

SECOND DIVISION

[CA-G.R. CR HC No. 06431, March 19, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO MAGDAY, JR. Y ALCANTARA, ACCUSED-APPELLANT.**

D E C I S I O N

GONZALES-SISON, M., J.:

Under consideration in this appeal is the Decision^[1] of the Regional Trial Court of Tarlac City, Branch 64 convicting the herein accused-appellant Francisco Magday, Jr. y Alcantara guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the **Comprehensive Dangerous Drugs Act of 2002**.

The offense was allegedly committed as follows:

"That on March 4, 2009 at on or about 9 pm at Zamora St., San Roque, in the City of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and feloniously trade, transport and deliver from La Trinidad, Benguet to Tarlac City a 400 grams brick of marijuana, a dangerous drug, without the necessary permit or authority from law.

Contrary to Law."^[2]

Duly arraigned on 17 June 2009 , accused, assisted by counsel, pleaded "Not Guilty^[3] to the crime charged. Trial on the merits forthwith ensued.

During the trial of the case, the prosecution presented the testimonies of: **SPO2 Jorge Andasan, Jr.; SPO1 Eduardo Navarro; SPO2 Regino L. Dinoy; and PSI Jebie C. Timario**, a forensic chemist. The defense, on the other hand, presented the lone testimony of the accused.

The evidence for the prosecution, as summarized by the Office of the Solicitor General, is as follows:

"Appellant is a known drug pusher included in the police's order of battle. Two weeks prior to appellant's arrest on March 4, 2009, the law enforcers conducted surveillance on his activities. Their test-buy on or around March 2, 2009 produced positive results.

In the morning of March 4, 2009, SPO2 Jorge Andasan, Jr. SPO1 Eduardo T. Navarro, Confidential Agent Domingo Ramos, the confidential asset, and PO3 Meimban, among others, had a buy-bust briefing operation in Tarlac City Police Station. During this briefing operation, they planned to purchase marijuana from appellant through their confidential asset, with

PO3 Meimban acting as a poseur-buyer. The confidential asset and PO3 Meimban thus went to appellant's residence in order to buy marijuana. Appellant, however, replied that he no longer has any stock, so he volunteered to go to Baguio City in order to procure some more.

Taking up appellant's offer to purchase marijuana in Baguio City, retired Col. Pedroche gave Php4,000.00 to the confidential asset. The confidential asset, in turn, gave the money to appellant for the purchase of one (1) kilo of marijuana. He likewise gave his cell phone number to appellant. They agreed to meet at the Siesta Bus Terminal in Tarlac City later that day to consummate the transaction.

At 2:20 in the afternoon of the same day, SPO1 Navarro coordinated with the Philippine Drug Enforcement Agency ("PDEA"), Region III. Thereafter, or at around 4:00 in the afternoon, appellant sent the confidential asset a text message which says: "Txbc k Pre nung okey na etang kpitna ala kcing gamit pre. Pre pba2 nako.txtbc." In his message, appellant's mention of "kpitna" is in reference to the quantity of the marijuana, or that he was only able to acquire one-half (½) kilo of marijuana. In response, the buy-bust team replied: "Okay lang balik ka na."

At around 8:30 in the evening of the same day, the buy-bust team waited for appellant to arrive at the Siesta Bus Terminal and positioned themselves along Zamora Street. Appellant arrived shortly thereafter, on or about 9:00 in the evening. The confidential asset gave a hand signal to the buy-bust team to confirm appellant's arrival.

Appellant and the confidential asset then boarded a tricycle where they proceeded to complete the transaction. After the confidential asset signaled to the buy-bust team by giving a thumbs-up, the police officers approached the tricycle, introduced themselves and asked appellant to lift his shirt. A brick of marijuana leaves wrapped in plastic was discovered tucked between appellant's stomach and pants when he lifted his shirt. The barangay chairman of San Roque (Tarlac City), Romualdo Razon, and the cameraman of Hi-Tech Cable TV, Inc. (Tarlac City), Christian Reyes, documented the whole operation from its planning to appellant's arrest.

Consequently, the marijuana in appellant's possession was confiscated. SPO1 Navarro placed his initials on the seized item, as well as the date and time of its seizure, thus: "042100H March 09 ETN". He also prepared a Receipt of Property Seized in the presence of the barangay chairman and tanod of San Roque, Tarlac City, which appellant refused to sign. Rene Bondoc, a member of the Task Force Bantay Droga, photographed the marijuana seized from appellant.

SPO1 Navarro brought the seized marijuana to the Crime Laboratory in Camp Macabulog. P/Sr. Insp. Jebie Timario, the forensic chemist, accompanied by SPO2 Regino L. Dinoy, Jr., the evidence custodian, received the specimen from SPO1 Navarro. The evidence submitted weighed four hundred (400) grams. Specimen samples of the item yielded a positive result for marijuana."^[4]

On the other hand, accused-appellant gave a different version of the incident. As recapitulated by the Public Attorney's Office, the evidence for the defense is as follows:

"FRANCISCO MAGDAY, JR. (Francisco) was engaged in the buy and sell of vegetables which he usually gets from La Trinidad, Benguet. On 4 March 2009, he and some companions, including a certain "Sally", went to Benguet to buy vegetables. He left his house at 9:00 o'clock in the morning and when he reached the crossing of their place, Manny Corpuz was waiting for him. Manny told him to give Four Thousand Pesos (P4,000.00) to Balweg, another person engaged in the buy and sell of vegetables. Balweg was already at La Trinidad at that time. Francisco agreed to Manny's request so he boarded a bus to Baguio. He arrived at La Trinidad at 3:00 o'clock in the afternoon and directly went to the vegetable terminal or "bagsakan ng gulay." He handed the money to Balweg and went to buy vegetables for three (3) hours then rested for fifteen (15) minutes. He then ordered the boarding of the vegetables to the truck. He left La Trinidad and headed home in Tarlac City. Before he finally left the "bagsakan", he was able to see Balweg again. The latter requested him to give something to Manny. He did not know what it was because it was contained in a plastic. He did not ask Manny what it was, he just received it. He then boarded a Dagupan Bus to Tarlac City and he arrived at almost 10:00 o'clock in the evening but the bus is supposed to stay there until the vegetables arrive. However, upon arrival at the bus terminal, he was suddenly arrested by SPO1 Navarro and his companions. They suddenly grabbed his hands and handcuffed him and asked him "May dala ka ba?," which he was not able to answer because he did not know what they were talking about. He was then brought to their office and was investigated upon. They asked him if he owns the thing contained in the plastic bag and he told them it is not his. The plastic bag was the one he brought from Balweg, the contents of which he was unaware of. The bag was not transparent and the contents were wrapped in a newspaper. He was surprised when the police asked him if he knows that it was marijuana and was shown its contents. He told the police he does not know anything about it."^[5]

After trial, the lower court, on 18 September 2013, rendered a decision^[6], the dispositive portion reads as follows:

"WHEREFORE, premises considered, this Court finds the accused GUILTY for Violation of Section 11, Article II of R.A. 9165 and hereby sentences him to suffer the penalty of imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine of Four Hundred Thousand Pesos (P400,000.00) considering the quantity of the dangerous drugs involved.

The subject item is hereby forfeited in favor of the State. The Clerk of Court is hereby directed to transmit the same to the Philippine Drug Enforcement Authority [sic] (PDEA) for proper disposal.

SO ORDERED."

Hence, this appeal, submitting the following assigned errors for Our resolution, to wit:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 11, ARTICLE II, REPUBLIC ACT NO. 9165, WHICH IN NOT NECESSARILY INCLUDED [sic] IN THE INFORMATION INDICTING HIM UNDER SECTION 5 OF THE SAME LAW, IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.

II

ASSUMING THAT THE ACCUSED-APPELLANT'S CONSTITUTIONAL RIGHT WAS NOT VIOLATED, THE COURT A QUO GRAVELY ERRED OM FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 11, ARTICLE II, REPUBLIC ACT NO. 9165 CONSIDERING THAT THE TRADE/TRANSPORT/DELIVERY OF MARIJUANA WAS NOT PROVEN BY THE PROSECUTION BEYOND REASONABLE DOUBT.

In essence, appellant raises the issue of whether the trial court gravely erred in finding him guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165.

Before delving on the issues raised by appellant, it bears stressing that while courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Dangerous Drugs Law will prosper only, just like in any other criminal case, after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, the Court is more duty-bound to uphold the constitutional presumption of innocence.^[7]

Considering, however, that at stake is no less than the liberty of appellant, We thoroughly examined the entire records of this case. Unfortunately for appellant, We failed to identify any error committed by the trial court both in its appreciation of the evidence presented before it and in the conclusion it reached.

On the *first assigned error*, appellant asserts that he was charged under Section 5, Article II of R.A. No. 9165 [trade, transport and delivery of illegal drugs] and was convicted under Section 11, Article II of R.A. No. 9165 [possession of illegal drugs] which is allegedly not necessarily included in the Information indicting him, thereby violating his constitutional right to be informed of the nature and cause of accusation against him. However, it is appellant himself who admitted in his Appellant's Brief, more particularly under paragraph 15 thereof that "Well-settled in jurisprudence that the crime of illegal sale of dangerous drugs necessarily includes the crime of illegal possession of dangerous drugs. The same ruling may also be applied to the other acts penalized under Article II, Section 5 of Republic Act No. 9165 because for the accused to be able to trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, he must necessarily be in possession of said drugs." (underscoring supplied)

Anent the *second assigned error*, appellant avers that the prosecution was not able to prove his guilt beyond reasonable doubt and questions the chain of custody of the seized illegal drug.

We dismiss appellant's submissions as pure nonsense and inanity that did not in anyway affect the clear and unequivocal testimonies of the prosecution witnesses. The court *a quo's* evaluation of the facts and evidence is utterly sufficient in substance to support accused-appellant's conviction.

Appellant demands absolute compliance with Section 21 of RA 9165 and insists that anything short of the adherence to its letter, renders the evidence against him inadmissible. Pertinently, **Section 21** of the law provides:

"SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."

The pertinent implementing rules, Section 21 of the IRR, states:

"Section 21. a. xxx *Provided further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." (underscoring supplied)

From the testimonies of the police officers in the case at bench, the prosecution established that they had custody of the drug seized from the appellant from the moment he was arrested, during the time he was transported to the police station, and up to the time the seized prohibited drug was submitted to the crime laboratory for examination. As regards to the handling of the seized drug, there are no conflicting testimonies or glaring inconsistencies that would cast doubt on the integrity thereof as evidence presented and scrutinized in court.

SPO1 Navarro testified, thus:

"PROS. OLINARES

Q: *Were you able to find the marijuana that you were mentioning?*

A: *Yes, ma'am.*

Q: *Where, Mr. Witness?*

A: *It was tucked between his pants and his belly, ma'am.*