

## **NINETEENTH DIVISION**

**[ CA-G.R. CR-HC NO. 01174, July 31, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JONATHAN BARREDO Y PATRICIO, ACCUSED-APPELLANT.**

### **D E C I S I O N**

#### **LAGURA-YAP, J.:**

Jonathan Barredo (accused-appellant) appeals the Decision<sup>[1]</sup> dated May 15, 2009 rendered by the Regional Trial Court (RTC), Branch 17, Roxas City in Criminal Case No. C-54-05. The accused-appellant is convicted with Violation of Section 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act.

The dispositive portion<sup>[2]</sup> of the decision, reads:

“WHEREFORE, premises considered, finding accused Jonathan Barredo guilty beyond reasonable doubt of the crime of violation of Section 11 of R.A. 9165, he is hereby sentenced to suffer the jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

Grace Barredo is acquitted of the crime she is charged with.

### **ANTECEDENTS**

The Information<sup>[3]</sup> for Violation of Section 11, Article II of R.A. 9165 filed on March 7, 2005 under Criminal Case No. C-54-05 alleges:

That on or about 1:00 o'clock in the afternoon of March 2, 2005 at the house of immediate premises of Spouses Jonathan Barredo Y Patricio and Grace Barredo Y Bacalucos located at Sitio Ilaya, Brgy. Cogon, Panay, Capiz, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and illegally have in their possession without any legal cause of authority, the following:

- a. Eight (8) big sachets of Methamphetamine Hydrochloride (shabu);
- b. Six (6) small sachets of Methamphetamine Hydrochloride (shabu);
- c. One (1) cartoon box mamas love bandage 4x6 YRDS;
- d. One (1) unit Nokia cellphone color white;
- e. Four (4) pcs one hundred pesos bill;
- f. Ten (10) pcs one hundred pesos bill;

- g. One (1) pc five hundred pesos bill;
- h. One (1) pack empty sachet used in repacking shabu.

That the total weight of the above confiscated methamphetamine hydrochloride (shabu), a dangerous drug is 59.823 grams;

That the foregoing were confiscated by virtue of Search Warrant No. 2005-11 issued by Honorable Charlito Fantilanan, Executive Judge, RTC, Roxas City.

“CONTRARY TO LAW.”

The accused entered a “NOT GUILTY” plea during the arraignment on July 15, 2005.  
[4]

The evidence for the prosecution is summarized as follows:

On March 2, 2005, Executive Judge Charlito Fantila of the Regional Trial Court of Roxas City issued Search Warrant No. 2005-11.<sup>[5]</sup> The Search Warrant directed the search of the house of the accused Jonathan Barredo and his wife Grace Barredo, located at Sitio Ilaya, Barangay Cogon, Panay, Capiz for the following items or personal properties:

- a. Undetermined volume/quantity of Methamphetamine Hydrochloride (shabu), and/or Marijuana or dangerous drugs;
- b. Assorted paraphernalia such as: improvised water pipes, tooters, burners, strips of aluminum foil, unused transparent plastic packets used for repacking of shabu or marijuana, weighing scale, bamboo stick used in sealing shabu, and used transparent plastic sachets with traces of shabu or marijuana or dangerous drugs;
- c. Marked money and money proceeds of illegal drugs; and
- d. Cellular phones and other communication equipment used in their illegal drug trade activity.

On that same day at around 1:00 o'clock in the afternoon, the joint elements of 1st Capiz Provincial Mobile Group and Panay Police Station went to the target area. The searching team led by P/Chief Insp. Ricardo Alba and P/Chief Inspector Oscar Silva implemented the search warrant. The search team was composed of PO1 Manuela Bansale Jr., SPO1 Romeo Ortencio, PO3 Joan Vicente, PO2 Jesus Bercades, PO3 Gilbert Quiachon and one member of the Panay Police Station. There were also members of the media and barangay officials who were invited to witness the search of accused's house.

While the search on the bedroom of the accused-appellants was going on, Grace Barredo suddenly took a small cartoon box marked “Mama's Love” bandage from under the pillow and she put it on top of their bed. The cartoon box was opened in the presence of the accused and his wife, the media and barangay representatives. The contents of the box were eight (8) big sachets and six (6) small sachets of

suspected shabu. The searching team also recovered and seized one (1) pack of empty plastic sachets used in repacking of shabu, fourteen (14) one hundred peso bills, one (1) five hundred peso bill and one (1) Nokia cellular phone. An inventory of the seized items was then prepared by PO3 Quiachon and signed by P/Chief Insp. Ricardo Alba. This was witnessed by the media and local government officials.

The seized items were brought to the court which issued the warrant and were later withdrawn by PO3 Quiachon for examination in the PNP Crime Laboratory. The fourteen (14) plastic sachets weighed a total of 59.823 grams and all yielded positive results for *Methylamphetamine Hydrochloride*.

The evidence for the defense is also summarized as follows:

On March 2, 2005 at about 1:00 o'clock, Grace Barredo, wife of the accused was at their house in Ilaya, Cogon, Panay, Capiz. She saw a man wearing bonnet entered their house through the kitchen door and went to the master's bedroom. The said man was wearing camouflage pants, black long sleeves shirt and holding a long firearm. The man stayed in the room for quite sometime. When the master's bedroom was searched, Grace Barredo was outside. She (Grace Barredo) was asked to enter the master's bedroom. She was surprised to see on top of their bed the cartoon labeled Mama's Love bandage. The man was alone when he entered their house, and fifteen minutes later the search was conducted. There were four police officers who conducted the search and Police Officer Bensale was not among them. Grace Barredo protested to the police because it was the man wearing a bonnet who who must have placed the cartoon on their bed. Grace Barredo did not affix her signature on the inventory certificate because the items recovered did not belong to her and her husband. At that time, the reporters were outside the living room.

On May 29, 2009<sup>[6]</sup>, the trial court promulgated the decision convicting the accused Jonathan Barredo. Hence, this appeal.<sup>[7]</sup>

On March 23, 2010, the trial court issued an order (Mittimus) transferring the person of the accused-appellant to the New Bilibid Prison, Muntinlupa City.<sup>[8]</sup>

On May 28, 2010 the accused-appellant filed an Application to Bail Pending Appeal with Motion to Suspend Transfer Detention.<sup>[9]</sup>

## ASSIGNMENT OF ERRORS

### I

WHETHER OR NOT THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ILLEGAL POSSESSION OF DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST THE ACCUSED FOR HAVING BEEN OBTAINED IN VIOLATION OF SECTION 21 OF REPUBLIC ACT NO. 9165.

### II

WHETHER OR NOT THE TRIAL COURT SERIOUSLY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN

BEYOND REASONABLE DOUBT NOTWITHSTANDING THE PROSECUTION'S UNBELIEVABLE NARRATION OF FACTS AND IT'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE SPECIMENS.

The accused-appellant in his Appellant's Brief argues that it is the prosecution who has the positive duty to establish that efforts were employed in complying with the requirements under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to comply with the Section 21 of R.A. 9165. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law, serious uncertainty is generated about the identity of the seized items that the prosecution has presented as their evidence. Similarly, in this case, PO3 Gilbert Quiachon, the evidence custodian, recorder and person in charge in marking of the evidence in the implementation of the search warrant, testified that he cannot recall whether he was able to make a listing of paraphernalia allegedly recovered during the conduct of search. Notably also is the fact that during his testimony, he only stated that he only prepared a Certificate of Inventory and a Certificate of the Conduct of the Search.

In the present case, the prosecution admitted that the police had committed lapses in the handling of the seized materials but claims that it is only a minor deviation from the required procedure. However, the prosecution did not even bother to present any explanation to justify the non-observance of the prescribed procedures. It is clear that the physical inventory cannot be relied upon as the police officer who prepared the Certificate of Inventory cannot even recall as to whether he made a listing of the paraphernalia allegedly recovered from the house of the accused-appellant. Further, there were no photographs taken of the seized items in the presence of the accused or his counsel. In the testimonies of the police officers, there is no showing that the plastic sachets of shabu and paraphernalia recovered from the house of the accused-appellant were immediately marked upon seizure.

Accused-appellant said that the *corpus delicti* of the case was not proven. In this case, all the police officers that were presented as witnesses, failed to account as to what happened to the sachets of drugs after marking them, to whom did they turn over the drugs in the police station in the court that issued the search warrant and in the crime laboratory. PO1 Bensale testified that he was the one who gave the 14 sachets of shabu to PO3 Quiachon after he recovered these from the couple's bedroom. However, this statement was contradicted by the Barangay Captain who was invited to witness the search. The latter testified that he was inside the bedroom when the search was conducted. PO1 Bensale was not inside the bedroom when the Mama's Love bandage box containing the 14 sachets of shabu was recovered. The Barangay Captain also said that the Mama's Love bandage box was not shown to him after the search.

None of the police officers who were presented as witnesses by the prosecution, identified the 14 sachets of shabu allegedly recovered from the house of the accused. It was only the forensic chemist who identified the shabu in open court. The testimony of the forensic chemist was only confined to the handling of the specimen at the forensic laboratory and the result of the examination of the sachets of shabu.

The *court a quo* banked on the presumption of regularity in the performance of duty by the police officers. However, this presumption is not applicable in this case. In the