

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JONATHAN BARREDO Y PATRICIO, ACCUSED-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Jonathan Barredo (accused-appellant) appeals the Decision[1] dated May 15, 2009 rendered by the Regional Trial Court (RTC), Branch 17, Roxas City in Criminal Case No. C-54-05. The accused-appellant is convicted with Violation of Section 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act.

The dispositive portion[2] of the decision, reads:

“WHEREFORE, premises considered, finding accused Jonathan Barredo guilty beyond reasonable doubt of the crime of violation of Section 11 of R.A. 9165, he is hereby sentenced to suffer the jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

Grace Barredo is acquitted of the crime she is charged with.

ANTECEDENTS

The Information[3] for Violation of Section 11, Article II of R.A. 9165 filed on March 7, 2005 under Criminal Case No. C-54-05 alleges:

That on or about 1:00 o'clock in the afternoon of March 2, 2005 at the house of immediate premises of Spouses Jonathan Barredo Y Patricio and Grace Barredo Y Bacalucos located at Sitio Ilaya, Brgy. Cogon, Panay, Capiz, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and illegally have in their possession without any legal cause of authority, the following:

- a. Eight (8) big sachets of Methamphetamine Hydrochloride (shabu);
- b. Six (6) small sachets of Methamphetamine Hydrochloride (shabu);
- c. One (1) cartoon box mamas love bandage 4x6 YRDS;
- d. One (1) unit Nokia cellphone color white;
- e. Four (4) pcs one hundred pesos bill;
- f. Ten (10) pcs one hundred pesos bill;
- g. One (1) pc five hundred pesos bill;
- h. One (1) pack empty sachet used in repacking shabu.

That the total weight of the above confiscated methamphetamine hydrochloride (shabu), a dangerous drug is 59.823 grams;

That the foregoing were confiscated by virtue of Search Warrant No. 2005-11 issued by Honorable Charlito

Fantilanan, Executive Judge, RTC, Roxas City.

“CONTRARY TO LAW.”

The accused entered a “NOT GUILTY” plea during the arraignment on July 15, 2005.[4]

The evidence for the prosecution is summarized as follows:

On March 2, 2005, Executive Judge Charlito Fantila of the Regional Trial Court of Roxas City issued Search Warrant No. 2005-11.[5] The Search Warrant directed the search of the house of the accused Jonathan Barredo and his wife Grace Barredo, located at Sitio Ilaya, Barangay Cogon, Panay, Capiz for the following items or personal properties:

- a. Undetermined volume/quantity of Methamphetamine Hydrochloride (shabu), and/or Marijuana or dangerous drugs;
- b. Assorted paraphernalia such as: improvised water pipes, tooters, burners, strips of aluminum foil, unused transparent plastic packets used for repacking of shabu or marijuana, weighing scale, bamboo stick used in sealing shabu, and used transparent plastic sachets with traces of shabu or marijuana or dangerous drugs;
- c. Marked money and money proceeds of illegal drugs; and
- d. Cellular phones and other communication equipment used in their illegal drug trade activity.

On that same day at around 1:00 o'clock in the afternoon, the joint elements of 1st Capiz Provincial Mobile Group and Panay Police Station went to the target area. The searching team led by P/Chief Insp. Ricardo Alba and P/Chief Inspector Oscar Silva implemented the search warrant. The search team was composed of PO1 Manuela Bansale Jr., SPO1 Romeo Ortencio, PO3 Joan Vicente, PO2 Jesus Bercades, PO3 Gilbert Quiachon and one member of the Panay Police Station. There were also members of the media and barangay officials who were invited to witness the search of accused's house.

While the search on the bedroom of the accused-appellants was going on, Grace Barredo suddenly took a small cartoon box marked “Mama's Love” bandage from under the pillow and she put it on top of their bed. The cartoon box was opened in the presence of the accused and his wife, the media and barangay representatives. The contents of the box were eight (8) big sachets and six (6) small sachets of suspected shabu. The searching team also recovered and seized one (1) pack of empty plastic sachets used in repacking of shabu, fourteen (14) one hundred peso bills, one (1) five hundred peso bill and one (1) Nokia cellular phone. An inventory of the seized items was then prepared by PO3 Quiachon and signed by P/Chief Insp. Ricardo Alba. This was witnessed by the media and local government officials.

The seized items were brought to the court which issued the warrant and were later withdrawn by PO3 Quiachon for examination in the PNP Crime Laboratory. The fourteen (14) plastic sachets weighed a total of 59.823 grams and all yielded positive results for Methamphetamine Hydrochloride.

The evidence for the defense is also summarized as follows:

On March 2, 2005 at about 1:00 o'clock, Grace Barredo, wife of the accused was at their house in Ilaya, Cogon, Panay, Capiz. She saw a man wearing bonnet entered their house through the kitchen door and went to the master's bedroom. The said man was wearing camouflage pants, black long sleeves shirt and holding a long firearm. The man stayed in the room for quite sometime. When the master's bedroom was searched, Grace Barredo was outside. She (Grace Barredo) was asked to enter the master's bedroom. She was surprised to see on top of their bed the cartoon labeled Mama's Love bandage. The man was alone when he entered their house, and

fifteen minutes later the search was conducted. There were four police officers who conducted the search and Police Officer Bensale was not among them. Grace Barredo protested to the police because it was the man wearing a bonnet who must have placed the cartoon on their bed. Grace Barredo did not affix her signature on the inventory certificate because the items recovered did not belong to her and her husband. At that time, the reporters were outside the living room.

On May 29, 2009[6], the trial court promulgated the decision convicting the accused Jonathan Barredo. Hence, this appeal.[7]

On March 23, 2010, the trial court issued an order (Mittimus) transferring the person of the accused-appellant to the New Bilibid Prison, Muntinlupa City.[8]

On May 28, 2010 the accused-appellant filed an Application to Bail Pending Appeal with Motion to Suspend Transfer Detention.[9]

ASSIGNMENT OF ERRORS

I

WHETHER OR NOT THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ILLEGAL POSSESSION OF DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST THE ACCUSED FOR HAVING BEEN OBTAINED IN VIOLATION OF SECTION 21 OF REPUBLIC ACT NO. 9165.

II

WHETHER OR NOT THE TRIAL COURT SERIOUSLY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT NOTWITHSTANDING THE PROSECUTION'S UNBELIEVABLE NARRATION OF FACTS AND IT'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE SPECIMENS.

The accused-appellant in his Appellant's Brief argues that it is the prosecution who has the positive duty to establish that efforts were employed in complying with the requirements under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to comply with the Section 21 of R.A. 9165. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law, serious uncertainty is generated about the identity of the seized items that the prosecution has presented as their evidence. Similarly, in this case, PO3 Gilbert Quiachon, the evidence custodian, recorder and person in charge in marking of the evidence in the implementation of the search warrant, testified that he cannot recall whether he was able to make a listing of paraphernalia allegedly recovered during the conduct of search. Notably also is the fact that during his testimony, he only stated that he only prepared a Certificate of Inventory and a Certificate of the Conduct of the Search.

In the present case, the prosecution admitted that the police had committed lapses in the handling of the seized materials but claims that it is only a minor deviation from the required procedure. However, the prosecution did not even bother to present any explanation to justify the non-observance of the prescribed procedures. It is clear that the physical inventory cannot be relied upon as the police officer who prepared the Certificate of Inventory cannot even recall as to whether he made a listing of the paraphernalia allegedly recovered from the house of the accused-appellant. Further, there were no photographs taken of the seized items in the presence of the accused or his counsel. In the testimonies of the police officers, there is no showing that the plastic sachets of shabu and paraphernalia recovered from the house of the accused-appellant were immediately marked upon seizure.

Accused-appellant said that the corpus delicti of the case was not proven. In this case, all the police officers that were presented as witnesses, failed to account as to what happened to the sachets of drugs after marking them, to

whom did they turn over the drugs in the police station in the court that issued the search warrant and in the crime laboratory. PO1 Bensale testified that he was the one who gave the 14 sachets of shabu to PO3 Quiachon after he recovered these from the couple's bedroom. However, this statement was contradicted by the Barangay Captain who was invited to witness the search. The latter testified that he was inside the bedroom when the search was conducted. PO1 Bensale was not inside the bedroom when the Mama's Love bandage box containing the 14 sachets of shabu was recovered. The Barangay Captain also said that the Mama's Love bandage box was not shown to him after the search.

None of the police officers who were presented as witnesses by the prosecution, identified the 14 sachets of shabu allegedly recovered from the house of the accused. It was only the forensic chemist who identified the shabu in open court. The testimony of the forensic chemist was only confined to the handling of the specimen at the forensic laboratory and the result of the examination of the sachets of shabu.

The court a quo banked on the presumption of regularity in the performance of duty by the police officers. However, this presumption is not applicable in this case. In the testimony of PO1 Bensale, he said that it was SPO1 Ortencio who explained to the accused-appellant that a search will be conducted in his (accused-appellant) house by virtue of a search warrant. However, SPO1 Ortencio was not presented in court to testify on this matter. Therefore, there is no showing that the accused was made to understand the contents of the search warrant. In the case of *Lopez vs. People*,^[10] the Supreme Court said that the effect of the above stated lapses is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of regularity affects the whole performance and should make the presumption unavailable.

Finally, it is the view of accused-appellant that the presumption of innocence of an accused in criminal case is a basic constitutional principle. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense, may logically not even present evidence on its behalf. In this case, the presumption of innocence shall prevail and the accused-appellant should be acquitted.

The Solicitor General in his Appellee's Brief counter argues that in cases of illegal possession of dangerous drugs, conviction can be had 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; (3) the accused freely and consciously possesses the said drug.^[11]

The first two elements are not disputed. During the trial, accused-appellant admitted that the illegal drugs were in fact found inside his home, inside his bedroom and on top of his bed. The testimonies of accused-appellant and his witnesses attest to the fact that the eight (8) packs of shabu and the six (6) small sachets containing methylamphetamine hydrochloride or "shabu" were recovered in the conjugal bed of the accused-appellant. It is therefore undisputable that the illegal drugs were found inside accused-appellant's bedroom which is obviously within his authority and control.

According to the Solicitor General, accused-appellant failed to prove that a person wearing a black bonnet went inside his home, proceeded to his bedroom and placed eight (8) big sachets of shabu and six (6) small sachets of shabu on his bed without his consent. Accused-appellant did not present an independent witness to corroborate his claim. The presumption that the person in possession has intent to possess is clearly applicable in this case. Accused-appellant has the duty to overturn the presumption, which he did not.

The Solicitor General also states that non-compliance with Section 21 of RA 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from accused-appellant inadmissible. What is of utmost importance 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.[12] Thus, the lack of photographs is not necessarily fatal to the prosecution, where no doubts exists as to the integrity and evidentiary value of the seized sachet.

THE COURT'S RULING

There is merit to the appeal.

The records show that to date, the Search Warrant No. 2005-11 has not been quashed.[13] It is a reasonable conclusion to draw that the Search Warrant No. 2005-11 against the spouses Barredo was validly issued and therefore all pieces of evidence recovered by virtue of the search warrant are deemed admissible against accused-appellant. It is a settled rule that objection to the legality of the search warrant and to the admissibility of the evidence obtained therefrom are deemed waived where no objection was raised during the trial of the case nor to the admissibility of the evidence obtained through said warrant.[14]

We will now proceed to consider whether the prosecution has proven the corpus delicti of the offense of possession of dangerous drugs.

In the offense of illegal possession of shabu, a dangerous drug, it must be shown that: (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 said drug.[15]

The testimony of PO1 Manuel Bensale Jr., presented the sequence of events that transpired during the conduct of the search. The searching party together with the barangay tanod and the media men went to the house of the accused-appellant.[16] PO1 Bensale said that it was Police Officer Ortencio who showed and read the search warrant to the accused-appellant.[17] Thereafter, they started the search in the sala and then inside the room of the accused-appellant. During the search, accused-appellant was in the room and Grace Barredo got something underneath the bed and threw a mama's love bandage box on top of the bed.[18] Inside the box, PO1 Bensale saw eight (8) big sachets[19] and six (6) small sachets of suspected shabu[20] with a total weight of 59.823 grams.[21] PO1 Bensale turned over the box of shabu to PO3 Quiachon their designated recovery custodian.[22] The latter prepared the Certificate of Inventory[23] and the Certificate of the Conduct of the Search.[24] The 14 packs of shabu were delivered by PO3 Quiachon to the PNP Crime Laboratory. The Chemistry Report No. D-058-05[25] by the Forensic Chemist P/Chief Inspector Angela Baldevieso states that the fourteen (14) packs of shabu yielded positive for Methamphetamine Hydrochloride. Accused-appellant was positively identified in court by PO1 Bensale and PO3 Quiachon as the one caught possessing the plastic sachets of shabu.

However, upon scrutiny of the records, We note that the prosecution failed to establish the identity of the 14 plastic sachets of shabu. From the testimonies of the police witnesses, We fail to see the narration of facts on how the 14 sachets of shabu were handled after their seizure. As to when, where and how the seized plastic sachets were marked, it cannot be ascertained. No marking of evidence at the place of search or at the police station was made. It was not explained why the fourteen (14) plastic sachets containing white crystalline substance were already marked as G-7" to "G-14" and "G-15" to "G-20 when transmitted to the forensic chemist. Worst of all, the police officers did not even identify in open court the plastic sachets of shabu they seized during the search of the house of the accused-appellant. Hence, the identity of the drugs seized from the accused-appellant which is essential in the offense of possession has not been proven.

There is a clear break or gap in the chain of custody. These lapses made by the prosecution has already tainted the integrity and evidentiary value of the confiscated plastic sachets of shabu. The break in the chain of custody in handling the plastic sachets of shabu cannot be remedied by the testimony of the forensic chemist. Proceeding

from the vacuity of proof of identification of the supposedly seized item and of the transfer of its custody, from the arresting officer to the forensic chemist, no value can be given to the document that merely states that the sachets presented to the forensic chemist contained prohibited drugs.[26]

It is the duty of the prosecution to adduce proof of proper custody of the dangerous drugs from the time of the seizure to the time of the laboratory examination and up to when these were presented in court. In this case, it was the burden of the prosecution to complete the chain of custody of the dangerous drugs by adducing evidence that the 14 sachets of shabu presented during the trial were the ones examined by the crime laboratory and are the same one recovered as a result of the search operation. The prosecution acted with wanton neglect or with gross inexcusable negligence when it failed to perform the basic duty to prove the identity of the subject shabu which in essence is the corpus delicti of the crime charged. In the case of *People vs. Salonga*,[27] the Supreme Court held 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 a finding of guilt.

Thus, since the prosecution has not established the existence and identity of the 14 plastic sachets of shabu, the corpus delicti of illegal possession thereof has not been shown. The accused-appellant deserves no less than an acquittal. We must clarify however, that accused-appellant that shall be acquitted not because he did not commit the crime charged but because this Court could not ascertain with moral conviction the commission of the crime charged which is illegal possession of dangerous drugs. Put differently, accused-appellant is acquitted because the prosecution failed to prove the corpus delicti of the offense of possession of dangerous drugs.

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti: every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function xxxx as it ensures that doubts concerning the identity of the evidence are removed. In a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused-appellant.[28]

WHEREFORE, the Decision[29] dated May 15, 2009 rendered by the Regional Trial Court, Branch 17, Roxas City in Criminal Case No. C-54-05 convicting the accused-appellant Jonathan y Barredo for Violation of Section 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act is REVERSED and SET ASIDE. Accused-appellant is hereby ACQUITTED of the charge against him for failure of the prosecution to prove his guilt beyond reasonable doubt. Unless his continued confinement is warranted for some other cause or ground, accused-appellant shall be immediately RELEASED by the Director of the New Bilibid Prison, Muntinlupa City, who shall submit a report within five (5) days from compliance of this order.

Further, it is DIRECTED that copies of the Decision be furnished to the Secretary of the Department of Justice and the Regional Director of PNP Region 6 to determine if irregularities were committed in the prosecution of this case.

SO ORDERED.

Delos Santos, and Lopez, JJ., concur.

[1] Records, pp. 282-291.

- [2] Records, p. 282.
- [3] Records, p. 1.
- [4] Records, p. 36.
- [5] Records, p.8; Exhibit “A”.
- [6] Records, p. 281.
- [7] Records, p. 300, Notice of Appeal.
- [8] Records, p. 306.
- [9] The Office of the ponente received the Application to Bail with Motion to Suspend Transfer Detention only on May 22, 2014.
- [10] G.R. No. 172953, April 30, 2008.
- [11] People of the Philippines vs. Alvin Pringas 531 SCRA 828 (2007).
- [12] People of the Philippines vs. Norberto del Monte (552 SCRA 627) (2008).
- [13] Records, p. 8, Exhibit “A”.
- [14] People of the Philippines vs. Dexter Torres, G.R. NO. 170837, September 12, 2006 citing the case of Demaisip v. Court of Appeals G.R. No. 89393, January 25, 1991.
- [15] People of the Philippines vs. Hong Yen E and Tsien Tsien Chua, G.R. No. 181826, January 9, 2013.
- [16] TSN, January 17, 2006, p.8.
- [17] Ibid.
- [18] TSN, January 17, 2006, p.9.
- [19] Records, p. 141, Formal Offer of Exhibits, Exhibits “G-7” to “G-14”.
- [20] Records, p. 142, Formal Offer of Exhibits, Exhibits “G-15” to “G-20”.
- [21] TSN, November 15, 2005, p. 10.
- [22] TSN, January 17, 2006, p. 10.
- [23] Records, p. 15; Exhibit “B”.
- [24] Records, p. 9; Exhibit “C”.
- [25] Records, p. 5, Exhibit “G”.
- [26] People of the Philippines, vs. Ricardo Remigio y Zapanta, G.R. No. 189277, December 05, 2012.
- [27] People v. Salonga, G.R.186390, October 2, 2009.
- [28] Valdez vs. People, G.R. No. 170180, November 23, 2007.
- [29] Rollo, pp. 34-41.

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