

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL CRUZ Y LALAW, ACCUSED-APPELLANT.

G.R. No. 102880. April 25, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

In an information filed on July 29, 1991 with the Regional Trial Court of Valenzuela, Metro Manila, Branch 172, accused-appellant Raul Cruz y Lalaw was charged with violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, for unlawfully selling and delivering to one Pat. Cesar J. Pineda several sticks of marijuana-treated cigarettes and marijuana dried leaves with flowering tops.[1]

On August 2, 1991, appellant, assisted by counsel de oficio, entered a plea of not guilty.[2] After trial on the merits, the lower court found said appellant guilty as charged in a decision dated November 8, 1991, and sentenced him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. Appellant was credited with the full term of his preventive imprisonment.[3]

The basic and determinative issue to be resolved in the case at bar is whether or not the guilt of appellant for the crime charged has been proven beyond reasonable doubt, considering that, as contended by him, the uncorroborated testimony of principal prosecution witness Pat. Cesar J. Pineda is replete with material inconsistencies, as well as tell-tale signs of bias and prejudice.

We have two opposing accounts of the events that led to and eventuated in this criminal action. By and large, the prosecution's case rests primarily on the testimony of the aforementioned Pat. Pineda of the Anti-Narcotics Unit, Valenzuela Police Station, a complete precis of which follows hereunder.

On June 23, 1991, at about 12:00 o'clock noon, Valenzuela police officers assigned at the anti-narcotics unit held a meeting to discuss, among others, the drug situation within their jurisdiction. Present therein were Sgt. Loreto Rodriguez, a certain Cpl. Paguntalan, Pat. Alfredo Limson, Pfc. Maximo Constantino, Police Aide Crisanto Zoriaga and Pat. Pineda. Acting on reports that the sale of prohibited drugs was rampant on Sanchez Street, Arkong Bato, Valenzuela, they decided to conduct a "buy-bust" operation thereat. Information reaching their office was to the effect that "Willy Sulit," "Tony Kabayo," and herein appellant, Raul Cruz alias "Dalaw,"* were drug pushers operating in said area. After agreeing to entrap appellant Raul Cruz first, Pat. Pineda was designated as the poseur-buyer, he having theretofore known appellant because of a prior surveillance he conducted in collaboration with an "asset," that is, a police informer. Sgt. Rodriguez handed a P20.00 bill to Pat. Pineda to be used in the operation and the latter wrote the serial number of the bill in their official logbook and in his calendar.[4]

Pat. Pineda, along with Cpl. Paguntalan, Police Aide Soriaga and Pfc. Dizon proceeded to Sanchez Street in an owner-type jeep. Pat. Pineda was wearing a basketball uniform, while the others were also in civilian clothes.[5]

About thirty (30) meters away from Sanchez Street, Pineda alighted from the jeep and proceeded to look for appellant. Seeing the latter in an alley along Sanchez Street at Arkong Bato, he asked him "Dalaw, mayroon ba tayo dyan (?), kukuha sana ako." Appellant inquired, "Bakit?" and Pineda replied, "Pupunta sana ako kay Willie Sulit at bibili ako ng damo." Appellant Cruz answered, "Wala dyan. Sa akin na lang." Pineda gave him the P20.00 bill and the latter went inside an alley. When Cruz returned, he got six sticks of marijuana from his pocket and handed them to Pineda who immediately introduced himself as a policeman and held appellant on the waistband. At this juncture, the other police officers moved towards them and Pfc. Dizon handcuffed Cruz. A body search on him yielded three more marijuana sticks tucked in the garter of the waistband of his underwear. Pineda ordered Cruz to bring out any more drugs that might be in his possession but the latter answered that there was none, although there were some in his house. They asked Cruz to take them to his house and in front thereof, inserted in what looked like a pile of garbage, they found dried marijuana leaves. Pineda prepared a receipt of the items recovered and asked Cruz to sign it, after which Pineda also signed it. Pineda wrote his initials and the corresponding date on the nine sticks of marijuana cigarettes and on the plastic bag containing the dried marijuana leaves with flowering tops. Later, appellant Cruz was brought to the police station.[6]

On the witness stand, Mrs. Demelen Renton de la Cruz, forensic chemist of the National Bureau of Investigation (NBI), declared that the nine sticks of marijuana as well as the flowering tops submitted for microscopic, chemical and chromatographic examination were found positive for marijuana.[7]

On the other hand, appellant Raul Cruz denies entirely the accusation of the prosecution and maintains that he is a mere sampaguita flower vendor at Sangandaan, Kalookan. At about 2:35 P.M. on July 23, 1991, while crossing the street to board a jeep at the corner of Arkong Bato, Valenzuela, Metro Manila, he was apprehended by Pineda, a barangay tanod called "Sonny," and a man whose name he does not know. They frisked him but found nothing. He was ordered to reveal the residence of "Willy Sulit" and "Tony Kabayo." Failing to do so, his hands were tied behind his back and he was forced to bring them to his house. Upon reaching the house, they also frisked his brother-in-law, Armand, and his younger sister but, again, they found nothing. "Sonny" and the unnamed person went upstairs and when they later came down, they had with them something wrapped in plastic, which when shown to him, appeared to be marijuana. He vigorously denied ownership thereof, but he was nevertheless brought to the Polo Emergency Hospital for medical examination and, later, to the police headquarters. His brother-in-law and his sister did not accompany him because they were afraid. While in the police headquarters, he was asked if he would reveal the whereabouts of "Willy Sulit" and "Tony Kabayo" in exchange for his release and the dropping of any charge against him. However, he failed to do so because, in reality, he did not have that information.[8]

The grave and continuing threat posed by drugs against society is well known and indisputable. Accordingly, the campaign of the Government against drug trafficking must receive the fullest cooperation and support of all sectors of the public service, particularly the judiciary. Courts trying narcotics cases must not impede or frustrate the prosecution thereof on mere legal or procedural technicalities. Of these imperatives, this Court is only too aware.

Be that as it may, the Court is also cognizant of the fact that the practice of planting evidence for extortion, as a means to compel one to divulge information or merely to harass witnesses is not uncommon. By the very nature of anti-narcotics operations, with 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.[9] Hence, courts must be extra vigilant in trying drug charges lest an innocent person be made to suffer the unusually severe penalties for drug offenses.[10]

With these contrapuntal themes in mind, we will not hesitate to review or reverse the findings of the lower court if its judgment is based on a misapprehension of facts,[11] although we likewise adhere to the principle that factual findings of the trial court should normally be accorded the highest degree of respect by the appellate courts, said lower court having had the opportunity to intimately observe the manner in which the witnesses of the contending sides testified.[12]

In the case now before us, there is undeniably an exigent need to carefully look into the credibility and competence of Pat. Pineda, the trial court having relied heavily and principally on his testimony. In fact, an examination of the records will readily show that the guilt or innocence of appellant Cruz hinges on the issue of Pineda's credibility. The other witness, NBI forensic chemist De la Cruz, merely identified the nine marijuana sticks and dried flowering tops submitted to their office for examination and then reported her findings thereon. Obviously, however, she could only testify as to the marijuana handed over to her by the police officers, but definitely not with regard to the alleged act of selling thereof by appellant for she was admittedly not present during the alleged buy-bust operation.

After a thoroughgoing scrutiny and meticulous evaluation of the records of this case, the Court is of the firm belief that there are sufficient grounds which should justly and indubitably lead to the exoneration of herein appellant.

The lower court, although observing that there was indeed an inconsistency in the testimony of Pat. Pineda, was nonetheless inclined to disregard the same. In its decision, it stated thus: "x x x. The Court noted a discrepancy in the testimony of this police officer on the particular act of drug pushing. That is – (t)his police officer testified on direct examination that when he approached the accused he said 'Dalao mayroon ba tayo diyan? Kukuha sana ako.' Then, on cross-examination Pat. Cesar Pineda testified that his first words to the accused were not 'Dalao mayroon ba tayo diyan (?)' Instead he first asked for Willy Sulit. On further cross-examination, this police officer said he is changing his answer." [13]

The trial court, however, considered this inconsistency as involving only a minor detail, supposedly too insignificant to affect the case for the People. Indulging the Court below by conceding that it may possibly be so, the fact remains that neither it nor the parties noticed the other major and evident discrepancies in the testimony of Pat. Pineda on various aspects, which cannot but raise well-founded and overriding doubts on his credibility. After all, evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself.[14] We start with his sworn statement of July 24, 1991 executed before State Prosecutor Amelito Perfecto at Valenzuela, Metro Manila.[15]

In that Sinumpaang Salaysay prepared and sworn to by Pat. Pineda shortly after the arrest of appellant, he detailed the alleged buy-bust operation, a portion of his narration being as follows:

"Na, iniabot ko sa kanya ang halagang beinte pesos na marked money at kanya namang itong kinuha sa akin at bumunot siya sa kanyang harapang kanang bulsa ng pantalon ang anim (6) na stick ng marijuana at kanya itong ibinigay sa akin at sa pagkakataong ito ako ay nagpakilalang isang pulis Valenzuela x x x." [16] (Underscoring ours.)

From the aforequoted statement, Pineda definitely asserts that when he gave the P20.00 bill to Cruz, the latter immediately gave him in return six sticks of marijuana cigarettes. And yet, in his direct examination, Cruz gave an altogether different account of the alleged sale. He testified that after he handed over to Cruz the P20.00 bill, the latter went inside the alley, while he just waited for Cruz to return. When Cruz returned; he got from his pocket six sticks of marijuana cigarettes and handed them to Pineda.[17] This glaring contradiction was never explained by the prosecution nor was there ever any attempt to do so.

Again, a further comparison of Cruz' sworn statement and his testimony reveals another major discrepancy. In that sworn statement, Pineda narrated what happened next, as above stated, after he identified himself to Cruz as a police officer, thus:

"x x x sa pagkakataong ito ako ay nagpakilalang isang pulis Valenzuela at aking siyang hinawakan at hinuli at nakuha ko pa rin (sa) kanyang pagiingat ang tatlong (3) stick na marijuana at isang plastic bag na mayroong laman na pinatuyong dahon ng marijuana at ang aming marked money." [18] (Emphasis supplied.)

In diametrical apposition, however, during his direct examination he gave an entirely different version of how they were able to obtain the marijuana leaves, to wit:

"Q: After you have already frisked the accused and you again recovered another three sticks from his waistband, what happened next?

A: I ordered him to bring out the other pieces of evidence but he said there is nothing more.

Q: After that what did you do?

A: He said there are no more rolled sticks of marijuana but in his house and placed inside the plastic bag.

Q: When you were informed that he has still marijuana in his house, what did you do next?

A: We asked him to accompany us (to) his house, sir.

Q: And asked to get the marijuana which he was mentioning?

A: Yes, sir.

Q: Did he accede?

A: Yes, sir.

Q: And you proceeded to his house?

A: Yes, sir.

Q: Were you able to recover these marijuana leaves?

A: Yes, sir.

Q: How were you able to get the marijuana?

A: In front of his house also because he was living in the squatter(s) area, it looks like a pile of garbage and just inserted there, sir." [19] (Underscoring supplied.)

On cross-examination by defense counsel precisely to test the credibility of said testimony, he somersaulted and again contradicted those very statements which he himself gave on direct examination:

"Q: When he was (i)n handcuff(s) you led him to his house?

A: No, sir.

Q: You want to impress (upon) this Court that you did not go to the house of the accused?

A: No, we did not, sir.

Q: You went there because the accused voluntar-ily told you that there were still some marijuana stuff in the house and you went there and you got the marijuana from the house?

A: No, sir.

Q: Are you very sure of your answer?

A: No, sir, we did not go to the house be-cause we immediately brought him to our chief." [20] (Emphasis ours.)

The question of whether or not in fact they went to the house of appellant Cruz is decidedly not a minor detail. The nine sticks of handrolled marijuana cigarettes had a total weight of only 4.7936 grams while the marijuana flowering tops weighed 18.0623 grams.[21] It is obvious then that the marijuana flowering tops formed a big and major portion of the marijuana seized by Pat. Pineda. Hence, it does not inspire belief that said arresting officer could have easily forgotten whether or not they proceeded to the house of Cruz to get the same. It may be possible, although highly improbable, that he could have forgotten the sequence of the events that transpired, but not the events themselves which took place during the buy-bust operation, especially if we consider his being a trained and experienced member of an anti-narcotics unit.

In appellee's brief, the Solicitor General would like to quibble and split hairs on this matter, stating that "as claimed by the latter even during his direct examination, he and his companions did not actually enter appellant's house, which was in the squatter(s) area, but found and retrieved more of the prohibited stuff outside and in front of the house near a place which looked like a pile of garbage." [22] However, regardless of whether they went inside the house or merely in front thereof, still it cannot be denied that Pat. Pineda gravely contradicted himself during the cross-examination when he insisted that they confiscated the dried marijuana flowering tops right after the so-called frisking or body search conducted by them on the appellant in the street after the alleged sale.

Again, in his sworn statement, Pat. Pineda specified that they were able to seize "pinatuyong dahon ng marijuana," [23] in addition to the marijuana sticks. In the receipt of property seized, he stated "dried marijuana leaves with flowering tops" [24] while, as earlier explained, the NBI forensic chemistry section certification [25] says only "dried marijuana flowering (sic) tops." If Pineda had intended to tell the truth, he should not have taken so lightly his duty to report facts with accuracy and not with ambiguity. A layman may mistake one of the above illegal items for the other, but not a member of an anti-narcotics unit who is precisely trained to easily recognize and identify the different prohibited drugs, as well as the different parts thereof.

Jurisprudence teaches us that where the sworn statement given during the preliminary examination conflicts with that given during the trial, and the variance in the answers of the witness is greatly disturbing and irreconcilable, the testimony of the said witness should not be given in evidence, as the discrepancy in the witness' statements shows that he was either lying when he executed it or he had simply forgotten what he truly witnessed. Simply stated, serious and inexplicable discrepancies between a previously executed sworn statement of a witness and his testimonial declarations as to the appellant's participation in the commission of a crime raise a grave doubt on the veracity of his account. [26]

If we are to believe Pat. Pineda's testimony that Cruz is a notorious drug peddler, then the latter would not have been so naive as to volunteer the fact that there was still some more marijuana hidden in his house. In fact, Pat. Pineda partially corroborated Cruz' testimony that he brought the police officers to his house, except only that they gave different versions on what happened afterwards.

Also, if Pat. Pineda really had an "asset" with whom he made the preliminary surveillance, it is surprising why that "asset" was not used as the poseur-buyer, considering the prosecution's claim that he had successfully bought prohibited drugs before from appellant. He would naturally arouse less suspicion than a member of the anti-narcotics unit buying directly from a drug pusher. Again, if Cruz is a notorious drug peddler, he would have made it a point to know who were the members of the anti-narcotics unit in their place. In fact, Cruz testified that

Pineda and his informer, "Sonny," were well-known in their neighborhood.

On top of these, in his direct examination, Pineda declared that he was able to confiscate three more sticks of marijuana "stucked (sic) in the garter of (Cruz') brief wrapped inside the plastic,"[27] However, under cross-examination, he asserted that "three more sticks of marijuana and plastic containing marijuana tops x x x (were) found at the back of the pocket of his pants." [28]

Now, when Cruz was arrested, Pineda allegedly showed the former his identification card (I.D.). It is rather odd that a police officer, acting as a poseur-buyer, would take the trouble and risk of bringing with him something that could easily alert and definitely inform a drug pusher of his identity as a lawman and thereby put the whole operation in jeopardy. This is further puzzling since he knew that he could rely on his other fellow officers who were present there to serve as a back-up and support group.

There is, of course, the legal presumption that law enforcers are supposed to have regularly performed their duties in the absence of proof to the contrary.[29] Withal, such presumption *juris tantum* of regularity in the performance of official duty cannot by itself prevail against the constitutional presumption of innocence accorded an accused person.[30]

After all, as early as *People vs. Pacana*,[31] we have announced and always adhered to the principle that when 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. To paraphrase a well-known tenet, accusation is not, according to the fundamental law, synonymous with guilt; the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.[32] Even if the defense is weak, the case against the accused must fail if the prosecution is even weaker, for the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[33]

We are not disposed to hazard a surmise as to why prosecution witness Pineda made the inconsistent statements analyzed above. He may have done so through unwitting error, but the fact remains that even the inanimate pages of the records amply provide eloquent bases for rejection of his testimony. All told, therefore, the Court holds that the prosecution has failed to establish the guilt of herein appellant with the requisite quantum of evidence.

ACCORDINGLY, the impugned judgment of conviction in Criminal Case No. 396-V-91 of the court *a quo* is REVERSED and SET ASIDE and accused appellant Raul Cruz y Lalaw is hereby ACQUITTED of the charge therein, with costs *de officio*. His immediate release from confinement is hereby ordered, unless there is any other lawful cause for his continued detention.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Puno, JJ., concur.

[1] Original Record, 1.

[2] *Ibid.*, 8.

[3] *Ibid.*, 64; Decision, 6; per Judge Teresita Dizon-Capulong.

* Also spelled "Dalao" in some portions of the record and the petition.

[4] TSN, August 5, 1991, 4-8, 10.

- [5] Ibid., id., 8.
- [6] Ibid., id., 10-17; September 18, 1991, 2-4.
- [7] Ibid., September 11, 1991, 5.
- [8] Ibid., October 18, 1991, 4-5.
- [9] People vs. Salcedo, G.R. No. 86975, March 18, 1991, 195 SCRA 345.
- [10] People vs. William, et al., G.R. No. 93712, June 15, 1992, 209 SCRA 808.
- [11] People vs. Castillon, et al., G.R. No. 100586, January 15, 1993, 217 SCRA 76.
- [12] People vs. Uson, G.R. No. 101313, July 5, 1993.
- [13] Original Record, 63; Decision, 5.
- [14] People vs. Uson, ante; Fn. 12.
- [15] Exhibit I; Folder of Exhibits, 6.
- [16] Original Record, 3.
- [17] TSN, August 5, 1991, 12-13.
- [18] Original Record, 3.
- [19] TSN, August 5, 1991, 16-17.
- [20] Ibid., October 4, 1991, 2-3.
- [21] Exhibit B, Certification of NBI Forensic Chemistry Section, dated July 24, 1991; Folder of Exhibits 2.
- [22] Rollo, 55.
- [23] Original Record, 3.
- [24] Exhibit E; Folder of Exhibits, 4.
- [25] Exhibit B; *ibid.*, 2. See also Exhibit C, NBI Dangerous Drugs (Marihuana) Report No. DDM-91-500, dated July 24, 1991, which states: "3. Alleged dried marihuana flowering tops placed in a stapled plastic bag with label;" Folder of Exhibits, 3.
- [26] People vs. Casim, G.R. No. 93634, September 2, 1992, 213 SCRA 390.
- [27] TSN, August 5, 1991, 15.
- [28] Ibid., October 4, 1991, 3.
- [29] Sec. 5 (m), Rule 131, Rules of Court; People vs. Mariano, G.R. No. 86656, October 31, 1990, 191 SCRA 136.
- [30] People vs. Salcedo, G.R. No. 86975, March 18, 1991, 195 SCRA 345.
- [31] 47 Phil. 48 (1924).
- [32] People vs. Austria, et al., G.R. No. 55109, April 8, 1991, 195 SCRA 700.
- [33] People vs. Cruz, G.R. No. 87884, November 4, 1992, 215 SCRA 339.

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