

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELSIE BARBA Y BIAZON, ACCUSED-APPELLANT.*G.R. No. 182420. July 23, 2009*

Ponente: VELASCO JR., J.

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This is an appeal from the August 29, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01587 entitled *People of the Philippines v. Elsie Barba y Biazon*, which affirmed the September 14, 2005 Decision in Criminal Case No. Q-03-114526 of the Regional Trial Court (RTC), Branch 103 in Quezon City. The RTC convicted accused-appellant Elsie Barba y Biazon of violation of Section 5 of Republic Act No. (RA) 9165 or The Comprehensive Dangerous Drugs Act of 2002.

The Facts

An Information was filed charging Barba with drug pushing under RA 9165, quoted below:

That on or about the 16[th] day of January, 2003, in Quezon City, Philippines, the said accused, not being authorized to sell, deliver, transport or distribute any dangerous drugs, did then and there, willfully and unlawfully sell, dispense, deliver, transport and distribute or act as broker in the said transaction, 0.04 (zero point zero four) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

Contrary to law.[1]

According to the prosecution, PO2 Rodel Rabina, PO2 Arnulfo Aguillon, and PO1 Michael Almacen conducted a surveillance operation against Barba in Pag-asa, Quezon City on January 16, 2003. Satisfied that Barba was engaged in the sale of illegal drugs, they conducted a buy-bust operation the next day. PO2 Rabina acted as poseur-buyer.[2] PO2 Rabina went to Barba's house with their informant and asked Barba if he could buy PhP 200 worth of shabu from her. Barba left to go inside her house. As she was going inside, PO2 Rabina noticed three (3) men inside who were engaging in a pot session. These men were identified as Barba's co-accused Eduardo Silvestre, Rene Banzuelo, and Reynaldo Labrador.[3]

After a few moments, Barba came back with two (2) sachets which she gave to PO2 Rabina. She then asked if he would like to test the purity of the sachets' contents, to which PO2 Rabina replied in the negative. He gave a PhP 200 marked bill to Barba and then scratched his head, the pre-arranged signal for the other members of the buy-bust team to join them. Barba, Silvestre, Banzuelo, and Labrador were all arrested. The PhP 200 marked bill, shabu, and drug paraphernalia found were retrieved and brought to the police station along with the accused.[4] PO2 Rabina marked the plastic sachets with "RR," his initials.[5] PO1 Almacen, on the other hand, marked the confiscated tooter with "MA01-17-03," his initials included. That same day, Inspector Rodrigo Legaspi Bauto submitted a Request for Laboratory Examination[6] (Exhibit "F") of the seized drug and paraphernalia addressed to the Crime Laboratory of the Philippine National Police (PNP) Central Police District. In turn, Forensic Chemist Leonard M. Jabonillo prepared Chemistry Report No. D-086-2003[7] (Exhibit "G") which showed that of the

specimens[8] submitted, the plastic sachets and the strip of aluminum foil contained methylamphetamine hydrochloride or shabu.

Barba was subsequently charged for drug pushing. The others arrested were charged with possession of drug paraphernalia. All four accused pleaded not guilty at their arraignment.

Barba denied the charge against her by claiming she had been framed. On January 17, 2003, at around 2:30 in the morning, she was awakened by the sound of someone knocking on her door. The door was then forcibly opened and eight (8) persons entered her house and searched the premises. Although no illegal drugs had been found she was arrested along with Banzuelo and brought to the police station. She denied knowing her co-accused Silvestre and Labrador and claimed they were arrested by the police on their way to the police vehicle. Her testimony was corroborated by Banzuelo, who said he was sleeping in Barba's house when they were arrested and that the arresting officers found no illegal drugs or paraphernalia during their search.[9]

The RTC ruled against Barba. The dispositive portion of its Joint Decision reads:

ACCORDINGLY, judgment is hereby rendered as follows:

- In Criminal Case No. Q-03-114526, accused ELSIE BARBA y Biazon is hereby found GUILTY beyond reasonable doubt of the crime of drug pushing and she is hereby sentenced to Life Imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

- In Criminal Case No. Q-03-1145267, accused EDUARDO SILVESTRE y Agua, RENE BANZUELO y Sigaan and REYNALDO LABRADOR y Padua are hereby found GUILTY beyond reasonable doubt of the crime possession of drug paraphernalia and each is hereby sentenced to a jail term of Six (6) Months and One (1) Day to One (1) Year and each to pay a fine of Ten Thousand (P10,000.00) Pesos.

The drugs involved in these cases, including the drug paraphernalia, are hereby ordered transmitted to the PDEA thru DDB for proper disposition.

SO ORDERED.[10]

On October 5, 2005, Barba filed a Notice of Appeal of the RTC Decision.

In her Appellant's Brief,[11] Barba assigned the following errors: (1) the trial court gravely erred in convicting Barba, when her guilt has not been proved beyond doubt; and (2) the trial court gravely erred when it gave credence to the conflicting and unsupported testimonies of the prosecution's witnesses.

The CA in its decision[12] affirmed the RTC decision. The CA held that the prosecution presented sufficient evidence to overcome the constitutional presumption of innocence. The two police officers who took the stand both testified that Barba was caught in flagrante delicto, and their testimonies agreed on the essential facts. According to the CA, the elements required for proving the illegal sale of dangerous drugs were met in consonance with *People v. Mala*: first, the identity of the seller and the buyer, as well as the object and the consideration of the sale, was proved; and second, the delivery of the thing sold and the payment for it was likewise shown.[13]

Moreover, the appellate court held that no evidence was offered to overturn the legal presumption that the police officers have performed their duties regularly. No improper motive was given as to why they, being involved in the buy-bust operation, would fabricate the charges against Barba and her co-accused.

The CA also held that the so-called inconsistency in the police officers' testimony was inconsequential. Whether or not there was a prior surveillance was immaterial.

On September 13, 2007, Barba filed a Notice of Appeal of the CA Decision.

On June 18, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted.

The Issues

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT, WHEN HER GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT

II

THE TRIAL COURT GRAVELY ERRED WHEN IT GAVE CREDENCE TO THE CONFLICTING AND UNSUPPORTED TESTIMONIES OF THE PROSECUTION'S WITNESSES

Our Ruling

To reiterate, the essential elements in a prosecution for sale of illegal drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it.[14] The prohibited drug is an integral part of the corpus delicti of the crime of possession or selling of regulated/prohibited drug; proof of its identity, existence, and presentation in court are crucial.[15] A conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[16]

The identity of the subject substance is established by showing the chain of custody. In *Espinoza v. State*, an adequate foundation establishing a continuous chain of custody is said to have been established if the State accounts for the evidence at each stage from its acquisition to its testing, and to its introduction at trial.[17] In a prosecution for sale of illegal drugs, this foundation takes more significance because of the nature of the evidence involved.[18] The more fungible the evidence, the more significant its condition, or the higher its susceptibility to change, the more elaborate the foundation must be. In those circumstances, it must be shown that there has been no tampering, alteration, or substitution.[19]

The chain of custody presented by the prosecution in this case suffers from incompleteness. After the illegal drugs were seized from Barba, PO2 Rabina marked the plastic sachets with his initials. PO1 Almacen marked the tooter in the same manner. The seized aluminum foil was marked "AA," presumably after PO2 Arnulfo Aguillon but there is no testimony on this. Once at the police station, the drugs and paraphernalia were then made the subject of a Request for Examination issued by Inspector Bauto. The specimens were then turned over to the PNP Crime Laboratory Office where Forensic Chemist Jabonillo made his conclusion that the sachets and the aluminum foil contained shabu. During trial, he testified that the specimen he examined was the same one he brought to the court. Exhibit "G" or Chemistry Report No. D-086-2003 was also presented as evidence to show that the seized items were positive for dangerous drugs. Pieced together, the prosecution's evidence, however, does not supply all the links needed in the chain of custody rule. The records do not tell us what happened after the seized items were brought to the police station and after these were tested at the forensic laboratory. Doubt is now formed as to the integrity of the evidence.

The latest jurisprudence on illegal drugs cases shows a growing trend in acquittals based on reasonable doubt. These "reasonable doubt acquittals" underscore the lack of strict adherence that law enforcement agencies and prosecutors have shown with regard to the chain of custody rule.

In *Malillin v. People*, we laid down the chain of custody requirements that must be met in proving that the seized drugs are the same ones presented in court: (1) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item.[20]

In *People v. Sanchez*,[21] the accused was acquitted since the prosecution did not make known the identities of the police officers to whom custody of the seized drugs was entrusted after the buy-bust operation. Likewise absent from the evidence is any testimony on the whereabouts of the drugs after they were analyzed by the forensic chemist.

In *People v. Garcia*,[22] the conviction was overturned due in part to the failure of the state to show who delivered the drugs to the forensic laboratory and who had custody of them after their examination by the forensic chemist and pending their presentation in court.

In *People v. Cervantes*,[23] a total of five (5) links in the chain of custody were not presented in court: the desk officer who received the drugs at the police station; the unnamed person who delivered the drugs to the forensic laboratory; the recipient of the drugs at the forensic laboratory; the forensic chemist who did the examination of the drugs; and the person who acted as custodian of the drugs after their analysis.

Although the non-presentation of some of the witnesses who can attest to an unbroken chain of evidence may in some instances be excused, there should be a justifying factor for the prosecution to dispense with their testimonies.[24] Here, however, no explanation was proffered as to why key individuals who had custody over the drugs at certain periods were not identified and/or not presented as witnesses. Uncertainty, therefore, arises if the drugs and paraphernalia seized during the buy-bust operation on January 2003 were the same specimens presented in court in December of that same year.

The very identity of the illegal drug is in question because of the absence of key prosecution witnesses. No one knows if the drug seized at the time of the buy-bust operation is the same drug tested and later kept as evidence against Barba. Though there was a stipulation during trial that the specimens submitted as evidence yielded positive for shabu, this only touches on one link in the chain of custody. Thus, given the failure of the prosecution to identify the continuous whereabouts of such fungible pieces of evidence, we are unable to conclude that all elements of the crime have been established beyond reasonable doubt.

WHEREFORE, the appeal is GRANTED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01587 finding accused-appellant Elsie Barba y Biazon guilty of drug pushing (Crim. Case No. Q-03-114526) and possession of drug paraphernalia (Crim. Case No. Q-03-1145267) is REVERSED and SET ASIDE. Accused-appellant Elsie Barba y Biazon is ACQUITTED on the ground of reasonable doubt and is accordingly immediately RELEASED from custody unless she is being lawfully held for some lawful cause.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 2-3.

[2] *Id.* at 3.

[3] CA rollo, p. 16.

[4] Id.

[5] TSN, September 10, 2003, p. 7.

[6] Records, p. 9.

[7] Id. at 10.

[8] The report covered two (2) heat-sealed transparent plastic sachets both marked "RR/01-17-03" and weighing 0.02 grams; one (1) strip of aluminum foil marked "AA/01-17-03"; and one (1) tooter marked "MA/01-17-03."

[9] CA rollo, p. 17.

[10] Id. at 18-19. Penned by Judge Jaime N. Salazar, Jr.

[11] Id. at 28.

[12] Rollo, pp. 2-15. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Magdangal M. De Leon and Ricardo R. Rosario.

[13] G.R. No. 152351, September 18, 2003, 411 SCRA 327, 334-335; citing *People v. Uy*, 384 Phil. 70, 85 (2000).

[14] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449; citing *People v. Adam*, 459 Phil. 676, 684 (2003).

[15] See *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[16] *People v. Cervantes*, G.R. No. 181494, March 17, 2009.

[17] 859 N.E.2d 375, December 27, 2006.

[18] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 633.

[19] 23 C.J.S. Criminal Law § 1142.

[20] *Supra* note 18, at 632-633.

[21] *Supra* note 15.

[22] G.R. No. 173480, February 25, 2009.

[23] *Supra* note 16.

[24] *Cervantes*, *supra* note 16.

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