

SEVENTH DIVISION

[CA-G.R. CR NO. 35688, July 28, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROWIE MAÑALAC Y MARCILLANO, ACCUSED-APPELLANT.

DECISION

REYES, JR., J.C., J.:

On appeal is the Decision dated August 3, 2012 of the Regional Trial Court (RTC) Manila, Branch 53 which found Rowie Mañalac y Marcillano (Mañalac) guilty of possessing dangerous drugs, punished by Section 11, Art. II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 for which he was sentenced to suffer imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum, and to pay a fine of P300,000.00.

On March 19, 2009, the Assistant City Prosecutor of Manila filed an Information charging Mañalac of violating Section 11(3), Article II of R.A. No. 9165 as follows:

“That on or about March 17, 2009, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly have in their possessions (sic) and under their (sic) custody and control One (1) rolled tissue paper “RMM” containing ZERO POINT TWO ONE SEVEN (0.217) grams of dried marijuana leaves and fruiting crops, a dangerous drugs.

Contrary to law.” (Records, p. 1).

Upon arraignment, Mañalac pleaded “not guilty”. (Rollo, p. 15).

Trial proceeded and according to the prosecution:

PO2 Romeo Ricamara and PO2 Randy Nepomuceno of Police Station No. 6, Sta. Ana, Manila, were conducting an Anti-Criminality patrol along Zobel Roxas corner Pasig Line Street, Sta. Ana Manila, on March 17, 2009 at around 1:00 a.m., on board a multi-cab driven by PO2 Nepomuceno. While traversing Zobel Roxas Street, they observed a person without any upper garment at the dimly lighted portion of the corner of Zobel Roxas and Pasig Line Streets. The policemen approached the person, later identified as Mañalac, and arrested him for violating Revised Ordinance 819, for being half-naked in a public place. PO2 Ricamara asked the suspect to remove the contents of his pocket and when Mañalac complied, the officers saw a rolled tissue paper with dried marijuana leaves inside. PO2 Ricamara seized the tissue with marijuana and informed Mañalac that he is liable for possession of illegal drugs. The police informed Mañalac of his constitutional rights and when he tried to resist, they brought him to the police station. There, PO2 Ricamara inserted the tissue paper inside a small plastic and turned it over to PO2 Donato Godoy, the investigator of

Station Anti-Illegal Drugs (SAID) of Police Station No.6. PO2 Godoy marked the tissue paper with "RMM", the initials of Mañalac, in the presence of PO2 Ricamara, PO2 Nepomuceno and the accused. An inventory of the evidence was made and after the Booking Sheet Arrest Report and Inventory of Seized Evidence were prepared by PO2 Godoy, PO2 Ricamara and Nepomuceno brought Mañalac to the *Ospital ng Maynila* for medical examination. (Rollo, pp. 52-53).

Mañalac meanwhile, in his defense, testified that on March 16, 2009, between 11:00 a.m. to 12 nn., he was walking along Estrada Street near the corner of Pasig Line Street, coming from his residence at Montojo Street, Makati City, when four police officers asked him where he was going. He answered that he was going to fetch his sister who attended a birthday party. Mañalac was invited by the police officers to the Police Block in Dagonoy Market for verification. Along with three other persons who were arrested by the officers, Mañalac was handcuffed and then brought to the Dagonoy Market Police Block. Later, Mañalac was taken to Police Station No. 6 while the three other persons arrested were left at the Dagonoy Market. On the way to the police station, Mañalac asked the police officers where they were bringing him and he was shocked when one answered "*Isa-salvage ka namin.*" At Police Station No.6, PO2 Godoy informed him that he violated a Manila Ordinance and R.A. No. 9165. Mañalac claimed however that he was wearing a t-shirt at the time he was arrested and that the police only planted the evidence against him. He said that he saw the illegal drugs for the first time during trial. (Rollo, p. 53).

On August 3, 2012, the RTC rendered its Decision:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused ROWIE MANALAC y MARCILLANO GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and is hereby sentenced to suffer imprisonment of TWELVE (12) YEARS, ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum, and to pay a fine of P300,000.00.

Cost against the accused.

SO ORDERED." (Rollo, p. 54).

The RTC held that:

"In the case under consideration, the prosecution has demonstrated by clear and convincing evidence all the elements of the offense. PO2 Ricamara and PO2 Nepumoceno testified on how accused Mañalac was apprehended on March 17, 2009 at around 1:00 a.m. at Estrada Street near corner Pasig Line Street, Manila. The court gives more credence to the testimonies of PO2 Ricamara and PO2 Nepomuceno regarding the arrest of accused Mañalac because the presumption of regular performance of official function by the police officers is applicable. Furthermore, the criminal liability of the accused in this case is further strengthened by the prosecution's documentary and physical evidence.

The prosecution established the continuous whereabouts of the marijuana from the time this was seized from accused Mañalac until this was subjected for laboratory examination.

It is evident that accused Mañalac had in his possession illegal drugs and the identity of the *corpus delicti* was properly preserved and established by the prosecution. What is of vital importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

Moreover, accused Mañalac's defense of denial, without substantial evidence to support it cannot overcome the presumption of regularity of the police officers' performance of official functions." (Rollo, p. 54) (Citations omitted).

Mañalac is now before the Court claiming that:

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY AND DEFENSE BY GIVING CREDENCE TO THE PROSECUTION WITNESSES' (POLICE OFFICERS') TESTIMONIES, ULTIMATELY DECLARING THAT ACCUSED-APPELLANT'S DEFENSE OF DENIAL CANNOT OVERCOME THE PRESUMPTION OF REGULARITY OF THE POLICE OFFICERS' PERFORMANCE OF OFFICIAL FUNCTIONS.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED, WARRANTING HIS ACQUITTAL SINCE:

1. THE DANGEROUS DRUG ALLEGEDLY RECOVERED FROM THE ACCUSED-APPELLANT IS INADMISSIBLE EVIDENCE AS HIS ARREST AND THE SUBSEQUENT SEARCH AND SEIZURE WERE ILLEGAL; AND
2. EVEN ASSUMING ARGUENDO THAT THE EVIDENCE AGAINST THE ACCUSED-APPELLANT MAY BE ADMITTED, THE RECORDS CLEARLY SHOW THAT THE PROCEDURAL SAFEGUARDS PRESCRIBED BY R.A. NO. 9165 WERE NOT COMPLIED WITH. (Rollo, pp. 30-31).

Mañalac argues that the constitutional presumption of innocence prevails over the presumption of regularity in the performance of official duties. In this case, lapses in the police operation were present. While alibi is the weakest of defenses, courts should not be quick to dismiss such defense, if this was presented by the accused. Mañalac maintains that he did not violate Revised Ordinance 819 of the City of Manila nor the Dangerous Drugs law. (Rollo, pp. 37-37).

Mañalac further avers that the search conducted on him, which was purportedly an incident to his arrest, was not validly conducted. The purpose of a warrantless search incidental to a lawful arrest is to search for concealed weapons and not to discover evidence of a crime. Here, Mañalac was asked to empty his pocket in front of a police officer to discover incriminating evidence against him. Thus, whatever was taken from him is a 'fruit of a poisonous tree' which is inadmissible in evidence. And even granting that the seized item was admissible in evidence, his acquittal is

still in order for the failure of the apprehending officers to comply with the chain of custody requirements in dangerous drugs cases. It was not explained why the seized item was not marked immediately. It was made at the police station, not by the apprehending police officers but by the duty investigator. The physical inventory was not conducted in the presence of a DOJ representative or any barangay official. There was also no photograph of Mañalac with the seized item. (Rollo, pp. 43-47).

The People, through the Office of the Solicitor General, contends on the other hand that the prosecution was able to prove Mañalac's guilt beyond reasonable doubt; that the search was made incidental to a lawful arrest, and; that the chain of custody was properly observed. (Rollo, pp. 67-69).

The Court finds MERIT in the appeal.

When courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual commission of the crime charged is put into serious question and in such instances, courts have no alternative but to acquit on the ground of reasonable doubt. (*Rontos v. People*, G.R. No. 188024, June 5, 2013).

Such is the instant case.

In the prosecution of the sale or possession of dangerous drugs, the State must prove not only the elements of each of the offenses, but also the *corpus delicti*, failing in which the State will be unable to discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. (*People v. Bautista*, G.R. No. 198113, December 11, 2013). Proof beyond reasonable doubt in criminal prosecution for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti*, the body of the crime whose core is the confiscated illicit drug. (*People v. Beran*, G.R. No. 203028, January 15, 2014)

To prove the *corpus delicti*, the prosecution must show that the dangerous drugs seized from the accused and subsequently examined in the laboratory are the same items presented in court as evidence to prove his guilt. To ensure that this is done properly and that the integrity of the evidence of the dangerous drugs is safeguarded, Sec. 21 of R.A. No. 9165 outlines the mandatory procedure that law enforcers must observe following the seizure of dangerous substance:

"(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;"

Sec. 21(a) of the IRR of R.A. No. 9165 also provides that:

"(a) The apprehending officer/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