

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERLINDA BACLAYON, ACCUSED-APPELLANT.

G.R. No. 110837. March 29, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the evening of 19 May 1992, the accused was arrested during an alleged buy-bust operation in her house in sitio Bato, barangay Ermita, Cebu City, by the members of the Anti-Narcotics and Dangerous Drugs Section (ANDDRUS) of the Philippine National Police (PNP) of Cebu City assigned to the Fuente Osmeña Police Station.

In an information filed under Section 7, Rule 112 of the Rules of Court by Prosperidad L. Latorena, State Prosecutor II, detailed with the City Prosecutor of Cebu City, the accused was charged with the violation of Section 15, Article III of R.A. No. 6425 (the Dangerous Drugs Act of 1972), as amended, committed as follows:

"That on or about the 19th day of May, 1992, at about 7:30 o'clock P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there sell, deliver and give away one (1) deck of 'Shabu' powder which contains a methamphetamine hydrochloride, a regulated drug, to a person who posted himself as buyer, without authority of law." [1]

which was docketed as Criminal Case No. CBU-25835 and raffled to Branch 8 of the said court. No bail was recommended for her temporary liberty.

She entered a plea of not guilty upon her arraignment on 6 July 1992.[2] The trial commenced in due course.

The prosecution presented as its witnesses, Eduardo Hipolito and Gualberto Gabales of the ANDDRUS-PNP, and Myrna P. Ariola of the Chemistry and Crime Laboratory Section of the PNP Crime Laboratory Service in Cebu City.

The accused and her 14-year-old daughter, Lissette Baclayon, testified for the defense.

On 18 December 1992, the trial court promulgated its decision[3] finding the accused guilty as charged and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 and the costs.

The facts established by the evidence for the prosecution are succinctly summarized in the Appellee's Brief in this wise:

"At about 7:30 o'clock in the evening of May 19, 1992, Police Officers Eduardo Hipolito, Gualberto Gabarles [Gabales] and others, led by Inspector Wendell M. Tanza, all of the Anti-Narcotics and Dangerous Drugs Section of PNP Cebu City, were at the back of Carbon Market in sitio Bato, Cebu City to conduct a 'buy-bust' operation against a certain Mommy Baclayon, who turned out later to be appellant, in response to an earlier information provided by an anonymous caller that she is engaged in the sale of shabu. Pretending to be a buyer, Officer Eduardo Hipolito approached appellant, then in her house, who asked if he wanted to buy shabu. In reply, he gave her a marked P100.00 bill (Exh. "A"). Thereafter, she went upstairs and shortly returned, giving him a deck of shabu (Exh. "C-1"). Immediately, he touched his head, signaling his companions, who

rushed to the house (TSN, July 21, 1992, pp. 3-5). After frisking her, Officer Gualberto Gabarles [Gabales] recovered the marked money and another deck of shabu (Exh. "C-2") (TSN, July 22, 1992, p. 6).

Subsequently, the two (2) decks of suspected shabu were turned over to the PNP Crime Laboratory for examination. After examination, OIC Myrna P. Ariola of the Chemistry and Crime Laboratory Section submitted her report (Exh. "B"), with a finding that the suspected shabu 'gave positive result for the presence of Methamphetamine Hydrochloride, a regulated drug' (Exh. "B-1", TSN, July 22, 1992, p. 3)."[4]

The defense presented another version of the incident. According to the accused, she is a widow of a former member of the Philippine Constabulary. She receives a monthly pension of P1,200.00 and is engaged in the handicrafts business from which she earns a monthly income of more than P2,000.00. Her three dependent children live with her at their residence in Bato, Carbon, Cebu City. In the evening of 19 May 1992, while she was having a visitor, Philip Infanta, who is a tourist guide and who had come to inform her of the approval of her application to export native products, somebody with a bicycle and who looked pale went inside her house. Then three other persons, one of whom she came to know later as Gualberto Gabales, a policeman, also entered. Gabales went to her and got a pack of blue seal Champion cigarettes containing 19 sticks from her pocket. He informed her that he has a warrant of arrest against the person who had entered her house -- she learned later at the police station that the person to be arrested was a certain Nido who was, however, released later. After he got the cigarettes, Gabales and his companions searched the house and even lifted her bed repeatedly. She was arrested and brought to the police station. While there, she heard a person typing something asking for marked money, and someone then handed him money saying that it could be used as the marked money. She claimed that Hipolito was not among the companions of Gabales; that she saw Hipolito for the first time at the police station; and that it is not true that there was a standing warrant of arrest against her. Finally she declared that there are many persons known as Mommy.[5] Her 14-year-old daughter, Lissette, corroborated her testimony on the search of the house.[6]

The trial court accepted the version of the prosecution and brushed aside the story of the accused.

Insisting on her innocence, the accused filed her Notice of Appeal on 22 December 1992.[7]

In the Brief for the Appellant, the accused ascribes to the trial court the commission of the following errors: (a) in giving credence to the testimonies of the prosecution witnesses; (b) in disregarding the testimonies for the defense; and (c) in convicting her without establishing proof beyond reasonable doubt. In amplification thereof, she contends that the testimonies of Hipolito and Gabales do not merit belief. Both never knew her until the alleged buy-bust operation. Her name cropped up only in a tip relayed to the police that same day. The said policemen never knew her exact residence, yet they testified that when they reached the locality they were able to go straight to her residence and entrap her. She claims that she was a victim of a frame-up as a result of a saturation drive undertaken by the police to rid sitio Bato of drug pushers, that the pieces of evidence supposedly recovered were merely planted, and that Hipolito was never a member of the raiding team much less the alleged poseur-buyer whose name never appeared as a witness in the information filed against her. The fact that she did not protest or interfere with the search indicates that she hid nothing illegal in her residence. There was no reason for her to be a drug peddler since her pension and income from her business are enough to support her family and there is no evidence that she indulged in luxurious living. Finally, the prosecution failed to rebut her testimony that there was an unidentified man who barged into her residence and who was pursued by the police, and that the police considered everybody in sitio Bato a drug pusher.

In the Brief for Plaintiff-Appellee, the Office of the Solicitor General prays for the affirmance of the challenged decision mainly because the testimonies of the prosecution witnesses were consistent with one another and there was no proof that they had any improper motive in testifying against the accused.

The paramount issue then in this case is the credibility of the witnesses. When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[8]

After a careful review of the records of this case and a thorough evaluation of the evidence adduced by the parties, we find certain facts of substance which the trial court failed to consider and which create reasonable doubt in our minds on the culpability of the accused.

The format of the challenged decision immediately gives one the impression that the court a quo gave primacy to the weakness of the evidence for the accused. The trial court first summarizes the evidence for the defense and meticulously probes into its weakness, faulting it for its failure -- to the "surprise" of the court -- to present as witness Philip Infanta and to prove improper motive on the part of the police raiding team.[9] The trial court concludes with what it believes to be the established facts by summarizing the testimonies of the prosecution witnesses, which it considers to be credible. While the format might be but a style of writing, it might, nevertheless, likely mislead one to believe that the accused has the burden of proving her innocence. This is, of course, not so because of the solemn mandate of the Constitution that an accused is presumed innocent until the contrary is proved. In order to overcome this presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. Save in certain circumstances, as where the accused admits the commission of the imputed crime but interposes justifying circumstances, that burden is never shifted to the accused or diminished by the weakness of the defense. Unless the prosecution discharges that burden, the accused need not even offer evidence in his behalf.[10]

While it may be conceded that the evidence for the accused in this case is weak, that of the prosecution is, in our view, much weaker and its insufficiency to prove the guilt of the accused is all too clear.

There is enough doubt on whether there was, in fact, a buy-bust operation undertaken by the police raiding team. In the first place, in his cross-examination, the principal witness for the prosecution, Eduardo Hipolito, disclosed that their office was then conducting a "saturation drive": persons who appeared to be drug addicts were brought to their headquarters and were interrogated. In the course thereof, it received information that one "Mommy" of sitio Bato, Carbon, Cebu City, has been "peddling shabu." Regrettably, however, Hipolito could not even recall the name of the "informant," justifying such inability by saying that either there were many suspected users who were, nevertheless, released, or he simply "forgot the name [and could not] mention a particular person." [11] On the other hand, on direct examination, prosecution witness Gualberto Gabales told the court that the information their office received was that "a certain Mommy Baclayon is possessing shabu." [12] There is thus an inconsistency as to what the alleged information was precisely all about, i.e., whether the accused was "peddling" or "possessing" shabu. Needless to state, the identity of the source of the said information is equally unclear for it allegedly came from one of the suspected users whose name Hipolito either "did not know at all or simply forgot." Further muddling the situation, Gabales attempted to supply the name of an informant by referring to a certain Bodong, whom he described as "one of the drug pushers that we backed up." [13] Unfortunately, however, that is only a nickname, for he even forgot to ascertain the true name or, if he did, forgot the true name altogether. Thus:

"Q Were you able to ascertain the true name of the person?

A I forgot.

Q Did you enter that in the blotter wherein that particular person Bodong have knowledge regarding the alleged activity of the accused in this case.?

A No, sir."[14]

Both law enforcers also admitted that they did not know the accused and have not conducted any surveillance on her activities before the incident in question.[15] Gabales even candidly admitted that other than her age, no other particular description of the accused was given. Thus:

"Q There was no particular description of her person whatsoever?

A He gave the description regarding the age."[16]

Under these circumstances, it is doubtful if indeed the office of the ANDDRUS had enough basis to conclude that the accused is a drug peddler. On the contrary, it is more likely that it believed that she was merely keeping or possessing shabu because there is un rebutted evidence that the members of the team searched the house and even lifted her bed repeatedly.[17]

In the second place, we find unconvincing the story about the alleged marked money. Hipolito claimed that the marked money[18] was given to him by his superior to be used in buying shabu.[19] Yet, the four-page direct examination of Hipolito[20] miserably failed to disclose where the marking was placed on the alleged marked money. In short, the said witness was not asked about the marking, which is usually made before a buy-bust operation is undertaken, and did not even volunteer to indicate any marking thereon as proof that the bill had earlier been marked. This is unusual. There can be no "marked money" unless a mark thereon was placed to identify it as marked money. There is, as well, an unexplained deviation from the standard procedure concerning the preparation of the buy-bust money and the buy-bust operation itself, which involves some surveillance for the law enforcers to determine the identity of the suspect and to verify that the latter is engaged in the illegal sale or distribution of dangerous drugs so as to ensure the success of the entrapment.

There is also the revelation of Hipolito that the accused "was already placed in the passed [sic] for surveillance by the police operatives of San Nicolas but not arrested." [21] The team of Hipolito is composed of members of the ANDDRUS of the Fuente Osmeña police station[22] and not of the San Nicolas Police Station. If indeed the policemen of the San Nicolas Police Station had her placed under surveillance but did not arrest her, then they must have found nothing against her for we are not prepared to conclude that the ANDDRUS at the Fuente Osmeña Police Station had misgivings on the conduct of the policemen at the San Nicolas Police Station.

While in the minds of the members of the police raiding team the accused may indeed be a drug pusher or peddler who must be dealt with without mercy, that alone, even if it be conceded ex gratia to be true, is not enough justification for any shortcut in law enforcement. Paraphrasing Mr. Justice Isagani A. Cruz in the recent case of Sanchez vs. Demetriou,[23] even if the accused were the most notorious person in our country today, and alleged to be committing the most serious offense, she is, nevertheless, entitled to the full and vigilant protection of the Bill of Rights. It was eloquently proclaimed more than a hundred years ago in Ex parte Milligan[24] that "the Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances."

In the light of the above circumstances surrounding the raid on the residence of the accused and her arrest, grave doubts on her culpability exist. She must therefore be acquitted.

WHEREFORE, on the ground of reasonable doubt, the appealed decision of Branch 8 of the Regional Trial Court of Cebu City in Criminal Case No. CBU-25835 is REVERSED and accused-appellant ERLINDA BACLAYON is hereby ACQUITTED and her immediate release from imprisonment is ordered, unless her further detention for some other lawful cause is warranted.

Costs de officio.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] OR, 1-2; Rollo, 1-2.

[2] OR, 18.

[3] Id., 47-53; Id., 10-16. Per Judge Bernardo Ll. Salas.

[4] Rollo, 62-63.

[5] TSN, 13 August 1992, 2-8.

[6] TSN, 19 August 1992, 2-6.

[7] OR, 55.

[8] People vs. Garcia, 209 SCRA 164 [1992]; People vs. Florida, 214 SCRA 227 [1992].

[9] OR, 51; Rollo, 14.

[10] People vs. Garcia, 215 SCRA 349 [1992].

[11] TSN, 21 July 1992, 8-9.

[12] TSN, 22 July 1992, 5.

[13] Id., 8.

[14] Id.

[15] TSN, 21 July 1992, 7-8; Id., 9.

[16] TSN, 22 July 1992, 9.

[17] TSN, 13 August 1992, 6.

[18] A P100.00 bill with serial number PG687013 and offered in evidence as Exhibit "A."

[19] TSN, 21 July 1992, 3.

[20] Id., 2-6.

[21] TSN, 21 July 1992, 7.

[22] OR, 2; Rollo, 4.

[23] G.R. Nos. 111771-77, 9 November 1993.

[24] 4 Wall. 2 (1866), cited in Cayaga vs. Tangonan, 66 SCRA 216, 219 [1975]; Go vs. Olivas, 74 SCRA 230, 237 [1976]; and Martin vs. Ver, 123 SCRA 745, 750 [1983].

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