



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 8, 2023 which reads as follows:*

**“G.R. No. 252866 (*People of the Philippines v. Moises Cortez y Agalous*). — This appeal<sup>1</sup> assails the Decision<sup>2</sup> dated 04 October 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 11012, which affirmed the conviction of Moises Cortez y Agalous (accused-appellant) for violation of Section 5, Article II of Republic Act No. (RA) 9165<sup>3</sup> or the “Comprehensive Dangerous Drugs Act of 2002.”**

**Antecedents**

Accused-appellant was charged with violation of Section 5, Article II of RA 9165, allegedly committed as follows:

That on or about the 27<sup>th</sup> day of January, 2014, in the City Of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there, willfully, unlawfully and feloniously, deliver and sell eleven (11) elongated dried marijuana fruiting tops wrapped in a brown packaging tape with a total weight of ten thousand one hundred eleven point one (10111.1) grams to IO1 Nickson Acosta who posed as poseur buyer, and in consideration of said marijuana, IO1 Nickson Acosta used boodle money in the total amount of THIRTY FIVE THOUSAND PESOS (Php35,000.00) Philippine currency, without first securing the necessary permit, license or authority from the proper government agency.

CONTRARY TO LAW.<sup>4</sup>

<sup>1</sup> *Rollo*, pp. 19-20.

<sup>2</sup> *Id.* at 3-18; Penned by Associate Louis P. Acosta and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Nina G. Antonio-Valenzuela.

<sup>3</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE 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 07 June 2002.

<sup>4</sup> *CA rollo*, p. 62.

When arraigned, accused-appellant pleaded not guilty to the charge.<sup>5</sup> During pre-trial,<sup>6</sup> he admitted that he was the person named in the Information, and that he was arrested on 27 January 2014 at San Fernando, La Union. Trial on the merits ensued thereafter.<sup>7</sup>

### Version of the Prosecution

On 26 January 2014, Agent Nickelson Quinones Acosta (Agent Acosta) of the Philippine Drug Enforcement Agency (PDEA) Regional Office I, San Fernando City, La Union, received a phone call from a confidential informant that an *alias* Michael, later on identified as accused-appellant, is looking for buyers of marijuana. Agent Acosta instructed the informant to tell accused-appellant that he has a found a buyer from San Fernando City, La Union. When the informant told Agent Acosta that accused-appellant's selling price is ₱3,500.00 per kilo, the former conveyed to the informant that he was willing to buy 10 kilos of marijuana to be delivered in San Fernando City, La Union. After confirming the meet-up with accused-appellant, Agent Acosta informed their team leader Agent Seymoure Darious Sanchez (Agent Sanchez), who then organized a buy-bust operation to entrap Michael.<sup>8</sup>

The following day, the informant arrived at the office of PDEA Regional Office. Agent Acosta was designated as the poseur-buyer and Agent Sanchez as immediate back-up and arresting officer, while the rest were assigned as additional back-up. Agent Acosta prepared 35 pieces of ₱1,000.00-bills and marked them with his initials "NQA." When the informant received information that accused-appellant was already at the city, and willing to meet up at 4M Sister's restaurant at *Barangay* Mameltac, Biday, San Fernando City, the buy-bust team proceeded to the meeting place.<sup>9</sup>

Upon arrival at the meeting place, Agent Acosta and the informant waited in front of the restaurant, while the rest of the buy-bust team positioned themselves strategically. Later on, a van stopped in front of them, and accused-appellant alighted therefrom carrying a carton box and black bag. The informant introduced Agent Acosta to accused-appellant as the buyer of marijuana. The latter handed the carton to Agent Acosta, saying "*Dayta tay order mon, bro*" ("That is now your order, brother") and demanded for payment. Agent Acosta received the box and placed it on the floor to get money from his pocket. When he was about to hand over the boodle money,

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<sup>5</sup> *Rollo*, p. 7.

<sup>6</sup> *CA rollo*, p. 62.

<sup>7</sup> *Id.*

<sup>8</sup> *Rollo*, p. 4.

<sup>9</sup> *Id.* at 4-5.

accused-appellant suddenly ran towards the rice field. Agent Sanchez and the other PDEA operatives chased and were able to caught up with accused-appellant, while Agent Acosta held on to the box and the bag.<sup>10</sup>

Accused-appellant was brought back to the place of transaction. Agent Acosta opened the box and found seven pieces of elongated marijuana fruity tops wrapped with a brown masking tape. Meanwhile, the bag contained four pieces of elongated marijuana fruiting tops. Thereafter, Agent Acosta marked the pieces of marijuana tops from the box with "A-1-NQA", signature, "01-27-14" to "A-7-NQA", signature, "01-27-14", while those found in the bag were marked "B-1 NGQ"-signature "1-27-14" to "B-4-NQA"-signature "1-27-14." The inventory was conducted in the presence of accused-appellant, elected official Catalino Silao, Jr. (Silao), Department of Justice (DOJ) representative Luciano Trinidad (Trinidad), and media representative Rico Valdez (Valdez). Agent Marlon Apolog (Agent Apolog) took photographs of the seized items. Accused-appellant identified himself as Moises Cortez y Agalous when asked of his name.<sup>11</sup>

At the office, Agent Acosta prepared the request for qualitative and quantitative laboratory examinations of the seized items. The same was submitted by Agent Acosta to the resident chemist, Lei-Yen C. Valdez-Ganat (Chemist Ganat) of PDEA Regional Office I, who personally received the request and conducted the examination on the seized items. The seized items were later on confirmed to be marijuana, a dangerous drug.<sup>12</sup>

### **Version of the Defense**

On 26 January 2014, accused-appellant was in Sudipen, La Union, on board a van going to Baguio City. Suddenly, a police patrol car blocked their path and the police officers ordered him and the other passengers to alight from the van. The police officers looked for a certain Wilmer, which he and the other passengers denied knowing. The police then asked the driver to open the back door of the van. The police officers searched the van and placed marijuana near the back of the van. They then assumed that accused-appellant was Wilmer, and forced him to go with them.<sup>13</sup>

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<sup>10</sup> Id. at 5.

<sup>11</sup> Id. at 6.

<sup>12</sup> Id.

<sup>13</sup> CA rollo, p. 39.

### Ruling of the RTC

On 08 March 2018, the RTC found accused-appellant guilty beyond reasonable doubt of the charge of illegal delivery of dangerous drugs, and sentenced him to suffer the penalty of life imprisonment. He was likewise ordered to pay a fine of ₱500,000.00.<sup>14</sup>

### Ruling of the CA

On appeal, the CA agreed with the RTC's findings and affirmed accused-appellant's conviction.<sup>15</sup> It ruled that the elements of Illegal Delivery of Drugs were established, and that the chain of custody of the seized items was not broken. Hence, the instant appeal.

### Issue

The sole issue in this case is whether or not the CA correctly affirmed accused-appellant's conviction for illegal delivery of dangerous drugs.

### Ruling of the Court

We DENY the appeal.

The offense of Illegal Delivery of Dangerous Drugs acts is found in Section 5, Article II of RA 9165, viz.:

*SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — 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, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.*

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<sup>14</sup> *Rollo*, p. 7.

<sup>15</sup> *Id.* at 17.

To secure a conviction for Illegal Delivery of Dangerous Drugs, the prosecution must establish the following elements: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery.<sup>16</sup>

In addition to the elements of the drug offenses, the State is also burdened with the responsibility of identifying, proving, and adducing in court the *corpus delicti*, or the drug subject of the offense.<sup>17</sup> The prosecution has to show an unbroken chain of custody over the same, and account for each link in the chain of custody, from the moment the drugs are seized, up to their presentation in court, as evidence of the crime.<sup>18</sup>

*The elements of Illegal Delivery  
were established*

We note that the trial court and the CA both found that the elements of Illegal Delivery were satisfied.

According to the prosecution witnesses, accused-appellant, who had no authority to do so, knowingly handed possession of a carton box, which upon opening, yielded 10 kgs. of marijuana, an illegal drug, to Agent Acosta, the poseur-buyer, during a buy-bust sale. As the payment for the illegal drugs, in the form of boodle money representing ₱35,000.00, was being handed over to accused-appellant, the latter seemingly sensed something was amiss, and tried to scamper away until he was caught by the PDEA operatives. Notwithstanding his attempt to escape before the payment could be received, the delivery of the illegal drugs was already consummated upon passing the carton of drugs to the possession of Agent Acosta. To stress, Section 5, Article II of RA 9165 penalizes not only the sale, but likewise, the delivery of illegal drugs. And under Section 3(k), Article I of the same law, delivery is defined as "any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration."

*The chain of custody was sufficiently  
complied with; the integrity and  
evidentiary value of the corpus delicti  
were properly preserved*

<sup>16</sup> *People v. Arago, Jr.*, G.R. No. 233833, 20 February 2019.

<sup>17</sup> *People v. Angeles*, G.R. No. 229099, 27 February 2019.

<sup>18</sup> *People v. Briones*, G.R. No. 239077, 20 March 2019.

Material in the prosecution of illegal sale of dangerous drugs is the proof that the sale took place, coupled with the presentation of the *corpus delicti* or the illicit drug as evidence.<sup>19</sup> The Court has consistently held that it is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.<sup>20</sup> Jurisprudence teaches that in these cases, it is essential that the identity of the seized drug be established with moral certainty. In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same.<sup>21</sup>

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photography of the seized items be conducted immediately after the seizure and confiscation of the same. The law further requires that the inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>22</sup> “a representative from the media AND the Department of Justice (DOJ), and any elected public official”; or (b) if **after** the amendment of RA 9165 by RA 10640, “[a] elected public official and a representative of the National Prosecution Service OR the media.” The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>23</sup>

The Information charges accused-appellant with committing the offense on 27 January 2014, or prior to the effectivity of the amendatory RA 10640.<sup>24</sup> Section 21, Article II of RA 9165, as complemented by Section 21 (a) of Article II of its Implementing Rules and Regulations, requires that immediately after seizure and confiscation of the suspected drug, the same should be physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel; (b) a representative from the media AND the Department of Justice (DOJ); and (c) any elected public official.

<sup>19</sup> *People v. Yanson*, G.R. No. 238453, 31 July 2019.

<sup>20</sup> *People v. Bartolini*, 791 Phil. 626, 634 (2016).

<sup>21</sup> *People v. Zapanta*, G.R. No. 230227, 06 November 2019.

<sup>22</sup> Entitled “An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2002,” approved on 15 July 2014.

<sup>23</sup> *People v. Bangalan*, 839 Phil. 455, 462 (2018); *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>24</sup> *People v. Bangalan*, id. at 461; In *People v. Gutierrez* (842 Phil. 681, 689 [2018]), this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter or on 07 August 2014, pursuant to Section 5 of the law.



Here, the prosecution witnesses were able to testify in detail the chain of custody, in compliance with the procedures laid down in Section 21, Article II of RA 9165, the law in force at the time of the commission of the offense. This is evident from the testimony of Agent Acosta, to wit:

PROS. FANGAYEN, JR:

Q Let us clarify, this, Mr. Witness. You handed him the payment?

A As I handed him the payment, he ran away because he notice agent Sanchez coming closer to our place.

Q So you mean to say he did not take with him the money?

A Yes your honor, because he immediately ran away.

Q Now when he ran away, what did you do next?

A Agent Sanchez and the rest of the team chased him in the rice field of Barangay Biday.

Q What about you, what did you do when you ran away?

A I took hold of the carton and the bag.

Q And when the other members of the team were able to catch your target, what happened next?

A We brought the suspect in our place of transaction then Agent Sanchez informed him of his Miranda rights.

Q After he was arrested, what happened next?

A I then conducted the markings and inventoried the pieces of evidence we recovered from alias Michael.

Q So what are these pieces of evidence which were recovered?

A On the brown carton, I recovered seven (7) pieces of elongated marijuana fruiting tops wrapped with masking tape.

Q So the carton contained seven (7) pieces of marijuana?

A Yes, your honor, marijuana fruiting tops wrapped with masking tape.

Q So where did you put your markings?

A I put the markings on the carton and the seven (7) pieces of elongated marijuana fruiting tops wrapped with masking tape.

Q Each of those seven?

A Yes, your honor.

Q What else?

A I also put markings on the other four (4) pieces of elongated marijuana fruiting tops on the black backpack.

Q From the bag.

A Yes your Honor.

- Q So the bag contains four. What about the bag?  
A I also put marking on the bag.<sup>25</sup>

It is clear that Agent Acosta promptly marked the seized items at the place of apprehension and in the presence of accused-appellant himself. And as further established by the prosecution, the inventory and taking of photographs were done in the presence of the required witness, namely, an elected *barangay* official, a member of the media and a representative from the DOJ.<sup>26</sup>


Thereafter, Agent Acosta prepared the request for qualitative and quantitative laboratory examination of the seized items, and turned over the same, including the seized items, to Chemist Ganat. The latter conducted both qualitative and quantitative examinations on the seized items, which were confirmed to be marijuana, a dangerous drug.<sup>27</sup> There is likewise no issue that the same specimen were presented to the court during trial.

Thus, We find no error on the part of the lower courts in ruling that there was compliance with the chain of custody rule, and that integrity and evidentiary value of the *corpus delicti* were properly preserved. Perforce, the conviction of accused-appellant must stand.

**WHEREFORE**, the Appeal is hereby **DENIED**. The Decision promulgated on 04 October 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11012 finding accused-appellant **Moises Cortez y Agalous** guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, is **AFFIRMED**.

**SO ORDERED.**” *Rosario, J., on official leave.*

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 7m 3/1

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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<sup>25</sup> TSN dated 09 September 2014, pp. 10-12

<sup>26</sup> *Rollo*, p. 6.

<sup>27</sup> *Id.* at 6.



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Court of Appeals (x)  
Manila  
(CA-G.R. CR-HC No. 11012)

The Hon. Presiding Judge  
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(Crim. Case No. 10261)

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