

SECOND DIVISION

[G.R. NO. 170836, April 04, 2007]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO FERNANDO Y MONTIAS, ACCUSED-APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

Accused-appellant, Ricardo Fernando y Montias (the accused), was charged for violation of Republic Act No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) in two Informations before the Regional Trial Court (RTC) of Caloocan on August 28, 2002.

The first Information, docketed as Criminal Case No. C-66149, for possession of dangerous drugs, which was raffled to Branch 127, alleged as follows:

x x x x

That on or about the 19th day of August 2002, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being a private person and without being authorized by law, did then and there willfully, unlawfully and feloniously have in their [*sic*] possession, custody and control one (1) heat sealed transparent plastic bag containing white crystalline substance weighing 0.07 gram which substance when subjected to chemistry examination gave positive results of Methylamphetamine Hydrochloride otherwise known as "shabu" which is a dangerous drug.

x x x x^[1]

The second Information, docketed as Criminal Case No. C-66150, for selling dangerous drugs, which was raffled to Branch 120 of the same court, alleged as follows:

x x x x

That on or about the 19th day of August 2002, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being a private person and without being authorized by law, did then and there, willfully, unlawfully and feloniously in consideration of the sum of one hundred pesos (P100.00), sell and distribute to PO3 Rodrigo Pagsolangan, who posed as buyer of one (1) heat sealed transparent plastic bag containing white crystalline substance weighing 0.07 gram which substance when subjected to chemistry examination gave positive results of Methylamphetamine Hydrochloride

otherwise known as "shabu" which is a dangerous drug.[2]

X X X X

The second case was consolidated with the first.[3]

The evidence for the prosecution established the following version:

On August 19, 2002, an informant reported to the Chief of the Caloocan City Police, Senior Inspector Jose Valencia (Valencia), that someone in Cottage 10th Avenue, Caloocan City was selling drugs "to everyone and anyone." [4]

Valencia thus formed a buy-bust team composed of PO3 Rodrigo Garcia Pagsolingan (PO3 Pagsolingan), PO1 Joseph delos Santos (PO1 Delos Santos), one PO3 Antonio, one PO3 Gamit, and one PO3 Modina. Designated as poseur-buyer was PO3 Pagsolingan who was given a P100 bill to be used as buy-bust money. PO3 Pagsolingan thereupon marked the P100 bill with his initials "RGP."

The buy-bust team and the informant proceeded to Cottage 10th Avenue, Caloocan City and when they reached M. Hizon St., the informant, seeing the accused, pointed to ("*nginuso*") him. PO3 Pagsolingan thus approached the accused, telling him "*Pare, pa-iskor nga ng piso,*" meaning he wanted to buy P100.00 worth of shabu. As PO3 Pagsolingan handed the P100 bill to the accused, the latter took out a sachet from his pocket. [5]

PO3 Pagsolingan immediately gave the pre-arranged signal that the transaction was completed.

PO1 Delos Santos, who was hiding nearby with the rest of the buy-bust team members, immediately approached and frisked the accused, retrieving from his pants' pocket the P100 buy-bust money and a plastic sachet containing a white crystalline substance. [6] The accused was thus arrested and PO1 Delos Santos and PO3 Pagsolingan turned over the marked money and the two sachets containing white crystalline substance to PO3 Hector Castillo, who then marked the sachets and delivered them to the Philippine National Police Crime Laboratory for examination. [7] The substance in the sachets tested positive for methylamphetamine hydrochloride or *shabu*. [8]

Upon the other hand, the accused, denying the charges, gave the following version: [9]

In the afternoon of August 19, 2002, while he was outside the house, near the window, of his friend Anthony Villanueva where a birthday party for the latter's father was going to be held and as he was singing along with a *videoke*, one Antonio ran towards him, asked him what he was doing there, frisked him and at the same time took P400 from the only pocket of his "garter short" [*sic*], and then summoned his (Antonio's) companions.

As the men were about to leave, he asked Antonio to give his money back. Apparently peeved, Antonio remarked "*Putang ina mo, halika, makulit ka, sumama ka*" and handcuffed him.

A commotion ensued for "*hindi tumagal ng 20 minutes*" during which he was mauled, even catching the attention of bystanders in the alley. He was thereafter boarded into an owner-type jeep, brought to the Drug Enforcement Unit headquarters where his ring and "earring" were taken, mauled again, and detained. He was informed that his case was "5 and 11 and no bail,"^[10] and PO1 Delos Santos advised him that if he wanted to be released, he should tell any visitor of his to settle his case monetarily.

When his mother visited him, PO1 Delos Santos asked her for money in exchange for settling the case, but his mother replied that she could not afford "that big amount" demanded.^[11]

By Decision^[12] of October 8, 2003, Branch 127 of the RTC Caloocan convicted the accused in both cases, disposing as follows:

WHEREFORE, premises considered, and the prosecution having established beyond an iota of doubt the guilt of Accused RICARDO FERNANDO Y MONTIAS, of the crimes charged, this Court hereby renders judgment as follows:

1. In Crim. Case No. 66149 for Viol. of Sec. 11, Art. II of RA 9165 this Court, in the absence of any aggravating circumstance hereby sentences aforementioned Accused to a prison term of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay the fine of Three hundred thousand pesos (P300,000.00) without any subsidiary imprisonment in case of insolvency;
2. In Crim. Case No. 66150 for Viol. of Sec. 5, Art. II of the same Act this Court, in the absence of any aggravating circumstances, hereby sentences the Accused to LIFE IMPRISONMENT and to pay the fine of Five hundred thousand pesos (P500,000.00) without any subsidiary imprisonment in case of insolvency.

Subject drug in both cases are hereby declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

This Court ends with a note that it is not exactly happy at seeing a small-time drug pusher, suffer the severe penalty for LIFE IMPRISONMENT for the sale of illegal drug consisting merely of 0.07 grams of methylamphetamine hydrochloride, however, that is the imposable penalty under RA 9165, hence this Court has no option but to apply the same. Accused committed an offense in open defiance of the continuing and relentless campaign of the Government to rid society of the drug menace and its disastrous harmful social, economic and even spiritual effects, thus, he cannot escape the full clutches of the law. DURA LEX SED LEX.^[13]

On the accused's filing a Notice of Appeal,^[14] the records of the case were forwarded to this Court.^[15]

In his Brief filed before this Court,^[16] the accused, arguing that his guilt was not

proven beyond reasonable doubt, drew attention to contradictions in the testimonies of prosecution witnesses PO3 Pagsolingan and PO1 Delos Santos, viz:

x x x PO1 delos Santos testified that there was a pre-arranged sign that the transaction was consummated, thus PO3 Pagsolingan made a signal by **scratching his head**. PO^[3] Pagsolingan, however, declared that after the plastic sachet containing the white crystalline was delivered to him, he communicated the pre-arranged signal by **placing a towel on his right shoulder**.

x x x x

Likewise, PO1 delos Santos testified that he recovered the plastic sachet containing the alleged shabu from the **right pocket** of the accused appellant.

x x x x

While, PO3 Pagsolingan stated that the buy-bust money and the plastic sachet were recovered by PO1 delos Santos from the **left pocket** of the accused.^[17] (Emphasis and underscoring supplied)

The case was referred to the Court of Appeals, following *People v. Mateo*,^[18] for intermediate review of criminal cases imposing death penalty, life imprisonment, or *reclusion perpetua*.^[19]

By Decision^[20] of October 26, 2005, the Court of Appeals found the contradictions in the testimonies of the two police authorities inconsequential.^[21] And it noted the weakness of the defense of the accused, thus:

In the case at bar, x x x appellant failed to substantiate his defense of frame-up or "hulidap." No evidence was adduced by the appellant to show that the buy-bust operation was resorted to in order to harass, extort, or abuse him. Moreover, for the police officers to frame him up, they must have known appellant prior to the incident. This is clearly not the case here for appellant himself admitted that he does not know any of the police officers who arrested him prior to the incident.

Anent his allegation that he was mauled by the police officers when he was arrested and during his incarceration, We likewise find the same to be without basis, considering that no medical certificate was presented by him to prove such claim. He did not even bother to present his mother in the witness stand to corroborate his claim. After all, he testified that [his] mother regularly visited him during his confinement, hence, she would have surely seen the injuries inflicted on him, if there was any. Moreover, he did not file any case, administrative or criminal, against the police officers concerned. When asked why he did not file any case against the police officers who allegedly mauled him, he simply answered that his mother failed to do so due to utter confusion. Such inaction by appellant runs counter to the normal human conduct and behavior of one