

FIRST DIVISION

[G.R. No. 187070, February 24, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO TAMAYO Y TENA, ACCUSED-APPELLANT.**

D E C I S I O N

VILLARAMA, JR., J.:

For review is the Decision ^[1] dated April 21, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01850, which affirmed the Joint Decision ^[2] dated December 27, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 103 in *Criminal Case Nos. Q-03-117407* and *Q-03-117408*. The trial court convicted appellant Rolando Tamayo y Tena of violation of Sections 5 ^[3] and 11 ^[4] of Article II of Republic Act No. 9165 ^[5] and sentenced him to suffer the penalty of life imprisonment and to pay the fine of P500,000.00 in *Criminal Case No. Q-03-117407*, and to suffer the penalty of life imprisonment and to pay the fine of P500,000.00 in *Criminal Case No. Q-03-117408*.

The appellant was charged in two (2) Informations, ^[6] which read as follows:

Crim. Case No. Q-03-117407

That on or about the 17th day of May, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, twelve point seventeen (12.17) grams of dried marijuana leaves a dangerous drug.

CONTRARY TO LAW.

Crim. Case No. Q-03-117408

That on or about the 17th day of May, 2003, in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, wilfully, unlawfully and knowingly have in her/his/their possession and control, one thousand four hundred ninety one point five (1,491.5) grams of marijuana fruiting tops, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment on June 30, 2003, the appellant pleaded not guilty to the charges against him. [7] Thereafter, trial ensued.

The prosecution presented as witnesses Police Officers Andres Nelson Sy and Cesar C. Collado of Police Station 4, Novaliches, Quezon City. They testified that on May 17, 2003 at around 5:30 p.m., a confidential informant arrived at the station and reported that a certain "Ronnie" was selling marijuana at Pilarin Street, Barangay Gulod, Novaliches, Quezon City. At once, a team was created to conduct a buy-bust operation in the reported area. PO3 Sy was designated as the poseur-buyer, while PO2 Collado, Police Superintendent Noli Wong and one (1) other police officer were assigned as back-ups. PO3 Sy placed his initials "ANS" on a one hundred peso (P100.00) bill, which would be used as the buy-bust money. Then the team and the confidential informant proceeded to the target area. [8]

At around 7:00 p.m., PO3 Sy and the confidential informant went to the appellant's house, while PO2 Collado and the other officers remained inside their vehicle, about ten (10) to fifteen (15) meters away from the house. After the informant introduced PO3 Sy to the appellant, PO3 Sy was allowed to enter the house. Once inside, PO3 Sy told the appellant that he is interested in buying marijuana. The appellant asked PO3 Sy to wait. The appellant then went to the stairs and took a bag which was colored blue, green and pink. The appellant placed the bag on a table and took out a tea bag supposedly containing dried marijuana. PO3 Sy gave the P100.00 buy-bust money to the appellant, who in turn handed him the tea bag. Right after the exchange, PO3 Sy introduced himself as a police officer and placed the appellant under arrest. Thereafter, the confidential informant went out of the house, which was the pre-arranged signal that the sale of illegal drugs was already consummated. [9] PO3 Sy likewise testified that at the time he was transacting with the appellant, there were people playing video *karera* inside the house and that those people scampered away when he arrested the appellant. [10]

PO2 Collado testified that as soon as he saw the confidential informant go out of the house, he approached PO3 Sy who was already holding the appellant. PO2 Collado examined the bag and discovered dried marijuana leaves inside, but it was PO3 Sy who recovered the buy-bust money and other plastic sachets containing dried marijuana fruiting tops from the appellant. Afterwards, the appellant was brought to the police station together with the confiscated dried marijuana fruiting tops. There were eight (8) plastic sachets containing marijuana fruiting tops recovered from the appellant aside from the dried marijuana contents of the bag. [11]

On cross-examination, PO3 Sy testified that it was his first time to meet the appellant. He likewise testified that during the time he was dealing with the appellant, there were other people inside the house. [12] On the other hand, PO2 Collado testified that he was at a distance of about fifteen (15) meters from the appellant's house when the illegal sale took place. Right after he saw the confidential informant running out of the house, he immediately approached PO3 Sy. [13] PO3 Sy and PO2 Collado positively identified the appellant and the dried marijuana leaves in open court. [14] PO3 Sy identified the tea bag containing marijuana through his initials, "ANS." [15]

The testimony of Forensic Chemist Yelah C. Manaog, who examined the substance and prepared the report, was dispensed with, considering that the parties had stipulated that the report was duly accomplished after the substance examined by the crime laboratory yielded "positive" to the test for marijuana, a dangerous drug.

[16]

The defense, for its part, presented the appellant as its sole witness. He testified that he was with his daughter inside his house at No. 18 Pilarin Street, Barangay Gulod, Novaliches, Quezon City at around 3:00 to 4:00 in the afternoon of May 17, 2003, when someone barged into his house and pointed a gun at him. He asked the person, who later turned out to be a police officer, what was going on but he did not get any answer. He was then forcibly dragged out of his house, made to board a van, and brought to Police Station 4 in Novaliches, Quezon City. He further testified that at the police station, he was put inside a detention cell. He denied the allegations of the prosecution. [17]

On cross-examination, the appellant testified that he worked as a mason while his wife is a manicurist. They have two (2) children who are still toddlers. He also narrated that at the time he was arrested, his wife was not in their house and he sought the help of his sister, Baby, who lives right beside them. According to him, Baby did not ask the police officers the reason for his arrest. [18]

On December 27, 2005, the trial court found the evidence of the prosecution sufficient to prove the appellant's guilt beyond reasonable doubt and rendered a decision of conviction in *Criminal Case Nos. Q-03-117407* and *Q-03-117408*.

The dispositive portion of the trial court's joint decision reads:

WHEREFORE, in view of the foregoing disquisitions, judgment is hereby rendered finding accused **Rolando Tamayo y Tena** **GUILTY** beyond reasonable doubt of the crimes of drug pushing and of drug possession and he is hereby sentenced, as follows:

1. In Criminal Case No. Q-03-117407, accused **Rolando Tamayo y Tena** is hereby sentenced to suffer **Life Imprisonment** and to pay a fine of P500,000.00.
2. In Criminal Case No. Q-03-117408, accused **Rolando Tamayo y Tena** is hereby likewise sentenced to suffer **Life Imprisonment** and to pay a fine of P500,000.00 in view of the large quantity of marijuana involved.

The drugs involved in this case are hereby ordered transmitted to the PDEA thru DDB for proper disposition.

SO ORDERED. [19]

The appellant appealed to the Court of Appeals, [20] which, however, sustained the

trial court's judgment of conviction.

Hence, the present appeal.

On June 10, 2009, we required the parties to submit their supplemental briefs if they so desired. The Office of the Solicitor General (OSG), however, opted not to file its supplemental brief, while the appellant adopted his brief filed with the Court of Appeals. In his brief, the appellant interposed the following arguments:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE ADDUCED BY THE DEFENSE. [21]

Simply stated, the issue is whether the appellant is guilty beyond reasonable doubt of violating Rep. Act No. 9165.

Appellant denies the charges against him and insists that he was merely inside his house with his three (3)-year old daughter and doing nothing illegal when the alleged buy-bust operation happened. He suggests that he was the victim of a frame-up as it is well known that some law enforcers engage in anomalous practices such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. He laments the fact that his testimony was not given weight and that the trial court found his version difficult to accept. He insists that the presumption of innocence prevails over the presumption of regularity in the performance of duty and contends that his guilt was not proven beyond reasonable doubt. [22]

For the State, the OSG maintains that the prosecution had established all the elements of an illegal sale of prohibited drugs, viz: (1) the appellant sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. The facts show that the appellant sold and delivered marijuana to PO3 Sy who posed as a buyer. The marijuana that was seized and identified as a prohibited drug was subsequently presented in evidence. Moreover, the OSG maintains that witnesses PO2 Collado and PO3 Sy positively identified the appellant as the perpetrator of the crime. The records do not disclose any ill-motive on their part to falsely accuse the appellant of an atrocious crime. [23]

We affirm the appellant's conviction.

It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. [24] In this case, no evidence was adduced showing any

irregularity in any material aspect of the conduct of the buy-bust operation. Neither was there any proof that the prosecution witnesses who were members of the buy-bust operation team, particularly those whose testimonies were in question, were impelled by any ill-feeling or improper motive against the appellant which would raise a doubt as to their credibility.

In a prosecution for illegal *sale* of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. In a prosecution for illegal *possession* of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.^[25]

Here, the prosecution was able to prove the existence of all the elements of the illegal sale and illegal possession of marijuana. The appellant was positively identified by the prosecution witnesses as the person who possessed and sold the marijuana presented in court. In his testimony, PO3 Sy categorically stated that he bought the marijuana from the appellant. In addition, it was duly established that the sale actually took place and more marijuana was discovered in appellant's possession pursuant to a lawful arrest. The marked money used in the buy-bust operation was likewise duly presented. Furthermore, the marijuana seized from the appellant was positively and categorically identified in open court. ^[26]

We give credence to the straightforward testimony of prosecution witness PO3 Andres Nelson Sy, which clearly established that an illegal sale of marijuana actually took place and that the appellant was the seller, thus:

FIS. ARAULA;

You said that you are a police officer, do you remember where were you sometime in M[a]y 17, 2003, mr. witness?

WITNESS:

At police station 4, Novaliches, Quezon City sir.

FIS. ARAULA;

What time you reported to Police station 4 on May 17, 2003, mr. witness?

WITNESS:

I reported for work at about 8:00 in the morning sir.

FIS. ARAULA;

While at the police station, what happened, mr. witness?

WITNESS: