

## SECOND DIVISION

[ G.R. No. 189277, December 05, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICARDO REMIGIO Y ZAPANTA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For review through this appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated 29 May 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03169 which affirmed the conviction of herein accused-appellant RICARDO REMIGIO y ZAPANTA for illegal sale of dangerous drugs in violation of Section 5, Article II<sup>[3]</sup> and illegal possession of dangerous drugs in violation of Section 11, Article II<sup>[4]</sup> of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The factual rendition of the prosecution as presented by its only witness PO2 Romelito Ramos (PO2 Ramos), a member of the Cainta Police Station, follows:

PO2 Ramos testified that on 17 April 2003 at about six o'clock in the evening, while giving assistance to the devotees going to Antipolo City in the corner of General Ricarte Street and Ortigas Avenue, Cainta, Rizal, one of the police informants named Angel approached and told him that an Alyas Footer was somewhere in the store near General Ricarte Street.<sup>[5]</sup> Immediately, PO2 Ramos informed his Deputy Chief of Police, Colonel Bagtas (Col. Bagtas) for the conduct of a buy-bust operation. At that time, there were about seven to eight police officers in the area also giving assistance to the devotees.<sup>[6]</sup> Col. Bagtas so ordered that such operation be done with PO2 Ramos as the poseur-buyer.<sup>[7]</sup> PO2 Ramos prepared the One Hundred Peso bill (P100.00) to be used as marked money in the operation. He put his initials, RDR, on the face of the bill.<sup>[8]</sup>

Having told the informant Angel that they will conduct a buy-bust operation, the policeman and Angel proceeded to the store in General Ricarte Street where Alyas Footer was.<sup>[9]</sup> Angel approached Alyas Footer first and PO2 Ramos waited for his signal from a distance of more or less ten arms length.<sup>[10]</sup> After Angel and Alyas Footer talked for a while, Angel called PO2 Ramos to come forward. Upon approaching, PO2 Ramos immediately told Alyas Footer, "[p]are paiskor ng piso."<sup>[11]</sup> This meant One Hundred Pesos worth of illegal drugs.<sup>[12]</sup> Alyas Footer, prompted by the question, took a sachet of *shabu* from his pocket and handed it over to PO2 Ramos. PO2 Ramos then handed the marked money to Alyas Footer as payment.<sup>[13]</sup>

After the transaction, PO2 Ramos introduced himself as a policeman and asked Alyas Footer to take out all the contents of his pocket. Alyas Footer complied and brought out the One Hundred Peso bill marked money and another plastic sachet of

illegal drug.<sup>[14]</sup> Three more sachets of illegal drugs were found in the compartment of the motorcycle of the accused. He also turned over his student driver's license to PO2 Ramos which indicated his name as Remigio Zapanta.<sup>[15]</sup> The name of the accused would later be clarified by the prosecution through PO2 Ramos as referring to the same person as the accused Ricardo Zapanta Remigio (Remigio).

The plastic sachets taken from Remigio were brought by PO2 Ramos to Camp Crame for laboratory examination. He testified that he personally transmitted the request for actual testing of the contents of the sachets to the chemist.<sup>[16]</sup>

Towards the end of his direct examination, he identified the marked money as the one used in the transaction and the picture of the motorcycle marked as Exhibit "C" as the one possessed by Remigio when the buy-bust operation was conducted.<sup>[17]</sup>

During his cross examination,<sup>[18]</sup> PO2 Ramos admitted that the buy-bust operation was recorded only after the arrest.<sup>[19]</sup> He also revealed that he already knew that there was a standing alias warrant against Remigio and that they have been conducting surveillance against Remigio for some time prior to the buy-bust operation.<sup>[20]</sup> He also added that he was then wearing civilian clothes unlike the other police officers visible in the area.<sup>[21]</sup>

On the other hand, the factual version of the defense as presented by accused Remigio is as follows:

He testified that at about seven o'clock in the evening of 17 April 2003, he was at Helen's Best store in Ortigas Extension, Cainta, Rizal.<sup>[22]</sup> He said that he rode his motorcycle going there and parked it in front of the store before buying food.<sup>[23]</sup> There were about six policemen in the area while he was in front of the store.<sup>[24]</sup>

He thereafter described the conduct of his arrest.

PO2 Ramos, wearing his official uniform, together with an asset he knew by the name of Angel, approached and told him to take the things out of his pocket.<sup>[25]</sup> PO2 Ramos then asked for his name in this manner, "[i]kaw ba si Futter?"<sup>[26]</sup> He replied that he is not the person. Just the same, he complied and took out his keys and wallet from his pocket and gave them to PO2 Ramos.<sup>[27]</sup> PO2 Ramos opened his wallet and was thereafter shown one (1) plastic sachet of illegal drug which was allegedly taken from his wallet.<sup>[28]</sup> He told them that the sachet did not belong to him but still was handcuffed.<sup>[29]</sup> PO2 Ramos then brought him together with Angel to the police station at Karangalan Village on board a taxi.<sup>[30]</sup> His motorcycle was left in front of the store after his arrest.<sup>[31]</sup>

Upon reaching the police station, one of the police officers there named Oscar Soliven told him that for P20,000.00 the police would not file the case for violation of Section 5 or illegal sale of dangerous drugs under R.A. No. 9165. He did not agree to the proposal and was detained at the station until his inquest on 21 April 2003.<sup>[32]</sup>

Subjected to cross-examination, Remigio was questioned by the prosecution regarding a previous arrest relative to dangerous drugs. He said that he was just a suspect in that case and that he had filed a complaint against the person who arrested him.<sup>[33]</sup>

A witness who was presented to corroborate the version of Remigio was Nelia Diolata, his elementary school classmate. She testified that she went to Helen's Best store in General Ricarte St. and Ortigas Avenue to buy food.<sup>[34]</sup> There, she saw Remigio already waiting for the food he bought.<sup>[35]</sup> While leaving the store after she got her food, she heard someone being asked if his name was Footer.<sup>[36]</sup> She saw a uniformed police officer asking the question. She was able to identify the policeman as "Ramos" through his nameplate,<sup>[37]</sup> as she was only two meters away from them.<sup>[38]</sup> She then heard Remigio answer composedly.<sup>[39]</sup> She saw Remigio pull out his wallet and a piece of paper which she recognized as registration paper of a motor vehicle. Two more persons in civilian clothes approached PO2 Ramos and Remigio. She thereafter turned her back and proceeded home.<sup>[40]</sup> Two years after the arrest, she learned from Remigio's mother that he was arrested so she voluntarily offered to testify.<sup>[41]</sup>

Eventually, two sets of Information were filed as follows:

For Criminal Case No. 03-25497 for illegal sale of dangerous drugs:

That on or about the 17<sup>th</sup> day of April 2003 in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "Shabu[,]" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[42]</sup>

For Criminal Case No. 03-25498 for possession of dangerous drugs:

That on or about the 17<sup>th</sup> day of April 2003 in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did, then and there willfully, unlawfully and knowingly have in his possession, direct custody and control 0.03 gram, 0.03 gram, 0.03 gram and 0.03 gram with a total weight of 0.12 gram of white crystalline substance contained in four (4) heat-sealed transparent plastic sachets which were found positive to the test for Methamphetamine Hydrochloride, also known as "Shabu[,]" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[43]</sup>

Upon arraignment on 29 May 2003, accused Remigio with the assistance of his counsel, pleaded NOT GUILTY to the offenses charged against him.<sup>[44]</sup>

Trial ensued and on 12 October 2007, the trial court<sup>[45]</sup> found the accused guilty of the offenses charged against him. The disposition reads:

WHEREFORE, premises considered, accused Ricardo Remigio is found guilty of the offense charged in the Informations and is sentenced to Reclusion Perpetua in Criminal Case No. 03-25497. In Criminal case No. 03-25498, accused Ricardo Remigio is sentenced to suffer an Imprisonment of Twelve (12) years and one (1) day to twenty (20) years and a fine of P300,000.00 as provided for under Section 11, Par. (3) [o]f RA 9165. As amended.<sup>[46]</sup>

Upon appeal, the accused-appellant argued that the trial court erred in finding that the prosecution was able to prove the requisites of a buy-bust operation.<sup>[47]</sup> He doubted the entrapment operation as there was already an existing warrant of arrest against him.<sup>[48]</sup> Further, he emphasized the failure of the prosecution to establish the *corpus delicti* of the case as the five plastic sachets allegedly containing dangerous drug were not presented in court. What were presented were only pictures which do not prove that those in the pictures were the same ones tested at the forensic laboratory.<sup>[49]</sup> Finally, he questioned the non-adherence to the procedures to establish the chain of custody of evidence such as the marking of the five sachets of confiscated drugs at the time and in the place where the accused was arrested.<sup>[50]</sup>

The People, through the Office of the Solicitor General, stressed the legality of a buy-bust operation.<sup>[51]</sup> It relied on the presumption of regularity of performance of police officers in fulfilling their duties,<sup>[52]</sup> and on the prosecution's proof of all the elements of illegal sale of *shabu*.<sup>[53]</sup>

After review, the CA affirmed the ruling of the trial court with modification on the penalty imposed. The dispositive portion reads:

WHEREFORE, in light of the foregoing, the decision subject of the present appeal is hereby **AFFIRMED** save for a modification in the penalty imposed by the trial court. Accordingly, the accused-appellant is sentenced to suffer life imprisonment and a fine of five hundred thousand pesos (P500,000.00).<sup>[54]</sup>

The appellate court gave great weight on the findings of facts of the trial court and full credit to the presumption of regularity of performance of the arresting officer Ramos. It discredited the argument of the defense of frame-up and upheld the

presence of the requisites to prove illegal sale of dangerous drugs.<sup>[55]</sup> No weight was given by the CA to the argument about non-compliance with the procedures laid down in Section 21 of R.A. No. 9165 to establish the chain of custody of evidence ruling that there was no taint in the integrity of the evidentiary value of the seized items.<sup>[56]</sup>

This appeal is moored on the contention about the break in the chain of custody and the absence of identification of illegal drugs.<sup>[57]</sup> Appellant capitalizes on the non-marking of the sachets allegedly recovered from his wallet and compartment of his motorcycle, the non-preparation of an inventory report, the absence of photographs of the arrest, and non-presentation of the actual dangerous drugs before the court. The argument is that without the requisite proof, there is insurmountable doubt whether the sachets allegedly confiscated from him were the same ones delivered to the forensic laboratory for examination,<sup>[58]</sup> and then presented during the trial.

We agree fully with the accused-appellant.

In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.<sup>[59]</sup>

On the other hand, a case of illegal possession of dangerous drugs will prosper if the following elements are present: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>[60]</sup>

In both cases of illegal sale and illegal possession of dangerous drugs, it is important for the prosecution to show the chain of custody over the dangerous drug in order to establish the *corpus delicti*.<sup>[61]</sup>

Jurisprudence consistently pronounces that the dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.<sup>[62]</sup> As such, the presentation in court of the *corpus delicti* – the body or substance of the crime – establishes the fact that a crime has actually been committed.<sup>[63]</sup>

In this case, no illegal drug was presented as evidence before the trial court. As pointed out by appellant, what were presented were pictures of the supposedly confiscated items. But, in the current course of drugs case decisions, a picture is not worth a thousand words.<sup>[64]</sup> The image without the thing even prevents the telling of a story. It is indispensable for the prosecution to present the drug itself in court.

We have decided that in prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. To emphasize the importance of the *corpus delicti* in drug charges, we have held that it is essential that the prohibited drug confiscated or recovered from the suspect is **the very same substance** offered in court as exhibit; and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make**