

## **THIRD DIVISION**

**[ G.R. No. 234051, November 27, 2019 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL  
AMBROSIO Y NIDUA A.K.A. "ARNEL," ACCUSED-APPELLANT.**

### **DECISION**

**ZALAMEDA, J.:**

This is an appeal seeking to reverse and set aside the Decision<sup>[1]</sup> dated 20 April 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07424, which affirmed the Decision<sup>[2]</sup> dated 03 September 2014 of Branch 64, Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 13-1497 to 1498, finding Arnel Ambrosio y Nidua, a.k.a. "Arnel" (accused-appellant), guilty beyond reasonable doubt of the crime of violation of Sections 5<sup>[3]</sup> and 11,<sup>[4]</sup> Article II of Republic Act (RA) 9165.

#### **Antecedents**

Accused-appellant was indicted for the subject offenses in two separate Informations, the accusatory portion of each states -

Criminal Case No. 13-1497

On the 18<sup>th</sup> day of June 2013 in the city of Makati, the Philippines, accused, not being lawfully authorized to [possess] or otherwise use any dangerous drugs and without corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver zero point eighty gram (0.80) and zero point ninety three gram (0.93), with the total of one point seventy three gram (1.73) of dried marijuana fruiting tops which is a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.<sup>[5]</sup>

and

Criminal Case No. 13-1498

On the 18<sup>th</sup> day of June 2013 in the city of Makati, the Philippines, accused, not being lawfully authorized by law to possess and without corresponding prescription did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control six heat sealed transparent plastic sachets containing zero point ninety gram (0.90), zero point eighty nine gram (0.89), zero point ninety eight gram (0.98), zero point eighty five gram (0.85), zero point eighty four gram

(0.84) and zero point seventy gram [(0.70)] and one piece of glass tube/pipe containing zero point eighteen gram (0.18) with the total of five point thirty four grams (5.34) of dried marijuana fruiting tops which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[6]</sup>

Upon arraignment, accused-appellant entered a plea of not guilty to the charges.<sup>[7]</sup> After pre-trial was terminated, trial on the merits ensued.<sup>[8]</sup>

### **Version of the Prosecution**

On 18 June 2013, the Station Anti Illegal Drugs Special Operations Task Group (SAIDSOTG) received information that accused-appellant engaged in illegal drug pushing in D. Gomez St., *Barangay* Tejeros, Makati City. On the basis thereof, a buy-bust team was organized in coordination with the Makati Anti-Drug Abuse Council (MADAC).

Before 9:00 p.m. of that day, the buy-bust team proceeded to the target area accompanied by the informant. However, accused-appellant did not have *shabu* at the time, so he encouraged the poseur-buyer, Bobby Veñalon (Veñalon), to purchase a "*kasang isang daan*," or One Hundred Pesos (Php 100.00) worth of marijuana instead. The poseur-buyer acceded, and after parting with the marked money as payment, accused-appellant handed two (2) plastic sachets allegedly containing marijuana. After executing the pre-arranged signal, the poseur-buyer introduced himself as a MADAC operative,<sup>[9]</sup> and placed accused-appellant under arrest. Obtained from accused-appellant's possession was a gray carton with six (6) plastic sachets containing suspected marijuana, six (6) empty plastic sachets, one pipe, one pink lighter, and the marked money.<sup>[10]</sup>

As it was drizzling and, a commotion was taking place, the arresting officers brought the accused-appellant, together with the seized items, to the *barangay* hall of *Barangay* Tejeros, Makati City.<sup>[11]</sup> Since there was no available elected official, the arresting officers summoned the *Barangay Bantay Bayan* Desk Officer, Ramon Fernando (Fernando), to witness the inventory.<sup>[12]</sup> The seized items were marked, inventoried,<sup>[13]</sup> photographed<sup>[14]</sup> and listed in the Inventory Receipt<sup>[15]</sup> in the presence of accused-appellant and signed by a member of the buy-bust team and Fernando.<sup>[16]</sup>

Later, the subject specimens were brought and turned over to the SAIDSOTG office for preparation of the requests for laboratory examination<sup>[17]</sup> and drug test<sup>[18]</sup> on accused-appellant. The seized items and the requests were later brought to the Southern Police District Crime Laboratory. Pursuant to Chemistry Report No. D-474-13,<sup>[19]</sup> the submitted specimens tested positive for the presence of marijuana.

### **Version of the Defense**

At around 5:00 p.m. of 18 June 2013, accused-appellant was inside the lavatory of his house when he heard some commotion outside. Upon stepping out of the lavatory, he found six (6) armed men inside his house wearing MADAC uniforms.

They brought accused-appellant inside a vehicle and took him to an office. He was bodily searched, but nothing was recovered from him.<sup>[20]</sup>

He was detained temporarily and, after an hour, brought to an office where they photographed him beside a plastic sachet. He was ordered to admit that the plastic sachet belonged to him, but he refused. He was later taken to the SOCO, then to the Hospital of Pasay, and finally, to the Counter Intelligence Division or CID.<sup>[21]</sup>

### **Ruling of the RTC**

On 03 September 2014, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 13-1497, finding the accused Arnel Ambrosio y Nidua, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and
2. In Criminal Case No. 13-1498, finding the accused Arnel Ambrosio y Nidua, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing him to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (400,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>[22]</sup>

The RTC stated that the prosecution was able to establish all the elements of the crimes charged. The poseur-buyer positively identified accused-appellant as the person who sold him One Hundred Pesos (Php100.00)<sup>[23]</sup> worth of marijuana. The prosecution likewise satisfactorily proved that accused-appellant had in his possession several sachets of dangerous drugs. The RTC further held that the integrity and evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule and disregarded accused-appellant's defense of denial.

Aggrieved, accused-appellant appealed to the CA.

### **Ruling of the CA**

In its Decision, the CA affirmed accused-appellant's conviction. It ruled that the prosecution succeeded in establishing that there was an illegal sale of prohibited drugs between the poseur-buyer and accused-appellant. It likewise found that accused-appellant was not legally authorized to possess the marijuana and drug paraphernalia obtained from him.

The CA did not give credence to accused-appellant's defense that the prosecution failed to follow the chain of custody rule. It declared that notwithstanding the

procedural lapses in the handling of the seized drugs, these were not fatal to the prosecution's cause as it was able to demonstrate the chain of custody of the seized illegal drugs and the preservation of its integrity all throughout the process.

Hence, this appeal.

### **Issue**

The issue is whether or not the CA correctly found accused-appellant guilty beyond reasonable doubt for the crimes of illegal sale and illegal possession of prohibited drugs under RA 9165.

### **Ruling of the Court**

The Court finds the appeal meritorious.

Accused-appellant was charged with illegal sale and illegal possession of dangerous drugs, as defined and penalized under Sections 5 and 11, Article II of RA 9165.

For the successful prosecution of illegal sale of prohibited drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>[24]</sup> In turn, for the successful prosecution of illegal possession of dangerous drugs, it must be established that the accused was in possession of the dangerous drugs without authority of law, and the accused freely and consciously possessed the dangerous drug.<sup>[25]</sup>

In both cases, it is essential that the identity of the prohibited drugs seized from the accused be established beyond reasonable doubt, and that the prohibited drugs offered in court as exhibit are the same as those recovered from the accused.<sup>[26]</sup> This requirement is known as the chain of custody rule under RA 9165, which was created to obviate any doubt concerning the identity of the seized drugs.<sup>[27]</sup>

Section 21, Article II of RA 9165 lays down the chain of custody rule, outlining the procedures police officers must follow in handling seized drugs in order to preserve their integrity and evidentiary value.<sup>[28]</sup> Said provision was later amended by RA 10640 which took effect in 2014,<sup>[29]</sup> but since the offenses charged were allegedly committed on 18 June 2013, it is the earlier version of Section 21, Article II of RA 9165 and its corresponding Implementing Rules and Regulations which should apply. The relevant portion of Section 21 (1) reads -

(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 requirements of*

*Section 21 of RA 9165  
were not complied  
with*

The seized items should have been marked with the initials of Veñalon, as well as the date, time and place where the evidence was seized, pursuant to the PNP Manual on Anti-Illegal Drugs Operation and Investigation.<sup>[30]</sup> But the apprehending officers disregarded this and instead marked the seized items as "Arnel," and "Arnel-1" to "Arnel-8".<sup>[31]</sup>

Also, the marking, inventory and photographing of the seized items were not done immediately. The testimony of Veñalon shows that the police officers waited for some time for an elected official to show up. When it seemed that no elected official was coming, they decided to mark the inventory in the presence of a *Bantay Bayan* desk officer instead. The pertinent portion of Veñalon's testimony is reproduced below:

PROSECUTOR:

Were you able to reach the barangay hall, Mr. Witness?

WITNESS:

Yes, ma'am.

PROSECUTOR:

What did you (sic) there, Mr. Witness?

WITNESS:

We waited for an elected official of the barangay hall (sic).

PROSECUTOR :

Was there any elected barangay official [who] showed up at the barangay hall?

WITNESS:

None, ma'am, because I think the barangay chairman and the kagawad had a meeting at that time.

PROSECUTOR :

What did you do when nobody from the barangay official showed up?

WITNESS:

The police officers just decided to summon the Bantay Bayan duty officer to serve as a witness.

PROSECUTOR:

Was the Bantay Bayan officer there?

WITNESS:

Yes, ma'am.

PROSECUTOR:

What did you do when he arrived?

WITNESS:

*Doon ko po nilatag ang inventory na wala pong sulat at pati po iyong mga ebidensya na nakuha ko po.*<sup>[32]</sup>