

SECOND DIVISION

[G.R. No. 182231, April 16, 2009]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. EDDIE GUM-OYEN Y SACPA, APPELLEE.

DECISION

TINGA, J.:

Two separate informations^[1] for violations of Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, were filed against appellant Eddie Gum-Oyen y Sacpa. He pleaded not guilty to both charges at the arraignment.^[2]

During the pre-trial conference, the prosecution and the defense stipulated on the existence of Chemistry Report Nos. D-049-03 and P1-002-03, as well as the existence of the request for the ultraviolet fluorescent dusting addressed to the Philippine National Police (PNP) Crime Laboratory, Regional Office No. 1; the identity of the accused, and the date indicated in the information as the alleged date of the incident. Thereafter, trial on the merits ensued.

The prosecution presented, as witnesses, Police Officer (PO)³ Allan Bañana, Police Inspector and Forensic Chemist Imelda Roderos, Senior Police Inspector and Forensic Chemist Valeriano P. Laya II, and Senior Police Officer (SPO)¹ Wilfredo Montero. On the other hand, the defense called to the witness stand the accused himself Marilou Panit and Balloguing Gum-Oyen.

According to the prosecution, the facts are as follows:

On 5 February 2003, PO³ Allan Bañana and SPO¹ Wilfredo Montero of the Drug Enforcement Unit, Naguilian, La Union received a report from a police asset that a certain Eddie would deliver marijuana to Barangay Cabaritan, Naguilian, La Union. PO³ Bañana and SPO¹ Montero immediately relayed this information to their station commander, Police Superintendent Rolando Nana, who directed them to conduct a buy-bust operation together with PO³ Mendoza and PO¹ Mendoza.^[3]

With the police asset acting as the *poseur-buyer* and P1,120.00 as buy-bust money,^[4] PO³ Bañana and SPO¹ Montero proceeded to the target place. PO³ Bañana and SPO¹ Montero positioned themselves at a waiting shed while the rest of the buy-bust team who followed stood by the houses opposite the shed. The police asset waited for the arrival of the appellant by the road close to the houses.^[5]

Around 11:30 a.m, appellant arrived at the place on board a tricycle. Carrying a blue bag, he alighted therefrom and talked to the police asset. Then appellant put down his bag, opened it and took out a square-shaped object wrapped in a brown-

colored plastic. Appellant partially opened it and gave it to the police asset. After smelling the object, the police asset handed the buy-bust money to appellant. While appellant was counting the money, the buy-bust team identified themselves as policemen, arrested him, apprised him of his rights and frisked him for dangerous weapons.^[6]

PO3 Bañana searched appellant's bag and recovered three (3) more bricks of marijuana. Thereafter, they brought appellant to the police station and to the hospital for medical examination.^[7]

At the police station, the buy-bust money was recovered from appellant, together with the four (4) bricks of marijuana, and turned over to the investigator on duty, SPO1 Valentin Abenoja, who marked the items. The police next presented appellant to the Municipal Mayor, and photographs of them with several police officers and the seized items were taken.^[8]

Afterward, PO3 Bañana and SPO1 Abenoja, with appellant in tow, brought the marijuana, seven (7) of the P10.00 bills and one (1) P50.00 bill with two (2) requests for laboratory examination to the PNP Crime Laboratory. When the initial and the final laboratory reports confirmed the positive existence of marijuana, PO3 Bañana and SPO1 Montero executed a joint affidavit against appellant and a request for his inquest. ^[9]

Police Inspector Imelda Roderos, a forensic chemist at the PNP Crime Laboratory testified that she had received a request to conduct an ultraviolet examination of several money bills and of the person of the appellant. Both hands of appellant and the money bills were found positive for the presence of ultraviolet powder. Her findings are embodied in Chemistry Report No. PI-002-03.^[10]

Senior Police Inspector Valeriano P. Laya II, also a forensic chemist of the Philippine National Police (PNP) Crime Laboratory, stated that he had received a letter-request from the Naguilian Police Station for the laboratory examination of four (4) bricks of dried marijuana fruiting tops. The specimen tested positive for marijuana, and the findings were recorded in Chemistry Report No. D-049-03.^[11]

In his defense, appellant maintained that he had only been instigated to commit the offenses charged. He testified that on 12 January 2003, a certain Roger Fundanera, a former co-worker at a construction firm in Irisan, Baguio City and a police asset, had gone to his house and asked him to go buy marijuana from someone in San Gabriel. Roger returned a couple more times and, on the last date, 4 February 2003, gave him P2,500.00 and a letter and instructed him to give them to the person from whom he was going to buy marijuana. On even date, appellant left for Sacdaan, San Gabriel.^[12]

Appellant reached the place at 2:00 p.m. and thereat handed the letter and the money, in the amount of P2,200.00, to Ponsing. Appellant used the remaining P300.00 for his fare. Ponsing then told him to meet him at Lon-oy, San Gabriel the following day at 6:30 a.m. Subsequently, appellant went home to his parents' house in Bayabas, San Gabriel.^[13]

In the morning of the next day, appellant met with Ponsing in Lon-oy. Appellant handed to him his handbag, and the latter placed inside it something wrapped in plastic. Thereafter, appellant traveled to Bauang to meet with Roger. At the meeting place, after appellant had given Roger the handbag, the latter placed it inside a tricycle, boarded the same and asked appellant to ride with him to Naguilian. En route, three (3) men in civilian clothes boarded the tricycle. Roger asked appellant to give one (1) bundle from inside the bag to one of the three (3) persons. Following this, the three (3) persons, whom he later found out to be police officers, arrested him and brought him to the Municipal Hall of Naguilian.^[14]

Appellant denied having P1,120.00 in his pocket at the time of his arrest but he confirmed that his hands were found positive for the presence of ultraviolet powder.^[15] Appellant also testified that he had gone to San Gabriel upon Roger's request to help the latter procure marijuana, without any intent to gain on his part and despite the fact that he knew it was prohibited for anybody to have in his possession any amount of marijuana.^[16]

Marilou Panit, appellant's live-in partner, testified that Roger Fundanera, a police asset, had been to their house on 12 and 20 January 2003, and on 4 February 2004. Marilou stated that appellant had merely gone to San Gabriel to purchase marijuana for Roger upon the insistence of and as an accommodation to Roger in order for the policemen to believe appellant's story about its real source. After appellant left for San Gabriel, Marilou next saw him when he was already behind bars.^[17]

Balloguing Gum-Oyen, appellant's father, testified that in the evening of 4 February 2003, he was roused from sleep by the knocking at the door. When he opened it, he saw appellant. Asked about the purpose for his visit, appellant replied that somebody had ordered him to get something. Appellant left at dawn the next day without telling him where he was going. ^[18]

In a Decision promulgated on 5 May 1995, the Regional Trial Court (RTC) of Bauang, La Union, Branch 67 found appellant guilty of illegal possession of marijuana. Appellant, however, was acquitted of the offense of illegal sale of marijuana. The dispositive portion of the decision reads, as follows:

WHEREFORE, judgment is rendered:

In Criminal Case No. 2808 **ACQUITTING** the accused Eddie Gum-oyen y Sacpa on reasonable doubt of the charge;

In Criminal Case No. 2809, finding the accused Eddie Gum-oyen y Sacpa **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Marijuana defined and penalized under Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the supreme penalty of death by lethal injection and to pay a fine of Ten Million (P10,000,000.00) Pesos, and the cost.

The confiscated and/or seized items were already destroyed in accordance with Section 21, par. 4 of Republic Act 9165 on October 29, 2004 at 9:30 A.M. in front of the Justice Hall, Municipality of Bauang,

Province of La Union.

SO ORDERED.^[19]

Before the Court of Appeals, appellant raised a lone assignment of error--"the trial court gravely erred in convicting accused-appellant of the crime charged despite the failure of the prosecution to establish the identity of the *corpus delicti*."

On 19 November 2007, the Court of Appeals rendered the assailed decision^[20] affirming the judgment of the trial court but modifying the penalty to life imprisonment conformably to R.A. No. 9346^[21] prohibiting the imposition of the death penalty. The pertinent portions of the decision follow:

The prosecution successfully proved the existence of all elements necessary to convict accused-appellant of illegal possession of dangerous drugs penalized under Section 11, Article II of R.A. 9165. PO3 Bañana, SPO1 Montero and the other police operatives caught accused-appellant in unauthorized possession of the three (3) bricks of marijuana at the time of his arrest. Accused-appellant was not authorized to possess marijuana. He knew that the unauthorized possession of marijuana is penalized by law. He freely and consciously possessed the bricks of marijuana notwithstanding his knowledge that such possession is illegal.

Likewise, the prosecution established the *corpus delicti* of the offense with moral certainty. PO3 Bañana and the other members of the buy-bust team immediately turned over the three bricks of marijuana to the police investigator on duty, SPO1 Abenoja. The latter, PO3 Bañana and SPO1 Montero marked the three bricks of marijuana with their respective initials at the police station after accused-appellant's arrest. PO3 Bañana also recorded in the police blotter the items seized from accused-appellant including the three bricks of marijuana subject of this case. PO3 Bañana and SPO1 Abenoja turned over the three bricks of marijuana to the crime laboratory for examination. Chemistry Report No. D-049-03 shows that the three bricks tested positive to the laboratory examination for the presence of marijuana. The three marijuana bricks were properly identified, marked and offered in evidence during the trial. The testimony of PO3 Bañana sufficiently proves that the three bricks of marijuana seized from accused-appellant are the same items presented as evidence against him before the court *a quo*.

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The defense of instigation put up by accused-appellant does not inspire belief. Accused-appellant's testimony in this regard is inconsistent and not credible. He initially testified that he worked with Roger Fundanera in a construction work, and that Roger asked him to buy marijuana for him. Despite the incredulity of Roger's request, accused-appellant gave in and traveled to Sacdaan, San Gabriel to buy marijuana from the person whom Roger mentioned. It was, however, only during the next hearing that accused-appellant testified that Roger was a police asset. Significantly, Roger never testified for the prosecution and for the defense. His identity remains questionable to this Court. Clearly, what the