GEMMA ONG A.K.A. MARIA TERESA GEMMA CATACUTAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 169440. November 23, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before Us is a petition for review on certiorari, filed under Rule 45 of the Rules of Court, to set aside and reverse the June 16, 2005 Decision[1] of the Court of Appeals in CA-G.R. CR No. 28308, which affirmed the September 23, 2003 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 24 in Criminal Case No. 00-184454.

On July 28, 2000, petitioner Gemma Ong a.k.a. Maria Teresa Gemma Catacutan (Gemma) was charged before the RTC for Infringement under Section 155 in relation to Section 170 of Republic Act No. 8293 or the Intellectual Property Code. The accusatory portion of the Information reads:

> That sometime in September 25, 1998 and prior thereto at Sta. Cruz, Manila and within the jurisdiction of this Honorable Court, the above-named accused did then and there, knowingly, maliciously, unlawfully and feloniously engage in the distribution, sale, [and] offering for sale of counterfeit Marlboro cigarettes which had caused confusion, deceiving the public that such cigarettes [were] Marlboro cigarettes and those of the Telengtan Brothers and Sons, Inc., doing business under the style of La Suerte Cigar and Cigarettes Factory, the exclusive manufacturer of Marlboro Cigarette in the Philippines and that of Philip Morris Products, Inc. (PMP7) the registered owner and proprietor of the MARLBORO trademark together with the devices, including the famous-Root Device, to their damage and prejudice, without the accused seeking their permit or authority to manufacture and distribute the same.[3]

On August 1, 2000, Judge Rebecca G. Salvador of RTC Manila, Branch 1, issued a warrant of arrest against Gemma, but lifted[4] and set aside[5] the same after Gemma voluntarily surrendered on August 4, 2000, and filed a cash bond for P12,000.00.

Gemma pleaded not guilty to the charge upon arraignment on October 17, 2000.[6] After the pre-trial conference on February 13, 2001,[7] trial on the merits ensued.

The prosecution called to the witness stand the following: Roger Sherman Slagle, the Director of Operations of Philip Morris Malaysia, and Philip Morris Philippines, Inc.'s (PMPI) product/brand security expert, to testify that according to his examination, the products they seized at the subject premises were counterfeit cigarettes;[8] as well as Jesse Lara, who, as then Senior Investigator III at the Intellectual Property Rights (IPR) Unit of the Economic Intelligence and Investigation Bureau (EIIB), Department of Finance, led the investigating team, to testify on the events that led to the arrest of Gemma.[9] The prosecution also presented the billing accountant of Quasha Ancheta Peña & Nolasco Law Office (Quasha Law Office), Juliet Flores, to show that PMPI, being one of Quasha Law Office's clients, paid the amount of $4,069.12 for legal services rendered.[10] The last witness for the prosecution was Atty. Alonzo Q. Ancheta, a senior law partner at Quasha Law Office, who testified that as the duly appointed Attorney-in-Fact of PMPI, he was in charge of the EIIB search operation in the subject premises. Atty. Ancheta said that while he was not personally present during the implementation of the search warrant, he

sent Atty. Leonardo Salvador, who constantly reported the developments to him.[11]

The facts, as succinctly summarized by the Court of Appeals, are as follows:

> On September 10, 1998, Jesse S. Lara, then Senior Investigator III at the Intellectual Property Rights (IPR) Unit of the Economic Intelligence and Investigation Bureau (EIIB), Department of Finance, received reliable information that counterfeit "Marlboro" cigarettes were being distributed and sold by two (2) Chinese nationals, Johnny Sia and Jessie Concepcion, in the areas of Tondo, Binondo, Sta. Cruz and Quiapo, Manila. A mission team formed by EIIB, including Lara, conducted surveillance operation to verify the report. EIIB agents Leonardo Villanueva and Jigo Madrigal did a "test-buy" on the different sari-sari stores of Manila located in Quiapo, Tondo, Sta. Cruz and Blumentritt areas and took samples of "Marlboro" cigarettes sold therein. During the surveillance, the container van delivering the "Marlboro" packed in black plastic bags was seen parked at 1677 Bulacan corner Hizon Streets, Sta. Cruz, Manila [(the subject premises)]. Upon inquiry from the Barangay Chairman, they also learned that the place is owned by a certain Mr. Jackson Ong.
>
> The EIIB team coordinated with officers of Philip Morris, Inc., owner of the trademark Marlboro Label in the Philippines duly registered with the Philippine Patents Office and subsequently with the Intellectual Property Office (IPO) since 1956. Initial examination made by Philip Morris, Inc. on those random sample purchases revealed that the cigarettes were indeed fake products unauthorized by the company. With official indorsement by the EIIB, Senior Investigator Lara filed an application for search warrant before the Regional Trial Court of Dasmariñas, Cavite, Branch 90.
>
> On September 24, 1998, Executive Judge Dolores L. Español issued a search warrant after finding probable cause to believe that Mr. Jackson Ong has in his possession/control in the premises located at 1675-1677 Bulacan St. cor. M. Hizon St., Sta. Cruz, Manila, the following properties:
>
> "Substantial number of fake locally made and imported fake cigarettes bearing the Marlboro brand, together with the corresponding labels, cartons, boxes and other packaging as well as receipts, invoices and other documents relative to the purchase, sale, and distribution of the aforesaid fake Marlboro cigarettes."

On September 25, 1998, the EIIB team led by Senior Investigator Lara implemented the search warrant, together with SPO2 Rommel P. Sese of the Western Police District (WPD) as representative of the Philippine National Police (PNP), Barangay Chairman Ernesto Traje, Sr., Barangay Kagawad Vivian V. Rallonza and Atty. Leonardo P. Salvador who was sent by [Quasha Peña & Nolasco Law Office,] the law firm engaged by Philip Morris, Inc. They proceeded to the subject premises but Jackson Ong, the alleged owner, was not there. It was accused, who is supposedly either the spouse or common-law wife of Jackson Ong, who entertained them. At first, accused refused to allow them entry into the premises but eventually the team was able to search the premises and found Marlboro cigarettes stocked in several boxes containing fifty (50) reams inside each box which were packed in black plastic sacks like in "balikbayan boxes." The "Inventory" and "Certification In the Conduct of Search" were duly accomplished and signed by the members of the EIIB and the other representatives present during the actual search (SPO2 Sese, Jess Lara, Traje, Sr., Henry Mariano, Isidro Burgos and Atty. Salvador). Accused signed her name in the said documents as "Gemma Ong," as the Owner/Representative, while a certain employee, Girlie Cantillo, also signed as witness.

On September 28, 1998, a Return of Search Warrant was submitted by the EIIB to the issuing court stating that the articles seized pursuant to the warrant were stored in the premises of the EIIB and requesting that EIIB be granted temporary custody of the goods. Acting on the Urgent Motion To Transfer Custody of Confiscated Articles filed by Philip Morris Products, Inc. (PMPI) of Virginia, U.S.A., Executive Judge Dolores L. Español ordered the custody of the seized goods transferred from EIIB to PMPI c/o Quasha Ancheta Peña and Nolasco Law Office, the Attorney-in-Fact of PMPI. Judge Español subsequently also issued an order dated October 15, 1998 authorizing PMPI to secure and take out samples of the unauthorized products from the confiscated

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cartons/boxes of Marlboro cigarettes which are stored at Four Winds Phils. Inc. warehouse located at No. 2241 Pasong Tamo Extension, Makati City under the direct and personal control and supervision of Sheriff IV Tomas C. Azurin. PMPI had earlier sought such order from the court for the purpose of laboratory analysis and scientific testing of the samples from the confiscated cigarettes.

On the basis of the results of the examination conducted by PMPI on the samples obtained from the confiscated boxes of cigarettes bearing the Marlboro brand, which confirmed the same to be unauthorized products and not genuine Marlboro cigarettes, the EIIB filed a case for Violation of Sections 155 and 168 in relation to Section 170 of Republic Act No. 8293 against Jackson Ong who is not an authorized distributor of Marlboro products in the Philippines.[12]

After the prosecution rested its case, the defense filed a Demurrer to Evidence,[13] which the RTC denied on March 26, 2003.[14] The defense moved for a reconsideration of this order but the same was denied on April 22, 2003.[15]

Gemma, as the lone witness for the defense, then took the witness stand. She said that she is married to Co Yok Piao, a Chinese national, but she still uses her maiden name Catacutan.[16] She denied that she is the Gemma Ong accused in this case. She testified that she was arrested on August 4, 2000, without the arresting officers asking for her name. She said that when she pleaded to be released, she was instructed to post a cash bond, which she did in the amount of P12,000.00. Gemma averred that when she posted her bond and signed her certificate of arraignment, she did so under her real name Maria Teresa Gemma Catacutan, as opposed to the signatures in the Inventory and Certification in the Conduct of Search (search documents), which she denied signing. She claimed that she was not able to bring up her defense of mistaken identity early on as she did not know when the proper time to raise it was. She avowed that she was not interrogated by the police prior to her arrest, despite the two-year gap between it and the search of the subject premises. She alleged that she did not know Jackson Ong and that the prosecution witnesses, whom she first saw during her trial, couldn't even point to her as the person present during the raid when they testified in court. Gemma further asseverated that while she could not remember where she was on September 25, 1998, she was sure that she was not at the subject premises on that date. Gemma presented her Identification Card issued by the Professional Regulation Commission (PRC) to show that she is a dentist by profession, although she claimed that she is a businessperson in practice. She said that she used to buy and sell gear fabrics, t-shirts, truck materials, and real estate[17] under the business name "Fascinate Trading" based in Bulacan Street, Sta. Cruz, Manila, but that it had ceased operations in February 1998.[18] Gemma denied ever having engaged in the manufacture and sale of any kind of cigarettes and claimed that she could not even distinguish between a fake and a genuine Marlboro cigarette.[19]

On September 30, 2003, the RTC convicted Gemma of the crime as charged. The dispositive portion of its Decision reads:

> Accordingly, this Court finds accused Gemma Catacutan guilty beyond reasonable doubt of violation of Section 155 in relation to Section 170 of Republic Act No. 8293 and hereby sentences her to suffer the penalty of imprisonment of two (2) years and to pay a fine of Fifty Thousand (P50,000.00) Pesos.
>
> Accused is further directed to indemnify private complainant the sum of US$4,069.12 or its peso equivalent, as actual damages.
>
> The records of the case as against Jackson Ong is hereby ordered archived pending his arrest.
>
> With costs against accused Gemma Catacutan.[20]

In resolving the case, the RTC narrowed down the issue to whether Gemma Catacutan was the same accused

identified as Gemma Ong. The RTC answered this in the affirmative as it found Gemma's defense of mistaken identity as untenable, especially since she claimed to be a professional. The RTC explained:

> Ranged against the positive and forthright declaration of the prosecution witnesses, the mere uncorroborated and self-serving denials of the accused cannot stand. (People vs. Hortaleza, 258 SCRA 201)
>
> We note in disbelief that it was only in the hearing of November 26, 2001, that accused'[s] former lawyer manifested that accused is known as Gemma Catacutan never as Gemma Ong (tsn, November 26, 2001, p. 3) and as admitted by her, she never revealed her true identity when arrested, when she posted her bail bond and even during her arraignment.
>
> She could have protested at the time of her arrest that they were arresting the wrong person but this she did not do. She proceeded to post a bond for her provisional liberty, hired a lawyer to defend her but failed to divulge the very information that could have led to an early dismissal of the case, if true.
>
> Her pretensions of ignorance as to the proper stage of when to explain (tsn, May 26, 2003), p. 13 can hardly be given credit. A dentist by profession, it is utterly incredible that she remained meek all through-out her arrest and the posting of her bail bond.[21]

The RTC also unfurled the fact that while Gemma claimed to have never engaged in the sale and manufacture of Marlboro cigarettes, the address of her business "Fascinate Trading" is registered as 1677 Bulacan Street, Sta. Cruz, Manila, the same property raided by the EIIB that contained the counterfeit cigarettes.[22]

Aggrieved, Gemma appealed the RTC's decision to the Court of Appeals based on the following grounds:

> I
>
> THE LOWER COURT GRIEVOUSLY ERRED IN CONVICTING DR. MARIA TERESA GEMMA CATACUTAN GUILTY OF THE CRIME OF VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS LAW DESPITE UTTER LACK OF EVIDENCE.
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> II
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> THE LOWER COURT IN CONVICTING DR. MARIA TERESA GEMMA CATACUTAN ON THE BASIS OF SURMISE (sic), CONJECTURES AND GUESSWORK COMMITTED GRAVE VIOLENCE AGAINST THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.
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> III
> THE LOWER COURT COMMITTED SERIOUS REVERSIBLE ERROR IN CONVICTING THE ACCUSED-APPELLANT WHO HAD NOT BEEN POSITIVELY IDENTIFIED AND PINPOINTED AS MANUFACTURER NOR (sic) DISTRIBUTOR OF FAKE MARLBORO PRODUCT.
>
> IV
> THE LOWER COURT COMMITTED SERIOUS REVERSIBLE ERROR IN NOT GIVING THE SLIGHTEST CREDENCE TO THE UNCONTRADICTED, UNREFUTED AND CANDID TESTIMONY OF THE ACCUSED-APPELLANT, BUT INSTEAD, CONVICTED HER ON [T]HE BASIS OF EXTRAPOLATED EVIDENCE NOT BORNE BY THE RECORDS.
>
> V
>
> THE LOWER COURT COMMITTED A GRAVE REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT DESPITE THE UTTER AND PATHETIC LACK OF EVIDENCE TO SUSTAIN THE PROSECUTION'S LAME, SHALLOW AND UNCONFOUNDED THEORY OF GUILT.[23]

The Court of Appeals found Gemma's appeal to be unmeritorious. It said that Gemma was positively identified

by the prosecution witnesses as the woman who entertained them during the search of the subject premises on September 25, 1998, and the woman who signed the Certification in the Conduct of Search and Inventory. The Court of Appeals agreed with the RTC's rejection of Gemma's defense of mistaken identity, as she should have raised it at the earliest opportunity, which was at the time of her arrest, the posting of her bail bond, or during her arraignment. The Court of Appeals held that the amendment of the prosecution witnesses' affidavits was explained during the hearing, and although the original affidavits were the ones marked during the pre-trial, the amended ones provided the basis for the filing of the Information against Gemma and her co-accused Jackson Ong. The Court of Appeals also noted that the March 20, 2000 Resolution of the State Prosecutor specifically mentioned that the search warrant was served on Gemma Ong. The Court of Appeals then proclaimed that in the hierarchy of evidence, the testimony of the witness in court commands greater weight than his written affidavit.[24]

The Court of Appeals affirmed the conviction of Gemma for trademark infringement under Section 155 of Republic Act No. 8293, as the counterfeit goods seized by the EIIB were not only found in her possession and control, but also in the building registered under her business, Fascinate Trading. The Court of Appeals said that the prosecution had satisfactorily proven Gemma's commission of the offense since the unauthorized use of the trademark Marlboro, owned by PMPI, was clearly intended to deceive the public as to the origin of the cigarettes being distributed and sold, or intended to be distributed and sold. The Court of Appeals further sustained the penalty and damages imposed by the RTC for being in accord with the law and facts.[25]

Gemma is now before this Court with the following assignment of errors:

> A.
>
> THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES IDENTIFYING PETITIONER AS PRESENT AT THE TIME AND PLACE WHEN THE SEARCH AND SEIZURE TOOK PLACE.
>
> B.
>
> THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES THAT THEY SAW PETITIONER SIGN HER NAME AS "GEMMA ONG" AS OWNER/CLAIMANT/REPRESENTATIVE (OF THE ARTICLES SEIZED) ON THE SEARCH WARRANT (EXH. "A"), CERTIFICATION IN THE CONDUCT OF SEARCH (EXH. "B") AND INVENTORY OF THE S[E]IZED ARTICLES AT THE TIME OF THE SEARCH (EXH. "D").
>
> C.
>
> THE COURT OF APPEALS ERRED IN NOT FINDING THAT PETITIONER'S SIGNATURE IN EXHIBITS "A", "B" AND "C" ARE NOT HERS BUT WERE FORGED, BEING COMPLETELY AND PATENTLY DISSIMILAR TO HER TRUE AND REAL SIGNATURE AS SHOWN IN HER OFFICIAL I.D AS PROFESSIONAL DENTIST.
>
> D.
>
> THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE AFFIDAVITS OF THE PROSECUTION WITNESSES WHICH DID NOT MENTION PETITIONER'S PRESENCE AT THE TIME AND PLACE OF THE SEARCH CANNOT TAKE PRECEDENCE OVER THEIR CONTRARY TESTIMONIES IN COURT THAT SHE WAS PRESENT AND IN FACT THE OCCUPANT AND OWNER OF THE PREMISES FROM WHICH SHE INITIALLY BLOCKED THEIR ENTRY INTO.
>
> E.

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> THE COURT OF APPEALS ERRED IN CONCLUDING THAT [PETITIONER] WAS THE VERY SAME PERSON WHO WAS CAUGHT IN POSSESSION AND CONTROL OF THE PREMISES WHERE THE COUNTERFEIT ARTICLES WERE SEIZED BECAUSE SHE ALLEGEDLY NEVER PROTESTED BEING WRONGFULLY ACCUSED AT THE TIME OF HER ARREST ON 4 AUGUST 2000, WHEN SHE POSTED HER CASH BOND AND WHEN SHE EVEN SIGNED HER NAME AS MA. TERESA GEMMA CATACUTAN IN THE WAIVER, UNDERTAKING AND CERTIFICATE OR ARRAIGNMENT, ALL IN THE NAME OF THE ACCUSED AS "GEMMA ONG, a.k.a. MA. THERESA CATACUTAN."
>
> F.
>
> THE COURT OF APPEALS ERRED IN NOT ACQUITTING [PETITIONER] FOR FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.[26]

Gemma argues that if it were true that she was in the subject premises when it was raided on September 25, 1998, then her name and presence would have been mentioned in the respective affidavits of Slagle and Atty. Ancheta; and the EIIB agents who conducted the search would have confronted, investigated, or arrested her. Gemma insists that the fact that her name was only mentioned for the first time in the amended affidavits yields to the conclusion that she was not in the subject premises when it was searched and that the testimonies of the prosecution witnesses were perjured.[27]

Gemma further claims that the courts below were wrong in finding that she never protested that she was mistakenly identified. She claims that she was arrested without the benefit of a preliminary investigation and all she wanted to do at that point was to "get out [of] the clutches of overzealous and eager beaver policemen who were exuberant in arresting an innocent party like"[28] her. Gemma also explains that her non-protest during her arraignment was upon the advice of her former lawyer, who said that he would correct it in the proper time during the trial.

Respondent People of the Philippines, in its comment,[29] avers that there are only two issues to be resolved in this case, to wit:

> - THE INSTANT PETITION IS FATALLY DEFECTIVE AS IT RAISES QUESTIONS OF FACT WHICH ARE NOT PROPER FOR REVIEW UNDER RULE 45 OF THE REVISED RULES OF COURT.
>
> - THE COURT OF APPEALS DID NOT ERR IN AFFIRMING PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 155 IN RELATION TO SECTION 170 OF R.A. 8293 (INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES).[30]

Respondent claims that a perusal of the issues in Gemma's petition readily discloses that only questions of fact have been raised, which are not reviewable in an appeal by certiorari.[31] Respondent asseverates that Gemma's conviction was warranted as the prosecution had sufficiently established her presence during the search of the subject premises where she signed the search documents as "Gemma Ong." Moreover, the respondent avers, Gemma failed to timely protest her arrest and raise her claim that she is not Gemma Ong.[32]

Issues

A study of the pleadings filed before this Court shows that the only issues to be resolved are the following:

- Whether or not accused-appellant's petition for review on certiorari under Rule 45 of the Rules of Court is fatally defective as it raises questions of fact; and

- Whether or not Gemma's guilt was proven beyond reasonable doubt in light of her alleged mistaken identity.

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This Court's Ruling

Procedural Issue

As this case reached this Court via Rule 45 of the Rules of Court, the basic rule is that factual questions are beyond the province of this Court, because only questions of law may be raised in a petition for review.[33] However, in exceptional cases, this Court has taken cognizance of questions of fact in order to resolve legal issues, such as when there was palpable error or a grave misapprehension of facts by the lower court.[34] In Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals,[35] we said that although submission of issues of fact in an appeal by certiorari taken to this Court is ordinarily proscribed, this Court nonetheless retains the option in the exercise of its sound discretion, taking into account the attendant circumstances, either to decide the case or refer it to the proper court for determination.[36] Since the determination of the identity of Gemma is the very issue affecting her guilt or innocence, this Court chooses to take cognizance of this case in the interest of proper administration of justice.

Gemma is guilty of violating
Section 155 in relation to Section 170 of
Republic Act No. 8293

Gemma was charged and convicted of violating Section 155 in relation to Section 170 of Republic Act No. 8293, or the Intellectual Property Code of the Philippines.

> Section 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:
>
> 155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
>
> 155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material. (Sec. 22, R.A. No 166a)
>
> Section 170. Penalties. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code.) (Emphases supplied.)

A "mark" is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.[37]

In McDonald's Corporation and McGeorge Food Industries, Inc. v. L.C. Big Mak Burger, Inc.,[38] this Court held:

> To establish trademark infringement, the following elements must be shown: (1) the validity of plaintiff's

> mark; (2) the plaintiff's ownership of the mark; and (3) the use of the mark or its colorable imitation by the alleged infringer results in "likelihood of confusion." Of these, it is the element of likelihood of confusion that is the gravamen of trademark infringement.

A mark is valid if it is distinctive and not barred from registration. Once registered, not only the mark's validity, but also the registrant's ownership of the mark is prima facie presumed.[39]

The prosecution was able to establish that the trademark "Marlboro" was not only valid for being neither generic nor descriptive, it was also exclusively owned by PMPI, as evidenced by the certificates of registration issued by the Intellectual Property Office of the Department of Trade and Industry.[40]

Anent the element of confusion, both the RTC and the Court of Appeals have correctly held that the counterfeit cigarettes seized from Gemma's possession were intended to confuse and deceive the public as to the origin of the cigarettes intended to be sold, as they not only bore PMPI's mark, but they were also packaged almost exactly as PMPI's products.[41]

Regarding the Claim of Mistaken Identity

Despite all these findings, Gemma has posited only a single defense, from the RTC all the way up to this Court: that she is not the Gemma Ong named and accused in this case. She bases this claim on the alleged discrepancies in the prosecution witnesses' original affidavits vis-à-vis the amended ones, which discrepancies, according to her, strongly suggest her innocence.

This Court has time and again held that between an affidavit executed outside the court, and a testimony given in open court, the latter almost always prevails.

> Discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are often incomplete. They do not purport to contain a complete compendium of the details of the event narrated by the affiant. Thus, our rulings generally consider sworn statements taken out of court to be inferior to in court testimony. x x x.[42]

A reading of the original affidavits[43] executed by Slagle and Atty. Ancheta, readily reveals that they concentrated on the facts and events leading up to the search and seizure of the contraband materials from the subject premises. They not only failed to mention Gemma Ong's presence there, but they also failed to mention the other witnesses' names and presence there as well. Although this might appear to be a mistake on the part of a known and established law firm like the Quasha Law Office, the firm immediately sought to rectify this by having the affidavits of Slagle, Atty. Ancheta, and Lara amended.

If it were true that Gemma was not at the subject premises at all on September 25, 1998, then she should have grabbed every chance to correct this notion and expose this mistake before she was arrested. She could have brought up her defense of mistaken identity or absence at the raid in the preliminary investigation conducted prior to the issuance of her warrant of arrest; but instead, she chose to ignore her subpoena and disregard the preliminary investigation. Even then, Gemma had the opportunity to raise the fact that she was not Gemma Ong; not only during her arrest, but also during the posting of the cash bond for her bail, and more importantly, during her arraignment, when she was asked if she understood the charges against her. Gemma also knew that the Information was filed against her on the basis of the amended affidavits, thus, she could have filed a motion to quash the information before she entered her plea, or asked that a reinvestigation be conducted. However, all these Gemma failed to do. We agree with the RTC that it is highly unlikely that a person of her stature and educational attainment would be so meek and timid that she failed to protest against her being wrongly identified, accused, arrested, and potentially imprisoned. If what she says were true, she would not have agreed to post bail or to be

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arraigned without at the very least, bringing up the fact that she was not the Gemma Ong the police officers were looking for. In addition, her own lawyer, Atty. Maglinao, brought up the fact that she was not Gemma Ong, only for the purpose of correcting the Information, and not to contest it, to wit:

> WITNESS ROGER SHERMAN SLAGLE UNDER THE SAME OATH FOR CONTINUATION OF DIRECT EXAMINATION BY:
>
> ATTY. ERESE:
>
> With the kind permission of the hon. court.
>
> COURT: Proceed.
>
> ATTY. MAGLINAO:
>
> I would just want to be on record that my client, Gemma Catacutan has never been known as Gemma Ong because her real name is Gemma Catacutan.
>
> COURT: Do you have any objection to the amendment of the information?
>
> ATTY. MAGLINAO:
>
> No, your Honor. May we request to correct the information from Gemma Ong to Gemma Catacutan.[44]

Gemma further accuses the prosecution witnesses of falsely testifying and of perjuring themselves just so they can satisfy a big client like PMPI by showing that somebody had been arrested for counterfeiting its cigarettes. The crimes Gemma is imputing on these witnesses are serious crimes, and in the absence of concrete and convincing evidence, this Court could not believe her mere allegations that imply that these people would destroy someone's life just so they can please a client, more so over mere cigarettes. In Principio v. Hon. Barrientos,[45] we said:

> Bad faith is never presumed while good faith is always presumed and the chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith, which springs from the fountain of good conscience. Therefore, he who claims bad faith must prove it. For one to be in bad faith, the same must be "evident." x x x.[46]

The prosecution witnesses, contrary to Gemma's claim, had positively identified her as the person who initially refused the search team entrance, then later acquiesced to the search operations. Slagle explained that even though he mentioned Gemma only in his amended affidavit, he was sure that she was at the subject premises on the day that they searched it:

Testimony of Roger Sherman Slagle

> ATTY. MAGLINAO:
>
> Q In this amended affidavit you mentioned the name, Gemma Catacutan as one of the accused?
>
> A Yes sir.
>
> Q Can you tell the court how you were able to include the name of Gemma Catacutan in your amended affidavit, when in fact it did not appear in the first affidavit?
>
> A When we arrived she was there and she was very nervous and upset.
>
> x x x x
>
> A It is very clear to me when I arrived there that she was somehow involved.[47] (Emphases ours.)

Lara on the other hand, even pointed to her and thus positively identified her to be the one who had signed the search documents,[48] as the owner of the subject premises, to wit:

> Testimony of Jesse Lara
>
> ATTY. FREZ
>
> Q : Mr. Witness, do you know this person who wrote the name Gemma Ong?
>
> A : Yes, sir, Gemma Ong is the owner of the premises when we served the search warrant and also, she was the one who refused us to gain entry during the service of the search warrant.
>
> Q : Were you able to gain entry at the premises?
>
> A : Yes, sir.
>
> Q : So, as regard to the person whom you identify as the one who refused you to gain entry, would you be able to identify this person?
>
> A : Yes, sir, that lady in pink is Mrs. Gemma Ong.(As witness is pointing to the accused Gemma Ong).
>
> Q : Mr. Witness, why do you say that the person whom you pointed to us is the one who wrote the name Mrs. Gemma Ong?
>
> WITNESS
>
> Because when we served the search warrant she signed it in our presence and that is her own signature.
>
> x x x x
>
> ATTY. FREZ
>
> Q : So, Mr. Witness, in this Inventory, we made some markings during the pre-trial conference and I see here above the signature (Owner/Representative), there exist a handwritten name which reads GEMMA ONG and above it, there exist a signature, are you familiar with this person which appears to be Gemma Ong?
>
> A : Yes, sir, Gemma Ong signed that in my presence.
>
> Q : Your Honor, during the pre-trial conference, it was previously marked as Exhibit “D-1”. Mr. Witness, I also see here a Verification but there also exist an entry below the name and I quote “Owner/Claimant/Representative”, there appears a handwritten name Gemma Ong and a signature above it, are you familiar with this person which appears to be Gemma Ong?
>
> A : Yes, sir, Gemma Ong signed that in my presence.
>
> x x x x
>
> Q : Mr. Witness, in this document which is the certification in the Conduct of Search and I have here above the entry (Owner/Representative), a handwritten name which reads Gemma Ong and there exist a signature above the handwritten name, can you identify the signature?
>
> A : Yes, sir, this was signed by Gemma Ong in my presence.[49] (Emphases ours.)

Lara further attested to the fact that the search warrant was served on Gemma, who later on entertained the search team:

> ATTY. FREZ
>
> Mr. Witness, the person to whom you served the search warrant is identified as Mrs. Gemma Ong, do you

know her relationship with the accused Jackson Ong?

ATTY. FERNANDEZ

Objection, your honor, the witness would be incompetent . . .

COURT

May answer.

(The stenographer read back the question).

WITNESS

I am not familiar with the relationship of Mrs. Gemma Ong with Jackson Ong because during the service of the search warrant, Mrs. Gemma Ong was there together with two employees and when I asked where was Jackson Ong, she was the one who entertained us.

ATTY. FREZ

So, the search warrant was served against Gemma Ong?

WITNESS

Yes, Sir.[50]

Positive identification of a culprit is of great weight in determining whether an accused is guilty or not.[51] Gemma, in claiming the defense of mistaken identity, is in reality denying her involvement in the crime. This Court has held that the defense of denial is insipid and weak as it is easy to fabricate and difficult to prove; thus, it cannot take precedence over the positive testimony of the offended party.[52] The defense of denial is unavailing when placed astride the undisputed fact that there was positive identification of the accused.[53]

While Gemma claims she does not know Jackson Ong, the subject premises where the counterfeit cigarettes were seized was registered under her admitted business "Fascinate Trading."[54] Aside from the bare allegation that she had stopped operations in the subject premises as early as February 1998, she has neither proven nor shown any evidence that she had relinquished control of the building after that date. Gemma's allegation that she did not sign the search documents, and that the signatures therein did not match the signature on her PRC identification card, must also be struck down as she has not shown proof that her PRC signature is the only way she has ever signed her name. She could have, at the very least, gotten a handwriting expert to testify on her behalf that there is no way that the signatures in the search documents and the signature on her PRC identification card could have been written by one and the same person; instead, she relied on the flimsy contention that the two signatures were, on their face, different.

Gemma's defense consists of her claim of mistaken identity, her denial of her involvement in the crime, and her accusation against the prosecution witnesses of allegedly giving false testimonies and committing perjury. These are all weak, unproven, and unfounded claims, and will not stand against the strong evidence against her.

WHEREFORE, this Court DENIES the Petition. The June 16, 2005 Decision of the Court of Appeals in CA-G.R. CR No. 28308 is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio,[*] Del Castillo, and Perlas-Bernabe,[**] JJ., concur.

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[*] Per raffle dated October 19, 2011.

[**] Per raffle dated October 19, 2011.

[1] Rollo, pp. 19-36; penned by Associate Justice Martin S. Villarama, Jr. (now Associate Justice of this Court) with Associate Justices Lucas P. Bersamin (now Associate Justice of this Court) and Lucenito N. Tagle, concurring.

[2] Records, pp. 325-331.

[3] Id. at 1.

[4] Id. at 30.

[5] Id. at 28-30.

[6] Id. at 38.

[7] Id. at 51-53.

[8] TSN, November 14, 2001, pp. 3-9.

[9] TSN, January 22, 2002, pp. 6-25.

[10] TSN, October 10, 2001, pp. 3-13.

[11] TSN, April 12, 2002, pp. 3-20.

[12] Rollo, pp. 19-21.

[13] Records, pp. 229-235.

[14] Id. at 261.

[15] Id. at 282.

[16] TSN, May 26, 2003, pp. 36-37.

[17] Id. at 39-40.

[18] TSN, June 9, 2003, pp. 13-15.

[19] TSN, May 26, 2003, pp. 5-30.

[20] Records, pp. 330-331.

[21] Id. at 329-330.

[22] Id. at 330.

[23] Rollo, pp. 29-30.

[24] Id. at 32-33.

[25] Id. at 34-35.

[26] Id. at 47-48.

[27] Id. at 49-50.

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[28] Id. at 57.

[29] Id. at 119-139.

[30] Id. at 126-127.

[31] Id. at 127-128.

[32] Id. at 127-132.

[33] Hko Ah Pao v. Ting, G.R. No. 153476, September 27, 2006, 503 SCRA 551, 559.

[34] Santos v. People and Sandiganbayan, 400 Phil. 1175, 1201 (2000).

[35] 370 Phil. 150 (1999).

[36] Id. at 165.

[37] Section 121.1, Republic Act No. 8293.

[38] 480 Phil. 402 (2004).

[39] Id. at 424-425.

[40] Records (thin folder), pp. 13-54.

[41] TSN, November 27, 2001, pp. 3-14.

[42] People v. Minangga and Agando, 388 Phil. 353, 362 (2000).

[43] Records, pp. 158-169.

[44] TSN, November 26, 2001, pp. 3-4.

[45] 515 Phil. 799 (2005).

[46] Id. at 811.

[47] TSN, November 27, 2001, pp. 16-17.

[48] Records, pp. 153 and 155.

[49] TSN, January 22, 2002, pp. 15-22.

[50] TSN, January 22, 2002, pp. 24-25.

[51] People v. Bihag, Jr. and Hilot, 396 Phil. 289, 296 (2000).

[52] People v. Pangilinan, 443 Phil. 198, 235-236 (2003).

[53] People v. Quimzon, 471 Phil. 182, 203 (2004).

[54] Records, p. 298.

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