

## THIRD DIVISION

[ G.R. No. 186470, September 27, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIE MIDENILLA Y ALABOSO, RICKY DELOS SANTOS Y MILARPES AND ROBERTO DELOS SANTOS Y MILARPES, ACCUSED, RICKY DELOS SANTOS Y MILARPES AND ROBERTO DELOS SANTOS Y MILARPES, ACCUSED-APPELLANTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated August 27, 2008 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 02741 which affirmed with modification the Joint Decision<sup>[2]</sup> dated March 26, 2007 of the Regional Trial Court (RTC), Caloocan City, Branch 127 finding appellants Ricky Delos Santos y Milarpes guilty beyond reasonable doubt of violating Sections 5<sup>[3]</sup> and II<sup>[4]</sup> of Article II, Republic Act (RA) No. 9165<sup>[5]</sup> or The Comprehensive Dangerous Drugs Act of 2002, and Roberto Delos Santos y Milarpes guilty beyond reasonable doubt of violating Section 5, Article II of the same law.

On September 26, 2003, accused-appellant, Ricky Delos Santos also known as "Hika" was charged with the crime of Violation of Section 11, Article II, of RANo. 9165 in an Information which alleged:

That on or about the 24<sup>th</sup> day of September, 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Six (6) heat-sealed transparent plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE having a corresponding weight as follows:

B-("RICKY DM-1") 0.02 gram gram	E-("RICKY DM-4") 0.03
C-C'RICKY DM-2") 0.03 gram gram	F-C'RICKYDM-5") 0.02
D-("RICKY DM-3") 0.04 gram gram	G-('RICKY DM-6") 0.03

knowing the same to be a dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW.<sup>[6]</sup>

On the same date, accused-appellants Ricky Delos Santos also known as "Hika" and Roberto Delos Santos also known as "Obet" were charged with the crime of Violation of Section 5, Article II, RA No. 9165 committed as follows:

That on or about the 24 day of September, 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding with one another, without the authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 RONNEL UGOT, who posed as buyer, one (1) heat-sealed transparent plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE weighing 0.05 gram knowing the same to be a dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW.<sup>[7]</sup>

On December 1, 2003, accused-appellants duly assisted by their counsel pleaded not guilty<sup>[8]</sup> to the charges against them.

The prosecution presented the facts as follows.

On September 24, 2003, at 5:00 in the afternoon while PO1 Ronel L. Ugot was on duty, an informant reported to SPO1 Wilson Gamit that, two (2) brothers known by their aliases as "Obet" and "Hika" were engaged in selling illegal drugs. SPO1 Gamit reported the matter to their Chief, Cesar G. Cruz who in turn immediately formed a buy-bust team. The team was composed of PO1 Ugot, SPO1 Rodrigo Antonio, PO2 Ferdinand Modina, PO1 Ronald Allan Mateo, PO2 Roily Jones Montefrio, PO1 Borban Paras, PO3 Fernando Moran and SPO1 Gamit. PO1 Ugot was the designated poseur-buyer. PO1 Ugot received a one hundred peso bill from SPO3 Benjar Matining to be used as marked money. SPO1 Gamit was the team leader. PO1 Ugot's backups were PO1 Mateo and PO1 Paras. PO1 Mateo was tasked to recite the rights of the person to be arrested.<sup>[9]</sup>

The team, together with the informant, was dispatched at 6 o'clock in the evening and they proceeded to 3rd Avenue, Caloocan City. Upon arrival thereat, the informant pointed Obet and Hika to PO1 Ugot. From their location, PO1 Ugot saw Willie Midenilla approach Obet and Hika. PO1 Ugot was approaching Obet and Hika when Obet asked PO1 Ugot "*Pre, iiskor ka ba?*" PO1 replied "*yes, pison*" and simultaneously handed over the money. Obet received the money and gave it to Hika saying "*Hika, piso lang daw.*" Hika took the money and put it in his right pocket. Thereafter, Hika took out a plastic sachet and gave the same to Obet. In turn, Obet gave the plastic sachet to POI Ugot.<sup>[10]</sup>

After receiving the plastic sachet from Obet, PO1 Ugot saw Midenilla receive a plastic sachet and aluminum foil from Hika. At that instance, PO1 Ugot gave the pre-arranged signal to his backup. PO1 Ugot held Hika and Obet while the other members of the buy-bust team came running towards them. Midenilla tried to flee but he was caught by PO1 Paras.<sup>[11]</sup>

PO1 Ugot recovered the buy-bust money from Hika and held on to the plastic sachet given to him and marked both with "Ricky/Roberto DM (buy bust)."<sup>[12]</sup> He also informed PO1 Paras that Hika had more *shabu* in his possession. PO1 Paras recovered six more plastic sachets of *shabu* from Hika. PO1 Mateo placed the markings "RICKY DM-1 to RICKY DM-6" on the sachets recovered from Hika. On the other hand, PO1 Paras recovered from Midenilla three plastic sachets of *shabu* which were marked in evidence as Exhibits C-9, C-11 and C-12 with two strips of aluminum foil marked in evidence as Exhibits C-13 and C-14.<sup>[13]</sup>

After PO1 Mateo informed Hika, Obet and Midenilla of their constitutional rights, they were brought to the office of the Station Anti-Illegal Drugs (SAID). At the SAID office, the team turned-over the seized items to PO2 Randolpho Hipolito, the investigator on duty. PO2 Hipolito requested the crime laboratory to determine whether the seized plastic sachets contained *shabu* and whether the hands of PO1 Ugot, Obet and Hika would indicate the presence of ultraviolet fluorescent powder. The result of the examination on the seized plastic sachets confirmed its contents to be methylamphetamine hydrochloride. PO1 Ugot, Obet, and Hika also tested positive for ultraviolet fluorescent powder. PO1 Ugot identified Hika as appellant Ricky Delos Santos, while Obet was identified as appellant Roberto Delos Santos.<sup>[14]</sup> Meanwhile, accused Willie Midenilla jumped bail and remains at large.

The defense presented the facts as follow.

According to accused-appellant Roberto Delos Santos, he is the brother of Ricky Delos Santos but never knew Willie Midenilla. He was arrested on September 24, 2003 at around 5:00 p.m. and not 8:00 p.m. as claimed by the police officers.

At 5:00 p.m. of September 24, 2003, Roberto was at the video "carrera" shop watching together with several other spectators, among whom was Danny Kangkong. Suddenly, a tricycle and an owner-type jeep parked in front of the video "carrera" shop. The passengers of the said vehicles alighted and proceeded to where Roberto and his companions were. The other persons present thereat scampered away but Roberto just remained standing in his place.

The passengers of the vehicle who parked in front of the video "carrera" shop told the remaining five to six persons inside, "*Walang tatakbo steady lang kayo*" When frisked, nothing was found on the person of Roberto. Roberto then saw a plastic sachet fall from the pocket of one of those who were resisting and complaining against the frisking. The said person was handcuffed by one of the passengers of the vehicle whom he later identified to be a policeman.

Roberto was surprised when he saw his younger brother Ricky being brought out of their house by policemen. He approached them and asked why they were taking his brother. The policemen replied that they will just conduct an investigation on his brother, so, together with that person from whom the plastic sachet fell, Ricky was made to board a vehicle bound for the police station. Roberto also voluntarily went with them.

Roberto's mother and wife, upon seeing what happened, also went inside the vehicle to accompany him and Ricky, who was afflicted with a lung disease. On their way to

the police station, Roberto's mother suffered difficulty in breathing so Roberto requested the police officers to first bring his mother to the hospital. His mother was brought to the Caloocan Puericulture Center where they left his mother and wife. Thereafter, the rest proceeded to the police station where Ricky, Roberto and that person from whom the sachet fell were detained.

Roberto claimed that the appearance of white dots at the dorsal and palmar portion of his right hand was the result of his hands being squeezed by someone he does not know while at the police precinct. He was aware of the ultraviolet examination conducted by the crime laboratory when his hands were placed under the light which is blue in color.<sup>[15]</sup>

According to accused-appellant Ricky Delos Santos, he was sleeping in his room on September 24, 2003 at around 5:00 p.m. when suddenly he was awakened by the two policemen who were looking for "Ferdie Putol." Ricky told them that he does not know "Feirdie Putol." When he uttered those words, the policemen told him to just go with them. He refused and asked them if they have a warrant. The policemen just ignored his inquiry and forced him to go with them. Ricky informed the policemen that he has lung ailment but they just handcuffed him.

As they were going out of the house, Roberto, his brother, blocked their way. Roberto told the policemen, "Where will you bring my brother? He has a lung ailment." Roberto also asked if the policemen have a warrant of arrest.

While going out of the alley, Ricky's mother asked the policemen where they will bring her son and likewise inquired if they have a warrant of arrest. Their mother and his sister-in-law went with them. The policemen brought his brother Roberto to the Drug Enforcement Unit (DEU).

When Ricky was already onboard the owner-type jeep, his mother suffered a stroke. Roberto asked the policemen to first bring his mother to the hospital. Thereafter, the policemen brought Ricky and Roberto to the DEU where they were detained.<sup>[16]</sup>

Finding the testimonial and documentary evidence against the accused-appellants sufficient, the trial court declared them guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA No. 9165. Accused-appellant Ricky Delos Santos was sentenced to a prison term of twelve (12) years and one (1) day to seventeen (17) years with subsidiary imprisonment in case of insolvency pursuant to Section 11, Article II, RA No. 9165. Both accused-appellants Ricky and Roberto Delos Santos were also sentenced to life imprisonment and a fine of P500,000.00 as provided in Section 5, Article II, RA No. 9165.

Maintaining their innocence, accused-appellants appealed the trial court's decision to the CA. However, accused Willie Midenilla jumped bail and to date has a standing warrant of arrest. Hence, his appeal to the CA was dismissed.<sup>[17]</sup> For the two remaining accused-appellants, the CA affirmed the trial court's decision with modification, to wit:

IN LIGHT OF ALL THE FOREGOING, the appeal is hereby **DENIED**. The decision of the Regional Trial Court is hereby **AFFIRMED WITH**

**MODIFICATION** on the penalty imposed, to wit:

Accused-appellant Ricky Delos Santos (Crim. Case No. 69224) is hereby sentenced to suffer the **penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum to FIFTEEN (15) YEARS as maximum and to pay a fine of FOUR HUNDRED THOUSAND PESOS (P400,000.00)**, as provided under Section 11, Article II, R.A. 9165; and

Accused-appellants Ricky Delos Santos and Roberto Delos Santos (Crim. Case No. 69225) are hereby sentenced to suffer the penalty of life imprisonment and a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00), as provided under Section 5, Article II, R.A. 9165.

**SO ORDERED.**<sup>[18]</sup>

Accused-appellants are now before this Court contending that the trial court gravely erred in convicting them of the crimes charged in view of the failure of the prosecution to overthrow the constitutional presumption of innocence in their favor. They stress that their defense of alibi was sufficient to acquit them of the crimes charged. Although indeed the "weakest" of all defenses, alibi attains importance when the case of the prosecution is weak. They point out that their version of the facts culled from their respective testimonies clearly shows that they should be acquitted.

Further, accused-appellants argue that the police officers who apprehended them failed to comply with the requirements of Section 21 (1) of RA No. 9165. They claim that the prosecution failed to prove that the apprehending officers conducted a physical inventory and photographed the confiscated items. In effect, they allege that the *corpus delicti* of the crime was not proven and hence, they should be acquitted.

On the other hand, the State represented by the Office of the Solicitor General (OSG) maintains that the trial court and the CA correctly found the accused-appellants guilty beyond reasonable doubt of the crimes charged and that such findings should be sustained by this Court. It is emphasized that as to the finding of facts, the version that the trial court accepted should be given due regard by the appellate courts. As a rule, the trial court's evaluation of the credibility of a testimony is generally accepted.<sup>[19]</sup>

As to the failure of the apprehending officers to strictly comply with the requirements of Section 21, Article II, RA No. 9165, the OSG argues that such is not fatal to the prosecution's case. It cites jurisprudence to the effect that non-compliance is not fatal as long as there is justifiable ground therefor and as long as the integrity and the evidentiary value of the seized items is properly preserved by the apprehending officers.<sup>[20]</sup>

The sole issue in this case is whether or not the prosecution has proven the guilt of the accused-appellants for illegal sale and possession of dangerous drugs beyond reasonable doubt.