

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PILAR BURDEOS Y OROPA, ACCUSED-APPELLANT.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Indeed, nothing is more depraved than for anyone to be a merchant of death by selling prohibited drugs, an act which often breeds other crimes[1]. It is not what we might call a "contained" crime with consequences that are limited to that crime alone, like swindling and bigamy[2]. Court and police records show that a significant number of murders, rapes and similar offenses have been committed by persons under the influence of dangerous drugs or while they are "high"[3]. While spreading such drugs, the drug-pusher is also abetting, through his greed and irresponsibility, the commission of other crimes[4].

This is an appeal from the Judgment[5] rendered by Judge Juanita T. Guerrero of Branch 204 of the Regional Trial Court of the National Capital Judicial Region in Muntinlupa City ("trial court") on November 28, 2012 in Criminal Case No. 08-633 convicting herein accused-appellant Pilar Burdeos y Oropa ("accused-appellant") of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 ("RA 9165"), in an Information[6] which reads:

"That on or about the 19th day of August, 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver and give away to another, Ephedrine, a dangerous drug, weighing 0.03 gram, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

"Contrary to law."

Upon being arraigned of the charge against her, the accused-appellant entered a plea of not guilty.[7] Subsequently, a Pre-trial[8] was conducted by Judge Guerrero on November 5, 2008 where the parties entered into the following stipulations, to wit:

- That the person in the trial court who responds to the name Pilar Burdeos y Oropa is the same Pilar Burdeos y Oropa who is the accused-appellant in the instant case;
- That the trial court had jurisdiction over the person of the accused-appellant and over the instant case;
- That PS/Insp. Abraham Tecson is a member of the PNP Crime Laboratory, Makati City, as of August 20, 2008 and that he is an expert in Forensic Chemistry;
- That a Request for Laboratory Examination was submitted to the office of the said Forensic Chemist and he conducted the said laboratory examination on the item that was submitted to him which yielded positive result for the test of Ephedrine, a dangerous drug; and
- That the result of the laboratory examination on the urine sample that was taken from the person of the accused-appellant yielded positive result for metabolites.

A trial on the merits of said case ensued thereafter.

During the trial, the prosecution adduced in evidence the testimonies of Eddie Barra Guevara (“Guevara”) and PO2 Rondivar B. Hernaez (“PO2 Hernaez”) who were both operatives assigned at the Anti-Illegal Drugs-Special Operation Task Group of the Muntinlupa Police Station. For her part, the accused-appellant adduced in evidence her testimony, as well as the testimonies of Bejohn Navarro Reyes (“Reyes”) and Lilibeth Cuyno Janaban (“Janaban”), the grandson and daughter of the accused-appellant, respectively.

The prosecution’s recital of facts is summarized as follows:

On August 19, 2008, Guevara was at the police headquarters of Muntinlupa City when the chief of the said station, Police Superintendent Alfredo C. Valdez (“P/S Valdez”) tasked him, along with PO3 Bornilla, PO2 Gastanes, PO1 Genova and PO2 Hernaez, to conduct a monitoring, surveillance and a possible buy-bust operation against one Pilar Burdeos @ “Aling Pilar” who was suspected of selling prohibited drugs. When the team was able to assign an informant who could negotiate with the said person, the team prepared the necessary coordination form and pre-operation report that would be sent to the Philippine Drug Enforcement Agency (PDEA). Thereafter, a Five Hundred Peso (Php500.00) bill was marked with a cross (x) at the bottom portion which would be used by the buy-bust team as a buy bust money. Guevara was then assigned as the poseur-buyer and the team agreed that the pre-arranged signal was for Guevara to light his lighter as a sign that the sale was already consummated.

Afterwards, at around 10:45 o'clock in the evening of the same day, the team headed to the known location of @ Aling Pilar at No. 7-C Kalentong, Alabang, Muntinlupa City, aboard a trolley. Upon reaching the said place, the team saw @ Aling Pilar sitting on a long bench in front of a carinderia. Thereafter, @ Aling Pilar greeted the informant while the latter introduced Guevara to her as a taxi driver who was a “shabu” user. @ Aling Pilar then asked Guevara how much the latter needed and Guevara replied that he would only buy Php500.00 worth of shabu for his personal use. Guevara thus handed the marked money worth Php500.00 to @ Aling Pilar while the latter gave Guevara one (1) plastic sachet containing white crystalline substance from the right pocket of her long blouse (“duster”). At this point, Guevara made the pre-arranged signal to the rest of the team that the sale of shabu had already been consummated. PO2 Hernaez then approached them and bodily searched @ Aling Pilar where PO2 Hernaez recovered from her pocket the marked money worth Php500.00.

After her arrest, the accused-appellant was brought to the police headquarters where, in her presence, Guevara prepared the Certificate of Inventory[9] containing the list of the items which were seized during the buy-bust operation. The plastic sachet containing white crystalline substance was marked with the initials of the accused-appellant, “PB”. Photographs were likewise taken of the plastic sachet and the accused-appellant herself. Thereafter, P/Supt. Alfredo C. Valdez prepared the Request for Laboratory Examination[10] of the contents of the small heat-sealed plastic sachet that was seized from herein accused-appellant addressed to the Chief of the Philippine National Police Crime Laboratory of the Southern Police District (SPD) located at Makati City. Guevara and PO2 Hernaez then personally brought the said plastic sachet to the crime laboratory office for examination. Subsequently, the crime laboratory office issued Chemistry Report No. D-336-08S[11] which confirmed that, upon examination, the content of the said plastic sachet yielded positive for ephedrine, a dangerous drug.

Meanwhile, the next witness for the prosecution, PO2 Hernaez, merely corroborated the testimony of Guevara on all material points.

For her part, the accused-appellant vehemently denied the accusations hurled against her by the prosecution. She claimed that, at around 9:00 o'clock in the evening of August 19, 2008, she was sleeping in her house at Ilaya,

Alabang, Muntinlupa City, with her live-in partner Mike Dimapuro (“Dimapuro”) and three (3) grandchildren named Rey John, Neneng and Kyle. The accused-appellant maintained that she was awakened when Guevara and another policeman, whom she identified as Martinez, came by her house. The latter uttered “Pusher, pusher” and the accused-appellant told them that it was not true. Thereafter, the policemen searched her house for twenty (20) minutes but no illegal item was found therein. She was also bodily frisked but the policemen likewise seized nothing from her.

Afterwards, the accused-appellant stated that she and her live-in partner, Dimapuro, were brought to the police station aboard the vehicle of the policemen. Inside the aforesaid vehicle was Guevara who asked her to name the persons who were selling illegal drugs at their place. The accused-appellant averred that, when she told the policemen that she did not know the said persons, the policemen told her that charges would be filed against her. Likewise, Dimapuro was asked by the policemen whether or not he was selling drugs to which the latter answered in the negative, adding that what they were selling were eyeglasses. Thereafter, the policemen took her personal circumstances and took a picture of her.

Later, the accused-appellant was brought to the crime laboratory for drug testing where she gave her urine sample for the aforementioned test. She asseverated that, after she was charged for the crime of selling prohibited drugs, she got mad since she knew that the accusation against her was false.

The second witness for the accused-appellant, Bejohn Navarro Reyes (“Reyes”), stated that he was the grandson of herein accused-appellant and he was eleven (11) years old when his grandmother was arrested by the policemen. He recalled that, at around 9:00 o'clock in the evening of August 19, 2008, he was inside the house of his grandmother, along with Dimapuro and his two (2) siblings named Leslie and Kyle. At that time, Reyes recalled that he was watching television while the accused-appellant was putting Kyle to sleep.

Further, Reyes narrated that policemen arrived at their house and bodily searched the accused-appellant. The latter was crying while she was being searched and Reyes was also crying at that time. He claimed that nothing was recovered from his grandmother but the latter was still brought to the police station aboard a trolley.

The last witness for the accused-appellant was the latter's daughter named Lilibeth Cuyno Janaban (“Janaban”) who lives near the house of the accused-appellant. Janaban narrated that, at around 7:00 o'clock in the evening of August 19, 2008, she was at the house of the accused-appellant who just arrived from the house of her sister in Cabuyao. An hour later, she went home to eat supper. Not long thereafter, when Janaban was relaxing at the terrace of her house, she saw three (3) men wearing civilian clothes and carrying guns enter the house of her mother. Thus, she went to the house of her mother and asked the policemen why they were arresting her mother. The policemen told her that the accused-appellant would only be invited to their office. Thereafter, Janaban confirmed that the accused-appellant boarded a trolley along with Dimapuro.

Janaban then followed the accused-appellant to the police station where she was told by the policemen that her mother would not be released because shabu was purportedly found inside the pocket of her duster. When Janaban told the policemen that she had been with her mother and that the latter had been sleeping at that time, Janaban was merely told by the policemen to prepare the amount of One Hundred Thousand Pesos (Php100,000.00) for the bail of the accused-appellant.

On November 28, 2012, the court a quo rendered a Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of the crime herein charged, accused PILAR BURDEOS y OROPA is sentenced to LIFE IMPRISONMENT and to pay a FINE of Php500,000.00.

“The preventive imprisonment undergone by the accused shall be credited in her favor.

“The drug evidence are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

“Issue a MITTIMUS committing accused PILAR BURDEOS y OROPA to the Correctional Institute for Women for the service of her sentence pending any appeal that she may file in this case.

“SO ORDERED.”

Aggrieved by the foregoing determination, herein accused-appellant interposed the instant appeal raising the following errors that were purportedly committed by the trial court, to wit:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESS.

II.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

III.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

IV.

THE COURT A QUO GRAVELY ERRED IN NOT APPLYING THE “FRUIT OF THE POISONOUS TREE” DOCTRINE WITH RESPECT TO THE ALLEGEDLY CONFISCATED SHABU.

V.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

VI.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

In sum, the primordial issue brought before this Court for resolution is whether the evidence adduced by the prosecution failed to prove the accused-appellant's guilt beyond reasonable doubt. After a careful and thorough review of the facts, law and issues of this case, we sustain the accused-appellant's conviction.

The accused-appellant asserted that the trial court erred in convicting her of the charge against her, considering that the prosecution failed to controvert the testimony of the accused-appellant and her witnesses, which were clear and convincing with regard to the circumstances surrounding her warrantless arrest. The accused-appellant lamented that she was inside her house when she was arrested by the police officers, contrary to the version of the prosecution that she was transacting with Guevara and the confidential informant before she was arrested. She pointed out that her testimony was bolstered by her daughter, Janaban, and her grandson, Reyes, who both testified that the accused-appellant was inside her room when the police officers came and arrested her.

The aforementioned assertion advanced by the accused-appellant is specious. It is worthy to note that the crime of illegal sale of shabu is penalized under Section 5, Article II of RA 9165 which, in part, provides:

“Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. xxx”

Thus, in a prosecution for illegal sale of dangerous drugs, the following elements must be established: first, proof that the transaction or sale took place; and, second, the presentation in court of the corpus delicti or the illicit drug as evidence[12].

In the case at bench, the prosecution was able to prove the existence of all the essential elements of the illegal sale of prohibited drugs. Herein accused-appellant was positively identified by Guevara as the one who sold to him the illegal drug that was presented in court in evidence. Likewise, it was duly established that the sale actually took place. The marked money used in the buy-bust operation and the illegal drug that was seized from the accused-appellant were likewise positively and categorically identified in open court. The testimonies of witnesses for the prosecution were unequivocal, definite and straightforward. More importantly, the testimonies of the two (2) witnesses, Guevara and PO2 Hernaez were consistent in material respects with each other and with the physical evidence.

The foregoing notwithstanding, the accused-appellant tries to prevail upon us that the evidence's chain of custody was not preserved and the illegal drug that was purportedly seized from her could not, with moral certainty, be said to be the same one that was adduced in evidence before the trial court. Section 21 of RA 9165, in part, reads:

“Section 21. xxx

“(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; xxx”

Verily, RA 9165 requires that there be an inventory of the confiscated prohibited drug and that the same be photographed immediately after seizure and confiscation thereof in the presence of the accused, representatives from the Department of Justice and from the media and any elected public official. Nonetheless, Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 (“Implementing Rules”) provides that:

“(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;”

(Emphasis supplied)

As can be gleaned from the language of Section 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal[13]. The procedural rule laid down in Section 21 of RA 9165 is not an iron-clad rule. Contrary to what accused-appellant tries to impress upon us, non-observance of the said rule does not automatically translate into an acquittal. It does not render accused-appellant's arrest illegal nor the evidence adduced against him inadmissible[14]. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused"[15].

In the case at bench, an astute perusal of the records of the instant case would affirm that there was substantial compliance with the law and the integrity of the illegal drug that was seized from the accused-appellant was preserved. Contrary to accused-appellant's claim, there was no broken chain in the custody of the seized item, found to be an illegal drug, from the time when Guevara seized the same from the accused-appellant and up to the time when it was brought to PS/Insp. Tecson, the forensic chemist at the Southern Police District Crime Laboratory Office, for laboratory examination.

Withal, the prosecution was able to sufficiently establish the following circumstances showing an unbroken chain of custody over the illegal drug that was seized from herein accused-appellant: (1) Guevara, who acted as the poseur buyer during the buy-bust operation, was the one who received the transparent plastic sachet containing a substance later identified as ephedrine from the accused-appellant; (2) the said transparent plastic sachet was then brought to the Muntinlupa City Police Station where the same was marked "PB" and a certificate of inventory was prepared by Guevara and signed by the latter and PO2 Hernaez; (3) thereafter, in the said station, PS/Superintendent Valdez prepared the request addressed to the PNP Crime Laboratory Office of the Southern Police District, Makati City, for the laboratory examination of the substance contained in the said plastic sachet; (4) after preparing the said request, Guevara personally delivered the said request, together with the substance contained in the said plastic sachet, to the PNP Crime Laboratory Office of the SPD in Makati City; and (5) the laboratory examination was conducted by PS/Insp. Tecson.

Be that as it may, herein accused-appellant claimed that the evidence that were adduced by the prosecution against her were insufficient to convict her of the charge hurled against her. Withal, accused-appellant averred that the trial court should have not given weight to the evidence for the prosecution which failed to establish the chain of custody rule.

On this score, suffice it to state that the trial court's determination on the issue of credibility of witnesses and its consequent findings of facts must be given great weight and respect on appeal, unless certain facts or substance have been overlooked which, if considered, might affect the result of the case. This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial[16]. It is worthy to emphasize that it is a fundamental rule that the said findings of the trial courts are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings[17]. At this point, it is worthy to note that a drug test was conducted on the person of the accused-appellant and the result of the aforesaid test reveals that she was positive for "THC-metabolites", which is a dangerous drug.[18] Thus, as the trial court rightfully found:

"A careful scrutiny of the evidence adduced by the prosecution witnesses, the court finds that all these essential requirements have been proven by the prosecution with certainty. The presumption of regularity in the performance of the official functions of the arresting officers has not been rebutted by the defense of the accused DENIAL. Hence, the testimony of said witnesses deserves full faith and credit in the absence of any ill

motive or bad faith that could be ascribed to GUEVARA and HERNAEZ or any other police operatives or members of the team for that matter.”

Here, after a sagacious review of the records, we find no reason to depart from the findings of the trial court. The record of the instant case is bereft of any circumstance which would show or even hint at glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions that was committed by the trial court.

The supposed non-compliance with the chain of custody rule adverted to by herein accused-appellant, even if it is extant, would not be sufficient to warrant a reversal of accused-appellant's conviction. In our view, the said details do not destroy the case for the prosecution, considering that the prosecution was able to sufficiently explain why the said rule was not strictly followed. Moreover, contrary to the foregoing contention advanced by the accused-appellant, we find no sufficient reason in this case to justify a disregard of the presumption of regularity in the performance of official functions of the police officers who arrested herein accused-appellant.

It is a settled rule that, in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties[19].

At this juncture, the observation made by the Supreme Court in the case of *People v. Ara*[20] is apropos, to wit:

"The ill effects of the use of illegal drugs are too repulsive and shocking to enumerate. Thus, once the charges of sale and possession of said drugs are established in cases such as this, any errors or technicalities raised by the suspects should not be allowed to invalidate the actions of those involved in curtailing their illegal activities. The punishments given to drug pushers should serve as deterrent for others not to commit the same offense. No price seems high enough for drug dealers to pay. xxx"

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED and, consequently, DISMISSED. The appealed Decision rendered by Branch 204 of the Regional Trial Court of the National Capital Judicial Region in Muntinlupa City, on November 28, 2012 in Criminal Case No. 08-633 insofar as it convicted herein accused-appellant Pilar Burdeos y Oropa is hereby AFFIRMED.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

[1] *People v. Encila*, G.R. No. 182419, February 10, 2009 citing *Office of the Court Administrator v. Librado*, 329 Phil. 433, 436 (1996).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Record, Criminal Case No. 08-633, pages 196-203.

[6] *Ibid*, page 1.

[7] *Ibid*, page 25.

[8] *Ibid*, pages 34-35.

- [9] Ibid, Exhibit “E”, page 123.
- [10] Ibid, Exhibit “H”, page 126.
- [11] Ibid, Exhibit “I”, page 127.
- [12] People v. Darisan, G.R. No. 176151, January 30, 2009.
- [13] People v. Pagkalinawan, G.R. No. 184805, March 3, 2010.
- [14] People v. Naquita, G.R. No. 180511, July 28, 2008.
- [15] Id.
- [16] People v. Alberto, G.R. No. 179717, February 5, 2010.
- [17] People v. Encila, G.R. No. 182419, February 10, 2009.
- [18] Record, Exhibit “K”, pages 129.
- [19] People v. De Guzman, G.R. No. 177569, November 28, 2007.
- [20] G.R. No. 185011, December 23, 2009.

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