

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HAMID AMBIH Y KADIL, ACCUSED-APPELLANT.*G.R. No. 101006. September 03, 1993*

Ponente: BELLOSILLO, J.

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HAMID AMBIH y KADIL, after his conviction by the trial court for "pushing" four (4) newspaper-wrapped packets of dried marijuana leaves, is now before us insisting that he was a mere innocent bystander, a fall-guy, whom the NARCOM agents arrested when their real "quarry" was able to run away and elude arrest.

The prosecution presented four (4) witnesses: Sgt. Amos Foncardas, Sgt. Bonifacio Morados and M/Sgt. Mohammad Sali Mihasun, of the Narcotics Command, and Forensic Chemist Athena Eliza Anderson of the PC Crime Laboratory, all stationed in Zamboanga City.

On 17 April 1989, at around 10:00 o'clock in the morning, Sgt. Foncardas received confidential report that a certain "Kadil" was engaged in the illicit trade of marijuana in the vicinity of Sutterville, Zamboanga City.[1] To verify the information, he dispatched Sgt. Morados accompanied by the informant to check on the suspected drug pusher. After thirty (30) minutes, Sgt. Morados confirmed the report. Sgt. Foncardas then organized the buy-bust operation, designated Sgt. Morados as the poseur-buyer, and handed him five (5) marked ten-peso bills which were given by NARCOM Chief Investigator M/Sgt. Mihasun.[2] The entrapment team, composed of Team Leader Sgt. Foncardas, Sgt. Morados and Sgt. Manuel Alarcon, proceeded to Sutterville on board two (2) motorcycles.

Upon seeing their suspect, now the accused, Sgt. Morados approached him while Sgts. Foncardas and Alarcon maintained their distance. Sgt. Morados asked the accused, "mayroon ba tayo diyan?" The latter replied, "mayroon ako ditong marijuana sa halagang P50.00." Sgt. Morados then said: "Bilhin ko na iyan." The accused then took out from the pocket of his pants four (4) packets wrapped in newspaper which he handed to Sgt. Morados who, after ascertaining them to be marijuana, paid the pusher with the five (5) marked ten-peso bills. After sensing that the accused might have noticed the presence of the NARCOM operatives, Sgt. Morados immediately grabbed the accused by the hand and placed him under arrest. Sgts. Foncardas and Alarcon moved in to assist Sgt. Morados, and brought the accused to the NARCOM Headquarters where he, together with the marked money and the four (4) packets of dried marijuana leaves, was turned over to Chief Investigator M/Sgt. Mihasun who personally went to the PC Crime Laboratory, Recom 9, Zamboanga City, to submit the four (4) packets of the prohibited stuff for examination. Forensic Chemist Athena Eliza Anderson found each packet to weigh five (5) grams and "gave POSITIVE results to the tests for the presence of marijuana, a prohibited drug." [3]

Accused Hamid Ambih, a 48-year old carpenter has a different story to tell. Testifying in Tausug, he recounted that he was hired by PC Captain Arosin Kañga and his wife, Hadja, to fix their kitchen and comfort room. As previously agreed upon, at around 10:00 o'clock in the morning of 17 April 1989, he together with his friend,

Alberto Pantoha, waited along the road at the entrance of the Lakian compound in Sutterville, Zamboanga City, for the truck carrying the materials purchased by Capt. Kaña to arrive. Aside from him and Pantoha, there were two (2) persons sitting nearby whom he did not know. It was during that time that he was arrested at gun-point by six (6) NARCOM agents for no apparent reason, handcuffed and taken to the police headquarters.[4]

The defense presented Alberto Pantoha who corroborated the testimony of Ambih by averring that while he and Ambih were waiting for the truck ferrying the materials, which truck he and Ambih would guide to the house of Capt. Kanga, two (2) armed persons appeared from nowhere. The people around them scampered away, leaving behind the "'lukut-lukot' or the marijuana (which) fell to the ground,"[5] near the place where Ambih was standing. Pantoha, who feared the armed persons, likewise ran, leaving Ambih alone. The armed persons, identifying themselves to be NARCOM agents, apprehended Ambih. Pantoha swore that nothing of the prohibited stuff was found in the person of Ambih at the time of his arrest.

Hadja Napisa Kaña, wife of PC Captain Kaña, was also presented by the defense. She said that it was she who hired Ambih and Pantoha to construct a toilet and a dirty kitchen, and that they were indeed instructed to wait along the road in Sutterville for the delivery truck. She added that she had known Ambih for a long time and that he was a good and religious person.[6]

On 25 March 1991, the Regional Trial Court of Zamboanga City, 9th Judicial Region, Br. 15,[7] giving more credence to the testimony of the prosecution witnesses, found accused Hamid Ambih y Kadil guilty of violation of Sec. 4, Art. II of R. A. No. 6425, as amended, and sentenced him to life imprisonment and to pay a fine of P20,000.00. The accused appealed.

The conviction of Hamid Ambih y Kadil should be reversed and set aside.

We take exception to the finding of the court a quo that the testimony of Sgt. Morados was clear and straightforward, and corroborated in all material points by Sgt. Foncardas.[8]

The trial court found that Team Leader Sgt. Foncardas, after being given three (3) ten-peso bills by M/Sgt. Mihasun, added two (2) ten-peso bills to complete the marked money for the entrapment.[9] But, from the testimony of Sgt. Foncardas himself, it appears that he received all the "5 pieces of P10.00 bills, a total of P50.00" from M/Sgt. Mihasun.[10] Of course, this was contradicted by M/Sgt. Mihasun who testified that he only gave Sgt. Foncardas three (3) ten-peso bills.[11] The inconsistency was rectified by Sgt. Foncardas upon being recalled to the witness stand five months later.[12] While this makes the version of the prosecution less convincing, it also takes its toll on the trial court which failed to note the inconsistency and vacillations of the prosecution witness. If the trial court failed to note this simple fact, We cannot see how it could have made a clear finding that the testimony of the prosecution witnesses was "entitled to full faith and credit." [13]

This is not a minor inconsistency which we can consider as a badge of truth coming from an uncoached witness. It must be remembered that it was Team Leader, Sgt. Foncardas who organized the buy-bust operation and who reportedly supplied the two (2) ten-peso bills to complete the marked money to be used in their ensuing operation. It disturbs us why he initially declared in open court that he received all five (5) ten-peso bills from M/Sgt. Mihasun, only to change his testimony some five (5) months later. While this fact does not concern the actual exchange of the prohibited drug, it nonetheless affects the entire case of the prosecution when the pieces of evidence are joined together.

Moreover, according to the trial court, "Sgt. Amos Foncardas received information from a confidential informant that a certain 'Ambih' of Sutterville, Zamboanga City, was engaged in selling marijuana x x x x"[14] The records show differently. Sgt. Foncardas testified that it was not a certain "Ambih" but a certain "Kadil" who was said to

have been engaged in illicit trade of drugs.[15]

We also find it strangely coincidental that the amount demanded by the accused for the four (4) packets of marijuana would be the exact amount of the marked money brought by the poseur-buyer. It boggles the mind how the "buy-bust team" prior to the actual "buy-bust operation" could have figured out beforehand "the operation (to be) worth P50.00,"[16] and in fact shelled out another two (2) ten-peso bills granting this to be true, if only to come up with the exact amount of P50.00 in marked money. And true enough, as shown by the alleged conversation that took place the accused allegedly offered marijuana worth exactly P50.00[17]

"Q x x x what did you say in Tagalog to the suspect?

"A I approached the suspect in a friendly manner and I told him. 'Meron ba tayo diyan?'

"Q What was the response if any?

"A 'Mayroon ako dito sa halagang P50.00.'"

Unlike in other buy-bust operations where the apprehending team is unaware of the exact value of the illegal drug the suspected peddler would be going to sell and thus has to play it by ear, it appears here that the entrapment team had already pre-determined the worth of the goods to be sold by preparing beforehand the precise amount it had to pay.

Thus, as we have observed in many occasions, oftentimes to our dismay, while a buy-bust operation is a recognized means of entrapment for the apprehension of drug pushers,[18] it does not always commend itself as the most reliable way to go after violators of the Dangerous Drugs Act as it is susceptible to mistake as well as to harassment, extortion and abuse.[19]

In *People v. Ale*,[20] the Court cautioned that -

"x x x we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the usually severe penalties for drug offenses."

Indeed, while the lone defense of the accused that he was the victim of a frame-up is easily fabricated, this claim assumes importance when faced with the rather shaky nature of the prosecution evidence. It is well to remember that the prosecution must rely, not on the weakness of the defense evidence, but rather on its own proof which must be strong enough to convince this Court that the prisoner in the dock deserves to be punished.[21] The constitutional presumption is that the accused is innocent even if his defense is weak as long as the prosecution is not strong enough to convict him.[22]

In fine, we find the evidence for the prosecution grossly insufficient to induce that moral certitude exacted by the fundamental law to prove the guilt of the accused. Verily, the freedom of the accused may only be forfeited if that requisite standard of proof beyond reasonable doubt is shown to lie by the prosecution.

WHEREFORE, the appealed judgment of conviction is REVERSED and SET ASIDE. Accused HAMID AMBIH Y KADIL is ACQUITTED on reasonable doubt.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quiason, JJ., concur.

[1] TSN, 24 October 1989, p. 12.

[2] Id., p. 14.

[3] Chemistry Report No. D-036-89 signed by Forensic Chemist Athena Eliza Anderson.

[4] TSN, 4 April 1990, pp. 2, 4, 7-10.

[5] TSN, 30 May 1990, p. 9.

[6] Id., pp. 20-22.

[7] Penned by Presiding Judge Jaime T. Hamoy.

[8] Decision, RTC of Zamboanga City, Br. 15.

[9] Id, pp. 2-3.

[10] TSN, 24 October 1989, p. 14.

[11] TSN, 30 January 1990, pp. 5, 8-9;

[12] TSN, 15 February 1990, pp. 10-11.

[13] See Note 8, p. 20.

[14] Id, p. 2.

[15] TSN, 24 October 1989, p. 12.

[16] TSN, 30 January 1990, p. 8.

[17] TSN, 8 January 1990, pp. 6-7.

[18] People v. Castiller, G. R. No. 87783, 6 August 1990, 188 SCRA 376; People v. Ramos, G. R. No. 88301, 28 October 1991, 203 SCRA 237.

[19] People v. Fernando, G.R. No. 66947, 24 October 1986, 145 SCRA 151; People v. Lati, G.R. No. 70393, 17 April 1990, 184 SCRA 336; People v. Yutuc, G.R. No. 82590, 26 July 1990, 188 SCRA 1.

[20] G. R. No. 70998, 14 October 1986, 145 SCRA 50, 58-59.

[21] Ang v. Sandiganbayan, G. R. No. 91886, 20 May 1991, 197 SCRA 262.

[22] People v. Aminnudin, G. R. No. 74869, 6 July 1988, 163 SCRA 402.

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