

## FIRST DIVISION

[ G.R. No. 207664, June 25, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL SALVIDAR Y GARLAN, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**REYES, J.:**

For review<sup>[1]</sup> is the Decision<sup>[2]</sup> rendered by the Court of Appeals (CA) on October 31, 2012 in CA-G.R. CR-HC No. 04989 affirming, albeit with modification as to the wordings of one of the penalties imposed, the Decision<sup>[3]</sup> dated April 11, 2011 by the Regional Trial Court (RTC) of Caloocan City, Branch 120 in Criminal Case Nos. C-78532-33, convicting Gil Salvador y Garlan (accused-appellant) for violation of Sections 5<sup>[4]</sup> and 11,<sup>[5]</sup> Article II of Republic Act (R.A.) No. 9165.<sup>[6]</sup>

#### **Factual Antecedents**

The informations filed before the RTC against the accused-appellant partially read as follows:

#### **CRIM CASE NO. 78532**

#### **Violation of Section 5, Art. II, RA 9165**

*"That on or about the 12<sup>th</sup> day of November 2007 in Caloocan City, Metro Manila, 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 and deliver to PO3 RAMON GALVEZ, who posed, as buyer, ten (10) heat-sealed transparent plastic sachets each containing dried MARIJUANA fruiting tops weighing 0.37 gram, 0.35 gram, 0.40 gram, 0.28 gram, 0.35 gram, 0.36 gram, 0.32 gram, 0.36 gram, 0.67 gram & 0.57 gram, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.*

*Contrary to law."*

#### **CRIM CASE NO. 78533**

#### **Violation of Section 11, Art. II, RA 9165**

*"That on or about the 12<sup>th</sup> day of November 2007, in Caloocan City[,], Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) transparent plastic box containing dried MARIJUANA*

*fruiting tops weighing 29.01 grams, when subjected for laboratory examination gave positive result to the tests of Marijuana, a dangerous drug.*

*Contrary to law.*<sup>[7]</sup>

During arraignment, the accused-appellant entered a “not guilty” plea. Pre-trial then ensued. Since the two cases were filed against the same accused and revolve around the same facts and evidence, they were consolidated and tried jointly.

### **Version of the Prosecution**

The prosecution offered the following as witnesses: (a) Police Officer 3 Ramon Galvez (PO3 Galvez), the poseur-buyer in the buy-bust operation conducted against the accused-appellant; (b) PO2 Randolpho Hipolito (PO2 Hipolito), likewise a member of the buy-bust operation; (c) Senior Police Officer 1 Fernando Moran (SPO1 Moran), then the investigator-on-duty to whom the accused-appellant and the seized evidence were turned over at the police station; and (d) Police Chief Inspector Albert S. Arturo (PCI Arturo), Forensic Chemical Officer of the Northern Police District Crime Laboratory Office, Caloocan City, who conducted the examination on the evidence seized from the accused-appellant.

PO3 Galvez testified that on November 12, 2007, he was ordered by their chief to conduct a surveillance operation to verify reported illegal drug selling activities in Don Antonio Street, *Barangay* 19, Caloocan City. A confidential informant told the police that a certain “*Keempee*,” who would later on be identified as the herein accused-appellant, was notoriously selling *marijuana* in the area. A buy-bust team was thereafter formed. PO3 Galvez was designated as the poseur-buyer, PO3 Fernando Modina (PO3 Modina) as team leader, and PO2 Hipolito as back-up member. A hundred peso bill, marked with PO3 Galvez’s initials, was prepared. To send a signal to the other members of the buy-bust team of the consummation of the transaction with the accused-appellant, PO3 Galvez was instructed to throw a lit cigarette.<sup>[8]</sup>

The buy-bust team proceeded to the target area. PO3 Galvez and the informant saw the accused-appellant near the front door of his house, stripping *marijuana* leaves. The rest of the team remained in the perimeter. PO3 Galvez approached the house, uttered “*Keempee, pakuha nga ng damo, halagang isang daan*,” and gave the latter the P100.00 marked money. The accused-appellant then held ten (10) pieces of plastic, which appeared to contain *marijuana* and white pieces of paper, placed them inside a Marlboro pack, and handed them all to PO3 Galvez. When PO3 Galvez threw a lit cigarette, PO2 Hipolito joined him in arresting the accused-appellant, who was apprised of his constitutional rights. After a further search, one transparent plastic box containing what likewise appeared to be dried *marijuana* leaves, one plastic sachet with white pieces of paper, and a few empty transparent plastic sachets were also seized from the accused-appellant.<sup>[9]</sup>

PO3 Galvez marked the ten (10) plastic sachets with “GSG/RG 11/12/07” representing his and the accused-appellant’s initials and the date the imprint was made. The rest of the items seized were marked with “GSG/RH,” the last two letters

representing PO2 Hipolito's initials. The accused-appellant and the seized items were thereafter taken to the police station and turned over to SPO1 Moran, who prepared the letter request for laboratory examination. The crime laboratory tested the seized items and found the same to be *marijuana*.<sup>[10]</sup>

PO2 Hipolito corroborated PO3 Galvez's testimony about the conduct of a buy-bust operation and the turnover of the accused-appellant and the seized items to the investigator at the police station. Additionally, PO2 Hipolito stated that he held the accused-appellant while PO3 Galvez was marking some of the seized items. The accused-appellant was turned over to PO3 Modina upon the latter's arrival, while PO2 Hipolito marked the rest of the seized items.<sup>[11]</sup>

The prosecution and the defense entered into stipulations and admissions of facts anent:

- (a) SPO1 Moran's (1) having caused the buy-bust money to be photographed; (2) receipt, while at the police station, of the person of the accused-appellant and the items allegedly seized from him; (3) preparation of the evidence acknowledgment receipt, affidavit of arrest of the police officers, and referral slip to the inquest prosecutor; (4) preparation of a letter request for laboratory examination of the seized items; and (5) receipt of the result of the laboratory examination, which yielded positive for *marijuana*;<sup>[12]</sup> and
- (b) PCI Arturo's (1) receipt of a letter request for laboratory examination of ten (10) heat-sealed transparent plastic sachets containing white pieces of paper and dried *marijuana* fruiting/flowering tops; (2) conduct of a laboratory examination on the aforecited specimens; and (3) preparation of Physical Science Report No. D-382-07 stating therein the result of the laboratory examination.<sup>[13]</sup>

The testimonies of SPO1 Moran and PCI Arturo were thus dispensed with.

### **Version of the Defense**

The defense, on its part, offered the testimonies of the accused-appellant and his son, Guillar Salvidar (Guillar).

The accused-appellant claimed that contrary to the prosecution's statements, he was instead arrested at around 4:00 p.m. of November 11, 2007. While playing a video game with Guillar, he stood up to get snacks for the latter. Several men arrived, brought him to their vehicle, and handcuffed him. He was subsequently asked to reveal the identities of big time drug pushers in the area. The accused-appellant was unable to comply with the order and was brought to the Sangandaan precinct. The men, who seized the accused-appellant, turned out to be police officers. PO3 Galvez and SPO1 Moran belonged to the group. They inquired from him about his and his wife's employment. The men then asked him to settle the case for P30,000.00. He told them that he did not have money. When his wife arrived, she argued with the police officers. The officers got angry and informed him that he would be indicted.<sup>[14]</sup>

Guillar corroborated the accused-appellant's testimony about the date of the arrest and their whereabouts at that time. He added that three policemen arrived. They dragged his father out of the video game shop and the latter, in turn, resisted. Guillar cried while he chased his father who was taken away, but the former's attempt was futile. Guillar went home to inform his mother about the incident.<sup>[15]</sup>

### **Ruling of the RTC**

On April 11, 2011, the RTC rendered a decision,<sup>[16]</sup> the dispositive portion of which reads:

Premises considered, this court finds and so holds the accused Gil **Salvidar y Garlan GUILTY** beyond reasonable doubt for violation of Sections 5 and 11, Article II of [R.A. No. 9165], x x x and imposes upon him the following:

(1) In **Crim. Case No. C-78532**, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos ([P]500,000.00); and

(2) In **Crim. Case No. C-78533**, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos ([P]300,000.00).

The drugs subject matter of these cases consisting of ten (10) heat-sealed transparent plastic sachets each containing dried MARIJUANA fruiting tops weighing 0.37 gram, 0.35 gram, 0.40 gram, 0.28 gram, 0.35 gram, 0.36 gram, 0.32 gram, 0.36 gram, 0.67 gram & 0.57 gram[,] as well as the one (1) transparent plastic box containing dried MARIJUANA fruiting tops weighing 29.01 grams[,] are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.<sup>[17]</sup>

The RTC found the accused-appellant's defense of denial and claim of attempted police extortion as bare, hence, unmeritorious. The trial court declared that the testimonies of the members of the buy-bust team deserve full faith and credit, unless it can be shown that they did not properly perform their duties, or that they were inspired by ill motives. The accused-appellant, in this case, did not personally know the policemen and had no previous altercation with any of them, which could have otherwise prompted the filing of fabricated charges against him. Besides, the police officers could not have been oblivious of the fact that Section 29 of R.A. No. 9165 imposes the penalty of death upon persons found guilty of planting dangerous drugs as evidence.<sup>[18]</sup>

Citing *People v. Cueno*<sup>[19]</sup> and *People v. Rigodon*,<sup>[20]</sup> the RTC emphasized that only two basic elements must be present for the charge of illegal sale of drugs to prosper, namely: (a) the determination of the identities of the buyer and the seller,

the object and the consideration; and (b) the delivery of the thing sold and the payment therefor. In the case at bar, PO3 Galvez gave a detailed account of how the sale involving the accused-appellant was consummated and his testimony was corroborated by PO2 Hipolito. The seized items were also positively identified and the unbroken chain of custody over the same was established.<sup>[21]</sup>

### **The Parties' Arguments Before the CA and its Ruling**

The accused-appellant challenged the above ruling before the CA claiming that the prosecution's version of what transpired was highly incredible. The members of the buy-bust team narrated that the accused-appellant was packing and selling his illegal merchandise in public view. This, however, is improbable and contrary to common experience.<sup>[22]</sup>

The accused-appellant also alleged that the prosecution failed to establish an unbroken chain of custody over the evidence. There was no explicit testimony that the specimens were marked in the presence of the accused-appellant. There was likewise no proof that the items were photographed and inventoried in the presence of a member of the media, a Department of Justice (DOJ) representative, and an elective government official.<sup>[23]</sup>

Further, not all who had custody of the specimens testified on the condition of the same upon receipt and the precautions they took to preserve their integrity. It is perplexing as well why SPO1 Moran delivered the seized items twice to the crime laboratory – at first to a certain PO1 Bolora at 9:40 p.m. of November 12, 2007, and subsequently to PCI Arturo at 9:45 p.m. of the same date. While PO1 Bolora's custody over the seized items merely lasted for a few minutes, still, he should have testified because that short span of time was more than sufficient to destroy the integrity of the evidence.<sup>[24]</sup>

Admittedly, there are exceptions to the strict implementation of the rules and procedures mandated by R.A. No. 9165. However, the prosecution should have, at the outset, recognized the procedural lapses and cite justifiable grounds for the omissions, failing at which, a taint of doubt is cast upon the presumption that official duties have been performed with regularity.<sup>[25]</sup>

The Office of the Solicitor General (OSG) opposed the appeal arguing that drug pushers have become more daring in selling their wares without regard for place and time.<sup>[26]</sup>

The prosecution had likewise proven beyond reasonable doubt that an illegal sale of ten (10) plastic sachets containing marijuana was consummated and the accused-appellant was the vendor. The same ten (10) plastic sachets were seized from the accused-appellant, then later on, identified and offered as evidence during the trial. PO3 Galvez and PO2 Hipolito had testified in detail about the conduct of the buy-bust operation, including the markings done on the plastic sachets and transparent box seized from the accused-appellant in the place where he was arrested, and no irregularity can be ascribed as to the concerned police officers' performance of duties.<sup>[27]</sup>