



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 15 July 2015 which reads as follows:*

**G.R. No. 216011 – (People of the Philippines v. Remigio Viray y Lopez).**

The records of this case were elevated to this Court on January 27, 2015, pursuant to the Resolution of the Court of Appeals, dated April 30, 2014, which gave due course to the notice of appeal filed by the accused-appellant, Remigio Viray y Lopez (*Viray*).

In compliance with the Court's Resolution, dated March 9, 2015, Viray filed a manifestation informing the Court that he intended to replead and adopt all the defenses and arguments raised in the Brief for the Accused-Appellant. The Office of the Solicitor General filed its Manifestation and Motion stating that it be excused from filing a supplemental brief as all the issues raised by the accused-appellant had been adequately addressed in its Appellee's Brief before the CA.

Hence, this disposition.

Subject of this appeal is the March 26, 2014 Decision<sup>1</sup> of the CA, in CA-G.R. CR. H.C. No. 05162, which *modified* the July 11, 2011 Judgment<sup>2</sup> rendered by the Regional Trial Court, Branch 75, Olongapo City (*RTC*), in Criminal Case Nos. 194-08 and 196-08, finding Viray guilty beyond reasonable doubt of violation of Section 5 and Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

*The Antecedents*

The City Anti-Illegal Drugs Special Operations Team (*CAIDSOT*), based in Olongapo City, received a tip from an informant that Viray, a balut vendor, was selling dangerous drugs in Barangays Pag-asa and East Bajac-Bajac, Olongapo City. After conducting a surveillance, CAIDSOT planned

<sup>1</sup> *Rollo*, pp. 2 to 15; Penned by Associate Justice Elihu A. Ybañez with Associate Justice Japar B. Dimaampao and Associate Justice Melchor Q. C. Sadang, concurring.

<sup>2</sup> *CA rollo*, pp. 75-86. Penned by Judge Raymond C. Viray.

- more -

and actually conducted a buy-bust operation on May 27, 2008, at around 7:00 o'clock in the evening.<sup>3</sup>

During the operation, PO1 Sherwin Tan (*PO1 Tan*) the designated poseur-buyer, approached Viray and pretended to buy balut. A conversation ensued where PO1 Tan told Viray that he was a friend of a certain Bong Cortez to whom Viray earlier sold marijuana, according to the informant's tip. Tan then told Viray that he wanted to buy marijuana worth ₱100.00. Viray opened his basket of balut and took out a sachet of marijuana and handed it to PO1 Tan while the latter, in turn, handed the former a marked ₱100.00 bill. PO1 Tan then gave the pre-arranged signal and proceeded to frisk Viray from whom the marked money was recovered.<sup>4</sup>

The other members of the buy-bust team then searched Viray's basket and found three more sachets of marijuana and another sachet wrapped in a piece of newspaper. The seized items were then marked and turned over to the investigating officer. The necessary documents, including the request for laboratory examination of the seized items, were prepared. The tests yielded positive for marijuana.<sup>5</sup>

Thereafter Viray was charged in two separate informations for violation of Section 5 and Section 11, Article II of R.A. No. 9165,<sup>6</sup> to wit:

**Criminal Case No. 194-08**

That on or about the twenty-seventh (27<sup>th</sup>) day of May, 2008, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly deliver to PO1 Sherwin Tan and PO1 Lawrence Reyes Php100.00 (SL439657) worth of marijuana fruiting tops, which is a dangerous drug in one (1) heat-sealed transparent plastic sachet weighing three grams and three tenth (3.3) of a gram.

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

**Criminal Case No. 196-08**

That on or about the twenty-seventh (27<sup>th</sup>) day of May, 2008, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his

<sup>3</sup> *Rollo*, pp. 4-5.

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

<sup>5</sup> *Id.* at 5-6.

<sup>6</sup> Comprehensive Dangerous Drugs Act of 2002.

<sup>7</sup> *CA rollo*. p. 75.

*mlg*

effective possession and control three (3) heat-sealed transparent plastic sachet containing marijuana fruiting tops having a combined weight of Nine grams (9.0) and one (1) small folded newspaper containing marijuana fruiting tops weighing One gram and four tenth (1.4) of a gram which are dangerous drugs, said accused not having the corresponding prescription to possess said dangerous drugs.

**Contrary to law.<sup>8</sup>**

For his defense, Viray claimed that he was selling balut to PO1 Tan when PO1 Lawrence Reyes (*PO1 Reyes*) suddenly approached him and grabbed his basket of balut. Viray added that he noticed PO1 Reyes holding something and placed it on top of his basket. Then, he was detained and he found out later that he was being charged with selling marijuana.<sup>9</sup>

After the trial, the RTC found Viray guilty beyond reasonable doubt as charged in the two cases.<sup>10</sup> The dispositive portion of the said judgment reads:

**WHEREFORE**, judgment is rendered as follows:

1. In Criminal Case No. 194-08, the Court finds **REMIGIO VIRAY y LOPEZ GUILTY** beyond reasonable doubt of Violation of Sec. 5, RA 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of **₱500,000.00 plus cost**, without subsidiary imprisonment in case of insolvency;
2. In Criminal Case No. 196-08, the Court finds **REMIGIO VIRAY y LOPEZ GUILTY** beyond reasonable doubt of Violation of Section 11, RA 9165 and sentences him to suffer the penalty of imprisonment from twelve (12) years and one day to fourteen (14) years and eight months and to pay a fine of **₱300,000.00 plus cost**, without subsidiary imprisonment in case of insolvency.

The accused shall also suffer the accessory penalties under Section 35, RA 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

<sup>8</sup> Id. at 75.

<sup>9</sup> Rollo, p. 6.

<sup>10</sup> Penned by Judge Raymond C. Viray.

*mlgo*

The sachets of marijuana marked Exhs. 'E' to 'E-4' of the Prosecution are ordered confiscated in favor of the government and to be disposed of in accordance with law.

SO DECIDED.<sup>11</sup>

[Emphases in the Original]

Viray went up on appeal to the CA questioning the inventory and chain of custody of the seized marijuana. After review, the CA denied the appeal stating that "the prosecution has amply proven all the elements of the drugs sale beyond moral certainty"<sup>12</sup> and that "nothing was offered by accused-appellant to bolster his claim of denial and frame up other than his self-serving assertion."<sup>13</sup> The CA, however, modified the penalty in the possession case. The decretal portion of the CA decision reads:

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 75, 3<sup>rd</sup> Judicial Region, Olongapo City, dated 11 July 2011 is hereby **AFFIRMED** with the **MODIFICATION** in that in **CRIMINAL CASE NO. 196-08** accused-appellant is sentenced to suffer the penalty of life imprisonment, and to pay a fine of Five hundred thousand pesos (P500,000.00).

The Decision of the trial court finding the accused-appellant guilty of violation of Section 5, Article II of R.A. 9165 in **CRIMINAL CASE NO. 2551-M-2003 [SIC]** is hereby **AFFIRMED** in all respects.

SO ORDERED.<sup>14</sup>

After a perusal of the records of the case, the Court resolves to affirm the CA decision for failure of Viray to sufficiently show reversible error in the challenged decision warranting the exercise of the Court's appellate jurisdiction, The Court, however, modified the penalty imposed by the CA in Criminal Cases No. 196-08.

The penalty of life imprisonment imposed by the CA in the possession case should be set aside. The correct penalty therefor is the one imposed by the RTC. Accordingly, the penalty imposed by the RTC for Criminal Case No. 196-08 must be **reinstated** in order to conform to the provisions of R.A. No. 9165, more particularly, Section 11, sub-item (3) or the last paragraph of Section 11 which provides:

<sup>11</sup> CA rollo, pp. 40-41.

<sup>12</sup> Rollo, p. 9.

<sup>13</sup> Id. at 10.

<sup>14</sup> Id. at 14-15.

Section 11. *Possession of Dangerous Drugs.* x x x

x x x.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows

x x x.

3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

**WHEREFORE**, the appeal is **DISMISSED**, subject to the aforesaid modification as to the penalty in Criminal Case No. 196-08. Accordingly, the July 11, 2011 Decision of the Regional Trial Court, Branch 75, Olongapo City, is **REINSTATED**. (*Carpio J., on official leave, Del Castillo, J., designated Acting Chairperson and Peralta, J., designated Acting Member, per Special Order Nos. 2087 (Revised) and 2088, both dated July 1, 2015; Brion, J., on leave, Bersamin, J., designated Acting Member, per Special Order No. 2079, dated June 29, 2015*)

**SO ORDERED. "**

Very truly yours,

  
 MA. LOURDES C. PERFECTO  
 Division Clerk of Court *jde*  
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HON. PRESIDING JUDGE (reg)  
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Olongapo City  
Crim. Case Nos. 194-08 and 196-08

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