

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO BALIDIATA Y ASONG, ACCUSED-APPELLANT.

G.R. No. 101831. May 21, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The accused-appellant seeks the reversal of the judgment in Criminal Case No. 310-V-91 of the Regional Trial Court of Valenzuela, Metro Manila, finding him guilty beyond reasonable doubt of the crime of violation of Section 4, Article II, Republic Act No. 6425, other-wise known as the Dangerous Drugs Law of 1972, as amend-ed, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of Twenty Thousand (P20,000.00) Pesos without subsidiary imprisonment in case of insolvency, and to pay the costs.

In an information dated May 31, 1991, the appel-lant was charged with having wilfully, unlawfully and feloniously sold and delivered to the prosecution witnesses thirteen (13) handrolled marijuana cigarettes, a prohibited drug, worth P50.00.

The facts established by the evidence of the prosecution are summarized in the Solicitor General's brief as follows:

"Sometime in May 29, 1991, the Chief of the CID-NPD, Caloocan City, acting on the repeated complaints of drug pushing-selling by concerned citizens of Marulas, Valenzuela, Metro Manila sent a special team of five policemen to Marulas to investigate said complaints. The team proceeded to Tampoy St., Marulas, Valenzuela, with the plan to entrap the drug pushers through a buy-bust operation wherein a member of the team (Pepito Gutierrez) would pose as a buyer of the prohibited drug. (pp. 2-5, tsn, July 3, 1991).

"Arriving at Tampoy St., Marulas, Bulacan the police team was met by an informant (p. 5, supra) who pointed to appellant who was then standing at Tampoy St., (p. 6, tsn, July 8, 1991). Appellant asked Gutierrez how many 'marijuanas' he would buy and to which Gutierrez answered how many could he buy for P50.00. Appellant left and after a few minutes returned and handed to Gutierrez thirteen (13) sticks of marijuana which were placed inside a cigarette pack. Gutierrez gave P50.00 to appellant and immediately the other members of the police team approached and apprehended the appellant and later brought [him] to the police station for investigation (pp. 5-6, tsn, July 3, 1991).

"The seized marijuana sticks were referred to the NBI Forensic Chemistry Section which when examined, were positive for marijuana, per the certification issued by Ruby Calalo, NBI Forensic Chemist (Exh. 'C')." (pp. 49-50, Rollo.)

After trial, the lower court made the following findings:

"The testimonies of Sgt. Pepito Gutierrez and Sgt. Alfredo Dela Cruz in Court are corroborated by their joint affidavit (Exhs. E, E-1, E-2, and E-3). Even as they testified that when they went to the buy bust operation area, they had no specific person in mind, on whom the buy bust would be applied, it is stated in the said joint

statement that after a series of surveillance with the aid of informants conducted in Valenzuela, they proceeded to Tampoy II, Valenzuela for the possible arrest of marijuana pushers which they found in their surveillance and information gathering abundant in that area; that an informant introduced Officer Pepito Gutierrez to the accused, who told the accused that Gutierrez wanted to buy marijuana. The sale materialized and for a buying price of P50.00, the 13 sticks were sold by the accused. This is believed by the Court.

"The testimony for the defense that a certain Fernando Tan y Reyes was with him when brought to the CID for verification, but was subsequently released bolstered the fact, that the accused did sell the 13 sticks and therefore not released unlike Fernando Tan against whom no sufficient evidence was found.

"The Court heard the testimonies for the defense that even when the accused was brought to the Fiscal he did not protest and did not explain his innocence but just cried, and the fact that he did not complain against the policemen for falsely charging him, are signs that he did commit the crime charged against him.

"The police officers who conducted the buy bust who apprehended the accused, were not shown by the defense to have been impelled by any ulterior motive for doing so. Under present jurisprudence, the presumption of regularity in the performance of official duty on their part must be recognized. This was repeatedly enunciated in the case of *People of the Philippines, plaintiff-appellee vs. June Sanchez y Carmona, defendant-appellant*, 173 SCRA 305 where the Supreme Court ruled:

"Remedial law: Evidence; Presumption of Regular Performance of Duty; Witnesses; The testimony of the two police officers carries with it the presumption of regular performance of official functions - As is so common in criminal cases of this kind there is here a direct conflict between the positive testimony of the arresting officers, Sgts. Palmero and Serrano, and the testimony of the accused. The trial court which had the opportunity to observe the detailed demeanor of the prosecution witnesses and of the accused on the witness stand, and to listen to their respective testimonies, gave more credence to the statements of the arresting officers, Sgts. Palmero and Serrano. The trial court pointed out that these government agents had no known motive or reason falsely to impute a serious and unfounded charge against the accused. x x x.'

"The 13 sticks of marijuana alleged by the above-mentioned law-enforcers were found positive for marijuana as evidenced by the Dangerous Drugs Report No. DDM-91-392 (Exhs. C, C-1, C-2) testified on by Forensic Chemist Rubie Baniela Calalo. The number of marijuana sticks in accused's possession, 13 in all which is of considerable quantity is evidence that he is a seller pusher. This was ruled in the case of *People of the Philippines, plaintiff-appellee, vs. Roberto Toledo y Tejarlo alias 'Obet,' accused-appellant*, 140 SCRA 259, No. L-67609, November 22, 1985:

"Criminal Law; Evidence; Violation of Dangerous Drugs Act; Possession of considerable quantity of marijuana leaves and seeds coupled with the fact that the accused is not a user of prohibited drugs, indicates an intention of the accused to sell, distribute and deliver marijuana.'

"Section 4 of RA 6425 as amended provides:

"Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs - 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 PD No. 1675, February 17, 1980)

"WHEREFORE, in view of the foregoing, the Court finds the accused Rogelio Balidiata guilty beyond reasonable doubt of the crime of Violation of Section 4 Article II RA 6425, and hereby sentences him to suffer the penalty of life imprisonment, and a fine of twenty thousand pesos without subsidiary imprisonment in case of insolvency, and to pay the costs.

"The accused shall be credited with the full term of his preventive imprisonment." (pp. 15-17, Rollo.)

In his appeal to this Court, the accused makes the following assignments of error:

1. The Court a quo gravely erred in letting accused-appellant be arraigned without assistance of counsel;
2. The Court a quo seriously erred in giving more credence to the witnesses for the prosecution rather than to the witness for the defense.
3. The Court a quo fatally erred in encouraging instead of discouraging artificial entrapment in the apprehension of violators of the Anti-Dangerous Drugs Act;
4. The Court a quo manifestly erred in not construing the provisions of the Anti-Dangerous Drugs Act in case of doubt in favor of the accused-appellant; and
5. The Court a quo evidently erred in condemning instead of acquitting the accused-appellant.

There is no merit in the appellant's allegation that the proceedings in the trial court were tainted by violation of his legal and constitutional rights because he was arraigned without the assistance of counsel. An examination of the records reveals the contrary. The trial court's order of June 7, 1991, states the following:

"The accused assisted by Atty. Donato Mabbayad, counsel de officio, appointed by the Court, upon arraignment, pleaded not guilty to the offense charged." (p. 7, Orig. Records.)

The statement in the decision that the accused was arraigned without the assistance of counsel appears to be a clerical error that should be corrected on the basis of the record. Significantly, the appellant failed to raise that issue in the trial court, hence, he is barred from raising it for the first time on appeal (*People vs. Leoparte*, 187 SCRA 190; *Ruiz vs. Caneba*, 191 SCRA 865).

Appellant's other contention that the Court a quo seriously erred in giving more credence to the prosecution witnesses rather than the defense, has no merit. Criminal cases turn upon the credibility of witnesses. A careful review of the records of this case and the arguments raised in the appellant's brief, discloses no reason why we should not accord the usual respect given to the factual findings of the trial court. Settled is the rule that when the issue is one of credibility of witnesses, we have always accorded the highest respect to the findings of the trial court for it is in a better position than us to decide that question, for it heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Unless the trial court has plainly overlooked certain facts of substance and value which, if considered, might affect the outcome of the case, we do not disturb its factual conclusions (*People vs. Egas*, 137 SCRA 188).

The entrapment laid out by the police which led to the arrest of the appellant in flagrante delicto is no bar to the prosecution of the offender. "Entrapment is a lawful police tactic for trapping and capturing law breakers in the execution of their criminal plan x x x" (*People vs. Natipravat*, 145 SCRA 483). The drug pusher is not induced to break the law for he is in fact already engaged in the business of selling prohibited drugs. As distinguished from an "inducement" which is illegal and would result in making the policemen principals by induction, in an entrapment they merely execute a plan to catch the drug dealer in the act of plying his nefarious trade.

Credence should be given to the testimony of the prosecution witnesses, especially the police officers who are

presumed to have performed their duties in a regular manner in the absence of any evidence to the contrary. The Court may not close its eyes to the seriousness of the drug menace in our country which, according to some newspaper reports, is now the third largest trading post for prohibited drugs in Asia.

Moreover, in this case, there is nary a hint that the policemen who took part in the entrapment of the accused were impelled by any ulterior or corrupt motive to falsely indict him for such a grave felony. Their testimony is entitled to full faith and credit (*People vs. Sanchez*, 173 SCRA 305).

WHEREFORE, finding no error in the decision of the trial court convicting the accused-appellant, Rogelio Balidiata y Asong, of having violated Section 4, Article II of Republic Act No. 6425, the judgment under appeal is hereby **AFFIRMED**, with costs against the appellant.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quason, JJ., concur.

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