

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERT SOLOMON Y BALMORES, ACCUSED-APPELLANT.

Ponente: SANTIAGO-LAGMAN, J.

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SANTIAGO-LAGMAN, J.:

Accused-appellant Bert Solomon y Balmores (“appellant”) appeals from the Decision[1] of the Regional Trial Court of Tarlac City (Branch 65), dated June 17, 2002, in Criminal Case No. 11532, finding him guilty of illegal possession of 1, 453 grams of marijuana, in violation of The Dangerous Drugs Act of 1972,[2] and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) and the costs of suit.

The Information filed against appellant charged him, as follows:

“That on or about March 3, 2001 around 6:30 o'clock in the morning, in the Municipality of Gerona, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously possess or use marijuana a prohibited drug, weighing 1,453 grams without being authorized by law.

CONTRARY TO LAW.”[3]

When arraigned on June 21, 2001, appellant, assisted by counsel, entered a plea of “Not Guilty” to the charge.[4] After the termination of the pre-trial on September 13, 2001,[5] the case proceeded to trial.

The evidence for the prosecution was summarized in the appealed Decision, viz:

“SPO1 Romulo Quibuyen testified that on March 3, 2001, he together with SPO4 Cuaresma, Rolly Reyes Romero, SPO3 Concepcion, PO3 Iglesia and others he could not remember went to Abagon, Gerona, Tarlac in order to implement a Search Warrant (Exh. B) issued by the Hon. Martonino Marcos of the Municipal Court in Cities, Tarlac City. In the company of Brgy. Capt. Mamer Alipio and Kagawad Bagsic and Faustino, they proceeded to the house of Bert Solomon. Upon arrival thereat, he presented the Search Warrant to Bert Solomon and the latter allowed them to search the shanty which consists of two rooms, a utility room and another small room. The shanty is made of galvanized iron with wooden walls and the floor is not cemented. They found marijuana at the lavatory, some buried on the ground under the bed while those placed in bottles were in the utility room and also in a wooden cabinet which serves as a divider. When the marijuana were found the accused readily admitted. They took the accused to the police station for further investigation. He and the other police officers executed a joint affidavit of arrest (Exh. A, A-1, A-2). He also prepared an inventory receipt witnessed by the barangay captain and kagawad (Exh. D, D-1, D-2, D-3 & D-4).

On cross-examination, he testified that SPO4 Cuaresma and PO1 Rolly Reyes Romero applied for the search warrant. Prior to the search, they posted their asset to conduct surveillance on the house of the accused. It was SPO4 Cuaresma who first entered the house followed by his group who personally conducted the search. During the search, Bert Solomon was only an arms length away and saw everything and he was trembling. His family was not around but was with a certain Catherine Lamog, a visitor. He was able to find about 5 or 6 'garapon' or plastic jars. When these were transmitted to the crime laboratory, these were sealed with proper

markings with the marijuana bricks placed in a plastic pack. They just estimated the weight of the marijuana because they did not have a weighing scale. He personally brought the items found to the crime laboratory that same day. He also brought Catherine Lamog to the police station and charged her with the accused Bert Solomon. Catherine Lamog is a courier from Baguio whom they placed under surveillance. He identified the small pitcher containing 250.130 grams of marijuana as Exh. E-1 with mark 'RGQ-2'; a glass containing marijuana with marking RGQ-3 containing 200.206 grams as E-2; one brick of marijuana as Exh. E-3; four chocolate bars of marijuana leaves as Exh. E-4, E-5, E-6 & E-7; the plastic container with marijuana leaves as Exh. E-8; the marijuana butts as Exh. E-9 and 36 sticks of marijuana sticks as Exh. E-10. In all of the exhibits he printed his initial before transmitting them to the crime laboratory. The masking tape must have been placed in the crime laboratory. He is very sure that the items he seized from the house of Bert Solomon at 6:30 a.m. are the same items he sent to the crime laboratory at 1:00 p.m. the same day. At the crime laboratory, he had the items weighed and they turned to weigh 1.453 grams without the containers.”[6]

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“(On rebuttal), he testified in brief as follows: Before they applied for a search warrant, they received information that accused is involved in drug trafficking. They conducted surveillance for a month. Accused was listed in the order of battle long before he became a member of the intelligence group. They even conducted a test buy and their asset was able to buy from the accused.”[7]

x x x x x x x x

“PO1 Rolly Romero, 34 year (sic) old, married, PNP member of the Gerona Police Station and a resident of Pinasling, Gerona, Tarlac, testified that in the morning on March 3, 2001, they went to serve a search warrant in the house of Bert Solomon but before doing so, they coordinated with Brgy. Capt. Mamer Alipio and Kgd. Bagsic and Agustin. x x x

On cross-examination he testified that Bert Solomon was with his wife and one Catherine lamog (sic), a suspected courier of drugs and who was under surveillance. During the search in his house, Bert Solomon was outside the house but his wife and the barangay officials were inside.”[8]

x x x x x x x x

“Police Insp. Arlene Valdez Coronel, the forensic chemist assigned at the Tarlac Crime Laboratory, testified that on March 3, 2001, at about 1:00 p.m. she received a request for laboratory examination from the Gerona Police Station (Exh. G) from SPO1 Romulo Quibuyen ascertaining whether the items turned over to her were the things listed in the request, she proceeded to examine them and marked them with a red pen but she already found markings such as RGG[9] (sic). She issued an initial laboratory report to SPO1 Quibuyen. There is another report she prepared, Chemistry Report No. D-068-1 (Exh. H) the contents of which she affirmed and identified in Court as Exh. H-2 one small pitcher containing 250.130 grams of crushed suspected marijuana; H-3-specimen B containing 250.050 grams of crushed marijuana; H-4-specimen C containing 200.206 grams of marijuana; H-5-specimen D one marijuana brick weighing 84.592 grams of marijuana; Exh. H-6 Specimen E one plastic bag of four (4) chocolate bars weighing 450.183 grams of marijuana; H-7 specimen F containing 200.147 grams of crushed marijuana; Exh. H-8 specimen G one plastic film canister of ii[10] (sic) pieces of cigarette butts weighing 1.057 grams and Exh. 9, specimen H a plastic bag containing 36 pieces of cigarette sticks with a total weight of 17.208 grams of marijuana. She affirmed and confirmed the correctness and truthfulness of her findings. All the specimen examined contains marijuana, a prohibited drug. She used three methods: 1) Physical examination 2) chemical and 3) layer chromatography. These items were personally handed to her by SPO1 Quibuyen. She personally placed the masking tape on the specimen after obtaining the representative samples which is about 20% and she found these to be positive.”[11]

Testifying on his behalf, appellant stated that his house was searched around 6:30 o'clock in the morning of March 3, 2001 by virtue of a search warrant, that he had a visitor at that time by the name of Catherine Lamog, that the

search was witnessed by the barangay captain of their place, and that the policemen found marijuana of which he does not know anything about. He, however, admitted that he used to boil marijuana and used it to cure his children of LBM. He said that he used to get marijuana, about one-fourth (¼) of a kilo, from his friend Philip Jetham, who is the boyfriend of his visitor Catherine Lamog. Realizing the consequences of his statement, appellant, while still on direct examination, quickly retracted his statement and averred that what he used to boil to cure his children of stomach ache was not marijuana but pito-pito.[12]

On cross-examination, appellant practically denied everything he said during the direct examination. Among others, he stated that he no longer remembered having seen Catherine Lamog in his house on March 3, 2001 nor having taken marijuana from Philip Jetham.[13]

But then again, when asked by the Court, appellant again readily admitted that he used to boil marijuana and give the same to his sick relatives.[14]

On the basis of the foregoing evidence, the trial court found appellant guilty as charged. In a Decision[15] dated June 17, 2002, it ruled, as follows:

“WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt of the crime of Violation of Sec. 8 of RA 6425, as amended, the accused Bert Solomon is hereby sentenced to suffer the penalty of reclusion perpetua and a fine of five hundred thousand pesos (Php500,000.00) and to pay the costs.

Upon proper receipt, the clerk of court who has custody of the confiscated marijuana in one small pitcher containing 250.130 grams of crushed marijuana; one bottle containing 250.050 grams of marijuana; one marijuana brick weighing 84.592 grams of marijuana; one plastic bag of four chocolate bars weighing 450.183 grams of marijuana; one bottle containing 200.147 grams of crushed marijuana; one film canister of 11 pieces of cigarette butts weighing 1.057 grams and one plastic bag containing 36 pieces of cigarette sticks with a total weight of 17.208 grams of marijuana is hereby ordered to turn over to the Dangerous Drugs Board for disposition.

SO ORDERED.”[16]

His Motion for Reconsideration[17] having been denied,[18] appellant filed this appeal[19] on the lone assigned error that:

“THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE ON THE PART OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.”[20]

Appellant brings up some alleged inconsistencies in the testimonies of prosecution witness SPO1 Romulo Quibuyen (“SPO1 Quibuyen”) and of PO1 Rolly Romero (“PO1 Romero”). First, appellant points to SPO1 Quibuyen's declaration that appellant was subjected to a surveillance before his arrest on account of reports that drug couriers frequented his house. This statement, according to appellant, is inconsistent with SPO1 Quibuyen's later testimony on rebuttal that appellant was listed as a drug courier long before 1998. This inconsistency purportedly casts doubt on whether a surveillance was actually conducted by the police officers prior to the appellant's arrest. Second, appellant points to SPO1 Quibuyen's statement, on the one hand, that the subject specimens of marijuana were already placed in containers when he found them and his testimony, on the other hand, that he was the one who placed the marijuana specimens in the containers. Finally, it is argued that SPO1 Quibuyen's testimony with regard to the precise location of appellant, his wife and his visitor Catherine Lamog greatly differed with that of PO1 Romero in that while SPO1 Quibuyen testified that appellant and Catherine Lamog were inside the house and appellant's wife was outside when the search was conducted, PO1 Romero asserted that appellant was told by one of the police officers to sit outside the house and it was Catherine Lamog,

appellant's wife and the barangay officials who were inside the house.

As to the first supposed inconsistency, the fact that appellant was listed as a drug courier long before 1998 does not preclude the fact that, as alleged by SPO1 Quibuyen, appellant had also been recently subjected to a surveillance prior to his arrest on March 3, 2001. As it turned out, appellant was not an ordinary drug dealer but one proficiently dealing with large amounts of marijuana, a prohibited drug. This probably explained why the police had to conduct a more careful and thorough surveillance before they were able to apprehend the appellant. At any rate, it is without doubt that, contrary to appellant's submission, a surveillance was actually conducted by the the police authorities from 1998 up until 2001 when appellant was arrested. Thus, SPO1 Quibuyen's declarations are actually reconcilable and far from inconsistent.

The remaining inconsistencies alluded to by appellant are on minor details and do not necessarily discredit the credibility of prosecution witnesses SPO1 Quibuyen and PO1 Romero. On the contrary, these supposed inconsistencies lend credence to their testimonies since they indicate that they were not coached to fabricate or dissemble.[21] Moreover, witnesses are not expected to remember every single detail of an incident with perfect or total recall.[22] Witnesses testifying on the same event do not have to be consistent in every detail as differences in recollections, viewpoints or impressions are inevitable.[23] What is important is that, as here, there is consistency among the prosecution witnesses in relating the principal occurrence and positive identification of the wrongdoer.[24]

Appellant next assails the identity of the seized marijuana specimens, arguing that SPO1 Quibuyen was not even sure of the initials and the markings he made on the containers of said specimens. On the contrary, however, We entertain no doubt that indeed, the specimens submitted to the crime laboratory for qualitative examination, were the same specimens recovered from appellant. This was affirmed not only by SPO1 Quibuyen but by PO1 Romero as well. Both corroborated each other's testimonies narrating the incident from the time the specimens were recovered from appellant until the time they were marked by the police investigator in their presence and finally when the same were referred to the forensic chemist for qualitative examination. Furthermore, as the record shows, SPO1 Quibuyen positively identified the seized items of marijuana in open court, thus:

“Court:

Q- How sure are you that these items that were marked and identified as Exhibits “E” and series are the same items that were seized in the house of the accused Bert Solomon?

A- Because I put them in those containers.

Q- Earlier you were shown prints on the plastic container and you said you don't remember if those were the prints you placed, did I get you right?

A- Yes, sir.

Q- The items that were seized in the house of Bert Solomon you were the one who took custody of them?

A- Yes, sir.

Q- And you have custody of these items before they were sent to the Crime Laboratory?

A- Yes, sir.

Q- And did anybody have access to these items that seized?

A- My co-investigator who recorded these items, sir.

Q- When these items were seized and before they were transmitted to the Crime Laboratory, where did you

place them?

A- In the office, sir.

Q- After the items were seized, how soon did you bring them to the Crime Lab?

A- We brought them at 1:00 p.m.

Q- And when was the search made, at what time?

A- 6:30 a.m., sir.

Q- And you personally brought the items seized to the Crime Lab?

A- I and my two other companions, sir.

Q- When you turned them over to the Crime Lab, did you sign any receipt?

A- Yes, sir. The request for laboratory examination.

Q- And to whom did you turn over these items seized?

A- PO1 M. Rodriguez, sir.

Q- Before turning them over to the Crime Lab, were the items weighed?

A- Not yet, sir.

Q- And did you come to know if the items were weighed in the Crime Lab?

A- Yes, sir.

Q- And what was the weight of the items seized?

A- 1,453 grams, sir.

Q- And in weighing the items seized, were the containers included in the weighing?

A- No, sir.”[25]

The identity of the prohibited drugs in this case was thus certainly safeguarded. If at all, the arresting officers' failure to strictly comply with the rules on custody and disposition of confiscated or seized dangerous drugs may result in administrative liability on their part, but the same does not derogate from the facts established by their testimonies that the specimens of marijuana presented in court and identified by them were the same ones recovered from appellant.

Appellant also casts doubt on the accuracy of the qualitative examination conducted on the subject specimens of marijuana considering that only a sample of about twenty percent (20%) of each of the specimens were subjected to such examination. Appellant submits that the remaining part of the specimens which were never subjected to the qualitative examination could have possibly contained pito-pito or ipil-ipil leaves. Aside, however, from the absence of any evidence to support this supposition by appellant, case law has it that the forensic chemist is not mandated to examine the entire mass of the dangerous drug confiscated by the policemen—it is enough that a sample thereof is subjected to qualitative examination.[26] A sample taken from the substance seized is logically presumed to be representative of all the contents of the package unless proven otherwise by the defense.[27]

Equally weak and unsubstantiated is appellant's allegation that the items of marijuana seized from his house were merely planted by the police officers. It bears emphasis that like an alleged frame-up, appellant's defense has been

a standard defense in drug cases can easily be concocted.[28] Moreover, the amount of the marijuana involved in this case itself makes such supposed planting of evidence or frame-up quite improbable, especially in this case where appellant himself, as narrated above, already admitted possession and use of marijuana. The fact that he used the marijuana as medicine or for purposes of curing his children and other relatives does not negate the fact that such possession and use were unauthorized.

Finally, law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary.[29] When police officers have no motive for testifying falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties;[30] and if, as in this case, no evidence whatsoever was presented which would suggest any improper motive on the part of the police enforcers, then We must accord great respect to and treat with finality the findings of the trial court on the matter of their credibility.

All told, We sustain the trial court in finding appellant guilty beyond reasonable doubt as charged.

Under Section 8, Article II, in relation to Section 20, Article IV, of Republic Act No. 6425 as amended by Republic Act No. 9346, otherwise known as “An Act Prohibiting the Imposition of Death Penalty in the Philippines,” the penalty of reclusion perpetua[31] and a fine of five hundred thousand pesos to ten million pesos shall be imposed upon any person caught in possession of 750 grams or more of Indian hemp or marijuana. A total of one thousand four hundred fifty-three (1, 453) grams of marijuana were confiscated from appellant. Also, considering that under Paragraph 1, Article 63 of the Revised Penal Code, “in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances x x x,” We rule that the trial court was correct in imposing the penalty of reclusion perpetua and the fine of Five Hundred Thousand Pesos (P500,000.00).

WHEREFORE, the Decision of the Regional Trial Court of Tarlac City (Branch 65), dated June 17, 2002, in Criminal Case No. 11532, is AFFIRMED.

SO ORDERED.

De Los Santos, (Chairman) and Pizarro, JJ., concur.

[1] Record, pp.86-96; Rollo, pp. 88-98.

[2] Republic Act No. 6425, Section 8, Art. II, in relation to Sec. e-1 (I), Art. I, as amended by Batas Pambansa 179 and Republic Act No. 7659.

[3] Record, p. 1.

[4] Order dated June 21, 2001, id., p. 31.

[5] Pre-Trial Order dated September 13, 2001, id., pp. 47-48.

[6] Pages 2-3 of the trial court's June 17, 2002 Decision, supra.

[7] Paragraph 3, Page 7 of the trial court's June 17, 2002 Decision, id.

[8] Page 4 of the trial court's June 17, 2002 Decision, id.

[9] Should be “RGQ.”

[10] Should be 11.

[11] Pages 4-5 of the trial court's June 17, 2002 Decision, id.

- [12] TSN, January 17, 2002, pp. 2-10; TSN, January 31, 2002, pp. 2-3.
- [13] TSN, January 31, 2002, pp. 5-6.
- [14] *Id.*, pp. 6-7.
- [15] *Supra*.
- [16] Page 11 of the appealed Decision, Record, p. 96; Rollo, p. 98.
- [17] Record, pp. 99-109.
- [18] Order dated August 13, 2002, *id.*, pp. 112-113.
- [19] Notice of Appeal dated August 16, 2002, *id.*, p. 117.
- [20] Page 1 of the Appellant's Brief, Rollo, p. 67
- [21] *People vs. Balad*, 274 SCRA 695 (1997); *People vs. Zaballero*, 274 SCRA 627 (1997).
- [22] *People vs. Alas*, 274 SCRA 310 (1997).
- [23] *Ibid.*
- [24] *People vs. Patawaran*, 274 SCRA 130 (1997).
- [25] TSN, October 18, 2001, pp. 9-10.
- [26] *People vs. Chiu*, 424 SCRA 72 (2004).
- [27] *People vs. Tiu*, 425 SCRA 207 (2004).
- [28] *People vs. Enriquez*, 281 SCRA 103 (1997); *People vs. Dulay*, 423 SCRA 652 (2004).
- [29] *People vs. Jones*, 278 SCRA 345 (1997).
- [30] *People vs. Guiamil*, 277 SCRA 658 (1997).
- [31] Section 8, Article II, in relation to Section 20, Article IV, of Republic Act No. 6425 as amended by Republic Act No. 7659 imposed the penalty of reclusion perpetua to death. Recently, however, Republic Act No. 9346 was enacted, prohibiting the imposition of death penalty in the Philippines. It provides that: "SEC. 2. In lieu of the death penalty, the following shall be imposed: (a) the penalty of reclusion perpetua when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; x x x," and the same being favorable to the accused, should be given a retroactive application. Hence, the penalty of reclusion perpetua to death in the present case should be reduced to reclusion perpetua.

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