

## TWENTY-SECOND DIVISION

[ CA-G.R. CR. HC. NO. 00952-MIN, January 22, 2014 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICARDO ANDOLERO Y SUMAYAN, ACCUSED-T-APPELLANT.**

### D E C I S I O N

**LOPEZ, J.:**

Before the Court is an appeal from the November 17, 2010 Decision<sup>[1]</sup> and January 3, 2011 Resolution<sup>[2]</sup> of the Regional Trial Court, Branch 8, Malaybalay City (court *a quo*) which convicted Ricardo Andolero y Sumayan (appellant) guilty beyond reasonable doubt of the crime of cultivation of prohibited drugs in violation of Section 16 of Republic Act (RA) No. 9165 also known as the "*Comprehensive Dangerous Drugs Act of 2002*" and sentenced appellant the penalty of life imprisonment and a fine of Php500,000.00.

The antecedent facts are as follows:

On November 22, 2006, appellant was charged with violation of Section 16 of RA No. 9165, in an Information, which alleged:

That on the 20<sup>th</sup> day of November 2006, in the afternoon, at Barangay Jasaan, municipality of Cabanglasan, province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and criminally plant and cultivate five (5) hills of marijuana plants, which marijuana are classified as, source of a dangerous drug, with a total weight of 6.70 grams without having secured permit or authority from the government.

Contrary to and in violation of Section 16 of Republic Act No. 9165.<sup>[3]</sup>

At the arraignment, appellant pleaded not guilty.<sup>[4]</sup> Thereafter, case was tried on the merits.

The evidence for the prosecution is summarized, thus:

In the morning of September 27, 2006, at about 10:00 in the morning, P/Insp. Rafael Lutrago while on duty at Cabanglasan Police Station, received a report from Epifanio Flores (Flores) that appellant was cultivating marijuana plants at Barangay Jasaan, Cabanglasan, Bukidnon. Upon receiving the information, P/Insp. Lutrago immediately formed a team consisting of SPO3 Eliezar Toyhacao, PO3 Hermon Pandong, PO3 Josefino Bonggat and PO2 Eotropio Ocier to verify the information.

The team arrived at Barangay Jasaan around 1:00 in the afternoon and immediately coordinated with barangay chairman Leonardo Bioyo and barangay kagawad Melanio Sundo. The team then proceeded to the area with kagawad Sundo and the

informant (Flores). When they arrived at the area, Flores pointed to the police the suspected marijuana plants. The team hid in the grassy portion of the area and observed the surroundings. At about 2:00 in the afternoon, they saw a person bringing a plastic gallon of water approached the area, and watered the suspected marijuana plants. Upon seeing this, P/Insp. Lutrago and his companions immediately rushed to the area and introduced themselves as police officers. P/Insp. Lutrago commanded the person not to move, but instead the person ran. The team chased the person and when arrested, the person revealed his name as Ricardo Andolero, the appellant. After he was apprehended, they went back to the area and uprooted five (5) hills of suspected marijuana plants. Appellant was then brought to the Philippine National Police (PNP) Station of Cabanglasan, Bukidnon, where they made a record of evidence, prepared a receipt and request for crime laboratory examination. The following day, the appellant and the confiscated marijuana plants were brought to the PNP crime laboratory, Cagayan de Oro City by PO3 Pandong, PO3 Bongat and PO2 Ocier for qualitative and quantitative examination.

Police Inspector Erma Contino Salvacion performed the laboratory tests. Per Chemistry Report No. D-59-06B<sup>[5]</sup> qualitative examination conducted on one (1) transparent plastic bag with attached markings "Exhibit "A" of alleged five (5) hills of marijuana plants having a total weight of 6.70 grams" yielded positive result to the tests for the presence of marijuana, a dangerous drug. However, Chemistry Report DT-51-06B,<sup>[6]</sup> containing urine samples of appellant, yielded negative result for the presence of methamphetamine and THC-metabolites, both dangerous drugs.

The evidence for the defense on the one hand, is summarized, thus:

In the afternoon of November 20, 2006, at about 2:00, appellant, a 23 year old *habal-habal* driver, was at Barangay Jasaan, Cabanglasan, Bukidnon with Pedro Gellama (Gellama) and Albert Caburnay. Gellama requested appellant to help load the harvested peppers to his motorcycle for transport from Banglasan to Aglayan. Moments later, Flores, together with three (3) CAGU members Elmer Maputi, Felimon Roble and Lolito Pesaña arrived. Flores immediately pointed a gun to appellant and arrested him for allegedly planting marijuana plants. Appellant was stunned and resisted his arrest, but he was forcibly brought to a military detachment where police officers from Cabanglasan Police Station were waiting. While there, appellant was handcuffed and photographed with marijuana plants tucked inside his pocket. Appellant denied all the accusations against him. He maintains that he is a *habal habal* driver and does not own a land at Barangay Jasaan, Cabanglasan, Bukidnon. He does not even recognize what marijuana plant looks like. According to appellant, he got the ire of Flores when he started collecting fare from the CAGU members, for the *habal habal* ride.

Roble, a CAGU member and Gellama, who were both present at the time appellant was arrested corroborated the version of appellant. They testified that there is no proof of the version of the prosecution that the policemen arrested appellant at the place where the supposed marijuana plants were planted. According to Roble, at the time of the arrest, only Flores and his two (2) other companions were there and the policemen were just waiting in the detachment. Gellama and Roble added that no marijuana plants and leaves were seized from the possession of appellant at the time he was arrested.

After due proceedings, the court a *quo* on November 17, 2010 issued the first assailed Order, thus:

WHEREFORE, the court finds the accused Ricardo Andolero y Sumayan, guilty beyond reasonable doubt of the crime of cultivation of prohibited drugs in violation of Sec. 16 of Republic Act No. 9165 and imposes upon him the penalty of life imprisonment and a fine of P500,000.00. The accused shall serve his penalty in the National Penitentiary of Davao Penal Colony. The 6.70 grams of marijuana is ordered forfeited and turned over to the Philippine Drug Enforcement Agency (PDEA) for destruction.

SO ORDERED.<sup>[7]</sup>

In ruling for the conviction of appellant, the court a *quo* gave probative value to the testimonies of the prosecution witnesses who positively identified appellant as the person who watered the marijuana plants. The court a *quo* likewise applied the presumption that the police officers were performing their duties in a regular manner. To justify the warrantless arrest of the appellant, the court a *quo* found that the accused was caught in the act in *flagrante delicto* watering the marijuana plants, hence, no warrant is necessary. Further, the court a *quo* held that notwithstanding the non-presentation of the inventory receipt and photographs of the seized items, the integrity and evidentiary value of the seized marijuana was preserved from the testimonies of P/Insp. Lutrago, SPO1 Pandong and the forensic expert.

The subsequent motion for reconsideration filed by appellant was denied by the court a *quo* in the second assailed Resolution dated January 3, 2011.<sup>[8]</sup>

Hence, the appeal.

#### Assignment of Errors:

In this appeal, appellant raised the following errors, thus:

##### I

THE COURT A QUO ERRED IN COMPLETELY DISREGARDING THE EVIDENCE FOR THE ACCUSED-APPELLANT WHICH IS IN TOTAL DEROGATION OF THE EVIDENCE FOR THE PROSECUTION;

##### II

THE COURT A QUO ERRED IN NOT CONSIDERING THAT THE EVIDENCE FOR THE ACCUSED-APPELLANT STANDS UNREBUTTED BY THE PROSECUTION;

##### III

THE COURT A QUO ERRED IN NOT APPRECIATING THAT THE FAILURE OF THE PROSECUTION TO PRESENT EPIFANIO FLORES AND MELANIO SUNDO IS IN VIOLATION OF ACCUSED' APPELLANT'S CONSTITUTIONAL RIGHT TO CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST HIM;

##### IV

THE COURT A QUO ERRED IN MAKING VERY ERRONEOUS STATEMENT OF FACTS IN ITS DECISION CONTRARY TO THE EVIDENCE OF THE PROSECUTION AND THE DEFENSE, TO THE GRAVE INJUSTICE OF THE ACCUSED-APPELLANT.<sup>[9]</sup>

The Court's Ruling:

*We resolve to acquit appellant for the prosecution's failure to prove his guilt beyond reasonable doubt.*

Appellant disputes the sufficiency of the evidence presented by the prosecution to convict him of the crime charged. He pointed out that the court a quo's decision was entirely based on the testimony of the police officers who allegedly saw him in the act of watering the suspected marijuana plants. Notably, other than the bare testimonies of the police officers, no other evidence was presented by the prosecution to corroborate the same. Appellant further contests his conviction due to the inconsistencies in the prosecution's witnesses, coupled with its failure to establish with certainty the chain of custody of evidence. Finally, appellant argues against the presumption of regularity of performance of duties.

We agree with the observations of the appellant.

*Elements of the crime not established by the prosecution*

Well-enshrined in our jurisdiction is the principle that the accused is presumed to be innocent until the contrary is proven.<sup>[10]</sup> The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required.<sup>[11]</sup> This constitutional presumption of innocence can be overcome only by proof beyond reasonable doubt which requires moral certainty of guilt, a certainty that convinces and satisfies the reason and conscience of those who act upon it.<sup>[12]</sup> This quantum of proof, however, was not satisfied in this case. A review of the records, shows that the testimony of the prosecution witnesses failed to establish the elements of the crime charged.

Section 16 of RA 9165 reads:

*Sec. 16. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who shall plant, cultivate or culture marijuana, opium poppy or any other plant regardless of quantity, which is or may hereafter be classified as a dangerous drug or as a source from which any dangerous drug may be manufactured or derived: *Provided, That* in the case of medical laboratories and medical research centers which cultivate or culture marijuana, opium poppy and other plants, or materials of such dangerous drugs for medical experiments and research purposes, or for the creation of new types of medicine, the Board shall prescribe the necessary implementing guidelines for the proper cultivation, culture, handling, experimentation and disposal of such plants and materials.