

## FIRST DIVISION

[ G.R. No. 185166, January 26, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARK  
LESTER DELA ROSA Y SUELLO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

The subject of this present appeal is the Decision<sup>[1]</sup> dated 24 April 2008 of the Court of Appeals in CA-G.R. CR HC No. 02642, affirming the Decision<sup>[2]</sup> dated 8 December 2006 of the Regional Trial Court (RTC) of Makati City, Branch 135, in Criminal Case Nos. 06-1870 to 06-1871, finding herein appellant Mark Lester Dela Rosa y Suello guilty beyond reasonable doubt of the crime of illegal sale and illegal possession of *marijuana*, a dangerous drug, in violation of Sections 5<sup>[3]</sup> and 11,<sup>[4]</sup> Article II of Republic Act No. 9165,<sup>[5]</sup> thereby, sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 for violation of Section 5, Article II of Republic Act No. 9165 (Criminal Case No. 06-1870) and an indeterminate penalty of 12 years and 1 day, as minimum, to 14 years and 8 months, as maximum, and to pay a fine of P300,000.00 for violation of Section 11, Article II of Republic Act No. 9165 (Criminal Case No. 06-1871).

In two separate Informations<sup>[6]</sup> both dated 26 September 2006, appellant Mark Lester Dela Rosa y Suello was charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 06-1870 and Criminal Case No. 06-1871. The Informations read as follows:

#### **Criminal Case No. 06-1870**

That on or about the 25<sup>th</sup> day of September 2006, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription did then and there willfully, unlawfully and feloniously **sell, distribute and transport three point zero two (3.02) grams of *marijuana***, which is a dangerous drug **in consideration of the amount of one hundred (Php100.00) pesos.**<sup>[7]</sup> [Emphasis supplied].

#### **Criminal Case No. 06-1871**

That on or about the 25<sup>th</sup> day of September 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there

willfully, unlawfully and feloniously **have in his possession five point six zero (5.60) grams of [m]arijuana**, which is a dangerous drug.<sup>[8]</sup>  
[Emphasis supplied].

When arraigned,<sup>[9]</sup> appellant, assisted by counsel *de officio*, pleaded "NOT GUILTY" to both charges. Thereafter, trial on the merits ensued.

The prosecution presented the testimony of its lone witness, Police Officer 3 Eusebio Lowaton, Jr. (PO3 Lowaton), of the Special Anti Illegal Drug-Special Operation Task Force (SAID-SOTF), Makati City.

The facts of the case as culled from the records and testimony of PO3 Lowaton are as follows:

On 25 September 2006, the Makati Anti-Drug Abuse Council (MADAC) operatives, together with an informant, came to the office of SAID-SOTF, Makati City, where PO3 Lowaton was one of the police officers assigned thereat, and reported that appellant was involved in the illegal sale of *marijuana* in Kalayaan Avenue, *Barangay* Singkamas, Makati City.<sup>[10]</sup>

On the basis thereof, the SAID-SOTF, Makati City, formed a team to conduct a buy-bust operation to verify if appellant was, indeed, involved in the illegal sale of *marijuana* in the above-mentioned place. The buy-bust team through one of its members, PO3 Lowaton, prepared a Pre-Operational Report/Coordination Sheet<sup>[11]</sup> and sent the same to the Philippine Drug Enforcement Agency (PDEA). In response thereto, PDEA sent a Certificate of Coordination<sup>[12]</sup> to confirm that the buy-bust team of SAID-SOTF, Makati City, had made the necessary coordination with their office in connection with the conduct of its anti-drug operations against appellant.  
<sup>[13]</sup>

After a complete coordination with PDEA, the briefing of the members of the buy-bust team followed, wherein PO3 Lowaton was designated as *poseur*-buyer. He was also given two Fifty Peso bills<sup>[14]</sup> marked money in the total amount of P100.00, bearing Serial Nos. FR 485129 and CY 532084, respectively, with markings "ATS" on the upper right portion of the serial number of each bill.<sup>[15]</sup>

Thereafter, the buy-bust team, together with the informant, proceeded to the target area in Kalayaan Avenue, *Barangay* Singkamas, Makati City. Upon arrival thereat, the buy-bust team waited for the appellant and soon after, the latter arrived after a few minutes. Subsequently, PO3 Lowaton and the informant walked towards the direction of the appellant. The informant then approached appellant and introduced to him PO3 Lowaton as someone interested in buying *marijuana*. Appellant asked PO3 Lowaton as to the amount of *marijuana* that he wanted to buy to which the latter replied that he would be buying P100.00 worth of *marijuana*. Appellant immediately took one plastic sachet of *marijuana* from his pocket that corresponds to the amount agreed upon and handed the same to PO3 Lowaton. The latter, in turn, handed the two marked Fifty Peso bills to appellant as payment for the purchased item.<sup>[16]</sup>

Upon the consummation of the sale, PO3 Lowaton executed their pre-arranged signal by holding appellant's right hand. At this juncture, the other members of the buy-bust team who were in the vicinity of the target area came in to help PO3 Lowaton, who at that moment had already introduced himself as a police officer, in arresting appellant. Appellant was arrested at around 3:15 p.m. PO3 Lowaton informed appellant of the cause of his arrest and of his constitutional rights. While frisking the appellant, however, PO3 Lowaton recovered from the former two more plastic sachets of *marijuana*. Subsequently, PO3 Lowaton marked the one plastic sachet of *marijuana* sold to him by appellant with his initials "EBL." He likewise marked the two other plastic sachets of *marijuana* that he recovered from appellant as "EBL-1" and "EBL-2." The seized items from appellant were also inventoried at the place where appellant was arrested and in his presence, as evidenced by an Acknowledgment Receipt<sup>[17]</sup> dated 25 September 2006.<sup>[18]</sup>

After appellant's arrest, he was brought to the office of SAID-SOTF, Makati City. The three plastic sachets of *marijuana* that has been previously marked were photographed<sup>[19]</sup> and sent to the Philippine National Police (PNP) Crime Laboratory for examination. The examination conducted on the aforesaid specimen, *i.e.*, three plastic sachet of *marijuana*, yielded positive<sup>[20]</sup> results to the tests for the presence of *marijuana*, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S.<sup>[21]</sup> Also, after the completion of the buy-bust operation, an after operation report or the so-called "Spot Report"<sup>[22]</sup> was prepared and sent to PDEA.<sup>[23]</sup>

After PO3 Lowaton's testimony, the parties agreed and stipulated that the testimony of Jeffrey Abellana, one of MADAC operatives, would be that he was a member of the back up team that assisted in the arrest of appellant. The prosecution, thus, decided to dispense with his testimony.<sup>[24]</sup>

The defense, on the other hand, presented appellant as their sole witness and offered a different version of what transpired on the day of his arrest.

Appellant narrated that on 25 September 2006, at around 12:00 noon, he was sleeping inside his house located at 4041 Kalayaan Street, *Barangay* Singkamas, Makati City, when suddenly he was awakened by three persons, who introduced themselves as MADAC operatives. These MADAC operatives were looking for a certain Richard. Upon asking them the reason why they were looking for Richard inside his house and at the same time telling them that he was not the person they were looking for, the MADAC operatives simply told him to just go with them peacefully. Without offering any resistance, appellant went with the MADAC operatives. The latter brought him to their office where he was asked to reveal the whereabouts of Richard to which the appellant replied that he does not know the person they were looking for. At this juncture, the MADAC operatives told him that if he will not reveal the whereabouts of Richard, then, they will charge him with possession of *marijuana* that they were carrying at that moment. Thereafter, he was detained at their office for about eight to nine days.<sup>[25]</sup>

Appellant further stated that when the MADAC operatives brought him out of the detention cell, he was subsequently brought inside a building where there was a fiscal. The latter then informed him that he was charged with the crime of illegal sale and possession of *marijuana* in violation of Sections 5 and 11, Article II of

Republic Act No. 9165. Appellant, however, denied the same.<sup>[26]</sup>

After all the documentary and testimonial evidence offered by both parties were meticulously evaluated, the trial court concluded that all the elements of the offenses charged against appellant were satisfactorily proven by the prosecution. Thus, in its Decision dated 8 December 2006, the trial court held appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

WHEREFORE, it appearing that the guilt of [appellant] MARK LESTER DE LA ROSA y SUELLO was proven beyond reasonable doubt, as principal, with no mitigating or aggravating circumstances, for violation [of] Section[s] 5 and 11, Article II of Republic Act No. 9165, he is hereby sentenced:

1. In **Criminal Case No. 06-1870**, to suffer **life imprisonment and to pay a fine of P500,000.00**;
2. In **Criminal Case No. 06-1871**, to suffer imprisonment for **an indeterminate term of twelve [12] years and one [1] day, as minimum, to fourteen [14] years, and eight [8] months, as maximum, and to pay a fine of P300,000.00**; and
3. To pay the costs.

Let the plastic sachets containing 3.02grams, 2.95 grams, and 2.65 grams of *marijuana* be turned over to the PDEA for proper disposition.  
<sup>[27]</sup> [Emphasis supplied].

Aggrieved, appellant appealed the aforesaid 8 December 2006 Decision of the trial court to the Court of Appeals *via* a Notice of Appeal.<sup>[28]</sup>

The Court of Appeals, after a thorough study of the records, rendered the assailed Decision dated 24 April 2008, affirming appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165. The decretal portion of the said Decision reads, thus:

**WHEREFORE**, the instant appeal is hereby **DENIED** and the questioned Decision of the RTC of Makati City, Branch 135, in Criminal Case Nos. 06-1870 and 06-1871, convicting the [appellant] beyond reasonable doubt of the crime of violation of Sections 5 and 11, Article II of Republic Act No. 9165, **AFFIRMED**.<sup>[29]</sup> [Emphasis supplied].

Still unsatisfied, appellant elevated the aforesaid Decision of the appellate court to this Court *via* a Notice of Appeal.<sup>[30]</sup>

In a Resolution<sup>[31]</sup> dated 14 January 2009, this Court required the parties to simultaneously submit their respective supplemental briefs if they so desire. Instead of filing a Supplemental Brief, the Office of the Solicitor General filed a Manifestation and Motion<sup>[32]</sup> stating that it be excused from filing it as the appellant has not advanced any cogent or compelling reason for the modification, much less reversal of the assailed appellate court's Decision.

Appellant, on the other hand, opted to file a Supplemental Brief<sup>[33]</sup> reiterating therein the arguments raised in his Appellant's Brief filed before the Court of Appeals.

In his brief, appellant raised the following assignment of errors:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE EVIDENCE OF THE PROSECUTION WHICH FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE [APPELLANT].

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY OF THE CRIMES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.  
<sup>[34]</sup>

Appellant argues that the fact of sale of *marijuana* was not conclusively established because PO3 Lowaton's testimony was incredible for no person in his right mind would boldly sell prohibited drugs in broad daylight and in a public place. The inconsistency in the testimony of PO3 Lowaton as regards their pre-arranged signal similarly casts doubt on the credibility of his testimony. More so, the alleged buy-bust operation was conducted without any prior surveillance. Appellant likewise maintains that his arrest was tainted with irregularity as there was an evident violation of Section 21, Article II of Republic Act No. 9165. By reason of the foregoing, appellant insists that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

After a painstaking review of the records, this Court affirms appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165.

In every prosecution for illegal sale of dangerous drugs, like *marijuana*, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.<sup>[35]</sup> **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence.** We reiterate the meaning of the term *corpus delicti* which is the actual commission by someone of the particular crime charged.<sup>[36]</sup> The **commission of the offense**