

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO IBARRA Y VERGARA, ACCUSED-APPELLANT.*G.R. No. 107837. June 27, 1994*

Ponente: REGALADO, J.

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The resolution by this Court of the present appellate entreaty may give an impression of another setback, for this turn, in the ongoing campaign against the traffic in dangerous drugs. Evidently, however, at bottom of this decision and as we have demonstrated in our other pronouncements,* is the palpable need for improved collation and presentation of evidence by the police authorities in drug cases. For, equally as important as the duty of the State to provide a haven for its citizens from the evils of the narcotics plague is its paramount responsibility for the judicial protection of the basic rights of its citizens under a regime of law.

Accused-appellant Reynaldo Ibarra y Vergara has interposed this appeal seeking the reversal of his conviction by the Regional Trial Court, Branch 171, of Valenzuela, Metro Manila in Criminal Cases Nos. 418-V-91 and 419-V-91 for unlawful sale of methamphetamine hydrochloride in violation of Section 15, Article III of the Dangerous Drugs Act of 1972, as amended, and for illegal possession of dried marijuana leaves punished by Section 8, Article II of the same law, allegedly perpetrated as follows:

Criminal Case No. 418-V-91

"That on or about the 31st day of July, 1991 in the Municipality of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to PAT. CESAR J. PINEDA, who posed as buyer, METHAMPHETAMINE HYDROCHLORIDE, a regulated drug, without the corresponding license or prescription therefo(r), knowing the same to be such. Contrary to law."

Criminal Case No. 419-V-91

"That on or about the 31st day of July, 1991 in the Municipality of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) tea bag of dried marijuana leaves with flowering tops, knowing the same to be a prohibited drugs (sic). Contrary to law." [1]

The prosecution evidence disclosed that at around 9:00 P.M. on July 31, 1991, Pat. Cesar J. Pineda received a "tip" from a confidential informant to the effect that one "Boy Barako," the herein appellant, was selling prohibited drugs in front of the RC discotheque in Marulas, Valenzuela, Metro Manila. Pat. Pineda then relayed the information to Police Sgt. Loreto Rodriguez, his superior at the Anti-Narcotics Unit of the Valenzuela Police Station, and the latter, in turn, formed a group tasked with the entrapment of appellant. Pat. Pineda was designated to act as poseur-buyer, while Cpl. Tomas Paguntalan, Police Officer Maximo Constantino, Police Officer Alfredo Dimson, and Police Aide Santos Soriaga were to function as lookouts.[2]

That same evening, the buy-bust team proceeded to the RC Disco at Marulas, Valenzuela. They were met there by the police informant who pointed to appellant who was at the time standing in front of the discotheque. Pat. Pineda, alone and unaccompanied, approached appellant and told the latter that he wanted to purchase "shabu." Said officer recalled that he then handed to appellant the five P20.00 bills earlier given to him by his superior to be used as purchase money. Appellant forthwith entered an alley and returned shortly thereafter with the illicit drug which he handed to the police officer.[3]

Pat. Pineda effected the arrest of appellant upon receiving the drug and also recovered one P20.00 bill from him. The other members of the buy-bust team, who had by then closed in on appellant, frisked him and found a pack of dried marijuana leaves. The police officers thereafter brought appellant to their station for investigation and it was there that he revealed his true name to them. Pat. Pineda himself forwarded the illicit items to the National Bureau of Investigation (NBI) for inspection. After conducting the requisite examination on the seized drugs, Elvira Avena-Del Rosario, Forensic Chemist II at the NBI, concluded that the white crystalline substance and the flowering tops submitted by Pat. Pineda were the illegal drugs of methamphetamine hydrochloride and marijuana, respectively.[4]

Appellant insists, however, that he never sold, much less did he possess, any of the supposed illegal drugs. He claims that he was having a few drinks inside the RC discotheque together with two companions, at around 9:00 o'clock in the evening of July 31, 1991, when Pat. Pineda and his group suddenly pounced on them and placed him and his friends under arrest. They were then taken by the police team to the Valenzuela Police Station where he was eventually detained, while his two other companions were released.[5]

Appellant, with the assistance of counsel de oficio, pleaded not guilty to the charges against him at his arraignment on September 13, 1991.[6] Trial on the merits thereafter commenced on September 23, 1991 and the cases were submitted for the court's verdict on May 4, 1992. On May 25, 1992, the trial court promulgated its judgment finding appellant guilty of both charges, with the following dispositions:

Criminal Case No. 418-V-91

"Finding the accused Reynaldo Ibarra y Vergara Guilty beyond reasonable doubt of the crime of unauthorized selling and delivering regulated drug known as Methamphetamine Hydrochloride defined and punished under Section 15, Article III of Republic Act No. 6425, as amended, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay a fine of Twenty Thousand (P20,000.00) and costs of suit.

The 0.2100 gra(m) of Methamphetamine Hydrochloride is hereby confiscated to be turned over to the Dangerous Drug(s) Board under proper receipt."

Criminal Case No. 419-V-91

"Finding accused Reynaldo Ibarra y Vergara guilty beyond reasonable doubt of the crime of Illegal Possession of Marijuana consisting of 3.0146 grams of dried flowering tops (Indian Hemp) as defined and penalized under Section 8, Article II of Republic Act No. 6425 as amended, he is hereby sentenced to suffer imprisonment in the indeterminate penalty of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of Prison Correccional, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor, as maximum, and to pay a fine of Six Thousand Pesos (P6,000.00) and the costs.

The 3.0146 grams of dried marijuana flowering tops (are) hereby confiscated in favor of the Government to be turned over to the Dangerous Drug(s) Board under proper receipt."[7]

Before us, appellant impugns said judgments of the trial court, contending that it erred in giving weight and credence to the uncorroborated version of the entrapment by the apprehending police officer, Pat. Cesar J. Pineda;

and in convicting appellant of the offenses charged in spite of the failure of the prosecution to establish his guilt beyond reasonable doubt.[8]

A conscientious and thorough review of the documentary and testimonial evidence on record compels this Court to conclude that appellant's position and presentation of his case should be sustained. Perforce, we reverse.

While the well-entrenched and oft-cited rule is that factual findings of trial courts are to be conferred much respect on account of said courts' indisputable advantage of having closely monitored the demeanor of the witnesses presented before them, corrective appellate action must, however, follow pursuant to the equally settled exceptive rule where a gross misapprehension of facts is plainly evident in the findings of the trial court or its factual conclusions do not find support from the evidence.[9]

It is ineluctable that, in the case at bar, the assailed judgment of the lower court must be held for naught in view of its manifest failure to take into consideration serious and significant improbabilities and contradictions in the testimony of Pat. Cesar J. Pineda, on whose sole uncorroborated narration of the supposed entrapment of appellant the court below mainly relied upon in arriving at its questioned adjudications.

To begin with, grave doubts irresistibly arise from Pat. Pineda's assertions, both in the sworn affidavit that he supposedly executed shortly after the arrest of appellant and in his testimony in court, that after their team of operatives had apprehended appellant and brought him to their station for further investigation, it was there that appellant, whom they only knew until then as "Boy Barako" per the asset's information, revealed for the first time his true identity as Reynaldo Ibarra.

Significantly, if not incredibly, the prosecution itself had presented as evidence the police logbook on which Pat. Pineda had supposedly written, prior to the buy-bust operation, the suspected peddler's name and the serial numbers of the buy-bust money, yet the true name of appellant, that is, Reynaldo Ibarra, already appeared therein together with his alias.[10] Obviously, Pat. Pineda was trifling with the truth when he told the court that they only came to know about appellant's real name when he disclosed his identity to them at the Valenzuela Police Station after his arrest.

Note Pat. Pineda's testimony on this point:

x x x

"ATTY. DOMINGO: (To the Witness)

Q Mr. Witness, these entries specifically bearing the date '31 July 1991' up to the entries reading '31 July 1991, 11:30 p.m.', was this (sic) written before you left the office to conduct the buy/bust operation or after?

A The first two paragraphs were written down before we left for the buy/bust operation.

Q Will you point to us in the original, please point to us th(ose) first two paragraphs.

A From here up to here.

ATTY. DOMINGO:

Your Honor, the witness is pointing to the entries... (pause)

ATTY. DOMINGO: (To the Witness)

Q Please repeat again your answer. Please tell the Court which of these entries appearing in this particular page of the dispatch book were written before you left the Anti-Narcotics Unit?

A This one, sir.

ATTY. DOMINGO:

Your Honor, the witness is pointing to the following entries which we will quote starting from 'July 31, 1991, 10:30 p.m.' up to the following entries, Your Honor, 'Dispatched and led by P/Cpl. Paguntalan to conduct buy/bust operation at RC Disco, Marulas, Valenzuela, AOR'.

ATTY. DOMINGO: (To the Witness)

Q That is the entry you made before you left the Anti-Narcotics Unit?

A Up to this part, sir.

ATTY. DOMINGO:

Witness now, Your Honor, is pointing to the following entries which we are going to read, 'Suspect Reynaldo Ibarra alias Boy Barako, marked ML-237269, PA-659020, (JC-94310 and MQ-905133' and last entry 'FC-145729.' (Italics ours.)

ATTY. DOMINGO: (To the Witness)

Q This is the entry you made before you left the office of the Anti-Narcotics Unit?

A Yes, sir.

Q You are sure of that?

A Yes, sir."[11]

x x x

Additionally, it is apparent from the records, as emphatically pointed out by appellant's counsel to the court a quo, that the pertinent page in the official logbook on which Pineda reportedly jotted down appellant's name was simply inserted and stapled to the logbook, unlike all the other pages which were correctly observed by said counsel as properly stitched and thus bound together.[12] What these all inevitably lead to is that said alleged entry in the logbook, and even the entry in Pineda's personal diary as well, were made after the fact of arrest of herein appellant so as to lend the whole process of entrapment a semblance of regularity.

The Court is not inclined to lend assent to the argument of the Solicitor General that whatever irregularity may have attended the matter of the entry in the police logbook can be safely discounted supposedly on account of the "hastiness" with which most entrapments are conducted and that, anyhow, such an entry is allegedly not essential for the conviction of appellant since the fact of sale was clearly established.

It should be emphasized on this score that Pat. Pineda himself admitted on the witness stand that the act of entering in the logbook all details of the operations of the Valenzuela Anti-Narcotics Unit is a standard operating procedure of the buy-bust team.[13] Hence, where contradictions are evident and no satisfactory explanations are given as to how the entries came to be, such may be duly considered as corrosive of Pat. Pineda's account of the entrapment and, ultimately, of his credibility, especially since every circumstance must be taken into serious consideration in passing upon the guilt or innocence of the accused.[14]

In any event, the alleged sale involving appellant and Pat. Pineda has not been established to this Court's satisfaction. Indeed, there are weighty discrepancies on material points between Pat. Pineda's testimony regarding the transaction and his affidavit thereon. Courts have generally regarded inconsistencies between a witness' testimony in court and his affidavit as inconsequential but only when these relate to minor and reconcilable points, as affidavits are usually prepared ex parte and thus incomplete. The rule is otherwise where the incongruities

relate to substantial and irreconcilable facts, such as omissions touching on important details which the affiant would not necessarily have neglected to mention.[15]

Thus, Pat. Pineda averred in his affidavit that what their team did, after having been dispatched to and upon reaching the RC Disco in Marulas, was as follows:

x x x

"Na, kaagad kaming pumunta sa nasabing lugar kung saan naghihintay ang aking impormante. At ako ay kanyang sinalubong at itinuro si BOY BARAKO na nakatayo sa harap ng R.C. Disco harap ng Mac Arthur Highway, Marulas, Valenzuela, Metro Manila.

Na, aking nilapitan si BOY BARAKO samantalang ang aking mga kasamang nabanggit ay nagsipuwesto sa isang stratehikong lugar na kung saan ako at si BOY BARAKO ay abot tanaw.

Na, lumapit ako kay BOY BARAKO at sinabi kong bibili ako ng SHABU sa halagang isang daang piso (P100.00) na kaagad naman niyang tinanggap ang pera sa akin at sinabing maghintay nalang (sic) ako ng sandali at siya ay umalis at makaraang sandali ay bumalik si BOY BARAKO at inabot sa akin ang isang deck ng SHABU (Methamphetamine hydrochloride). (P)agkakuha ko, ako'y nagpakilalang Pulis Valenzuela sabay pakita ng TAG ID namin sa NARCOM at siya ay aking inaresto sa tulong (sic) na rin ng aking mga kasama na kaagad namang nakalapit.

x x x

Na, kaagad naman niyang inamin at sinabi na isang nagngangalang RESTY na taga Bagong Baryo, Kalookan City ang nagdala sa kanya ng mga nakumpiskang ebidensiya sa kanya." (Underscoring supplied.)[16]

x x x

On the witness stand, however, Pat. Pineda's declarations were definitely and substantially different from what he had stated in his sworn statement. He told the court that when they reached their destination, they were met there by the informant who then accompanied Pat. Pineda in approaching appellant.[17] As already noted, Pineda had stated in the affidavit that he went alone in approaching appellant while the other team members posted themselves elsewhere. Said officer, however, testified later that he and the asset actually separated just a short distance from where appellant was allegedly standing, with the asset thereafter proceeding inside the discotheque.[18]

Again, Pat. Pineda contradicted himself when he professed before the court that as soon as he reached appellant, he told him that he wanted to purchase "shabu" and that appellant, in turn, asked the officer how much he wanted to buy and it was then that Pineda expressed his desire to buy P100.00 worth of the same.[19] This is not what transpired, though, as recalled by Pineda in his affidavit. In said sworn statement, he immediately told appellant point-blank and without preliminaries that he wanted to buy P100.00 worth of "shabu" and that appellant, without much ado, then took the amount being offered.

Even if we were minded to avail of the usual evidentiary refuge that the foregoing situation involved a minor inconsistency, the extreme casualness with which Pineda transacted the sale with appellant renders curious and dubious his account thereof. It is of common knowledge that drug traffickers are also knowledgeable and have consequently grown wary of the entrapment tactics employed over these years by law enforcers. It simply taxes credulity that appellant, if indeed he was a drug peddler, would have so readily and publicly agreed to enter into a deal with a complete stranger in such an intrepid and matter-of-fact manner.

What further baffles the court is the claim of Pineda, in the same affidavit, that right after his apprehension

appellant promptly confessed that one named "Resty" had supplied him with the drugs. This fact was never mentioned by said police officer when he was presented as a prosecution witness. Now, assuming that was so, then the buy-bust team should have sought the entrapment as well of this person who presumably would have been in the vicinity as an accomplice of appellant. But, they never did, nor do they even bother to explain why.

It is also a source of wonder how Pat. Pineda and his asset came to meet in front of the RC Disco for the buy-bust operation considering that said law enforcer never disclosed nor intimated that they were to have a rendezvous in that part of Valenzuela. In fact, Pineda asseverated in his affidavit that what the informant simply relayed to him on the telephone was that a certain "Boy Barako" was then engaged in drug trafficking in "Marulas" and nothing more.[20]

Creating one more problematic circumstance, the prosecution adduced in evidence purported xerox copies of the five P20.00 bills which were allegedly utilized as marked money.[21] According to Pineda, they had the bills xeroxed just before they left for the operation but he only asserted this as a reason when the trial court, during his cross-examination, inquired from him how they managed to procure xerox copies of said bills.[22] Pineda never made mention of the existence of these important documentary evidence in his sworn statement.

True, no ill motive has been demonstrated on the part of the apprehending officer to impute such serious charges on appellant, but that consideration cannot prevent his story from being rejected, replete as it is with considerable, inexplicable and serious discrepancies. Evidence, trite as we may sound in stressing this rule, must come not only from the mouth of a credible witness but it should necessarily be credible in itself and in accord with human experience.[23] Furthermore, conviction for a criminal offense, especially for a serious one as that now before us, must always be based on clear and positive evidence.[24]

Of course, credence is ordinarily accorded to the testimonies of prosecution witnesses, more so when narrated by law enforcers who are presumed to have performed their duties regularly.[25] By itself, however, the rebuttable presumption that official duty has been regularly performed cannot prevail over the constitutional presumption of innocence that an accused enjoys.[26] And, while appellant's defense of simple denial is admittedly weak, the same being easy of fabrication as in the case of alibi, it should nonetheless be accorded credence and significance where the case for the prosecution is itself frail, for it is axiomatic that in all criminal prosecutions the prosecution must not rely on the weakness and frailty of the evidence for the defense but on the strength of its own.[27]

ACCORDINGLY, the assailed judgments in Criminal Cases Nos. 418-V-91 and 419-V-912 are hereby REVERSED and SET ASIDE. With accused-appellant Reynaldo Ibarra y Vergara being hereby ACQUITTED of the charges therein, his immediate release is consequently ordered absent any lawful cause for his continued incarceration.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

* See, for instance, *People vs. Cruz*, G.R. No. 102880, April 25, 1994.

[1] Original Record, Criminal Case No. 418-V-91, 1; Criminal Case No. 419-V-91, 1.

[2] TSN, September 23, 1991, 4-8.

[3] *Ibid.*, id., 8-11.

[4] *Ibid.*, id., 11-12; March 13, 1992, 4-12.

- [5] Ibid., April 2, 1992, 4-7.
- [6] Original Record, Criminal Case No. 418-V-91, 8.
- [7] Ibid., id., 84; Judge Adriano R. Osorio, presiding.
- [8] Rollo, 34; Brief for the Accused-Appellant, 1.
- [9] People vs. Sibug, G.R. No. 108520, January 24, 1994.
- [10] Original Record, Criminal Case No. 418-V-91, 72.
- [11] TSN, November 29, 1991, 5-6.
- [12] Ibid., id., 4-5.
- [13] Ibid., id., 2-4.
- [14] People vs. Ponferrada, et al., G.R. No. 101004, March 17, 1993, 220 SCRA 46.
- [15] People vs. Maongco, et al., G.R. No. 108963-65, March 1, 1994.
- [16] Original Record, Criminal Case No. 418-V-91, 4.
- [17] TSN, October 18, 1991, 14-18.
- [18] Ibid., id., 15-17.
- [19] Ibid., September 23, 1991, 9.
- [20] Original Record, Criminal Case No. 418-V-91, 8.
- [21] Ibid., id., 58; Exhibits B, C, D, E, and F.
- [22] TSN, September 23, 1991, 29.
- [23] People vs. Eslaban, G.R. Nos. 101211-12, February 8, 1993, 218 SCRA 534.
- [24] People vs. Ritter, G.R. No. 88582, March 5, 1991, 194 SCRA 690.
- [25] People vs. Padilla, et al., G.R. Nos. 97111-13, September 4, 1992, 213 SCRA 631.
- [26] People vs. Uson, G.R. No. 101313, July 5, 1993.
- [27] People vs. Honrada, G.R. No. 91161, December 17, 1991, 204 SCRA 858.

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