

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EVANGELINE JUMAO-AS Y TORREOCAMPO, ACCUSED-APPELLANT.**

G.R. No. 101334. February 14, 1994

Ponente: VITUG, J.

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VITUG, J.:

Before us on appeal is the decision, dated 04 June 1991, of the Regional Trial Court, 7th Judicial Region, Branch 20, Cebu City, which convicted herein appellant Evangeline Jumao-as y Torrecampo for violation of Section 4, Article II, of Republic Act No. 6425, as amended.

The story narrated by the prosecution: On 24 February 1990, at around six o'clock in the morning, while Pat. Rolando Cejuela was on his tour of duty as armorer and as roving guard at the Tower I of the Bagong Bahay Rehabilitation Center ("BBRC"), he saw herein appellant Evangeline Jumao-as approach the waste and rain water exit ("a hole through a wall") of the BBRC compound, located about 1-1/2 meters from the main gate fronting the road. From his post, about 15 feet away, Pat. Cejuela noticed that Evangeline momentarily stood by the water exit and then, very quickly, inserted a wrapped article. After asking Evangeline what it was that she had placed inside the hole, Pat. Cejuela hurriedly descended from the tower and immediately retrieved the wrapped article. Suspecting it to contain dried marijuana leaves, he went to confront Jumao-as. The latter denied the accusation. Pat. Cejuela invited Jumao-as to go with him inside the BBRC compound where she was interrogated by a certain Cpl. Capao.

On 26 February 1990, the retrieved article was submitted for examination to the PC Crime Laboratory. Forensic Analyst PC/Lt. Myrna Areola reported that the article was "positive for marijuana." An information for violation of Section 4, Article II, of R.A. 6425, as amended, was thereupon filed against appellant Jumao-as by Prosecutor Virginia Palanca-Santiago.

At the trial, the prosecution first presented PC/Lt. Myrna Areola. She testified that on 26 February 1990, at 2:40 p.m., she received a bundle of suspected dried marijuana leaves, with a letter-request delivered by Pat. E.G. Hermosa, at the PC Crime Laboratory wrapped in one plastic bag. After subjecting the item for chemical analysis, she found it to be positive for marijuana.

Pat. Rolando Cejuela, the next and only other witness to testify for the prosecution, declared that, on 24 February 1990, at six o'clock in the morning, he was an armorer and the roving guard on duty at Tower I of the BBRC compound. From his position, which was about 15 feet up, he saw accused-appellant, Evangeline Jumao-as, insert a wrapped article inside the nearby waste and rain water exit at the BBRC compound. He inquired what it was that had been inserted, but, instead of giving an answer, Evangeline hastily ran away towards a small store across the BBRC compound. He promptly got down and took the article from the water exit. Finding it to contain dried marijuana leaves, a kind of article he had previously seen about four times before, he confronted the accused at the store where she by then had hurriedly ran to. She denied, however, any knowledge of it.

The defense, on its part, presented the accused-appellant herself. Denying the accusation, she said that, at six

o'clock that morning, she was at the store in front of BBRC, waiting for the gates to open at 9:00 a.m. in order to visit her common-law husband, Carlito Estomago, who was an inmate. She averred that she just happened to be there that early after having come all the way from Carcar, Cebu. It was to her surprise, she said, when suddenly Pat. Cejuela approached her, asked her name, and brought her to an office at the BBRC compound.

To corroborate the accused-appellant's testimony, Alma Daria took the witness stand. The latter testified that on the date and time of the incident, she was in front of BBRC's compound waiting to likewise visit her common-law husband, a detainee since September 1988. She testified that she and the accused arrived almost at the same time at the store. While waiting for the BBRC gate to open, she and the accused chatted, until Pat. Cejuela approached the accused, asked her name, and invited her to join him inside the BBRC compound.

After trial, the court rendered judgment finding accused-appellant guilty of the crime charged, and sentencing her accordingly, thus:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, applying the principle of 'dura lex sed lex' - the law is hard but such is the law - the Court opines and so holds to convict the accused beyond reasonable doubt of the crime of Violation of Sec. 4, Art. II of R.A. No. 6425, as amended, and hereby sentences her of the penalty of life imprisonment and a fine of Thirty Thousand Pesos (P30,000.00). The marijuana in question is hereby ordered to be turned over to the proper agency of the government, for its proper disposition/disposal." (p. 17, Rollo.)

We reproduce hereunder the findings of fact of the trial court, viz:

"After the confluence of evidence of both the prosecution and the defense, the Court is inclined to find the following ineluctable conclusions:

"(1) That the incontrovertible fact is that Pat. Rolando Cejuela positively identified the accused on February 24, 1990 at the unholy time of 6:00 o'clock in the morning (allegedly on a visit to her common-law-husband, Carlito Estomago, a detainee in Bagong Buhay Rehabilitation Center (BBRC) to be the one who inserted the newspaper-wrapped article contained in two (2) plastic bags into a water exit coming from the toilet of BBRC which at that time were already opened with inmates comforting and washing themselves just within a shouting distance from the outside, near the store where the accused came from. (TSN Chaves, p. 11, Sept. 26, 1990);

"(2) That the newspaper-wrapped article contained in two (2) plastic bags weighed two hundred (200) grams of marijuana with leaves, buds and seeds and positive for marijuana, (Exh. 'C-1');

"(3) That he saw the face of the accused thoroughly while going towards the water exit, standing before the water exit and saw her front view and side view, when she placed the wrapped article inside the water exit, (TSN Chaves, pp. 6-7, Sept. 26, 1990);

"(4) That morning of February 24, 1990 was not the first time he saw accused, because previously he always see here in her constant visits of her detained common-law-husband, Carlito Estomago, and on that occasion (when she placed/smuggled the marijuana in question to the water exit), her common-law-husband was still in jail. (TSN, Chaves, p. 7, Sept. 26, 1990);

"(5) That he demonstrated to the Court as requested by the Prosecutor the position of the accused when she was seen by him at the time when the accused inserted the question wrapped article by bending his body to the left and stretching his arm forward almost parallel to the ground and inserted his right hand and looking up at the tower watching for somebody. (TSN Chaves, p. 12, Sept. 26, 1990);

"(6) That the accused was not able to see him because at the time when she inserted the wrapped article into the water exit and looked upward (15 ft. away) he was already in hiding. (TSN Chaves, p. 12, Sept. 26, 1990);

“(7) That when he shouted at her after she placed the wrapped article of marijuana into the water exit the accused ran towards the store. That it did not take a minute to pursue her after taking first the smuggled marijuana and then confronted her, which she denied to have done so. That he asked her why should she deny when he personally saw her at the water exit and brought her to the BBRC for investigation by Pat. Capao and the Jail Superintendent, Capt. Miaga. (TSN Chaves, pp. 5-7, Sept. 26, 1990);

“(8) That no motive whatsoever could be established that the prosecution maliciously incriminated the accused as the accused herself even admitted that before the incident there was no misunderstanding between her and Pat. Cejuela and that was the first time (February 24, 1990) she saw Pat. Cejuela and that there could be no reason at all for him to file this complaint. This is a declaration of the accused against her self-interest, which would entitle the testimony of the prosecution to be worthy of full faith and credit. (People vs. Putian, L-33049, 29 Nov. 1976, 74 SCRA, 133, 140);

“(9) That the accused and her witness committed a willful and deliberate falsehood in their testimony that although for almost three (3) years they have been visiting their confined common-law-husbands at the BBRC, they do not still know the existence of the water exits near/beside the main gate plus the added fact that the same is just situated in front of the store where they usually stayed prior to their getting inside the jail. This is evidently a suppression of a matter which they ought to know. And evidence to be believed must be credible in itself such as the common experience and observation of mankind. (People vs. Luna L--15480, January 28, 1961);

“(10) That the accused and her witness have both common-law-husbands in the BBRC during the occasion when the incident occurred and hailed from sitios Bato and Ponce Compound, behind Carbon Market, Cebu City, while not denigrating the accident of their births or residences, it is lamentable, however, to state that Ponce Compound and Bato (behind Carbon Market) are the breeding places or snake pits of bad and lawless elements of our present society in Cebu City and that can we not justifiably say that 'birds of the same feather flock together?'

“(11) That the testimony of the witness for the accused, Alma Daria, are full of inconsistencies like for example on page 3, TSN, Gato, April 11, 1991, when asked by the Court how long has she been residing at Ponce Compound she answered: 'I was born there and ever since I have not left Ponce Compound.' She is now 21 years old. But later on, when asked by the Court when was the last time she happened to know that she will be a witness to this case because she conversed with the accused last March 1990 and that the date in which she testified was April 11, 1991, she answered: 'There was none because I just recently continued to visit my husband, considering that I was in Camotes, visiting my child.' (TSN Gato, p. 6, April 11, 1991). 'The rule that when a witness makes two statements on a material fact which are essentially inconsistent, neither of them can be accepted, and both shall be excluded is applicable in a case where material self-contradictions of witness on material facts occur.' (People vs. Oleas, 45 O. Go 2563);

“(12) That the accused declared that for three (3) years when she had been visiting her common-law-husband, usually she visits him at the visiting hours, from 9:00 o'clock A.M. to 3:00 o'clock P.M. But, however, in answer to the question of the Court it was only for the first time on February 24, 1990 that she came to BBRC at 6:00 o'clock A.M. because she did not like to be among those visitors to be lined in BBRC when it opens at 9:00 o'clock A.M., so that she came exactly at 6:00 o'clock A.M. (TSN Chaves, p. 5, Nov. 6, 1990). This testimony is incredible and not worthy of credence because she came purposely at 6:00 A.M. on that day in order to smuggle in marijuana leaves into the BBRC via the water exit. Our Supreme Court has ruled: 'Trial Judge should be on guard against placing too great faith in the witnesses whose appearance and bearing indicate truthfulness. Circumstances may show that a witness apparently truthful are really false. Though truthful or untruthful manner is an aid, and often a valuable aid in judging of the credibility of a witness, it certainly no infallible test of it; falsehood is often able to cloth itself in the garb of truth.' (Vice-Chancellor Mowatt of Ontario, Cited by II Moore on Facts, 1147)." (Pp. 16--17, Rollo.)

In this appeal, the accused-appellant interposes, that -

"1. The trial court gravely erred in convicting accused-appellant for the offense of violation of Section 4, Article II, R.A. 6425, as amended, despite the prosecution's failure to prove its essential elements with the required quantum of proof.

"2. The trial court gravely erred in giving weight and credence to the otherwise incredible and doubtful testimony of prosecution witness Pat. Rolando Cejuela and in disregarding those of the defense.

"3. The trial court gravely erred in meting a verdict of conviction against accused-appellant despite the prosecution's failure to prove her guilt beyond reasonable doubt."

The above assignment of errors can boil down to whether or not the essential elements of the crime charged have sufficiently been established.

Appellant is charged with having violated Section 4, Article II, of Republic Act No. 6425, as amended, which reads:

"SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from Twenty Thousand to Thirty Thousand Pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed. (As amended by P.D No. 1675, February 17, 1980.)

The information filed by the prosecution against the appellant, reading -

"That on or about the 24th day of February, 1990, at about 6:00 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court the said accused, with deliberate intent, did then and there deliver, without authority of law, 200 grams Marijuana Dried Leaves, buds and seeds, prohibited drugs, to a detainee at the BBRC, in Violation of Sec. 4, Art. II of Republic Act No. 6425, as amended" (p. 4, Rollo) -

could adequately cover the elements of the offense charged and, if duly established by the evidence, would warrant a conviction.

The findings of fact by a trial court, arrived at only after a hearing and evaluation of what can usually be expected to be conflicting testimonies of witnesses, certainly deserve respect by an appellate court. We have explained quite so often our own reasons for so doing. It is enough that we reiterate one typical pronouncement of the Court.

"Factual findings of a trial court are accorded great weight and respect, it being in the best position to weigh conflicting declarations of witnesses, observing their demeanor and conduct while giving evidence." (People vs. Moreno, Jr., 213 SCRA 450.)

The reliance by the trial court, in this instance, on the bare testimony of Pat. Cejuela is no reason for deviating from the rule. It has never been uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness. Here, in addition, there has been no ill-motive shown on the part of Pat. Cejuela that would have prompted him to unjustly attribute to the appellant an offense of so grave a crime as that with which she has been charged.

From the factual findings of the Court, it is unquestionable that, except for one, the requisites for conviction have sufficiently been proved. It is the last element, that of delivery, which appears to be wanting.

Section 2(f), Article I of Republic Act No. 6425, as amended, defines the word, "deliver," to mean "x x x a

person's act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration."

In sum, all that Pat. Cejuela declared was that the accused-appellant had approached the waste and rain water exit at the BBRC compound, placed something thereat and then hurriedly left. Pat. Cejuela only conjectured that the said drugs must have been intended to be passed on to appellant's common-law husband, Carlito Estomago, then a detainee at BBRC. Except for this speculation, there was utterly nothing else introduced on this score.

In *People vs. Padua*, 215 SCRA 266, 267, we have said: "Mere speculations and probabilities cannot substitute for the proof required by law to establish the guilt of an accused beyond reasonable doubt." It should so be, for as the Court there did further observe, "the conviction for a criminal offense must be based on clear and positive evidence." The offense with which the accused-appellant is charged carries no less than a capital punishment. The severity of this penalty makes it even more compelling that we closely adhere to, than allow a departure from, the aforequoted pronouncement by the Court.

A case with a parallel quantitative evidence to the one at bench is that of *People vs. Aranda y Doria* (G.R. No. 100985, 17 September 1993) where this Court, speaking through Mr. Justice Camilo D. Quiason, has said:

"The prosecution has failed to prove that appellant x x x 'delivered' the dangerous drug to Villanueva. It has also failed to prove that appellant 'knew' that what she delivered was a dangerous drug. *Scienter* can not be presumed in this case because of the failure of the prosecution to prove that the prescribed drug was x x x 'delivered' to Villanueva by appellant. If the prosecution was able to prove that appellant x x x 'delivered' the drug to Villanueva, it can then be presumed that appellant 'knew' that the same drug was dangerous.

"The evidence against appellant is not enough to engender moral certainty of her guilt. This moral certainty is that which convinces and satisfies the conscience of those who are to act upon it (*People vs. Salguero*, 198 SCRA 357 [1991])."

WHEREFORE, the judgment of conviction appealed from is REVERSED, and the accused-appellant is ACQUITTED of the charge.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

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