

THIRTEENTH DIVISION

[CA-G.R. CR-HC NO. 05997, March 31, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEMAR MALTO Y NAVARRO, ACCUSED-APPELLANT.

DECISION

CORALES, J.:

This is an appeal^[1] from the November 5, 2012 Judgment^[2] of the Regional Trial Court (RTC), Branch 34, Iriga City in Criminal Case No. IR-8670 finding accused-appellant Jemar Malto (Malto) guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

Malto was charged with violation of Section 5, Article II of R.A. No. 9165 under an Information^[3] which reads:

That on October 8, 2008 at about 2:45 o'clock in the afternoon at San Roque, Iriga City and within the jurisdiction of this Honorable Court, the said accused, without authority of the law did, then and there willfully, unlawfully and feloniously sell and deliver two (2) heat-sealed transparent plastic sachet containing dried marijuana leaves weighing 1.8 grams, more or less to PO2 Zandro I. Iriola who acted as poseur-buyer using one (1) one-hundred peso bill with serial number BJ694666, a marked money, to the damage of public interest.

ACTS CONTRARY TO LAW.

He pleaded "not guilty" to the offense charged.^[4] In the ensuing trial, the prosecution presented the testimonies of the designated poseur-buyer PO2 Zandro Iriola (PO2 Iriola), Forensic Chemical Officer of Regional Crime Laboratory Office 5 PI Edsel E. Villalobos (PI Villalobos), and the other members of the arresting team particularly SPO2 Abdunnajir Asari (SPO2 Asari) and SPO4 Andre P. Belleza (SPO4 Belleza). Malto was the lone witness for the defense.

The Version of the Prosecution

The Office of the Solicitor General (OSG), citing the testimonies of the witnesses, summarized^[5] the version of the prosecution in this wise:

9. On 08 October 2008, at around 2:00 o'clock in the afternoon, SPO4 Andrew P. Bellezza (Belleza), head of the Intelligence and Anti-Illegal Drugs Special Operation Task Force Section of PNP Iriga City, received a

report from a police asset regarding the drug pushing activities in the railroad tracks at San Roque, Iriga City. In response to the said report, and after being apprised that the seller might be leaving the area soon, a buy-bust operation team was organized. The said team comprised of the following members: (i) Belleza as team leader, (ii) SPO2 Abdunnajir Asari (Asari); and (iii) PO2 Zandro Iriola (Iriola).

10. The members of the team conducted a short briefing and agreed that Iriola and the police asset were to act as poseur-buyers, while Belleza and Asari would act as back-up. They likewise arranged the marked money to be used in the operation.

11. The team then proceeded to conduct the buy-bust operation. As agreed upon, Iriola and the asset approached the accused, who was then along the railroad tracks at the back of UNEP, while Belleza and Asari waited about twenty (20) meters away from where the exchange was to take place.

12. With everyone in place, the asset approached accused-appellant and asked if he has the "item," to which accused-appellant assented. Iriola thereafter handed the marked money to the asset, who in turn gave the same to accused-appellant. The latter thereafter gave two (2) sachets containing dried leaves to the asset.

13. The exchange having already taken place, Iriola arrested accused-appellant and signalled to Asari and Belleza, who then rushed to the crime scene. The asset thereafter handed the plastic sachets of dried leaves to Iriola, who then appraised accused-appellant of his constitutional rights. Iriola thereafter turned over the two (2) pieces of plastic sachets to Belleza, who wrote his initials "APB1" and "APB2" on each of the sachets.

14. Upon returning to the police station with the accused, the police officers conducted a routine body search on accused-appellant. As a result of the same, Iriola recovered the marked money from accused-appellant's pocket.

15. The court *a quo* aptly summarized the method utilized by the concerned police officers as regards the handling of the two sachets procured from accused-appellant:

The incident was recorded in the police blotter and the seizure receipt/inventory (Exh. I), the spot report (Exh. F) and the request for laboratory examination (Exh. D) were prepared. Pictures of the accused were also taken together with the marked money and the seized items together with the marked money and the seized items (Exh. J to J-3). The following day, October 9, 2009, SPO1 Anora Ortega brought the two (2) plastic sachets to the Camarines Sur Provincial Crime Laboratory for examination. The items (Exh. G & G-1) together with the request for laboratory examination (Exh. D) were received by the receiving clerk, Rosemarie Liona who in

turn handed over the items to forensic chemist PI Edsel Villalobos. The latter then inspected the items and compared the same with the items listed and described in the request for laboratory examination by adding reagents to the representative sample which gave a positive result of the presence of marijuana (Exh. E). To validate his initial findings, he subsequently performed a confirmatory examination through a chromatography test using TLC method and which test likewise turned positive of the presence of marijuana. He then prepared Chemistry Report D-52-2008 (Exh. H) and thereafter, sealed the two (2) plastic sachets with a masking tape, affixed his signatures on it and turned over the said items to their office evidence custodian for safekeeping which he retrieved from the same person when was to testify in court.

The Version of the Defense

Malto denied the allegations against him and claimed that he was only having a drinking spree with his friends along the railroad tracks at San Roque, Iriga City when PO2 Iriola and a certain Joel Bolangos approached him. PO2 Iriola held his shoulder, told him that he was under arrest for selling *marijuana*, handcuffed him and searched his pocket but the police officer found nothing. Malto was subsequently brought to the Iriga City Police Station where he faced SPO4 Belleza and SPO2 Asari. After a thorough body search which again produced nothing, SPO4 Belleza asked him whether he knows someone selling *marijuana* to which he answered in the negative. SPO2 Asari then pointed to a table with *marijuana* and a one-hundred peso bill (P100), which Malto saw for the first time. Thereafter, Malto was placed in jail.^[6]

The Ruling of the RTC

In its November 5, 2012 Judgment,^[7] the RTC found sufficient evidence to establish all the elements of illegal sale of *marijuana* and its unbroken chain of custody. It gave credence to the testimony of PO2 Iriola who identified Malto and detailed the exchange of money and *marijuana*. The court *a quo* disregarded the alleged discrepancies in the testimonies of PO2 Iriola and SPO4 Belleza as to the incidents prior to the actual buy-bust operation on the rationale that the same are trivial and have no bearing to the merit of the case. It stressed that the presumption of regularity of duty prevails over Malto's uncorroborated and unsubstantiated defense of frame-up and denial. It then disposed the case as follows:

WHEREFORE, premises considered, this court finds accused Jemar Malto y Navarro, **guilty** beyond reasonable doubt of the crime of **Violation of Section 5 Article II of Republic Act 9165** and hereby sentenced to suffer the penalty of **life imprisonment** and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00).

SO ORDERED. (Emphasis appear in the original text of the decision)

Insisting on his innocence, Malto is now before Us imputing the following errors to the RTC:^[8]

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION ESTABLISHED THE *CORPUS DELICTI* OF THE OFFENSE.
(Underscoring appears in the original text of the Appellant's Brief)

Malto assails the regularity of the buy-bust operation and harps on the alleged inconsistent testimonies of SPO4 Belleza and PO2 Ariola as to the conduct of a surveillance operation and the time of the buy-bust operation. He points out that SPO4 Belleza testified that upon receipt of information from the police asset, a short briefing was conducted and at around 2:30 to 2:35 in the afternoon, the buy-bust operation transpired. On the other hand, PO2 Iriola claimed that prior to the buy-bust operation, he was directed by SPO4 Belleza to conduct a surveillance and thereafter the buy-bust was held at around 4:45 in the afternoon. Malto also belabors on the absence of an unbroken chain of custody. He argues that the arresting officers improperly inventoried and photographed the seized items because they conducted the same in the police station in the absence of the accused or any of his representatives or the representatives from the media, Department of Justice (DOJ) and any elected official.^[9]

The OSG argues that the elements of illegal sale of *marijuana* as well as the chain of custody of the confiscated items were sufficiently established by the evidence presented by the prosecution. It adds that the noted inconsistencies in the testimonies of SPO4 Belleza and PO2 Iriola are negligible variance when compared to the testimonies of almost all the officers who participated in the buy-bust operations.^[10]

This Court's Ruling

We sustain Malto's conviction.

Buy-Bust Operation: Valid Elements of Illegal Sale of Dangerous Drugs Sufficiently Proven

The credibility of the prosecution's witnesses in this case regarding the conduct of the buy-bust operation satisfied the "objective test" as first laid down in *People v. Doria*.^[11] Under this test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug, whether to the