

SECOND DIVISION

[G.R. No. 232336, February 28, 2022]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARNEL VINLUAN Y LICLICAN A.K.A. "URBON," ACCUSED-APPELLANT.

D E C I S I O N

HERNANDO, J.:

On appeal^[1] is the August 17, 2016 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07360 that affirmed the January 8, 2015 Decision^[3] of the Regional Trial Court (RTC), Branch 37, Bambang, Nueva Vizcaya in Criminal Case No. 3438, which found accused-appellant Marnel Vinluan y Liclican (Vinluan) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5, Article II of Republic Act No. (RA) 9165^[4] or the "Comprehensive Dangerous Drugs Act of 2002."^[5]

The Factual Antecedents:

The Information^[6] charging Vinluan with Illegal Sale of Dangerous Drugs alleges:

That on or about December 3, 2013 at around 3:00 o'clock in the afternoon, in Barangay Banggot, Municipality of Bambang, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, trade, deliver and give away dried marijuana and fruiting tops, a dangerous drug, as contained in one (1) heat-sealed plastic container weighing 73.99 grams and three (3) pieces of heat-sealed transparent plastic sachets weighing 13.984 grams, 13.984 grams, 12.696 grams and 11.939 grams, respectively [sic], to PO1 MARLON BACCAY CAMMAYO, who acted as poseur buyer during a buy-bust operation, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.^[7]

During arraignment, Vinluan entered a plea of not guilty.^[8] Proceedings ensued.

Version of the Prosecution:

At around 2:00 p.m. of December 3, 2013, a confidential informant (CI) reported to the Bambang City Police Station that Vinluan^[9] is engaged in the illegal sale of *marijuana* leaves and fruit tops.^[10] Thus, Police Chief Inspector Rafael Pagalilauan, in coordination with the Nueva Vizcaya Police Provincial Office-Intelligence Section, organized a team to conduct a buy-bust operation.^[11] The team was composed of Senior Police Officer (SPO) 1 Erwin Bautista (SPO1 Bautista), Police Officer (PO) 2 Robert Ngloy (PO2 Ngloy), PO2 Darwin Damaso (PO2 Damaso), and PO1 Marlon Cammayo (PO1 Cammayo), who was designated as poseur-buyer.^[12] PO1 Cammayo then marked the buy-bust money consisting of five P100.00 peso bills with his initials "MBC."^[13] The operation was coordinated with the Philippine Drug Enforcement Agency.^[14] Thereafter, the CI called Vinluan and informed him that his (CI) friend was interested in buying *marijuana* worth P500.00.^[15] Vinluan thus instructed the CI to

meet him in his residence in *Purok 1, Barangay Banggot*, Bambang, Nueva Vizcaya.^[16]

The team proceeded to the target area; the CI and PO1 Cam Mayo rode the CI's tricycle.^[17] They parked adjacent to the house of Vinluan, while the other team members positioned themselves at a nearby basketball court.^[18] Vinluan then approached the CI, who in turn introduced PO1 Cam Mayo as his friend who wants to buy *marijuana*.^[19] The sale took place through the simultaneous exchange of the money and the drugs between Vinluan and PO1 Cam Mayo — PO1 Cam Mayo gave the five P100.00 bills while Vinluan gave four transparent plastic sachets containing dried leaves.^[20]

After the exchange, PO1 Cam Mayo gave the pre-arranged signal by removing his cap.^[21] Vinluan was alarmed so he attempted to flee inside his house; but SPO1 Bautista and PO2 Ngalo caught up and was able to apprehend him.^[22]

The seized items were marked at the place of the incident in the presence of Vinluan.^[23] PO1 Cam Mayo marked the four sachets with "MBC1," "MBC2," "MBC3," "MBC4."^[24]

Meanwhile, PO2 Damaso called for barangay officials.^[25] Upon arrival of *barangay kagawads* Virgilio Hernandez (Hernandez) and Norma Laguisma (Laguisma), an inventory of the items was prepared.^[26] PO2 Damaso also frisked Vinluan.^[27] Photographs of the seized items, the marked money, and Vinluan were also taken.^[28]

Thereafter, they went to the police station. PO2 Damaso prepared a request for laboratory examination.^[29] PO1 Cam Mayo then delivered the seized items to the forensic laboratory.^[30] Police Senior Inspector James Bad-e (PSI Bad-e) conducted the qualitative examination. The seized items tested positive for the presence of *marijuana*.^[31] After which, PSI Bad-e placed the items in a plastic bag that he sealed with a masking tape, and turned it over to the evidence custodian.^[32]

Version of the Defense:

Vinluan denied the accusation and claimed that the drugs were planted. He averred that at that time, he was just at home watching television, when he heard someone outside call out "*Apo*".^[33] When he opened the door to check who was calling him; he saw Jimboy (the CI) accompanied by someone unknown to him wearing a black hat.^[34] Vinluan claimed that the two individuals asked him if he had *marijuana*, to which he answered in the negative.^[35] The duo then left.

After a while, Jimboy called for Vinluan again.^[36] When Vinluan opened the door, he saw Jimboy this time accompanied by SPO2 Pascual, PO2 Ngalo, PO2 Damaso, and the unknown person wearing a black hat.^[37] Suddenly, the group barged into his house.^[38] Vinluan claimed that the unknown person pointed a gun at him, while PO2 Ngalo and SPO2 Pascual grabbed and handcuffed him.^[39] He was then dragged toward the back of the house.^[40]

Vinluan asserted that SPO2 Pascual placed a P500.00 bill in his hands; he had no choice but to hold the money as he was hit with a gun on his right side when he refused to do so.^[41] Thereafter, PO2 Damaso frisked him.^[42] Vinluan added that while they were waiting for the *barangay* officials, PO2 Damaso brought out a bag of *marijuana*,^[43] and threatened him with "salvage" if he would not admit that the drugs were his.^[44]

The defense also presented Florita Vinluan (Florita), Vinluan's stepmother. Florita recalled that at that time, she was in a hut near Vinluan's house when she saw three (3) men onboard a tricycle alight in front of the house.^[45] Upon seeing Vinluan, one of the men pointed a gun at him and uttered "That's him."^[46] The group cornered Vinluan and dragged him to the back of the house.^[47] Florita interfered and asked the police officer to lower his gun as Vinluan was unarmed.^[48]

Ruling of the Regional Trial Court:

In its January 8, 2015 Decision,^[49] the RTC convicted Vinluan of Illegal Sale of Dangerous Drugs and imposed the penalty of life imprisonment along with the payment of a fine. The RTC held that the elements of Illegal Sale of Dangerous Drugs were present.^[50] PO1 Cammayo was able to credibly narrate the occurrence of the sale.^[51] The RTC added that the presumption of regularity strengthened PO1 Cammayo's credibility.^[52] It likewise ruled that the rule on chain of custody was substantially complied with.^[53] It did not give weight to Vinluan's defenses of denial and frame-up.^[54] The dispositive portion of the RTC Decision reads:

WHEREFORE, the court finds the accused Marnel Vinluan y Liclican guilty beyond reasonable doubt of violation of Section 5, Article II, RA. 9165, and hereby imposes upon him the penalty [of] life imprisonment and a fine of P500,000.00. The drug subject of the case is confiscated, to be destroyed in accordance with law.

SO ORDERED.^[55]

Aggrieved, Vinluan appealed^[56] to the CA.

In his appellant's brief,^[57] Vinluan argued that the RTC erred in not taking into consideration his defenses and in relying instead on the presumption of regularity in the performance of duties.^[58] Second, he argued that the police officers failed to observe the rules on chain of custody.^[59] There were no representatives from the media and Department of Justice (DOJ) during the marking and inventory.^[60] Vinluan averred that for the saving clause regarding noncompliance to apply, the prosecution must have recognized the lapses and provided justifiable grounds, as well as show that the integrity and evidentiary value of the items have been preserved; in this case, however, the prosecution failed to do so.^[61] Vinluan also pointed out the inconsistency in the testimonies as to who conducted the inventory.^[62]

In its appellee's brief,^[63] the prosecution, through the Office of the Solicitor General (OSG), insisted that the elements of Illegal Sale of Dangerous Drugs were convincingly and sufficiently established.^[64] As to the chain of custody, the OSG countered that the links were clearly established; thus, the integrity and evidentiary value of the seized items were preserved.^[65] For the prosecution, integrity is presumed to be preserved unless there is a showing of bad faith, ill will, or proof of tampering.^[66] Also, the inconsistency as to who prepared the inventory was inconsequential.^[67]

Ruling of the Court of Appeals:

In its August 17, 2016 Decision,^[68] the CA affirmed Vinluan's conviction. The CA found that the elements of Illegal Sale of Dangerous Drugs were present.^[69] As to the issue of chain of custody, the CA found that the prosecution was able to establish that the integrity and

evidentiary value of the seized items were preserved. The items were identified and every link in the custody has been accounted for.^[71] Further, the non-presentation of the evidence custodian as witness was not fatal for the prosecution.^[72] Likewise, the inconsistency in the testimonies as to who conducted the inventory was inconsequential.^[73]

Unrelenting, Vinluan elevated^[74] the case to this Court.^[75] The parties opted to no longer file supplemental briefs.^[76]

Issue

The issue here is whether Vinluan's conviction for Illegal Sale of Dangerous Drugs is proper.

Our Ruling

The appeal has merit. We acquit Vinluan for failure of the prosecution to prove his guilt beyond reasonable doubt.

At the outset, We find that there was a violation of Section 5 of RA 9165. The elements of Illegal Sale of Dangerous Drugs are as follows: (a) the identity of the buyer and the seller, the object of the sale, and the consideration; and, (b) the delivery of the thing sold and the payment therefor.^[77] In a buy-bust operation, the receipt by the poseur-buyer of the dangerous drug and the corresponding receipt by the seller of the marked money consummate the Illegal Sale of Dangerous Drugs.^[78] What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.^[79]

We affirm the finding of the CA and the RTC in this regard. Evidence show that the Illegal Sale of Dangerous Drugs was consummated. Vinluan indeed delivered *marijuana* to PO1 Cammayo, who in turn gave the buy-bust money as payment. The seized items were also presented in court to prove the *corpus delicti*.

However, the setback lies in the failure of the police officers to observe the rule on chain of custody.

Related to establishing the identity of the object of Illegal Sale of Dangerous Drugs is the observance of the rule on chain of custody. Section 21 of RA 9165 provides:

Section 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[.] (emphasis supplied)

The law requires that the conduct of inventory and taking of photographs of the seized drugs must be done in the presence of three witnesses: a representative from the media, a representative from the DOJ, and any elected public official. *People v. Baluyot*^[80] (*Baluyot*)

teaches that this requirement seeks to avoid frame ups or wrongful arrests of persons suspected to be violators of the law.^[81] The presence of the three witnesses protects from the planting of evidence on the person or effects of the accused.^[82] The prosecution must therefore allege and prove that at the time of the inventory of the evidence and the taking of photographs, the three witnesses were present.^[83]

This rule is subject to exceptions. *Baluyot*, citing *People v. Lim*^[84] (*Lim*), further elaborates on this matter:

Indubitably, this strict requirement is subject to exceptions as well. The case of *People v. Lim* holds that in the event of absence of one or more of the witnesses, the prosecution must allege and prove that their presence during the inventory of the seized items was not obtained due to reasons such as:

- (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

The prosecution must show that the apprehending officers employed earnest efforts in procuring the attendance of witnesses for the inventory of the items seized during the buy-bust operation. Mere statements of unavailability of the witnesses given by the apprehending officers are not justifiable reasons for non-compliance with the requirement. This is because the apprehending officers usually have sufficient time, from the moment they received information about the alleged illegal activities until the time of the arrest, to prepare for the buy-bust operation that necessarily includes the procurement of three (3) witnesses. If one of the individuals invited refuses to participate as witness, the apprehending officers can still invite another individual to become a witness.^[85]

The witness requirement, before the amendment^[86] of the law, is quite strict. *Lim*, however, allows the prosecution to show that the attendance of one of the witnesses was not procured due to the reasons provided therein. The prosecution must show that the police officers have exerted earnest efforts in procuring the attendance of the witnesses.

Also, the Implementing Rules and Regulations (IRR) of RA 9165^[87] provides for the same requirements regarding witnesses. It allows, however, for non-compliance with the rules on chain of custody as long as there is a justifiable reason, and the integrity and evidentiary value of the seized items are preserved. The relevant portion of the IRR provision reads:

Section 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:

(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 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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **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[.]** (Emphases supplied)

For the saving clause to apply, the prosecution must first have recognized the procedural lapses, and thereafter explain the justifiable ground for noncompliance as well as show that the integrity and evidentiary value of the seized items were preserved.^[88] The prosecution bears the duty to acknowledge and justify any deviations from the procedure during the trial.^[89]

Here, the three-witness requirement was not observed. Only two witnesses were present, and they were both elected public officials: barangay *kagawads* Hernandez and Laguisma. There were no representatives from the media and the DOJ. First, it is apparent in the inventory report that only the two *kagawads* signed as witnesses.^[90] The document shows only the signatures of the two officials along with the police officers'; there is no showing of any other signature to imply that the other required witnesses were present and had signed. Second, the apprehending officers testified that only the two *kagawads* were present as witnesses. PO1 Cammayo testified that after Vinluan's arrest, he marked the evidence while PO2 Damaso called for the barangay *kagawads*; and that they signed the inventory report upon their arrival.^[91] SPO1 Bautista and PO2 Damaso provided the same information.^[92]

There was no attempt for the prosecution to justify the absence of the representatives from the media and DOJ as required by the law. Nowhere in the records does it show that the police officers employed earnest efforts to procure the attendance of the other required witnesses. With this, the prosecution also cannot just rely on the saving clause. To recall, the prosecution is required to first recognize the lapse, then provide for the justification as well as show that the integrity and evidentiary value of the seized items have been preserved. Here, the law enforcers failed to acknowledge the lapse on the witness requirement during the trial. This step is necessary for the saving clause to apply.^[93] While the prosecution argued that all of the links in the chain of custody were established, this does not suffice as there was no recognition of the lapse in the first place.

The Court finds that the police officers failed to comply with the witness-requirement of Section 21, Article II of RA 9165. This unjustified noncompliance produces a gap in the chain of custody of the illegal drugs that adversely affects their integrity and evidentiary value. The identity of the object of the illegal sale was not established. Thus, the prosecution failed to overcome the burden of proving Vinluan's guilt beyond reasonable doubt. Vinluan's acquittal is therefore in order.

WHEREFORE, the appeal is **GRANTED**. The August 17, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07360 is **REVERSED** and **SET ASIDE**. Accused-appellant Marnel Vinluan *y* Liclican is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director General, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director General is **DIRECTED** to report to this Court the action he/she has taken within five days from receipt of this Decision.

Let entry of judgment be issued immediately.

Perlas-Bernabe, (Chairperson), Zalameda, Rosario, and Marquez, JJ., concur.

[1] *Rollo*, pp. 17-18.

[2] Id. at pp. 2-16. Penned by Associate Justice Japar B. Dimaampao (now a Member of this Court), and concurred in by Associate Justices Carmelita Salandan-Manahan and Renato C. Francisco.

[3] CA *rollo*, pp. 10-16. Penned by Presiding Judge Jose Godofredo M. Nauj.

[4] Entitled "Comprehensive Dangerous Drugs Act of 2002." Approved on June 7, 2002.

[5] Entitled "AN ACT INSTITUTING THE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES." Approved on June 7, 2002.

[6] Records, p. 1.

[7] Id.

[8] Id. at 27-28.

[9] Also known as "Urbon."

[10] *Rollo*, p. 3.

[11] Id. at 4.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19]

Id.

[20] Id. CA *rollo*, p. 12.

[21] *Rollo*, p. 4.

[22] Id.

[23] Id. at 5.

[24] Id.

[25] TSN, July 1, 2014, pp. 9-11; TSN, July 23, 2014, p. 12.

[26] *Rollo*, p. 5. Records, p. 10. TSN, September 2, 2014, pp. 17-30.

[27] Id.

[28] Id. Records, p. 14-15, 18-20.

[29] *Rollo*, p. 5.

[30] Id.

[31] Id. Records, p. 13.

[32] *Rollo*, p. 5.

[33] Id.

[34] Id.

[35] Id.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] Id. at 5-6.

[41] Id. at 6.

[42] Id.

[43] Id.

[44]

Id.

[45] Id.

[46] Id.

[47] Id.

[48] Id.

[49] CA *rollo*, pp. 10-16.

[50] Id. at 14-15.

[51] Id. at 15.

[52] Id.

[53] Id.

[54] Id. at 14.

[55] Id. at 16.

[56] Id. at 17, 20.

[57] Id. at 41-60.

[58] Id. at 50.

[59] Id. at 51-58.

[60] Id. at 55.

[61] Id.

[62] Id. at 54-55.

[63] Id. at 82-103.

[64] Id. at 89-92.

[65] Id. at 95-99.

[66] Id. at 99.

[67] Id.

[68] *Rollo*, pp. 2-16. The dispositive portion of the CA Decision reads:

WHEREFORE, the Appeal is hereby **DENIED**. The Decision dated 8 January 2015

of the Regional Trial Court, Second Judicial Region, Bambang, Nueva Vizcaya, Branch 37, in Criminal Case No. 3438, finding the herein accused-appellant Marcel Vinluan guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

[69] Id. at 7-8.

[70] Id. at 13-14.

[71] Id. at 13.

[72] Id.

[73] Id. at 14.

[74] Id. at 17-18.

[75] Id. at 17-20.

[76] Id. at 33-34, 49.

[77] *People v. Baluyot*, G.R. No. 243390, October 5, 2020.

[78] Id.

[79] Id.

[80] Id.

[81] Id.

[82] Id.

[83] Id.

[84] G.R.No. 231989, September 4, 2018.

[85] Id. Citations omitted.

[86] The Comprehensive Dangerous Drugs Act of 2002 was amended by Republic Act No. 10640 in 2014 to the extent that the witness requirement during the marking of the seized items has been relaxed. The applicable law to the instant case, however, is the old law as the violation transpired prior to the effectivity of the amendment.

[87] Entitled "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002" (2002), as amended.

[88] *People v. Andrada*, 833 Phil. 999, 1013 (2018), citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

[89] *People v. Miranda*, 824 Phil. 1042, 1060 (2018).

[90] Records, p. 10.

[91] TSN, July 1, 2014, pp. 9-11; TSN, July 23, 2014, p. 12.

[92] TSN, September 2, 2014, pp. 17-18. TSN, October 1, 2014, pp. 5, 9.

[93] See *People v. Miranda*, supra note 89 at 1059, citing *People v. Almorfe*, 631 Phil. 51, (2010).
