around. SPO3 Eva asked him if he is Joselito Morate alias "Palito" and he answered affirmatively. At that moment, SPO3 Eva handcuffed the accused-appellant and brought the latter to the police station where he was detained for no apparent reason.^[17]

In its Joint Decision dated September 7, 2009, the trial court found the accused-appellant guilty beyond reasonable doubt of the charges against him. The dispositive portion of the Joint Decision reads:

WHEREFORE, finding the accused JOSELITO MORATE y TARNATE @ "PALITO" guilty beyond reasonable doubt of Violation of Section 5 of Art. II of R.A. 9165, in Criminal Case No. T-4467[,] judgment is hereby rendered sentencing JOSELITO MORATE y TARNATE to suffer the penalty of life imprisonment and a fine of P500,000.00.

Further finding the accused JOSELITO MORATE y TARNATE @ "PALITO" [guilty beyond reasonable doubt] in Criminal Case No. T-4466 for Violation of Section 11[,] Art. II of R.A. 9165[,] judgment is hereby rendered sentencing JOSELITO MORATE y TARNATE to suffer the penalty of imprisonment of twelve (12) years and 1 day to twenty (20) years of reclusion temporal and a fine of P300,000.00.

The confiscated dried marijuana leaves are hereby ordered to be turned over to the Office of the City Prosecutor, Tabaco City, which, in turn, shall coordinate with the proper government agency for the proper disposition and destruction of the same.^[18]

Accused-appellant appealed his case to the Court of Appeals. He questioned his conviction on the basis of what he claimed as non-compliance with the rule on chain of custody of seized illegal drugs. He further claimed that the trial court should not have given full weight and credence to the prosecution's evidence as there was failure to prove the integrity of the seized drug. Such failure on the part of the prosecution means failure to prove his guilt beyond reasonable doubt.^[19]

In particular, the accused-appellant points to the following violations of the chain of custody requirement under Section 21(1) of Republic Act No. 9165 and its implementing rules and regulations: the seized items were marked and subjected to inventory not at the scene of the buy-bust but at the police station; the marking and inventory of the seized drugs were conducted in the presence of the buy-bust team, together with Marbella and Cea, but without the accused-appellant or his representative; and, no photographs were taken during the inventory.^[20]

In its Decision dated October 18, 2011, the Court of Appeals rejected the contentions of the accused-appellant and denied his appeal. According to the Court of Appeals, there was substantial compliance with the requirements of Republic Act No. 9165. In particular, the Court of Appeals noted the following links in the chain of custody:

(1) PO1 Manamtam who was tasked to act as the poseur-buyer testified that the three (3) sachets of marijuana which he bought from the accused-appellant were marked by him as ["MCM A["], ["MCM B["], and ["MCM C["]. While the subject sachet of marijuana which was confiscated by PO3 Eva III when the accused-appellant was frisked during the arrest was marked by the former with ["PAE III["].

(2) The Receipt of Seized Evidence/Property clearly states that the subject sachets of marijuana were turned over by PO3 Eva III and were received by PO1 Borromeo, Jr. who testified and corroborated the said turn over. He further said in open court that aside from being the tasked driver at the buy-bust operation, he was also assigned by the Chief of Police Bataller to bring the items to the Crime Laboratory.

(3) The plastic sachets were brought to the laboratory for examination per Requests for Laboratory Examination signed by PO1 Borromeo.

(4) According to Chemistry Report No[s]. D-82-06 and [D-] 83-06, prepared by Sr. Insp. Josephine Macura Clemen, the four (4) plastic sachets positively contain Marijuana, a dangerous drug.^[21] (Citations omitted.)

For the Court of Appeals, the circumstances above show that the chain of custody of the seized items was properly established: "the items seized from the accused-appellant at the scene of the crime were also the items marked by the arresting officers, turned over to the investigator, sent to the Crime Laboratory, and returned after yielding positive results for Marijuana."^[22] Thus, the Court of Appeals upheld the conviction of the accused-appellant for both crimes. The decretal portion of the Decision dated October 18, 2011 reads:

IN VIEW OF ALL THE FOREGOING, the appeal is hereby DISMISSED. The Joint Decision dated 07 September 2009 of the Regional Trial Court of Tabaco City, Branch 17 in Criminal Cases Nos. T-4466 and T-4467 finding accused-appellant **JOSELITO MORATE y TARNATE** guilty of the violations charged is **AFFIRMED**.^[23]

Accused-appellant is now before this Court insisting on the failure of the prosecution to prove his guilt beyond reasonable doubt on account of the prosecution's non-compliance with the chain of custody requirement under Section 21(1) of Republic Act No. 9165 and its implementing rules and regulations.

This Court denies the accused-appellant's appeal.

Initially, it must be emphasized that accused-appellant's defense of alleged non-compliance with Section 21 of Republic Act No. 9165 was raised belatedly and for the first time on appeal. Failure to raise the issue of non-observance of the chain of custody requirement during trial is fatal to the case of the accused-appellant.^[24] As explained in *People v. Sta. Maria*^[25]:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. **Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.** (Emphasis supplied, citation omitted.)