

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANABEL VILLANUEVA Y DINACA A.K.A. MARIVIC BAYLON Y VELARDE, MALOU VASQUEZ Y SANTOS AND LUZVIMINDA SANTOS Y REA, ACCUSED-APPELL...

G.R. No. 131773. February 13, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On appeal is the decision of the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 97-9779, promulgated on November 12, 1997, finding accused-appellants guilty beyond reasonable doubt of violation of Section 15,[1] Article III, of the Dangerous Drugs Act of 1972 (Republic Act 6425), as amended by Republic Act 7659, sentencing them to suffer the penalty of reclusion perpetua and ordering them to pay a fine of P500,000.00 each. The dispositive portion of the decision reads:

IN VIEW OF ALL THE FOREGOING, the court hereby finds all accused namely Anabel Villanueva y Dinaca aka Marivic Baylon y Velarde, Luzviminda Santos y Rea and Malou Vasquez y Santos guilty beyond reasonable doubt for violation of Section 15, Art. III of RA 6425 as amended by RA 7659. The subject buy bust being 474.4 grams of methamphetamine hydrochloride hereby sentences them to Reclusion Perpetua or forty (40) Years imprisonment and to pay a fine of P500,000.00 each.

The methamphetamine hydrochloride is hereby forfeited in favor of the government and the OIC of this court is hereby directed to transmit the same to the National Bureau of Investigation and/or Dangerous Drugs Board for proper disposition.[2]

Accused-appellants were charged under the following amended information:

That at or about 6:00 o'clock in the morning of February 4, 1997 at No. 1754 Tripia de Galina,[3] Pasay City, and within the jurisdiction of this Honorable Court, the above-named accused grouping [themselves] together conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously transport, sell and deliver, to a buyer without authority of law approximately FOUR HUNDRED SEVENTY-FOUR POINT FOUR (474.4) grams of methamphetamine hydrochloride popularly known as "shabu", a regulated drug.

CONTRARY TO LAW.[4]

When accused-appellants were arrested, one of them gave the name Anabel Villanueva. In the course of the proceedings, however, her counsel requested that her name be changed to Marivic Baylon y Velarde, allegedly her real name. The trial court ordered that both names of accused-appellant be included.[5]

Upon arraignment on March 12, 1997, all the accused-appellants, assisted by their respective counsels, pleaded not guilty to the charge.[6]

The facts as presented by the prosecution are summarized by the Solicitor General in its Consolidated Brief for

the Appellee, to wit:

Receiving report from their informant about the drug trafficking activities of appellant Anabel Villanueva in Tramo Street, Pasay City, the NBI on February 1-3, 1997 conducted surveillance operations in the area (p. 3, TSN, March 17, 1997). In said surveillance operations, intelligence Agent Martin Soriano came to know appellants Luzviminda Santos and Malou Vasquez (mother and daughter) who negotiated for the sale of methamphetamine hydrochloride (shabu) (p. 4, TSN, March 17, 1997).

During the negotiations, agent Soriano was informed of the mode of payment, and the time and place of the delivery (Id.). Agent Soriano asked appellants Luzviminda and Malou if he could purchase one (1) kilo of shabu from appellant Anabel Villanueva and she replied “no problem as long as you have the money with you” (p. 8, TSN, March 17, 1997). On February 2, 1997, negotiations started at about 11:00 o’clock P.M. until 2:00 to 3:00 o’clock A.M. the next day. Since appellants Luzviminda and Malou insisted on counting the money first, agent Soriano decided to purchase one-half (1/2) kilo of shabu for he had only two-hundred fifty thousand pesos (P250,000.00) with him (pp. 8 and 9, TSN, March 17, 1997). Appellants Luzviminda and Malou wanted to take the money first from agent Soriano after which they will get the shabu but agent Soriano did not agree for fear that he will not be able to recover the money (pp. 9 & 10, TSN, March 17, 1997).

Agent Soriano was told to come back on February 3, 1997 about 6:00 A.M. at the house of appellants Luzviminda and Malou at 7659 Tramo Street, Pasay City, which the former did (p. 10, Id; p. 11, TSN, March 12, 1997).

Appellants Luzviminda and Malou still insisted that appellant Anabel Villanueva will not give the “shabu” to them unless he give them first the money. To win them, agent Soriano countered that he will give appellants Luzviminda and Malou Fifty Thousand Pesos as their bonus or commission money and made the promise that he will make a repeat order of two (2) kilos every week. Agent Soriano then handed to them Two Thousand Pesos (P2,000.00) as advance to convince appellant Anabel Villanueva of a cash on delivery (COD) transaction (pp. 10, 11, 15 and 16, TSN, March 17, 1997).

Forthwith, at about 8:00 A.M., after handling over to them said advance commission, agent Soriano left (p.13, March 17, 1997). At about midnight of the same day, agent Soriano together with his informant came back to the house of appellants Luzviminda and Malou to confirm the delivery (pp. 14 and 17, Ibid.). Luzviminda and Malou still insisted to agent Soriano that the latter give them the money.

Tired of haggling with them, agent Soriano told them in the vernacular, “Sige na ako na ang bahala sa inyo. Tulungan lang ninyo akong matapos na ang transacstion ito. Kasi pagod na ako. Heto na ang P50,000.00 na ibibigay ko sa inyo bilang commission ninyo. Pilitin ninyo si Anabel na pumayag ng kaliwaan.” (pp. 16 & 17, TSN, March 17, 1997). To which appellants Luzviminda and Malou replied, “Sige bumalik ka ng alas 5:00 dalhin mo na ang pera pati ang commission namin.” (p. 17, Id.).

At 5:00 o’clock A.M., February 4, 1997, agent Soriano together with his informant came back to the house of appellants Luzviminda and Malou as agreed upon while other members of the buy-bust team posted themselves outside in the vicinity (p. 12, TSN, March 12, 1997). The house is a two-storey apartment (p. 13, Ibid.). Agent Soriano and informant were made to wait in the sala at the second floor of the apartment in the presence of appellants Luzviminda and Malou (Id; pp. 22 & 23, TSN, March 17, 1997).

By and by, appellant Anabel Villanueva came out from one of the rooms holding one big Tide carton box (p. 24, TSN, March 17, 1997). Appellant Anabel Villanueva walked towards them and said, “Kumusta ka, saan mo sinisistema ito,” and handed over the Tide carton box to appellant Luzviminda (pp. 24-26, Ibid.). Appellant Luzviminda handed over the Tide carton box to agent Soriano and the latter opened the box; he saw one big plastic containing white crystalline substance (p. 14, TSN, March 12, 1997). Agent Soriano then handed over to appellant Luzviminda two (2) bundles of money worth One Hundred Twenty Five Thousand Pesos (P125,000.00) each. Appellants Anabel Villanueva, Luzviminda and Malou counted the money

segregating it to Ten Thousand Pesos (P10,000.00) per bundle (p. 15, TSN, March 12, 1997; pp. 26 & 27, TSN, March 17, 1997).

Agent Soriano forthwith pressed the button of his transmitter attached and hidden at his chest alerting the other members of the buy-bust team who immediately ran up to the stairs (Id.). Appellants did not finish counting the money when Agent Soriano flashed his identification card, pulled out his gun, announced that he is an NBI agent and effected the arrest on the appellants (p. 28, TSN, March 17, 1997). Agent Soriano and the other members of the buy-bust team handcuffed the appellants, retrieved the buy-bust money and brought appellants to their office at the NBI (p. 16, TSN, March 12, 1997).

The result of the examination conducted by the NBI Forensic Division on the contents of the plastic bag found inside the Tide carton box revealed that the white crystalline granules/substance weighing 474.4 grams is indeed methamphetamine hydrochloride or “shabu” (p. 16, TSN, March 12, 1997).

Appellants were likewise fingerprinted and their hands examined for the presence of fluorescent powder. The results revealed that appellants’ hands were positive of fluorescent powder specks and smudges (pp. 6, 7, 20, 21, and 22, TSN, March 5, 1997).[7]

The version of the defense, as testified[8] to by accused-appellant Anabel Villanueva, is as follows:

At about 7:00 a.m. of February 4, 1997, accused-appellant Malou Vasquez went to the house of accused-appellant Anabel Villanueva to inquire if she knows a supplier of shabu. Villanueva said no, and Vasquez left. At about 8:00 a.m. of the same day, Vasquez came back together with accused-appellant Santos and another woman. Asked if she knew anybody who sells shabu, Villanueva answered no. After the three left, she hurried to get food for breakfast, and on her way to the carinderia she met her husband who gave her a casserole of food. Her husband went back to the carinderia while she headed home. On her way, she heard somebody saying, “She is the one.” She turned around and saw the woman who was with accused-appellants Santos and Vasquez earlier that morning. Suddenly, two men grabbed her and hit her stomach with a gun. She later identified one of them as Agent Palencia. They pushed her toward Tramo street, asking her where her house is. At that point, Agent Soriano arrived. He forthwith got a key from accused-appellant Villanueva and tried to open the door opposite her house. He tried to use said key on three doors before he was finally able to open the house of accused-appellant Villanueva, saying, “Dito, dito ang bahay.” Inside the house, Agent Palencia held Villanueva’s hands while the other man pointed a gun at her back. The NBI agents commenced the search on the first floor, and thereafter, on the second floor of the house. According to accused-appellant, she was on the first floor, while her children, who were crying, were outside the house. No search warrant was shown to her. Present during the search were SPO3 Jimenez and Barangay Chairman Alfredo Rillo, but accused-appellant had no occasion to talk to them. After the search, which yielded no illegal drugs, Agent Soriano asked her if she knew anybody who had shabu, but she replied that she knew no one as she does not usually go out of her house.

Agent Palencia then brought her outside the house and boarded her on a vehicle where she found accused-appellants Vasquez and Santos. Accused-appellant Villanueva said that the traces of fluorescent powder in her hands must have been from the man who held her hands at the NBI office.

The events that led to the arrest of accused-appellant Villanueva were narrated by defense witness SPO3 Reynaldo Jimenez in this wise:[9]

At about 8:00 o’clock to 8:30 o’clock in the morning of February 4, 1997, while he was in his residence at 313 Manabat Street, Barangay 42, Dominga, Pasay City, someone asked him to check on a situation on Tramo Street, Barangay 43, Pasay City. He drove his owner-type jeep to Tramo street. There he saw two men trying to restrain accused-appellant Villanueva. One of the two men, who was later identified as Agent Pio Palencia, was poking a

gun at Villanueva, and SPO3 Jimenez introduced himself to Agent Palencia, and he was informed that the men were conducting a follow-up drug operations. Agent Palencia further told him, “Kung pulis ka mas maiging kausapin mo ang team leader namin.” Agent Palencia was referring to Agent Martin Soriano, who was then standing ten to fifteen meters away from accused-appellant Villanueva. SPO3 Jimenez introduced himself and showed his ID to Agent Soriano, who in turn presented his NBI ID to Jimenez. Agent Soriano agreed to the suggestion of SPO3 Jimenez to summon the barangay captain. Thus, SPO3 Jimenez asked a barangay councilman to get the barangay captain.

From Tramo Street, Agent Palencia and his companion forced accused-appellant Villanueva to lead them to an alley two to three meters wide, and asked her, “Itong bahay mo? Itong bahay mo?” They reached the house of accused-appellant and entered the same. SPO3 Jimenez and Agent Soriano were left on the corner of Tramo Street, fifteen to twenty meters away. When Barangay Captain Alfredo Rillo arrived, he introduced himself to Agent Soriano and asked him what the incident was all about. Agent Soriano replied that they are conducting a follow-up operation. Thereafter, Agent Soriano, SPO3 Jimenez and Barangay Captain Rillo proceeded to the house of accused-appellant Villanueva.

On the ground floor, Agent Palencia held accused-appellant Villanueva, while two men whose names were not known to SPO3 Jimenez searched the house. The search of the ground floor proved futile, so one of the NBI agents proceeded to the second floor and forcibly opened the door. Agent Soriano, SPO3 Jimenez, and Barangay Captain Rillo followed upstairs. Again, the NBI agents found no illegal drugs. Before the team left, Agent Soriano told SPO3 Jimenez, “Pare, tulungan mo na lang ito and informed (sic) his (sic) family na dadalhin namin sa headquarters ito, for further investigation.” According to SPO3 Palencia, he did not see accused-appellants Luzviminda Santos and Malou Vasquez during the arrest of accused-appellant Villanueva.

Culled from the testimony of defense witness, Barangay Captain Alfredo Rillo, are the following facts:[10]

Barangay Captain Alfredo Rillo went to Tramo Street, Pasay City acting on information from Barangay Councilman Geronimo Morales of a commotion and arrest incident. When he got there, he saw SPO3 Jimenez and four NBI agents. One of them was identified by Barangay Captain Rillo as Agent Soriano. Barangay Captain Rillo observed that the first floor of the house was searched first by the NBI team. Finding no illegal drugs therein, two NBI agents continued the search upstairs. Barangay Captain Rillo and SPO3 Jimenez followed, while accused-appellant Villanueva was left on the first floor. After the NBI agents found no illegal drugs in the house of accused-appellant Villanueva, they took her with them for further investigation. During the search conducted by the NBI team, Barangay Captain Rillo did not see accused-appellants Vasquez and Santos.

From the testimonies of accused-appellants Luzviminda Santos[11] and Malou Vasquez,[12] it appears that: at around 3:00 a.m. of February 4, 1997, a man who pretended to be a drug dealer, later identified to be Agent Soriano, together with a certain Karla, accompanied by two other male persons, went to the house of accused-appellant Luzviminda Santos at 1754 Tripa Galina, Tramo, Pasay City, and told the latter that a reward of P50,000.00 would be given to her if she could find a supplier of shabu. Enticed by the reward, accused-appellant Vasquez, daughter of accused-appellant Santos, went to accused-appellant Villanueva at 1738 Tramo Pasay City, and asked her if she knows a supplier of shabu, to which Villanueva replied in the negative. At around 7:00 a.m. of the same day, Karla, and the two male persons, went back to the house of accused-appellant Santos. They told Karla that they found no supplier of shabu, and Karla said, “Sayang ‘yong reward.” Thus, accused-appellants Santos and Vasquez, together with Karla, went back to accused-appellant Villanueva, who again told them that she does not know any supplier of shabu. The three then returned to the house of accused-appellant Santos where Karla’s two male companions were waiting. They reiterated their promise of a reward, and accused-appellants manifested their willingness to cooperate. Thereafter, Karla and her two male companions left. That was the last

time that accused-appellant Santos saw them. Asked about the circumstances that led to their arrest, accused-appellants Malou Vasquez and Luzviminda Santos declared that they were arrested in their house at around 8:00 a.m. by persons who introduced themselves as NBI agents. Accused-appellants vehemently denied holding the alleged buy bust money, and insisted that the fluorescent powder found on their hands must have been placed by Agents Palencia and Soriano when they clasped their hands after they were arrested.

On November 12, 1997, after finding the version of the prosecution credible, the trial court rendered the decision under review. Hence, accused-appellants Luzviminda Santos and Malou Vasquez appealed to this Court, contending that:

THE HONORABLE REGIONAL TRIAL COURT COMMITTED GRAVE ERROR IN CONVICTING ACCUSED-APPELLANTS SANTOS AND VASQUEZ DESPITE CLEAR EVIDENCE OF INSTIGATION EMPLOYED BY THE NBI AGENTS ON THEM.[13]

Accused-appellant Anabel Villanueva a.k.a. Marivic Baylon also appealed. She claims that the trial court erred –

IN RELYING COMPLETELY UPON THE TESTIMONY OF THE SOLE WITNESS, POSEUR BUYER AND NBI AGENT MARTIN SORIANO, WHO IS NOT A CREDIBLE WITNESS;

IN FAILING TO CONSIDER THE EXISTENCE OF INDUCEMENT OR INSTIGATION;

IN FINDING THAT THERE WAS A BUY BUST OPERATION, IN ITS APPRECIATION OF THE PRESENCE OF FLUORESCENT POWDER IN “CERTAIN” PORTIONS OF THE HANDS OF THE ACCUSED, AND IN FINDING THAT THE ACCUSED WERE CAUGHT EN FLAGRANTE DELICTO;

IN IGNORING SERIOUS LAPSES IN THE PROSECUTION’S EVIDENCE;

IN DEMEANING THE EVIDENCE OF THE ACCUSED.[14]

The issue boils down to the credibility of the prosecution witnesses.

Well entrenched is the rule that an appellate court will generally not disturb the assessment of the trial court on matters of credibility, considering that the latter was in a better position to appreciate the same, having heard and observed the witnesses themselves and observed their deportment as well as their manner of testifying during the trial. The only exception is when the trial court has plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case, or in instances where the evidence fails to support or substantiate the lower court’s findings of fact and conclusions, or where the disputed decision is based on a misapprehension of facts.[15]

The case at bar falls under the exceptions.

The Court has extensively reviewed the testimonies of the prosecution witnesses and found the same to be riddled with inconsistencies. On direct examination, agent Soriano categorically said that the Tide carton box containing shabu was given to him by accused-appellant Villanueva to whom he specifically handed the two bundles of buy bust money, after looking at the contents of the Tide carton box.

Fiscal Barrera:

x x x x x x x x

Q:

What happened when this Anabel Villanueva emerged from one of the rooms at the second floor of the house of these Luzviminda Santos and Malou Vasquez?

A:

She handed over to me one (1) big box of Tide soap.

Q:

Who were present when this Anabel handed to you a Tide box soap?

A:

Anabel, Luzviminda and Malou were there together with my informant.

x x x x x x x x

Q:

You mentioned these two bundles which you handed to them were marked money?

A:

Yes, sir.

Q:

How did you mark these two bundles?

A:

There was a request from our forensic chemist we had it dusted with fluorescent powder.

Q:

To whom did you specifically hand these two bundles?

A:

To Anabel Villanueva.[16]

On cross-examination, however, agent Soriano declared that it was accused-appellant Luzviminda Santos who gave him the Tide carton box containing shabu, and it was also she who received the two bundles of buy bust money –

Atty. Nogales:

x x x x x x x x

Q:

In this particular case the shabu was delivered by Anabel to Luzviminda and Malou and these two delivered to you?

A:

It was handed to me inside the room by Luzviminda.

Q:

Which one?

A:

The old lady.

Court:

Q:

Which one was handed to you?

A:

The Tide carton box was handed by Anabel to Luzviminda and Luzviminda handed over to me.[17]

x x x x x x x x

Q:

When she came out of the room before the handing of the box, she already notice you, is it not?

A:

Yes, sir. It was like this: when she came out of the room at the same time she was walking towards us. She was already lending her hand with the Tide box.

Q:

To Luzviminda?

A:

To Luzviminda.

Q:

That time she looked at you?

A:

That time she started saying “kumusta ka.”

Q:

She saw your companion, the informant?

A:

Yes, sir.

Q:

And then Luzviminda took the box?

A:

Yes, sir.

Q:

And then gave it to you?

A:

Yes, sir.

Q:

And you gave the money to Luzviminda?

A:

Yes, sir. I gave Luzviminda in two bundles of money of One Hundred Twenty five thousand pesos each.[18]

So also, as testified by Agent Soriano, on January 27, 1997, they received intelligence report that a certain Anabel Villanueva of Tramo Street, Pasay City was involved in drug trafficking.[19] The receipt of said information is likewise stated in the January 27, 1997 entry in Agent Palencia’s diary,[20] which as declared by Agent Soriano, could be filled up by either Agent Palencia or himself.[21] Then too, in the January 27, 1997 Deposition Form executed by Agents Palencia and Soriano, they declared that they received information “that a certain ANABEL VILLANUEVA of Tramo, Pasay City is presumably engaged in large scale drug trafficking.”[22] Acting thereon, they allegedly conducted a surveillance operation on Anabel Villanueva on February 1, 2, and 3, 1997.[23] Agent Soriano further declared that they learned that accused-appellant Villanueva does not transact business with strangers, such that they used accused-appellant Santos, a laundry woman and her daughter, accused-appellant Vasquez, a manicurist, to facilitate the sale of shabu by accused-appellant Villanueva to the NBI agents who acted as drug dealers.[24]

The foregoing testimony and documentary evidence was explicitly contradicted by the leader of the NBI team, Agent Palencia, on the issue of when for the first time they learn the name of the three accused-appellants -

Fiscal Barrera:

By the way, when for the first time did you come to know the names of these three persons you arrested during your buy bust operation at Tripa de Gallina, Pasay City?

A:

Right after they filled up the booking sheet and arrest report.

Q:

Already at the NBI?

A:

Yes, sir.

x x x x x x x x[25]

Atty. Nogales:

Agent Palencia, you answered a while ago the first time you learn of the names of these three persons was already when they were already brought to the NBI after the buy bust arrest?

A:

Yes, sir.

Atty. Nogales:

Which means before the buy bust arrest you did not know their names?

A:

Yes, sir.

Q:

Neither did any of your team member knew their names, is it not?

A:

Yes, sir, only a certain Anabel, that's the only name we know. No complete names.

Q:

No family names?

A:

Yes, sir.

Q:

So, you and the other members of the team only knew the name of Anabel, no family name?

A:

Yes.

Q:

And the name of Luzviminda Santos and Malou Vasquez were not known to the other team members before the buy bust arrest?

A:

Yes, sir.

Q:

Only also at the NBI office?

A:

Yes, sir.

Court:

You mean the other members did not know the names of Luzviminda Santos and Malou Vasquez?

A:

Before the operation they do not know their exact names, only the first name.

Atty. Nogales:

With due respect. May I manifest for the record in fairness to my client, the Court has asked leading questions to this witness.

Court:

No. I have to clarify his answer. I am allowed to ask questions to know the truth.

Atty. Nogales:

No offense. So you are now changing your answer. A while ago you answered, if you and other team members did not know the names of these Malou and Luzviminda when they were brought to the headquarters and you said, yes, and when the court asked you if you knew at least their first name, you said, yes. You are changing my [your] answer.

A:

I am not changing my answer.

Court:

Go to another point.[26]

Confronted with his previous testimony Agent Palencia testified, thus:

Atty. Nogales:

Now let us test your accuracy about it. Do you recall last time having testified that it was only at the time after the buy bust arrest of these three that you learn their names. Do you recall having said that?

A:

Only the names of Malou Santos and Luzviminda Santos are known after the buy bust operation.

Atty. Nogales:

Meaning before the arrest you did not know their names?

A:

Yes, sir.

Atty. Nogales:

None among your team knew them?

A:

Yes, sir

Q:

You also said you did not know the name of Anabel Villanueva until after the arrest, only you change it by saying you knew the first name is it not?

Court:

Before the arrest do you know the name of Anabel Villanueva?

A:

Yes, sir.

Atty. Nogales:

Let us test your memory now because I have your testimony in writing. I am referring you to page 40 of the transcript of your testimony last July 2, 1997 and I quote: "Is it correct to say that the first time you learn about the activities of the suspect... I withdraw that. In relation to the question of the prosecutor, Fiscsal Barrera, I am quoting page 21 of your testimony, transcript of July 2, 1997:

"Fiscal Barrera: By the way, when for the first time did you come to know the names of these three persons you arrested during your buy bust operation at Tripa de Gallina?" Answer: "right after they filled up the booking sheet and arrest report." Question: "Already at the NBI?" Answer: "Yes, sir".

Atty. Nogales: (cont'n)

Do you remember having asked those questions and given those answers?

A:

Yes sir.

Atty. Nogales:

And that is correct, is or not?

A:

It is included in the transcript.

Q:

It is correct because of that?

A:

Yes, sir.

Q:

Now why is it in Exh. S-2 [Deposition Form signed by Agents Palencia and Soriano] the name Anabel Villanueva appears? This Exh. S-2 is dated January 27. They were arrested February 4. You said you learned the names of these three on February 4. Why is it the name is listed in Exh. S-2 dated January 27?

A:

Actually, sir, I decided I should not present this before the court, that's why.

Court:

What is true now, you know their names or you don't know their names before their arrest?

A:

I know their names.

Court:

What is the true and correct answer?

A:

I know their names.

Court:

Why did you say you did not know their names?

A:

Only Malou Santos and Luzviminda Santos.

Court:

So, you knew Anabel Villanueva before that?

A:

Yes, sir. That Anabel Villanueva is reasonably engaged in large scale trafficking.

Court:

Are the names of the other two there?

A:

No, your Honor.[27]

Moreover, it is doubtful if the NBI team indeed conducted the subject surveillance operations on accused-appellant Villanueva, considering that Agent Palencia, the team leader of the buy bust team, does not know the personal circumstances of accused-appellant Villanueva. In fact, he said that it was only at the time accused-appellant Villanueva was arrested that he came to see her in person:

Atty. Nogales:

x x x x x x x x

Q:

You had opportunity from the first time that this case was referred to you, to conduct surveillance of Anabel, is it not?

A:

Yes, sir.

Q:

Did you learn her address?

A:

No.

Atty. Nogales:

You did not also learn where she live?

A:

No.

Q:

You did not know whether she was married or not?

A:

No, sir.

Q:

Whether she has children or not?

A:

No.

Q:

Whether she is single or not?

A:

No.

Q:

You do not know what kind of work she is doing?

A:

What we know this Anabel Villanueva is a big time drug trafficker.

x x x x x x x x

Q:

As a matter of fact, it was only on February 4 that you saw the person of Anabel Villanueva?

A:

After the buy bust operation.

Q:

Also none of your team have seen Anabel until after the buy bust?

A:

Yes, sir.

Q:

You did not even apply for a search warrant of her house?

A:

No sir.

Q:

You did not even think of that?

A:

Yes, sir.[28]

The Court also noted that Agent Soriano, who allegedly handed the buy bust money to accused-appellant Villanueva, had a difficulty in remembering her name, thus –

Atty. Nogales:

x x x x x x x x

Q -

I thought Luzviminda and Malou were not yet finished counting the money?

A -

Everytime they finished counting bundles of ten thousand pesos each they automatically gave it to Malou.

Q -

Point out to who?

A -

To the one wearing orange.

Court:

Why, you don't even know the name of that one in orange?

A -

I was so tired.

Q -

You do not even know the name now?

A -

I forgot.

Atty. Nogales:

Q -

You do not know the name of the woman up to now?

A -

I am sorry I have no sleep because of our previous operation.

Court:

Q -

You are referring to your operation in this case?

A -

No. We have an operation earlier this morning.

Atty. Nogales:

Q -

You cannot tell who is Luzviminda here?

A -

Luzviminda is the one wearing eyeglasses. Malou is the one wearing stripe shirt, and the other one....

Court:

Q -

Suddenly your mind went blank when you have mentioned the name earlier?

A -

Yes, Your Honor.

Atty. Nogales:

Q-

What is your educational attainment?

A -

I am a philosophy graduate.

Q -

I thought all the time Malou is your original target, not Luzviminda or Anabel and yet you forgot the name?

Court:

Q -

Who was your original target?

A -

The one in orange.

Atty. Nogales:

Q -

Despite the fact she is your principal suspect you don't remember her name right now?

A -

No.

Atty. Nogales:

Q -

Also despite the fact that you conducted surveillance of that woman in orange shirt on February 1, 2, 3 and 4, at this point you don't know her name?

A -

No. Because of the pressure I had no sleep yet. I have just came from an operation and I have not take my breakfast and lunch, no merienda not even water. I just change from my uniform to my long sleeve.

Q -

You are telling the Court despite the fact you have conducted surveillance operation of that woman in orange shirt, you cannot pointed where she was living, is it not?

A -

Yes, sir.[29]

Inconsistency is likewise shown as to the place where accused-appellants were arrested. According to the prosecution, the three were arrested in the house of accused-appellant Santos at 1754 Tripa de Galina, Tramo Pasay City. The Booking and Arrest Report[30] of accused-appellants, however, reveals that they were arrested in different places – accused-appellant Villanueva was arrested in her residence at 1738 Tramo, Pasay City, while accused-appellants Santos and Vasquez, were arrested at 1754 Tripa de Galina, Tramo, Pasay City. This finds support in the testimonies of SPO3 Jimenez and Barangay Captain Rillo that accused-appellant Villanueva alone was arrested in her residence at 1738 Tramo, Pasay City; and that accused-appellants Santos and Vasquez were never seen by them during said arrest of Anabel Villanueva. Likewise corroborative is the testimony of accused-appellant Villanueva that her co-accused-appellants were not arrested with her and that it was already in the vehicle of the NBI team where she saw them.

Furthermore, Agent Soriano gave conflicting testimonies anent the money used in the buy bust operation.[31] He declared that the P250,000.00 buy bust money is a government money. Later, he claimed that the money used in their operation was his personal money and that Exhibit “17”[32] is the reimbursement receipt of the said P250,000.00 advanced by him. It seems Soriano does not know what he is talking about because he later said that the P250,000.00 buy bust money stated in the receipt as a reimbursement to him, was returned by him to the Assistant Director right after the operation. Worse, he also stated that he deposited the P250,000.00 used in the operation at the BPI, Visayas Branch, savings account, in the name of Security System Specialist, a corporation. Per certification,[33] however, of the bank concerned, no such “account under the name of Security System Specialist, whether as a corporation or as a sole proprietorship,” exists “from the period February 1, 1997 up to the present [September 3, 1997].”

While it is true that conviction may lie even in the absence of a buy bust money, the inconsistencies in the testimony of Agent Soriano regarding the same goes into the veracity of the alleged buy bust operation.

Anent the fluorescent powder detected in the hands of accused-appellants, prosecution witness Emilia Rosaldes, forensic chemist of the NBI who conducted the laboratory examinations on accused-appellants testified that it is possible that accused-appellant Villanueva did not handle the buy bust money and explained further that in a scale of one to ten, ten being the highest, the rate of specks and smudges of fluorescent powder in the hands of accused-appellants Anabel Villanueva and Malou Vasquez is - one. And, while she gave accused-appellant Luzviminda Santos a rating of six, she said that the normal rate of smudges and specks found in the hands of a suspect who handled marked money is seven to ten.[34]

Finally, the NBI agents cannot seek refuge on the presumption of regularity in the performance of duty. The NBI logbook presented by the prosecution does not show that the case of Anabel Villanueva was indeed assigned to the NBI agents concerned.[35] What is more, Atty. Max Salvador (Chief of Security Intelligence Division), the officer pointed by Agents Soriano and Palencia as the one who gave them a written authority to embark upon a buy bust operation, denied having given said authorization. In fact, he testified that the team breached their procedure, to wit:

Atty. Nogales:

Q:

I’m going to show you what Soriano and Palencia said, there was the authority coming from you. Showing to you this Exh. “S- 1”? Will you tell us, if you are familiar with the Exh. “S-1”?

A:

This is my routing slip dated 28 January 1997, regarding intelligence information submitted by Pio Palencia dated January 27, 1997.

Q:

Whose signature is “S-1”? That is your signature?

A:

Yes, sir.

Q:

According to Palencia that this was the authority to conduct buy bust operation, was he correct?

A:

This is not the authority.

Q:

So that is not the said authority to conduct buy bust operation?

A:

Yes, sir.

Q:

And you have not signed any authority with these people to conduct buy bust operation, January 16, up to February 4, 1997?

A:

As I said, I asked them to validate information.

Q:

And did you sign any authority with these people?

A:

I did not sign any authority.

Q:

When you say you did not sign any written authority? There was no written authority?

A:

That is it.[36]

x x x x x x x x

Atty. Nogales:

x x x x x x x x

Since according to you, you have not authorized Soriano, Palencia and Santiago to conduct buy bust operation, you consider their activities as unauthorize[d] buy bust operation? Is it not?

A:

I don't have any order for them, maybe the higher authority have order to conduct buy bust.

Q:

They were pointing to you as the source of their authority. So as far as that is concerned, did you authorize or did you not?

A:

I authorized them to gather information on the persons operating on illegal drugs. But in this particular case the propose buy bust operation prior to my knowledge and prior to the operation they breached our procedure.

Q:

Atty. Salvador, just answer my question directly. As you also said, you don't have any written or verbal operation in this particular case?

A:

Yes, sir. (emphasis supplied)[37]

Withal, it is evident that the prosecution failed to discharge its burden to overcome the constitutional presumption of innocence, and to establish accused-appellants' guilt beyond reasonable doubt. From the testimonies of the prosecution witnesses, it can be gleaned that no surveillance operations occurred and that the NBI agents do not know and have not yet seen accused-appellant Villanueva prior to the arrest. The subject surveillance operations claimed by the prosecution is but an attempt to lay down a basis for the buy bust operations which the Court equally doubts.

As opposed to the indecisive, contradictory and conflicting testimonies of the prosecution witnesses, it is the version of the defense pieced together by the consistent, straightforward and complementary testimonies of its witnesses that appears to be credible. The Court can not give credence to the supposed buy bust operation that allegedly led to the arrest of the three accused-appellants at the same time and in the same place in the residence of accused-appellant Santos at 1754 Tripa Galina, Tramo, Pasay City, it appearing that accused-appellant Villanueva was arrested in her residence. The declaration of accused-appellants Santos and Vasquez that only the two of them were arrested at Santos at 1754 Tripa Galina, Tramo, Pasay City, jibes with the claim of accused-appellant Villanueva that she alone was apprehended in her residence at 1738 Tramo, Pasay City, and that during said arrest, accused-appellants Santos and Vasquez (whom she saw already at the NBI car after her arrest), were not in her house, nor in the vicinity thereof. This theory of the defense is bolstered by the testimonies of SPO3 Jimenez and Barangay Chairman Rillo that it was only accused-appellant Villanueva who was arrested by the NBI at 1738 Tramo, Pasay City, and that accused-appellants Santos and Vasquez were never seen by them during said incident.

The fluorescent powder detected in the hands of accused-appellants, cannot give rise to their conviction. The Court is inclined to believe the testimony of the accused-appellants that somebody at the NBI surreptitiously placed fluorescent powder in their hands by holding the same after their arrest. Even the NBI chemist presented

by the prosecution testified that it is possible that accused-appellant Villanueva did not handle the alleged buy bust money, contrary to the claim of Agent Soriano that he specifically handed the two bundles of buy bust money with sufficient fluorescent powder to accused-appellant Villanueva.[38] The same NBI chemist who said that in a scale of one to ten, ten being the highest, the normal rate of specks and smudges that would be detected in the hands of a person who held money with fluorescent powder, would be seven to ten, gave accused-appellants Vasquez and Santos a rating of only one and six, respectively.

Under our laws, the onus probandi in establishing the guilt of an accused for a criminal offense lies with the prosecution. The burden must be discharged by it on the strength of its own evidence and not on the weakness of the evidence for the defense or lack of it. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence.[39]

In the case at bar, we cannot rest easy in affirming the court a quo's judgment of conviction which, to our mind, is based on a sweeping disregard of the issues raised by the defense, and on a bare declaration that the guilt of herein accused-appellants has been proven beyond reasonable doubt. When the circumstances are capable of two or more inferences, as in the instant case, one of which is consistent with the presumption of innocence while the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit. For it is better to acquit a guilty man than to convict an innocent man.[40]

WHEREFORE, the decision of the Regional Trial Court of Pasay, Branch 109, in Criminal Case No. 97-9779 is REVERSED and SET ASIDE. Accused-appellants Anabel Villanueva y Dinaca a.k.a. Marivic Baylon y Velarde, Malou Vasquez y Santos and Luzviminda Santos y Rea, are ACQUITTED of the crime charged for lack of sufficient evidence to establish their guilt beyond reasonable doubt; and are ordered RELEASED unless they are detained for some other lawful cause.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Kapunan, JJ., concur.

[1] Section 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport, or distribute any regulated drug. x x x x x x x x.

[2] Rollo, pp. 63-64; penned by Judge Lilia C. Lopez.

[3] Sometimes spelled as "Gallina" in the records.

[4] Records, Vol. I, p. 122.

[5] TSN, March 12, 1997, pp. 2-4.

[6] Records, Vol. I, pp. 140-142.

[7] Consolidated Brief for the Appellee, Rollo, pp. 271 - 276.

[8] TSN, September 15, 1997, pp. 38-71.

[9] TSN, September 8, 1997, pp. 15-37 and September 12, 1997, p. 14.

[10] TSN, September 15, 1997, pp. 4-13 and pp. 20-21.

- [11] TSN, September 16, 1997, pp. 7-32.
- [12] TSN, September 16, 1997, pp. 33-47.
- [13] Rollo, p. 92.
- [14] Rollo, p. 131.
- [15] *People v. Limon*, 306 SCRA 367, 372-373 [1999]; citing *People v. Bawar*, 262 SCRA 325 [1996]; and *People v. Godoy*, 250 SCRA 676 [1995].
- [16] TSN, March 12, 1997, pp. 13-14.
- [17] TSN, March 17, 1997, pp. 21- 22.
- [18] *Id.*, p. 26.
- [19] TSN, March 13, 1997, p. 60.
- [20] Exhibit “13”, Vol. III, Records, p. 101.
- [21] TSN, March 12, 1997, p. 46.
- [22] Exhibit “S-2”, Records, Vol. III, p. 50.
- [23] TSN, March 13, 1997, p. 73.
- [24] TSN, July 2, 1997, pp. 2-4.
- [25] TSN, July 2, 1997, p. 21.
- [26] TSN, July 2, 1997, pp. 22-24.
- [27] TSN, July 15, 1997, pp. 11-13.
- [28] TSN, July 31, 1997, pp. 22-24
- [29] TSN, March 17, 1997, pp. 28-30.
- [30] Records, Vol. III, pp. 89, 92 and 95.
- [31] TSN, March 13, 1997, p. 43 and June 20, 1997, pp. 10-13; and pp. 16-20.
- [32] Records, Vol. III, p. 51.
- [33] Exhibit “31”, Records, Volume III, p. 105.
- [34] TSN, March 5, 1997, pp. 20-23.
- [35] TSN, July 31, 1997, pp. 11-13.
- [36] TSN, September 29, 1997, pp. 17-19.
- [37] TSN, September 29, 1997, pp. 22-23.
- [38] TSN, March 12, 1997, p. 14, and June 20, 1997, pp. 14-15.
- [39] *People v. Gomez*, 270 SCRA 432, 444 >[1997].
- [40] *People v. Gonzales*, G.R. No. 106873, October 2, 2000.

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