

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ERIC F. TIMTIMAN, ACCUSED.

G.R. No. 101663. November 04, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Morong, Rizal, Branch 79, the dispositive portion of which reads:

"WHEREFORE, this court finds the accused Eric Timtiman y Fulgado guilty beyond reasonable doubt of the crime of Violation of Section 4, Article II, Republic Act 6425, as amended, and hereby sentences him to life imprisonment, and to pay a fine of P20,000.00, plus costs." (Decision, p. 7; Rollo, p. 17)

The information filed against the accused alleges:

"That on or about the 5th day of September 1990, in the Municipality of Tanay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another two (2) tea bags of dried marijuana leaves with a total weight of 2.53 grams and three (3) sticks of marijuana cigarette, which are prohibited drugs, in violation of the above-cited law." (Records, p. 1)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is as follows:

"P/LT. JULITA T. DE VILLA, Forensic Chemist, PNP, Crime Laboratory Service, Camp Crame, Quezon City, in brief testified as follows: That per request for qualitative examination by Major Edgardo G. Manuel, PC, Commanding Officer of the 222nd Philippine Constabulary Baras, Rizal, she performed the microscopic, chemical and thin layer chromatography of the two (2) tea bags and three (3) sticks of marijuana cigarettes, submitted to their office, (Exhibit "A"). That as a result of the examination, she issued Certificate of Laboratory Result, Exhibit "B" showing to wit:

'Exhibit "A" - two (2) small transparent plastic bags each containing dried suspected marijuana leaves having a total weight of 2.53 grams;

Exhibit "B" - three (3) sticks of suspected Marijuana cigarettes.

This is to certify further that the laboratory examination of the above-mentioned specimens gave the following results;

Exhibit "A" and "B" - Positive to the test for marijuana, a prohibited drug. (Exhibit "B-2")

Further she issued Chemistry Report No. D-972-90, Exhibit "C", wherein it appears that the specimens submitted were:

Exhibit "A" - two (2) small transparent plastic bags each containing dried suspected marijuana leaves having a

total weight of 2.53 grams;

Exhibit "B" - Three (3) sticks of suspected marijuana cigarettes. (Exhibit "C")

Findings were:

'Qualitative examination conducted on the above-mentioned specimen gave positive result to the test for marijuana, a prohibited drug.'

SGT. NORBERTO MACARAEG of the PNP Station Baras, Rizal, in brief testified as follows: That on September 5, 1990 he was assigned with the 222nd PC Co. situated at Manila East Road, Baras, Rizal. That on said date their office received information that somebody, one Eric was selling marijuana in Tanay, Rizal. That their office was also furnished description of said Eric as one who is tall, muscular and with well built body. That at about 12:30 in the afternoon together with CIC Nonato Esquilon (should be Esquillon) on said date, they conducted a surveillance at Midway Restaurant situated at Sitio Buro, Barangay Tandang Kutyo, Tanay, Rizal. That acting as poseur-buyer and with the furnished description, he approached the accused Eric Timtiman and convinced him to sell marijuana to him. That the accused Eric Timtiman gave him the two plastic cellophane containing marijuana leaves and three (3) sticks of marijuana cigarettes and he in turn paid him the amount of three P10.00 peso bills. That upon receiving the aforesaid two (2) plastic bags of marijuana leaves and three (3) sticks of marijuana cigarettes, (Exhibit "E", "E-1" and "E-2"), he announced the arrest and his companion CIC Nonato Esquilon who was about 5 meters away as back up, handcuffed Eric Timtiman, and they brought him to the Headquarter together with the two (2) cellophane of marijuana and three (3) sticks of marijuana cigarettes, (Exhibit "E", "E-1", and "E-2"). That they turned over the accused to investigator Sgt. Arisgado.

"CIC NONATO ESQUILON of the 222nd PC Co. Baras, Rizal, in brief testified as follows: That on September 5, 1990 at about 1:00 o'clock in the afternoon together with Sgt. Norberto Macaraeg, they were in the Midway Restaurant at Tanay, Rizal. That per information of Sgt. Quintin Arisgado, Chief of Interrogation and Investigation Division of the 222nd PC Co., they stayed at the Midway Restaurant for transaction or sale of dried marijuana. That they started the buy-bust operation wherein Sgt. Norberto Macaraeg acted as poseur buyer, and him as back up. That he was about 10 meters away from Sgt. Macaraeg outside the restaurant observing what will happen, and if anything happened, that is the time he will enter the restaurant. That there was a commotion, so he entered the restaurant and he saw Norberto Macaraeg coming out from the comfort room and told him, 'baka iyon, kasama iyon'. That he apprehended the person pointed to by Sgt. Macaraeg, and who turned out to be the accused Eric Timtiman. That he and Sgt. Macaraeg brought the accused to the 222nd PC Co, Baras, Rizal. That during the buy-bust operation, he did not see the accused holding marijuana tea bags, and that except for instructions of Sgt. Macaraeg to apprehend the accused, they brought the accused to 222nd PC Co., Baras, Rizal in order to determine whether he is really involved in that drug trafficking." (Decision, pp. 2-3; Rollo, pp. 12-13)

On the other hand, the version of the defense is summarized by the trial court as follows:

"ERIC TIMTIMAN Y FULGADO in brief testified as follows: That he is a student of Tanay National High School in Tanay, Rizal, free from tuition fees. That on September 5, 1990 at about 1:00 o'clock in the afternoon, he was in the Midway Restaurant, Sitio Buro, Barangay Tandang Kutyo, Tanay, Rizal. That he was in the restaurant to request for the advice of his uncle of his plan to elope with one Angelita San Juan. That he arrived at the Midway Restaurant together with his uncle Renato Concepcion, Angelita San Juan was already there waiting for them. That when they arrived at the restaurant at about 11:30 in the morning Angelita San Juan was sitting facing the door at a table near the window, which was about 2 arms length away. That there were about four tables inside the Midway Restaurant, and two of the tables were occupied. That they sat at the table and talked with Angelita San Juan. That at about 1:00 o'clock of the same day two persons made a mistake about (pinagkamalan po ako) him and thought that he was with the two persons which they were

apprehending. That at that time, the two other tables inside the restaurant were occupied, each by 3 and two persons who were drinking soft drinks and beers, respectively. That with the two persons who made a mistake about him, one came from the outside of the restaurant while the other at a table near the door. That one of the said persons held his hand and arrested him, but did not say anything. That after his apprehension, he was loaded by the two in a tricycle and brought him to the 222nd PC INP Co., Baras, Rizal. That prior to this date, he has never been charged of any crime as attested to in his Barangay clearance, both dated April 1, 1990. That he came to know later that the two persons who apprehended him were Norberto Macaraeg and Nonato Esquilon.

"RENATO CONCEPCION in brief testified as follows: That on September 5, 1990 between the hours of 11:00 and 1:00 o'clock in the afternoon he was with his nephew Eric Timtiman in the Midway Beer House and Restaurant in Tanay, Rizal. That he was with Eric Timtiman at the Restaurant because the latter told him that he will elope with the girl. That his purpose in going to the restaurant was to help the accused talk to the girl so that the two could elope. That upon arriving at the restaurant while waiting for the food to be served, he talked with the girl and asked her if she was really decided to elope with his nephew, and she answered yes. That at the time they were seated on the table, Eric Timtiman was seated on his left, and the woman, Angelita San Juan on his right and at the time he was facing the window. That their table is about three (3) arms length away from the door of the restaurant. That upon arriving at the restaurant, two of the tables were occupied, one by two (2) persons drinking beers and the other by three (3) persons drinking soft drinks. That at the other table occupied by two persons who were drinking beers, he noticed a small clutch bag on the table. That at about 1:00 o'clock in the afternoon of the same day while the three of them were talking, he noticed the movement of two persons, then suddenly one of the two men entered the comfort room, and thereafter, he heard a commotion inside the same room. That he was surprised and looked toward the direction of the comfort room, then the other person, and companion, suddenly went out of the restaurant. At that juncture, another man entered the restaurant coming from the highway and said, 'Hayun, baka iyon, hulihin mo,' pointing to Eric Timtiman. That this order was directed to the person who has just entered the restaurant, and the order came from the person who just came out of the comfort room when he did not find anyone at the table vacated by the two persons drinking beer. That he was taken aback when the person got inside and ran directly to Eric and held his hands. That when he complained regarding the arrest of Eric, he was told to follow them to the 222nd PC Co., Baras, Rizal. That he was angry because his nephew was arrested without a warrant of arrest and he was not aware of any wrong doing committed by his nephew. That he went to the mother of the accused and together they went to the 222nd PC Co., Baras, Rizal.

"ANGELITA SAN JUAN in brief testified as follows: That she is a Cabaret dancer of the Honey Bees in Tanay, Rizal. She came to know the accused Eric Timtiman. That the accused first courted her and later they became sweethearts. That Eric Timtiman brought her from the Honey Bees to the Midway Restaurant and thereafter, left to fetch his uncle. That there were other tables occupied when they arrived, one of the tables was located near the door and the other inside. That the table occupied by her was three arms length from the door of the restaurant. Of the two other tables, one was occupied by three persons, and the other by two persons. That at about 12:00 noon, Eric Timtiman returned to the restaurant with his uncle Renato Concepcion. That while they were eating their lunch, they were discussing the plan of elopement. That at about 1:00 o'clock in the afternoon of that same day, a man entered the restaurant and approached the two men at one of the tables and they talked. That the man who approached the two seated at the table pulled out something from his pocket, but she did not see what was it. One of the men left and went to the comfort room, and the other man left at the table got impatient and followed the former inside the comfort room. That another man arrived and the man left at the table went out of the restaurant. That one of the persons inside the comfort room went out and talked to the newly arrived man and there was a commotion and that the man shouted, 'Hayun, baka iyon, hulihin mo.' That the statement was said by the one who came from the comfort room and directed to the newly arrived man. That the two persons approached them and handcuffed Eric, and the latter's uncle asked what wrong has his nephew done. The two persons said that they will talk about the incident at their camp in Baras. That she was left behind at the restaurant crying, and later on she rode in a tricycle and went to the

mother of the accused to inform her of what happened." (Decision, pp. 3-5; Rollo, pp. 13-15)

The appellant raises the following assignment of errors, to wit:

I

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED ON THE BASIS MERELY OF THE COURT'S ASSUMPTION THAT THE LATTER WAS THE ONLY PERSON PRESENT AT THE RESTAURANT FITTING THE DESCRIPTION 'TALL, MUSCULAR AND WITH WELL-BUILT PHYSIQUE.

II

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE CLEAR UNCERTAINTY AND VAGUENESS OF THE TESTIMONIES OF THE PROSECUTION WITNESSES AND THE TOTAL LACK OF PROOF BEYOND REASONABLE DOUBT.

III

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE ILLEGALITY OF HIS ARREST.

IV

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED DESPITE THE GRAVE OPENLY ADMITTED DOUBTS SURROUNDING HIS ARREST.

V

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PRESENT ANY CORROBORATING EVIDENCE IN THE CASE.
(Appellant's Brief, pp. 8-9)

From a careful reading of the records, we find that the prosecution evidence failed to prove the guilt of the appellant beyond reasonable doubt. The evidence presented was insufficient to overcome the presumption of innocence in favor of the accused. The appellant should, therefore, be acquitted.

This Court is well aware of the established rule that findings of fact of the trial court are given great weight and a high degree of respect by the appellate court considering that the former is in a better position to pass upon the matter of credibility of witnesses (See *People v. Naguita*, G.R. No. 76002, April 22, 1992; *People v. Castillo*, G.R. No. 93408, April 10, 1992). However, we will not hesitate to take exception to this rule in order to keep faith with the immutable principle that every criminal conviction must be supported by proof beyond reasonable doubt. (*People v. Viray*, 202 SCRA 320, 327 [1991]) Among the exceptions to the rule are: (a) the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (b) the inference made is manifestly mistaken, absurd or impossible; (c) there is grave abuse of discretion; (d) the judgment is based on misapprehension of facts; and (e) the court in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and appellee (*People v. Giron*, 192 SCRA 141, 148-149 [1990]) citing *People v. Ale*, 145 SCRA 58 [1986]). Another exception is where the lower court overlooked certain facts of substance and value that if considered would affect the result of the case. (*People v. Nuñez*, G.R. No. 79316, April 10, 1992; *People v. Salcedo*, 195 SCRA 345, 348-349 [1991]) This case falls under the exception.

It is not disputed that there was indeed, a violation of Section 4, Article II of Republic Act No. 6425 (Dangerous Drugs Act, as amended) but can we state beyond reasonable doubt that it was the appellant who committed such violation?

The requirement of proof beyond reasonable doubt requires moral certainty of guilt, "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it." (People v. Viray, supra, p. 332) This requirement was not met in the instant case.

To support the judgment of conviction, the trial court mainly relied upon the testimony of the poseur-buyer, Sgt. Norberto Macaraeg. The testimony of Sgt. Macaraeg, standing alone, would have been sufficient to convict the appellant. Taken by itself, it would have been believable as there were no inconsistencies in his testimony. Reasonable doubt, however, was introduced as Sgt. Macaraeg's testimony had to be taken together with the testimony of his companion during the buy-bust operation, the other prosecution witness, CIC Nonato Esquillon.

The testimonies of the two policemen, both prosecution witnesses are not in accord with each other. There is a variance as to what happened upon the arrest of Macaraeg.

According to Macaraeg, upon receiving the marijuana, he announced the arrest of the appellant (TSN, April 23, 1991, p. 8). On the other hand, Esquillon testified that upon his entrance in the restaurant, he saw Macaraeg coming out from the comfort room telling him "baka iyon, kasama iyon" pointing to the appellant. (TSN, May 15, 1991, p. 4) If Macaraeg's testimony is indeed true, then how is it that Esquillon saw him come out of the comfort room pointing to the appellant when he said that he was at the appellant's table announcing his arrest. (TSN, April 23, 1991, pp. 6-8)

The testimony of Esquillon is in fact more in consonance with the testimonies of the defense witnesses. Renato Concepcion, one of the defense witnesses, testified that a person who had just gotten out from the comfort room told another person who had just entered the restaurant "Hayun, baka iyon, hulihin mo" pointing to the appellant. (TSN, May 21, 1991, p. 5) Angelita San Juan testified to the same circumstances. (TSN, May 21, 1991, pp. 11-13)]

As gathered from a reading of the transcript of stenographic notes, Macaraeg's version is as follows: that he entered the restaurant and approached the appellant asking if he could buy marijuana from him. That the appellant acceded to his request and upon the exchange of the marijuana and money, he announced the arrest of the appellant. That his companion, Esquillon, then approached the appellant and handcuffed him. Conversely, the version of the defense is as follows: That a person entered the restaurant and approached two men who were seated at another table. That one of the men stood up and went inside the comfort room. That the person who entered the restaurant got impatient and followed the man inside the comfort room. That the other man left at the table went out of the restaurant. That afterwards, the man who followed to the comfort room went out and told a person who just entered the restaurant "Hayan, baka iyon, hulihin mo." That the man who just entered the restaurant arrested the appellant. It can be inferred from the testimony of Esquillon taken in conjunction with the version of the defense that the person who came out of the comfort room was Macaraeg and the person directed to arrest the appellant was Esquillon.

Two versions are presented before us. The version of Macaraeg which was the basis of the judgment of conviction of the lower court and the version of the defense which is even supported by the testimony of one of the prosecution witnesses, one of the policemen involved in the buy-bust operation. It has been held in People v. Remorosa, 200 SCRA 350, 360 [1991] that:

X X X X X X X X

"If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction." (Cited in *People v. Ale*, No. 70998, October 14, 1988, 145 SCRA 64)

x x x x x x x x

Aside from the abovementioned, the absence of the three (3) ten peso bills handed over by Macaraeg to the appellant as a material item of evidence must be construed in favor of the appellant. There was a categorical declaration of the transfer of the three (3) ten peso bills (TSN, April 23, 1991, p. 3 and 5) that were supposedly used to buy the marijuana from the appellant. The money therefore is a material item of evidence to prove, not that a sale or delivery had taken place, but that there was indeed a "transactional relationship" between Macaraeg and the appellant who was immediately apprehended after the "transaction." (*People v. Mendoza*, 203 SCRA 148, 157 [1991])

The Solicitor General, in the appellee's brief, cited *People v. Tejada*, 170 SCRA 497 [1989] to support its stand on the non-presentation of the three (3) ten-peso bills. In said case, we have ruled that "so long as the marijuana actually given by the appellant was presented before the lower court, the absence of the marked money does not create a hiatus in the prosecution evidence." In the aforecited *People v. Mendoza*, supra at p. 158, we have stated that:

x x x x x x x x

"x x x [t]here is one material factual difference between *Tejada* and the case at bar. In *Tejada*, the absence of evidence of the marked money arose from the fact that the other law officers arrived before the appellant could get the money. (Ibid, p. 504) Therefore, such money never came into play and presenting the marked bills would have served no evidentiary value. In the present case, the appellant was alleged to have received the money and was immediately apprehended thereafter. In fact, Pat. Manaois is supposed to have retrieved the P100 bill from appellant."

x x x x x x x x

The factual circumstances of the instant case are more similar to that of the case of *Mendoza* rather than that of *Tejada*.

This case may be taken by law enforcement officers as a setback in the government's drive against traffic in prohibited drugs, for after all, law officers are presumed to have performed their duties regularly. Yet, this presumption cannot, by itself, prevail over the constitutional presumption of innocence of the accused. (*People v. Mendoza*, supra, p. 159 citing *People v. Canido*, 167 SCRA 462 [1988])

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. The appellant is ACQUITTED on grounds of reasonable doubt and ordered immediately RELEASED unless he is detained on some other charge.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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