



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 27, 2019, which reads as follows:

“G.R. No. 232153 (*People of the Philippines v. Ariel Alog y Ramos alias “Aye”*) – This appeal¹ seeks the reversal of the Decision² dated 31 May 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05953, affirming the Judgment³ dated 14 November 2012 of Branch 75, Regional Trial Court (RTC) of Olongapo City, in Criminal Case Nos. 93-10 and 94-10, finding accused-appellant Ariel Alog y Ramos, alias “Aye” (accused-appellant), guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (RA) 9165.⁴

Antecedents

On 05 April 2010, accused-appellant was indicted for violation of Sections 5 and 11, Article II of RA 9165, in separate Informations, the accusatory portions of which read:

Criminal Case No. 94-2010

That on or about the Thirtieth (30th) day of March 2010[,] 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 sell and deliver during a buy-bust operation to PO1 Sherwin Tan (poseur buyer)[,] P100.00 (SN DP 013556) worth of Marijuana Fruiting Tops, which is a dangerous drug[,] in one (1) heat-sealed transparent plastic sachet[,] weighing 1.141 grams.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 15-17.

² *Id.* at 02-14; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.

³ Records, pp. 210-218; penned by Judge Raymond C. Viray.

⁴ Comprehensive Dangerous Drugs Act of 2002.

⁵ Records, p. 01.

Criminal Case No. 93-2010

That on or about the Thirtieth (30th) of March 2010[,] 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 possession and control[,] Marijuana Fruiting Tops in eight (8) heat-sealed transparent plastic sachets[,] with a total weight of 11.602 grams, which are dangerous drugs, [and] said accused not having the corresponding license, prescription, and/or authority to possess said dangerous drugs.

CONTRARY TO LAW.⁶

On arraignment,⁷ accused-appellant pleaded not guilty to the charges. After pre-trial,⁸ trial on the merits ensued.

Version of the Prosecution

Acting on reports that accused-appellant was engaged in illegal drug trade activities, the City Anti-Illegal Drug Special Operation Team, Olongapo City, conducted a buy-bust operation against accused-appellant at Suzuki Beach Hotel on 30 March 2010.⁹ During the buy-bust, accused-appellant sold and handed to the poseur-buyer, PO2 Sherwin Tan (PO2 Tan), one (1) plastic sachet containing dried suspected marijuana fruiting tops.¹⁰ Immediately, accused-appellant was arrested. Thereafter, PO1 Ferdinand Mataverde (PO1 Mataverde) rushed to the scene and frisked accused-appellant. PO1 Mataverde recovered from accused-appellant the buy-bust money, an improvised knife, and eight (8) plastic sachets containing suspected marijuana.¹¹

Subsequently, PO2 Tan and PO1 Mataverde turned over the seized items to the investigator, SPO2 Allan Delos Reyes (SPO2 Delos Reyes).¹² In turn, SPO2 Delos Reyes prepared an initial inventory and marked all the items at the place of arrest, in the presence of accused-appellant, a representative from the media and a *barangay* official.¹³ Later, the arresting officers conducted a final inventory and took photographs¹⁴ of the seized items at the police station. The DOJ representative and the *barangay* official

⁶ *Id.* at 16.

⁷ *Id.* at 37 and 39. *See* Order and Certificate of Arraignment both dated 13 May 2010.

⁸ *Id.* at p. 42.

⁹ TSN dated 08 February 2011, pp. 03-05.

¹⁰ *Id.* at 08-10; TSN dated 17 April 2012, pp. 03-06.

¹¹ TSN dated 27 October 2011, pp. 08-10.

¹² TSN dated 17 April 2012, p. 5.

¹³ *Id.* at 04-07.

¹⁴ Records, p. 100; TSN dated 17 April 2012, pp. 09-10.

likewise signed the Inventory Receipt and Chain of Custody¹⁵ at the station.¹⁶

The seized items were later brought to the crime laboratory.¹⁷ Per Chemistry Report No. D-0025-2010-OCCLLO,¹⁸ the contents of the nine (9) plastic sachets tested positive for the presence of marijuana, a dangerous drug.

Version of the Defense

Accused-appellant denied the charges against him. He claimed that on the date of the alleged buy-bust incident, he and his friend were eating at a fastfood chain in Barretto, Olongapo City, when three (3) armed men approached them and poked a gun at them.¹⁹ One of the armed men asked about a certain "Bunso,"²⁰ but when they could not say anything about the person, the armed men brought them to Camp Cabal, Barretto, Olongapo City for investigation.²¹

Ruling of the RTC

On 14 November 2012, the RTC rendered its Judgment,²² the dispositive portion of which reads:

WHEREFORE, judgment is rendered as follows:

1. In *Criminal Case No. 93-10*, the Court finds *ARIEL ALOG y RAMOS 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 (1) day to fourteen (14) years and eight (8) months[,] and to pay a fine of P300,000.00 plus cost**, without subsidiary imprisonment in case of insolvency[;]
2. In *Criminal Case No. 94-10*, the Court finds *ARIEL ALOG y RAMOS 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 P500,000.00 plus cost**, without subsidiary imprisonment in case of insolvency;

¹⁵ *Id.* at 95.

¹⁶ TSN dated 17 April 2012, pp. 06-07.

¹⁷ TSN dated 08 February 2011, pp. 15-16.

¹⁸ Records, p. 99.

¹⁹ TSN dated 14 June 2012, pp. 02-04.

²⁰ *Id.* at 04.

²¹ *Id.* at 02-04.

²² *Supra* at note 3.

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.

The sachets of marijuana marked *Exhs. "H" to "H-8"* of the Prosecution are ordered confiscated in favor of the government[,] and to be disposed of in accordance with law.

SO DECIDED.²³

The RTC ruled that the prosecution was able to establish all the elements of the offenses charged. The poseur-buyer positively identified accused-appellant as the person who sold him Php100.00 worth of marijuana.²⁴ The prosecution likewise satisfactorily proved that accused-appellant had in his possession eight (8) plastic sachets containing marijuana.²⁵ The RTC disregarded accused-appellant's defense of denial as there was nothing on record to remotely suggest that the evidence had been tampered with.²⁶

Aggrieved, accused-appellant appealed to the CA.²⁷

Ruling of the CA

On 31 May 2016, the CA promulgated its assailed Decision, affirming accused-appellant's conviction, thus:

We **DISMISS** the appeal, and **AFFIRM** the Decision dated 14 November 2012 of the Regional Trial Court, Branch 75, Olongapo City, in Criminal [Case Nos.] 93-10 and 94-10.

IT IS SO ORDERED.²⁸

The CA ruled that with the prosecution successfully proving that the sale took place, coupled with the presentation of the *corpus delicti* in court, a conviction of the offense of illegal sale of dangerous drugs must be

²³ Records, p. 218.

²⁴ *Id.* at pp. 214-215.

²⁵ *Id.* at pp. 215.

²⁶ *Id.* at p. 217.

²⁷ CA *rollo*, pp. 136-138.

²⁸ *Rollo*, p. 14; CA *rollo*, pp. 128-129.

sustained.²⁹ It further ruled that accused-appellant's possession of marijuana was not authorized by law.³⁰

The CA brushed aside accused-appellant's defense pertaining to the police officers' failure to strictly comply with the "chain of custody" rule.³¹ According to the CA, these procedural lapses in the handling of the seized drugs were not fatal to the prosecution's case as the integrity and evidentiary value of the seized drugs were sufficiently established.³² Finally, the CA held that accused-appellant's denial and alibi had no leg to stand on.³³

Hence, this appeal.³⁴

Issue

Simply, the issue here is whether or not the RTC, as affirmed by the CA, correctly convicted accused-appellant of the offenses of illegal sale and illegal possession of dangerous drugs.

Ruling of the Court

We grant the appeal.

In every prosecution for illegal sale of dangerous drugs, the following elements must be established with moral certainty: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.³⁵ Meanwhile, to obtain a conviction for illegal possession of dangerous drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.³⁶

²⁹ *Rollo*, p. 10; *CA rollo*, p. 125.

³⁰ *Rollo*, p. 09; *CA rollo*, p. 124.

³¹ *CA rollo*, pp. 125-126.

³² *Rollo*, pp. 11-13; *CA rollo*, pp. 126-128.

³³ *Rollo*, p. 13; *CA rollo*, p. 128.

³⁴ *Rollo*, pp. 15-17; *CA rollo*, pp. 136-138.

³⁵ *People v. Lumaya, et al.*, G.R. No. 231983, 07 March 2018, 858 SCRA 114, 125.

³⁶ *People v. Santos*, G.R. No. 223142, 17 January 2018, 852 SCRA 114, 125.

In both cases, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.³⁷ The chain of custody rule removes unnecessary doubts on the identity of the dangerous drugs presented in court. Officers who come into possession of seized drugs must show how they handled and preserved the integrity of the seized drugs while in their custody.³⁸

Section 21, Article II of RA 9165 (Section 21), as complemented by Section 21 (a) of its Implementing Rules and Regulations (IRR), provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.³⁹ Section 21 requires that the marking, physical inventory, and taking of photographs of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and taking of photographs be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, along with the required witnesses, namely: a representative from the media AND the Department of Justice (DOJ), and any elected public official.

Section 21 was later amended by RA 10640,⁴⁰ which took effect on 23 July 2014,⁴¹ and now requires only two (2) witnesses: an elected public official and either a representative of the National Prosecution Service OR the media. Here, considering that the Informations alleged that accused-appellant committed the subject offenses on 05 April 2010, Section 21, as originally worded, and its IRR shall apply.

A careful review of the records, however, reveals the arresting officers' non-compliance with the law.

During the initial inventory, only the media representative and a *barangay* official were present, with the DOJ representative being available only later at the police station. SPO2 Delos Reyes testified:

Q Mr. Witness[,] where did you prepare this inventory receipt?

A At the scene[,] [ma'am].

³⁷ *People v. Oliva, et al.*, G.R. No. 234156, 07 January 2019.

³⁸ *See People v. Ocampo*, G.R. No. 232300, 01 August 2018.

³⁹ *See People v. Bangcola*, G.R. No. 237802, 18 March 2019.

⁴⁰ 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.

⁴¹ OCA Circular No. 77-2015.

Q And who were present at the time you were preparing this?

A The arrested suspect, the other members of the team, the seizing officers[,] I[,] myself[,] and [sic] the representative from the media, [and] from the barangay officials [sic] [,] [ma'am].

Q How about the representative from the DOJ [,] was he present?

A At the office[,] [ma'am].

x x x.⁴²

On the other hand, while the DOJ representative and the *barangay* official signed the Inventory Receipt and the Chain of Custody Form⁴³ at the police station, the media representative failed to affix his signature thereon, as he no longer appeared at the police station:

Court:

Q You mean, what do you mean by office [?] [W]here is that?

A At the Police Station 1.

Q So the barangay official here affixed his signature on the inventory while at the crime scene?

A No[,] your honor[,] [A]t the office also [sic].

x x x

Fiscal:

Q The representative from the DOJ[,] was he present also at the scene?

A No[,] ma[']am[,] at the office only.

Q Why was not he invited at the scene[?] present at the scene of the crime?[sic]

A During that time[,] we were not able to contact Mr. Navarro[,] [ma'am].

X x x.⁴⁴

⁴² TSN dated 17 April 2012, p. 06.

⁴³ Records, p. 95.

⁴⁴ TSN dated 17 April 2012, pp. 06-07.

Significantly, the rule requires that during apprehension, all the required witnesses be present at or near the place. Their presence at the earliest point of contact with the *corpus delicti* is indispensable in order to foreclose, or at the very least, minimize, the possibility of abuse or planting of evidence.⁴⁵ It therefore becomes imperative that all police officers strictly comply with this requirement of Section 21 of RA 9165 and its IRR.⁴⁶ The arresting officers failed in this respect.

While the absence of the witnesses required by law does not *per se* render the confiscated items inadmissible, a justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses must be adduced. The prosecution must show that earnest efforts were employed in contacting the witnesses enumerated in the law. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance.⁴⁷

In this case, however, the arresting officers proffered no cogent reason for their failure to secure the presence of the DOJ representative during the marking of the seized items at the place of arrest. They likewise failed to justify the absence of the media representative during the inventory at the police station. These lapses adversely affected the integrity and credibility of the seized sachets of marijuana, and thus cast suspicion on the *corpus delicti* of the offenses charged, ultimately creating reasonable doubt on the guilt of accused-appellant.

WHEREFORE, the Appeal is hereby **GRANTED**. Accordingly, the Decision promulgated on 31 May 2016 by the Court of Appeals in CA-G.R. CR-HC No. 05953, finding accused-appellant **ARIEL ALOG y RAMOS, alias "Aye,"** guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of RA 9165, is **REVERSED** and **SET ASIDE**. He is hereby **ACQUITTED** in both cases on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

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

⁴⁵ *People v. Cepeda, et al.*, G.R. No. 229833, 03 October 2019.

⁴⁶ *See People v. Acub*, G.R. No. 220456, 10 June 2019.

⁴⁷ *Limbo v. People*, G.R. No. 238299, 01 July 2019.

SO ORDERED.” (Gesmundo, J., on wellness leave.)

Very truly yours,

Mis. DC Batt
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

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(Criminal Case Nos. 93-10 & 94-10)

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