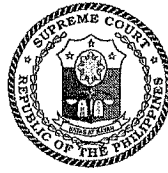


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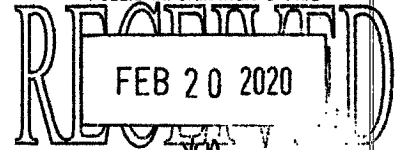


Mis-DC Balt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

FEB 18 2020

Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: *YSA*
TIME: *3:21*

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 234051

- versus -

Present:

LEONEN, J., Chairperson
GESMUNDO,*
CARANDANG,
LAZARO-JAVIER,** and
ZALAMEDA, JJ.

ARNEL AMBROSIO y NIDUA
a.k.a. "ARNEL,"
Accused-Appellant.

Promulgated:

November 27, 2019

X-----*Mis-DC Balt*-----X

DECISION

ZALAMEDA, J.:

This is an appeal seeking to reverse and set aside the Decision¹ dated 20 April 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07424, which affirmed the Decision² 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 5³ and 11,⁴ Article II of Republic Act (RA) 9165.

* On leave.

** Designated as additional Member of the Third Division per Special Order No. 2728.

¹ *Rollo*, pp. 2-12; penned by CA Associate Justice Eduardo B. Peralta, Jr., with CA Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a Member of this Court), concurring.

² *CA rollo*, pp. 49-54; Records, pp. 111-116.

³ Penalizing the sale, trading, administration, dispensation, delivery, distribution and transportation of dangerous drugs and/or controlled precursors and essential chemicals.

⁴ Penalizing possession of dangerous drugs.

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 18th 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.⁵

and

Criminal Case No. 13-1498

On the 18th 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.⁶

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

⁵ Records, p. 1.

⁶ *Id.* at 3.

⁷ *Id.* at 32.

⁸ *Id.* at 51-53.

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,⁹ 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.¹⁰

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.¹¹ Since there was no available elected official, the arresting officers summoned the *Barangay Bantay Bayan* Desk Officer, Ramon Fernando (Fernando), to witness the inventory.¹² The seized items were marked, inventoried,¹³ photographed¹⁴ and listed in the Inventory Receipt¹⁵ in the presence of accused-appellant and signed by a member of the buy-bust team and Fernando.¹⁶

Later, the subject specimens were brought and turned over to the SAIDSOTG office for preparation of the requests for laboratory examination¹⁷ and drug test¹⁸ on accused-appellant. The seized items and the

⁹ *Id.* at 8-11, 31-32.

¹⁰ *Id.* at 11-12, 38.

¹¹ *Id.* at 12, 40-42.

¹² TSN dated 12 February 2014, pp. 13, 16-17, 42-43.

¹³ *Id.* at 14-16.

¹⁴ *Id.* at 14; Records, pp. 97-99.

¹⁵ Records, p. 89.

¹⁶ TSN dated 12 February 2014, pp. 16-18, 43.

¹⁷ Records, p. 87.

¹⁸ *Id.* at 91.

requests were later brought to the Southern Police District Crime Laboratory. Pursuant to Chemistry Report No. D-474-13,¹⁹ 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.²⁰

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.²¹

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.

¹⁹ *Id.* at 90.

²⁰ TSN dated 13 August 2014, pp. 2, 4-9.

²¹ *Id.* at 10-12.

SO ORDERED.²²

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 (Php 100.00)²³ 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.

²² Records, page 116; CA *rollo*, p. 54.

²³ TSN dated August 2014, p. 10.



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.²⁴ 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.²⁵

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.²⁶ 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.²⁷

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.²⁸ Said provision was later amended by RA 10640 which took effect in 2014,²⁹ 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**

²⁴ *People v. Pantallano*, G.R. No. 233800, 06 March 2019.

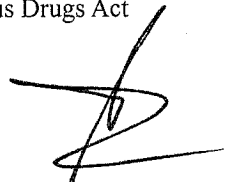
²⁵ *People v. Ismael*, G.R. No. 208093, 20 February 2017, 818 SCRA 122, 132.

²⁶ *People v. Macaumbang*, G.R. No. 208836, 01 April 2019.

²⁷ *People v. Bangcola*, G.R. No. 237802, 18 March 2019.

²⁸ *People v. Alvaro*, G.R. No. 225596, 10 January 2018.

²⁹ 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.



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.³⁰ But the apprehending officers disregarded this and instead marked the seized items as “Arnel,” and “Arnel-1” to “Arnel-8”.³¹

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 :

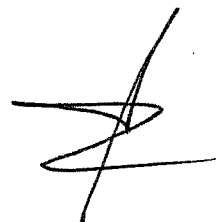
None, ma’am, because I think the barangay chairman and the kagawad had a meeting at that time.

PROSECUTOR :

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

³⁰ See *People v. Otico*, G.R. No. 231133, 06 June 2018, 865 SCRA 534.

³¹ TSN dated 12 February 2014, pp. 14-15.



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.*³²

The marking and inventory of the seized items were not attended and witnessed by any representative from the media and the DOJ, as well as any elected official, all in violation of the requirements in Section 21 of RA 9165. True, Fernando, the *Bantay Bayan* desk officer, was present. But he is not an elected public official and, thus, not one of the required witnesses in the law.

The presence of the three (3) required witnesses should not only be during the inventory but, more importantly, during accused-appellant's apprehension. For it is at this point that their presence was most needed. Their presence at the time of the seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drugs. If the buy-bust operation was legitimately conducted, the presence of these insulating witnesses would also controvert the usual defense of frame-up; they would be able to testify that the operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.³³

The records show that the briefing of the buy-bust team terminated at around 4:00 p.m., and that the team members merely stayed inside their office until it was time to leave for the target area at 8:45 p.m.³⁴ In those nearly five (5) hours of hiatus, anybody in the team could have contacted representatives from the media, the DOJ, and any local elected official in the area. But nothing in the records show that the police officers exerted any effort at all to secure the attendance of the mandatory witnesses during accused-appellant's apprehension and during inventory.

³² *Id.* at pp. 12-13.

³³ *People v. Caranto*, G.R. No. 217668, 20 February 2019; citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018.

³⁴ TSN dated 12 February 2014, p. 31.

MADAC operative Veñalon testified that when it appeared that no elected public officials were forthcoming, the police officers decided that the presence of the *Bantay Bayan* desk officer will suffice. This is not a justifiable ground for non-compliance with the required witnesses rule. No other proof was given that the police officers took other measures to ensure the presence of an elected public official. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance.³⁵

The following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug from the forensic chemist to the court.³⁶

In this case, there is a glaring gap in the fourth link of the chain. The trial court dispensed with the testimony of the forensic chemist in view of the stipulation entered into by the prosecution and the defense during the pre-trial conference.

It has been held in *People v. Pajarin*³⁷ that in case the parties stipulate to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist was to testify that he/she took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with pending trial. An examination of the Order dated 25 September 2013, wherein the testimony of the forensic chemist was dispensed with, does not show that the aforesaid conditions were stipulated on.³⁸

In cases of illegal sale and possession of dangerous drugs, the dangerous drug itself seized from the accused constitutes the *corpus delicti* of the offense. Hence, it is of utmost importance that the integrity and

³⁵ *People v. Isla*, G.R. No. 237352, 15 October 2018.

³⁶ *People v. Ubungen*, G.R. No. 225497, 23 July 2018.

³⁷ G.R. No. 190640, 12 January 2011, 639 SCRA 489.

³⁸ Records, pp. 51-53.



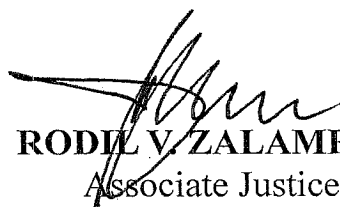
identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.³⁹ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and the identity of the said drug is established with the same unwavering exactitude as that required to make a finding of guilt.⁴⁰ When there are doubts on whether the seized substance examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug.⁴¹

The prosecution's failure to give justifiable grounds for the police officers' deviation from the procedures laid down in RA 9165, and its failure to account for the fourth link in the chain of custody, have compromised the integrity and evidentiary value of the *corpus delicti* in this case, thereby raising a cloud of reasonable doubt warranting accused-appellant's acquittal. As such, We find that the evidence for the prosecution failed to establish the guilt of the accused-appellant beyond reasonable doubt.

WHEREFORE, the instant appeal is hereby **GRANTED**. Accordingly, the Decision dated 20 April 2017 rendered by the Court of Appeals in CA-G.R. CR HC No. 07424 is **REVERSED AND SET ASIDE**. Accused-appellant **ARNEL AMBROSIO y NIDUA a.k.a. "ARNEL"** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The accused-appellant is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

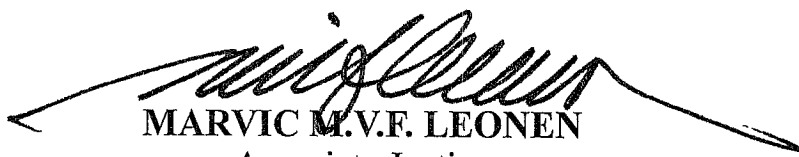

RODIL V. ZALAMEDA
Associate Justice

³⁹ *People v. Hilario*, G.R. No. 210610, 11 January 2018, 851 SCRA 1, 18.

⁴⁰ *People v. Malana*, G.R.-No. 233747, 05 December 2018.

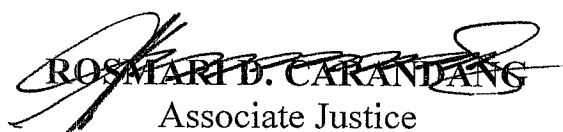
⁴¹ *Supra* at note 39.

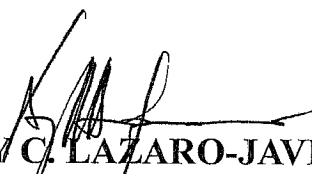
WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

(On leave)


ALEXANDER G. GESMUNDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MisPDCBatt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
FEB 18 2020

