

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APELLEE, VS. RENATO BARON JR. Y AQUINO, ACCUSED-APPELLANT.

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

This appeal assails the Decision[1] dated January 29, 2013 of the Regional Trial Court, Branch 57, Angeles City, finding appellant Renato Baron Jr. y Aquino alias “Boboy” guilty of violation of Section 5 of RA 9165[2], sentencing him to life imprisonment, and imposing on him a fine of P500,000.00.

By Information dated July 29, 2004, appellant Renato Baron Jr. y Aquino was charged, as follows:

That on or about the 27th day of July 2004, in the municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RENATO BARON y AQUINO, not having been previously licensed, authorized and/or permitted by law, did then and there willfully, unlawfully and feloniously sell to a poseur buyer one (1) heat sealed transparent plastic pack of methylamphetamine hydrochloride (0.0585) of a gram, a dangerous drug.

CONTRARY TO LAW.[3]

On arraignment, appellant pleaded not guilty.[4]

During pre-trial, the parties stipulated:

- Renato Baron Jr was the same person accused in the information; and
- The accused was in front of his residence around 8:30 in the evening of July 27, 2004.[5]

During trial, PO1 Antonio Barreras and PO2 Richard Lambino testified for the prosecution. Their testimonies may be summarized, as follows:

On July 27, 2004, acting on a prior surveillance conducted, SPO1 Buenaventura Lopez formed a buy bust operation where he assigned PO1 Antonio Barreras, as poseur buyer, and PO2 Richard Lambino, P/Insp. Pedro Pacia Hernandez, and PO1 Tolentino, as back up members. SPO1 Lopez gave PO1 Barreras a P500 bill which the latter marked with his initials “AEB”. The team together with the informant and DZRH reporter Pesie Miñosa proceeded to Brgy. Mawaque, Mabalacat, Pampanga where appellant was allegedly selling shabu. PO1 Barreras and the informant went to appellant's house. There, the informant introduced PO1 Barreras to appellant as his friend who was interested in buying shabu. Appellant asked PO1 Barreras how much he wanted to buy, and the latter answered P500.00 worth. PO1 Barreras gave appellant the P500.00 marked money and, in turn, the latter gave him a plastic sachet containing white crystalline substance. PO1 Barreras then flashed the pre-arranged signal by lighting a cigarette.[6]

Upon seeing the signal, the back-up team rushed to the scene, introduced themselves as Philippine Drug Enforcement Agency (PDEA) agents, informed appellant of his constitutional rights, and arrested him. PO2 Lambino searched appellant and was able to recover from the latter the marked money. PO1 Barreras gave the plastic sachet he bought from appellant to SPO1 Lopez and they all went back to their office. There, PO1

Barreras marked the plastic sachet with the initials “AEB” and “RB Jr.” which stand for Antonio Escandon Barreras and Renato Baron Jr., and, thereafter, prepared a certificate of inventory. At the same time, SPO1 Lopez prepared a request for laboratory examination. PO1 Barreras brought the certificate of inventory, request for laboratory examination, and the specimen to the PNP crime laboratory.[7]

On May 8, 2007, the parties dispensed with the forensic chemist's testimony and stipulated, thus:

- Amilyn Flores-Maclid was a forensic chemist assigned at Regional Crime Lab. III, Camp Olivas, City of San Fernando, Pampanga;
- She received a request for laboratory examination dated July 27, 2004 of one small plastic sachet containing a substance weighing 0.0585 gram with marking “AEB-RB Jr.”;
- Per Chemistry Report No. D-192-2004[8], the white crystalline substance was found positive for methylamphetamine hydrochloride, a dangerous drug;
- The chemistry report was authentic and duly executed;
- The request for laboratory examination, chemistry report, and subject specimen were presented in court as evidence for the prosecution.[9]

For its part, the defense presented appellant himself, Ace De Jesus Cenizal, and Clint John Cenizal.

Ace De Jesus Cenizal, appellant's brother-in-law, testified:

On July 28, 2004, he was at appellant's house in Mawaque, Mabalacat when several police officers suddenly entered the house. He initially closed the door but the police officers kept knocking loud on the door, thus, he was forced to open it. One of the officers pushed him inside the house and handcuffed him, his brother John, and friends Louie and Eduardo. Appellant was out of the house at that time because he was buying food. When appellant arrived, he asked one of the police officers “sino kayo at bakit kayo pumasok dito?”. Instead of answering, the latter asked appellant if he was Boboy, to which appellant answered in the affirmative. The police officers then dragged appellant inside the house where he was boxed, choked, and handcuffed. John said “police brutality iyang ginagawa niyo” but he was told “manahimik ka nalang diyan” and threatened with a gun. They were all brought to PDEA Clark Air Base and made to sign a document, stating that they will not file charges against the police officers. They were subsequently released.[10]

Clint John Ceniza, appellant's brother-in-law, stated:

While appellant was out buying dinner, police officers entered the house and handcuffed them. Thereafter, they were brought to PDEA Clark Air Base and was released only after they signed a document stating that no charges shall be filed against the police officers. Before they left PDEA Clark Air Base, he asked one of the officers why appellant was left in the station, albeit no complaint was filed against him. The police officer answered “pasensiya na kasi napagutusan lang.”[11]

Appellant said:

On the day in question, he saw some police officers in his house. One of them suddenly pushed him inside the house where he saw his in-laws handcuffed. Someone punched his stomach, causing him to drop on the ground. He was choked and threatened with a gun. One of his in-laws shouted “police brutality ang ginagawa niyo” but the officers just told him to be quiet. They were brought to Clark Air Base where the police officers told him that his relatives will be released provided no case shall be filed against them.[12]

In its assailed Decision, the trial court found appellant guilty as charged, giving credence to the prosecution witnesses' testimonies and rejecting appellant's defense of denial.[13]

Appellant now faults the trial court for: 1) finding him guilty of illegal sale of dangerous drugs, despite the prosecution's alleged failure to comply with the chain of custody rule; and, 2) not giving credence to his defense.[14]

The People, through Assistant Solicitor General Eric Remegio Panga and State Solicitor Rebecca Khan, counters: The police officers' compliance with the chain of custody rule was duly established and appellant's denial cannot prevail over the positive testimony of PO1 Barreras and PO2 Lambino, who have in their favor the presumption of regularity in the performance of their official duties.[15]

We reverse.

In every prosecution for illegal sale of dangerous drug, the following elements must be established: 1) identity of the buyer and seller, object of the sale, and consideration; and, 2) delivery of the thing sold and payment therefor. On this score, the identity and existence of the object evidence, coupled with its presentation in court must be proved, the same being an integral part of the corpus delicti of the crime of selling dangerous drug. Thus, there can be no crime of illegal sale of dangerous drug when nagging doubts persist on whether the specimen submitted for examination and presented in court was what was recovered from, or sold by, the accused. It is essential, therefore, that the identity of the dangerous drug be established with moral certainty.[16]

Considering the dangerous drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise, there is a need to strictly comply with procedure in its seizure and custody. Sec. 21, par. 1, Article II of R.A. No. 9165, provides:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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 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 xxxx.[17]

The following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[18] Failure to comply with these links implies a concomitant failure on the part of the prosecution to establish the identity of the seized illegal items as part of the corpus delicti.[19]

Here, record shows that after PO1 Barreras bought shabu from appellant, the former gave the plastic sachet containing shabu to their team leader SPO1 Lopez, who had the plastic sachet in his possession from the scene of the crime up to the time the buy bust team returned to their office. There, PO1 Barreras retrieved the plastic sachet from SPO1 Lopez, marked it with his initials, and prepared a certificate of inventory. The continuity of the chain, however, becomes unclear thereafter. Record reveals that it was SPO1 Lopez who prepared the request for laboratory examination of the specimen but it was not shown how the plastic sachet reached his hands. This failure to account how the plastic sachet was transferred from PO1 Barreras to SPO1 Lopez's hands is a substantial gap in the links of chain of custody considering that per Inventory Receipt of Property dated July 27, 2004[20] prepared by PO1 Barreras, the plastic sachet weighed 0.02 gram, while in the Request for Laboratory Examination[21] of even date prepared by SPO1 Lopez, the same plastic sachet already weighed 0.0585 gram. Too, per Chemistry Report No. D-192-2004[22] dated July 28, 2004, the plastic sachet was indicated as weighing 0.0585 gram.

Based on the foregoing discrepancy, there is doubt as to the identity of the substance confiscated from appellant, on one hand, and the one subjected to laboratory examination and submitted to court, on the other. For sure, there was a .0385 gram difference in the weight of the specimen initially during the inventory and later, when the request for laboratory examination was made. This weight discrepancy is fatal to the cause of the prosecution because the law expressly commands strict compliance with the chain of custody rule to ensure that what was confiscated from appellant was the same specimen presented in court. Notably, the prosecution did not even acknowledge or discuss the reason for the weight discrepancy but simply claimed that the buy bust team substantially complied with the chain of custody rule.

In *People v. Pornillos*[23], the Supreme Court considered a similar weight discrepancy of the substance as proof that what was seized was not the one forensically tested. This implied tampering with the prosecution evidence. Thus, accused Pornillos was acquitted because the High Court cannot affirm his conviction based on compromised evidence.

More, given the prosecution's failure here to abide by the chain of custody rule, the evidentiary presumption that official duties have been regularly performed cannot apply. *People v. Delos Reyes*[24] states that the presumption of regularity in the performance of official duties cannot be availed of to supply the missing links in the chain of custody as the presumption is effectively negated by the buy-bust team's failure to comply with Section 21 of R.A. No. 9165 and to show that the integrity of the corpus delicti has been duly preserved.

As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the prescribed procedure and guidelines, the presumption is effectively destroyed.[25]

To repeat, sale of a dangerous drug can never be proven without seizure and identification of the prohibited drug. *People v. Suan*[26] held that the existence of dangerous drug is a condition sine qua non for conviction for illegal sale or possession of dangerous drug, it being the very corpus delicti of the crime. Therefore, it is important that the identity of the dangerous drug be likewise established beyond reasonable doubt.

As stated, the prosecution here failed to establish the identity of the substance allegedly seized from appellant. In addition, there was a break in the chain of custody, thus, casting doubt on the integrity and evidentiary value of the substance allegedly seized from appellant himself. We are, therefore, compelled to acquit appellant based on reasonable doubt.

ACCORDINGLY, the appeal is GRANTED. The Decision dated January 29, 2013 is SET ASIDE and a new one

entered, ACQUITTING Renato Baron Jr. y Aquino of the crime charged based on reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for some other lawful cause. The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision and to report to this Court the action taken within five (5) days from notice.

SO ORDERED.

Castillo (Chairperson) and Galapate-Laguilles, JJ., concur.

[1] Rollo, pp. 35-44.

[2] Comprehensive Dangerous Drugs Act of 2002.

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. xxxx.

[3] Record, pp. 1-2.

[4] Id., p. 21.

[5] Id., pp. 32-33.

[6] TSN, November 14, 2006, pp. 5-12, March 13, 2007, pp. 4-6, November 27, 2007, pp. 5-9, July 15, 2008, pp. 2-4.

[7] TSN, November 14, 2006, pp. 12-13, March 13, 2007, pp. 7-9, July 31, 2007, pp. 3-10, January 29, 2008, pp. 4-8, July 15, 2008, pp. 5-6.

[8] Record, p. 144.

[9] Id., pp. 102-103.

[10] TSN, March 3, 2009, pp. 3-8, July 21, 2009, pp. 3-7.

[11] TSN, September 4, 2012, pp. 4-12.

[12] TSN, September 20, 2011, pp. 4-9, 15.

[13] Rollo, pp. 35-44.

[14] Id., pp. 21-33.

[15] Id., pp. 50-65.

[16] People v. Mantawil, G.R. No. 188319, June 8, 2011.

[17] Ibid.

[18] People v. Nandi, G.R. No. 188905, July 13, 2010.

[19] People v. Sitco, G.R. No. 178202, May 14, 2010.

[20] Record, p. 141.

[21] Id., p. 142.

[22] Id., p. 144.

[23] G.R. No. 201109, October 2, 2013.

[24] G.R. No. 181039, January 31, 2011.

[25] Ibid.

[26] G.R. No. 184546, February 22, 2010.

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