

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISALITO TABARNO Y AGENTE AND LUIS GOCOTANO, ACCUSED-APPELLANTS.

G.R. No. 101338. March 20, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In a decision dated March 1, 1991, rendered by the Regional Trial Court of Cebu, Branch 21, Crisalito Tabarno y Agente and Luis Gocotano were found guilty of drug trafficking, i.e., selling marijuana cigarettes, in violation of Section 4, Article II, in relation to Article IV of Republic Act 6425, as amended (the Dangerous Drugs Act of 1972). They were each sentenced to suffer the penalty of life imprisonment and pay a fine of P25,000.00 and the costs. [1]

The information dated January 10, 1990 against them reads as follows:

That on or about the 3rd day of January 1990 about 7:00 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving, confederating and mutually helping with (sic) each other, with deliberate intent and without authority of law, did then and there sell and/or deliver to a poseur buyer six (6) sticks of marijuana cigarettes, or Indian hemp, a prohibited drug for a consideration of P10.00, in violation of Sec. 4, Art. II in relation to Art. IV of RA 6425. [2]

Upon arraignment on February 27, 1990, accused Crisalito Tabarno entered a plea of not guilty. The other accused, Luis Gocotano, was arrested and arraigned five months later.

The evidence on record shows that in the evening of January 3, 1990, a three-man team from the Narcotics Command's (NARCOM) 7th Narcotics Unit was dispatched to Barangay Nivel in Busay, Cebu City, to conduct a buy-bust operation on account of reports of drug-trafficking in the area. The team, composed of Sgts. Ricardo Inding, Hermes Recla and Ibrahim Muhammadshaid, arrived in the area of operations at around 7:00 o'clock in the evening of the same day. Sgt. Inding positioned himself in a dark place beside the barangay chapel, about ten (10) meters away from the spot where Sgts. Recla and Muhammadshaid were hiding.

Moments later, somebody (who was later identified as the accused Crisalito Tabarno) approached Inding and asked him what he was doing. Inding told Tabarno that he wanted to buy marijuana sticks to use at a disco party. Tabarno told him that his selling price for marijuana was P5.00 for three sticks. They agreed that Tabarno would deliver to Inding six (6) marijuana sticks worth P10.00. Tabarno told Inding to wait a while because he would look for a friend who had a supply of the drug. Moments later, Tabarno came back with another person, later identified as the appellant, Luis Gocotano. Holding the sticks of marijuana, Tabarno demanded payment from Inding, who handed him a ten-peso bill.

After making certain that the sticks contained real marijuana, Inding pulled a handkerchief from his pocket (which was the pre-arranged signal for Sgts. Recla and Muhammadshaid to close in on the suspects). Sgts. Recla and Muhammadshaid rushed in and held Tabarno by the hand. Gocotano, who had seen the two operatives approaching, quickly fled with the "marked" money. [3]

Tabarno was brought to the NARCOM headquarters and the marijuana sticks were turned over to Criminal Investigation Command (CIC) investigator, Jesus Ceballos. Gocotano was arrested five (5) months later, on May 26, 1990. He pleaded not guilty at his arraignment.

The evidence for the prosecution consisted of the testimonies of Sgt. Ricardo Inding, Lt. Myrna Areola, Sgt. Hermes Recla, all members of the 7th Narcotics Command team, who unanimously testified on how the buy-bust operation in Nivel was carried out. The defense presented Juanito Constantino and the two accused as witnesses in their own behalf. Gocotano's defense was alibi. He claimed that during the evening in question, he was in Tangke, Talisay, to see one Bob Constantino because he wanted to be an extra driver of Bob's tricycle, but he was instead brought to the barangay hall by a tanod on suspicion of being a thief. On the other hand, Tabarno claimed that the lawmen who arrested him only wanted to frame him by asking him to point to Gocotano as the seller of prohibited drugs in the Nivel neighborhood.

As previously stated, the lower court rendered judgment on March 1, 1990 finding both men guilty, as conspirators, of violating Section 4, Article II, in relation to Article IV of R.A. 6425, as amended, sentencing each of them to suffer the penalty of life imprisonment and to pay a fine of P25,000.00 and to jointly and severally pay the costs. The confiscated marijuana cigarette sticks were ordered burned. [4]

Both defendants appealed but only Gocotano filed an appellant's brief. Tabarno's appeal was dismissed on September 16, 1992 for failure to file his appellant's brief within the extended period which expired on March 9, 1992.

Gocotano ascribed the following errors to the trial court, namely:

1. That he was denied due process because the trial judge was biased and prejudiced; and
2. That his guilt was not proven beyond reasonable doubt. [5]

Appellant's allegation that the trial judge was biased and prejudiced against him is not well taken. It is a judge's prerogative and duty to ask clarificatory questions to ferret the truth when he believes the witness is lying. [6]

As correctly observed by the Solicitor General in his brief for the People, "there was no showing that the judge had an interest, personal or otherwise, in the prosecution of the case at bar. He is therefore presumed to have acted regularly and in the manner to preserve the ideal of the 'the cold neutrality of an impartial judge' implicit in the guarantee of due process (Mateo, Jr. v. Villaluz, 50 SCRA 18)." [7]

That the trial judge believed the prosecution's evidence more than the defense, does not indicate that he was biased. He simply found the prosecution witnesses to be more credible than the accused. Indeed, the theory of the accused that they were framed, is not credible. Why would the policemen frame them? As pointed out by the trial judge, the accused are poor and unemployed. Gocotano is only a tricycle driver. Tabarno is a laborer in a hollow blocks factory. What could the police officers hope to extort from them? We quote the observations of the trial court:

The motives of prosecution witnesses in testifying the way they did is hard to question. They are officers of the law entitled to the presumption of regularity in the performance of their official duties [Sec. 5(m), Rule 131, Rules of Court; People vs. De Jesus, 145 SCRA 521]. They could have had no other motive to testify the way they did except to enforce the laws, particularly the Dangerous Drugs Act, as is their bounden duty. They could not have been influenced by profit or improved reputation by testifying against such simple, unemployed poor people as Tabarno and Gocotano. Either or both of the accused didn't have the capacity to produce effects on the lawmen by tangible or intangible or indirect means. They were simply economically or morally incapable of satisfying even

the most crass of rascals. [8]

The NARCOM operatives, Sgts. Ricardo Inding, Hermes Recla and Ibrahim Muhammadshaid, testified that when Tabarno saw Inding loitering beside the barangay chapel, Tabarno asked him what he was doing there. When he confided that he wanted to buy marijuana cigarettes, Tabarno said he could get them for him at 3 sticks for P5.00 and advised Inding to wait a while as he would look for someone who had a supply of marijuana cigarettes. When Tabarno returned a little later, he was accompanied by Gocotano. Tabarno handed over 6 sticks of marijuana cigarettes to Inding, who gave him a P10-bill for the purchase. Tabarno handed the money to Gocotano who apparently was the supplier of the marijuana cigarettes. When Recla and Muhammadshaid closed in, Gocotano fled before the officers could seize him. He was not arrested until five (5) months later.

Moreover, Tabarno himself testified that the reason why the NARCOM officers arrested him was because they wanted him to testify that he obtained sticks of marijuana cigarettes from Gocotano, which he refused to do.

In light of foregoing facts, Gocotano's alibi that he was in barangay Tangke, Talisay, Cebu, during the NARCOM operation in Nivel in the evening of January 3, 1990, cannot prevail against his positive identification by the NARCOM agents. [9] As the trial court observed, "it was not physically impossible for him to escape to Tangke, Talisay from Nivel that very evening and right after he eluded the lawmen's grasp at the crime scene. Nivel-to-Tangke-and-back trips by him were routine to Gocotano [appellant]; he frequently visited his mother in Nivel." [10]

In view of the recent enactment (on 13 December 1993) of Republic Act ("R.A.") No. 7659, [11] it would be well to delve at least briefly into the proper imposable penalty. The Dangerous Drugs Act of 1972, as now amended by Section 17 of Republic Act No. 7659, [12] provides:

Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or instrument of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;
2. 40 grams or more of morphine;
3. 200 grams or more of shabu or methylamphetamine hydrochloride;
4. 40 grams or more of heroin;
5. 750 grams or more of indian hemp or marijuana;
6. 50 grams or more of marijuana resin or marijuana resin oil;
7. 40 grams or more of cocaine or cocaine hydrochloride; or;
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultation/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity.

In *People v. Martin Simon* [13] this Court ruled (a) that the amendatory law, being more lenient and favorable to

the accused than the original provisions of the Dangerous Drugs Act, should be accorded retroactive application, [14] and (b) that pertinent provisions of the Revised Penal Code, in consonance with Article 10 thereof, as well as the Indeterminate Sentence Law, may now be considered suppletory to the Dangerous Drugs Act.

With the foregoing developments, and it appearing that the appellant sold only six (6) sticks of marijuana cigarettes, the second paragraph of Section 20 of R.A. No. 6425, as further amended by Section 17 of R.A. No. 7659, is applicable and considering such quantity, the proper imposable penalty should be prision correccional. Applying the Indeterminate Sentence Law, the appellant may then be sentenced to suffer an indeterminate penalty ranging from six (6) months of arresto mayor as minimum to two (2) years and four (4) months of prision correccional as maximum.

WHEREFORE, the judgment appealed from is hereby AFFIRMED subject to the modification of the penalty. Accused-appellant Luis Gocotano is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) MONTHS of arresto mayor as minimum to TWO (2) YEARS and FOUR (4) MONTHS of prision correccional as maximum.

It appearing that accused-appellant Luis Gocotano has been detained since May 26, 1990, already beyond the period of his maximum sentence, his immediate release from custody is ordered unless he is lawfully held for some other cause.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Decision, p. 9; Original Records, p. 108.

[2] Rollo , p. 21.

[3] TSN, June 26, 1990, p. 6.

[4] See Note 1, *ibid*.

[5] Appellant's Brief, p. 1; Rollo , p. 52.

[6] *Ventura v. Yatco*, 105 Phil. 287 [1959]; *People v. Catindihan*, 97 SCRA 196 [1980].

[7] Appellee's Brief, pp. 6-7.

[8] Rollo , p. 91.

[9] *Siton v. Court of Appeals*, 204 SCRA 473 [1991].

[10] Rollo , p. 28.

[11] Entitled "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes."

[12] Official Gazette, 17 January 1994, 321.

[13] G.R. No. 93028, 29 July 1994, 224 SCRA 555.

[14] Article 22, Revised Penal Code; *Escalante v. Santos*, 56 Phil. 483[1932]; *People v. Alcaraz*, 56 Phil.

520[1932].

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