

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADRIAN ENRIQUEZ Y GARCES, ACCUSED-APPELLANT.

G.R. No. 102955. March 22, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

Accused Adrian Enriquez y Garcés seeks a reversal of the decision[*] dated September 16, 1991 in Criminal Case No. 21734 of the Regional Trial Court of Cebu, 7th Judicial Region, Branch 8, finding him guilty of having violated Article II, Section 4 of Republic Act No. 6425 otherwise known as the Dangerous Drugs Act of 1972.

On April 23, 1991, the Assistant Provincial Prosecutor filed an information charging the accused with violation of Article II, Section 4 of the Dangerous Drugs Act committed as follows:

"That on or about the 19th day of April, 1991 at around 7:00 o'clock in the evening, more or less, in Barangay Perrelos, Municipality of Carcar, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court the above-named accused with deliberate intent and without any permit or license issued by any government agency, did then and there willfully, unlawfully and feloniously sell, deliver, distribute and give away ten (10) sticks of handrolled Indian hemp cigarette, commonly known as "Marijuana" to an informant, and the latter gave to the accused the buy money of TWENTY PESOS (P20.00) with Serial No. LU716642 and likewise recovered were 47 sticks of Marijuana cigarette and 59 stick (sic) surrendered by the accused, classified and in violation of the Dangerous Drugs Act of 1972.

CONTRARY TO LAW."[1]

On May 21, 1991, the accused, assisted by his counsel, pleaded not guilty to the information.[2]

After due trial, the trial court rendered its decision finding the accused guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

"The Foregoing Considered, this Court finds the accused ADRIAN ENRIQUEZ Y GARCÉS, guilty beyond reasonable doubt of the crime of selling marijuana cigarettes as defined and penalized in accordance with Sec. 4 Art. II RA 6425 as amended by BP Blg. 179, and hereby imposes upon him the penalty of LIFE IMPRISONMENT, and a fine of P20,000.00 with costs against him. The 10, 47, and 59 sticks of marijuana cigarettes are hereby FORFEITED in favor of the government.

So Ordered."[3]

From the judgment of conviction, the accused appealed, assigning the following as the errors[4] allegedly committed by the trial court:

I

THE COURT A QUO ERRED IN NOT CONSIDERING THE TOTALITY OF EVIDENCE PRESENTED BY MERELY RELYING ON THE TESTIMONIES OF RICARDO INDING.

II

THE GUILT OF THE ACCUSED-APPELLANT HAS NOT BEEN PROVED BEYOND REASONABLE DOUBT, HENCE IS ENTITLED TO AN ACQUITTAL.

As gathered from the evidence presented by the prosecution, a surveillance on the person of the accused was conducted on April 17 and 18, 1991 by Sgt. Inding, a member of the 7th Narcotics Unit of the Philippine National Police (PNP) in Lahug, Cebu City[5] based on a report received from a concerned citizen that there are drug pushers in the area.[6] During his surveillance, Sgt. Inding stayed in the store at the corner going to the residence of the accused[7]. He was able to identify the person of the accused, and to observe the activity of the accused in the illegal business dealing in drugs. He saw many teenagers coming in and out of the residence of the accused and he personally noticed that these teenagers handed over some money to the accused and the latter in turn gave them thinly rolled cigarette to each of the former.[8]

On April 19, 1991 at about 7:00 o'clock in the evening, Lt. Ughoc, Staff Sgt. Eduardo Misa, Sgt. Inding and some other narcotics agents, all of the 7th Narcotics Regional Unit[9] went to Perrelos, Carcar, Cebu to conduct a buy-bust operation.[10] After being briefed by their team leader, Lt. Ughoc, for more or less 45 minutes,[11] they proceeded to their target area. They stopped more or less 200 meters from the house and walked towards the residence of the accused.[12]

Sgt. Inding, who was disguised as an addict or a drug user (wearing black sunglasses and short pants), proceeded directly to the accused's residence while his back-up stayed at a distance of more or less 10 meters from his position.[13] At the entrance of the accused's residence, he was seen by the accused, who immediately approached him. Sgt. Inding offered to buy 10 sticks of marijuana cigarettes. Immediately, the accused handed him the 10 sticks and got the money.[14]

After having received the 10 sticks of marijuana, Sgt. Inding's companions immediately effected the arrest.[15] A body search on the accused yielded 47 sticks of marijuana cigarettes hidden in his back pocket while 59 sticks of marijuana cigarettes were voluntarily surrendered by the accused.[16]

A Chemistry Report submitted by Lt. Myrna Ariola, Chief of the Chemistry and Physical Identification Section, PNP, Crime Laboratory, Region 7, Cebu City states that the 10, 47 and 59 sticks are positive for marijuana.[17]

Accused presented a different version of what transpired. He testified that for the last 20 years, he has been engaged in poultry raising, piggery and so forth, and during market days he goes to Sibonga, San Fernando, Carcar proper, Montalongon to sell dog chains, tawas, hair puller, hammer, saw, chisel, carborundum (grinding stone) etcetera in these places.[18] In the evening of April 19, 1991 he was in his house. Wilfredo Da-an and Franco Garces were also there. Da-an introduced Garces to him because the latter wanted to borrow money. That was the only occasion that Garces was there.[19] While talking with Garces, somebody arrived with a plastic bag and said he wanted to buy "tawas" or alum. He invited him inside the house. As soon as the visitor entered, accused suddenly heard a loud banging of the door from outside. Thereafter, persons with drawn guns rushed inside the house and he heard the cocking of firearms.[20] He protested. As a matter of fact, he called the attention of an elder brother, but a gun was pointed at his mouth. He was told to accompany them otherwise he will be killed. He was then brought to the Narcom Headquarters in Lahug. On the jeep was the person who went up the house carrying the plastic bag. At the Narcom Office he inquired about the identity of the person who was carrying the plastic bag but no answer was given him.[21]

Accused insisted that the 10 sticks of marijuana cigarettes were planted and that he saw the 47 and 59 sticks for the first time in court during the trial.[22] On the other hand, the Solicitor General recommended the acquittal of the accused because of the existence of alleged major contradictions in the testimonies of the prosecution witnesses, Sgt. Inding and Sgt. Misa.

We do not agree with the recommendation of the Solicitor General.

It is a matter of fact that opium, marijuana or any other prohibited drug can easily be planted by some corrupt law enforcement agents on innocent victims as a convenient vehicle of extortion. Many such persons would rather buy peace than risk a prosecution however false it may be. In any case, the courts must be vigilant. A handy defense in such cases is that it is a frame-up and that the police attempted to extort from the accused. Extreme caution must be exercised in appreciating such defense. It is just as easy to concoct as it is to make a frame-up. At all time, the police, the prosecution, and the courts must always be on guard against these hazards in the administration of criminal justice.[23]

In the case at bar, the defense tried to prove the alleged "planted evidence" and extortion attempt through the testimony of prosecution witness, Sgt. Misa. A careful reading of the transcript of stenographic notes of Sgt. Misa's testimony does not impress upon Us any doubt or suspicion which the defense would want this Court to believe. At most, the testimony of Sgt. Misa shows that he is not accustomed to the rudiments of trial. His failure to promptly answer the questions propounded on him was not due to any intent to conceal but may be said to be due to the injection of statements made by the defense counsel after each question. The atmosphere of the court room during the trial coupled with interruptions by counsel can affect the accuracy and manner of a witness in answering questions.[24]

Another evidence which the defense wants this Court to look into is the testimony of defense witness Elpidio Escano which according to the defense "materially corroborated in material points the oral testimony of the accused".[25] Unfortunately, the transcript of stenographic notes of his testimony was not submitted to this Court hence We cannot go over the same.[26] However, a reading of the summarized testimony of said witness by the trial court shows that his testimony materially contradicted that of the accused. Accused testified that at around 7:00 o'clock in the evening of April 19, 1991, Wilfredo Da-an and Franco Garces were in his house. While he was talking with Franco Garces, a person whom he cannot identify and who brought with him a plastic bag also arrived at his house.[27] If the testimony of witness Elpidio Escano is to be believed, he would have seen Franco Garces inside the house together with Wilfredo Da-an since according to him his house is only 5 meters away from the house of the accused.[28]

Neither is the testimony of Wilfredo Da-an of any help to the accused. Wilfredo Da-an testified that after the accused was arrested, he ran out of the house of the accused and there he met Franco Garces who was asking him if accused has money to loan him[29] which testimony again materially contradicted that of the accused.

The testimony of the accused imputing extortion and planted evidence or frame-up against the members of the buy-bust operation team is reproduced as follows:

"Court

Q.

The Information says a total of 10 sticks of marijuana, planted or not?

A.

Planted.

Q.

Where?

A.

I don't have any knowledge about that.

Q.

When did you see these 10 sticks of marijuana the first time?

A.

Here in court.

Q.

What about the 47 sticks of marijuana cigarettes in a (sic) separate 59 sticks surrendered by you, where did you see these sticks of marijuana cigarettes?

A.

Here in court.

Q.

What happened at the Narcom?

A.

I was placed inside the cell.

Q.

No interrogation?

A.

No investigation.

Q.

You mean after you were brought to the Narcom headquarters, no interrogation method? You were just placed inside?

A.

Nothing, but there was somebody who called by telephone.

Q.

Who was that fellow?

A.

Somebody called me while I was in the cell and in the telephone he told me if I have P10 thousand I will be freed. I was even wondering who was that fellow.

Q.

You were at the Narcom. You were fetched by the military that there was somebody who tries (sic) to call you by phone?

A.

Yes, sir.

Q.

Did you not ask him who was he?

A.

No, sir.

Q.

Did you mention willingness to do payment or what?

A.

No, sir.

Q.

What did you tell him?

A.

I told him to come and we will talk.

Q.

Did you use the telephone of Major Hasan?

A.

The telephone of (sic) his office.

Q.

The telephone in (sic) his table?

A.

Yes, sir.

Q.

Where was Major Hasan when somebody made the call?

A.

He was not in his office.

Q.

Who was the official on duty?

A.

Inding and Misa.

Q.

Do you know this Misa?

A.

Yes, Narcom Agent.

Q.

How did you happen to know him?

A.

I only knew him at the office.

Q.

What was your dealing with him?

A.

He only said, Enriquez you have a telephone call.

Q.

How did you know he was Misa?

A.

I inquired from other prisoners.

Q.

Do you know Inding?

A.

Yes, sir, also at the Narcom office.

Q.

That was the first time you met him?

A.

Yes, sir.

Q.

Was he not making arrangement with you?

A.

No, sir.

Q.

Are you sure?

A.

Yes, sir.

Q.

You are in good terms with him as of today?

A.

Yes, sir?

Q.

Are you in good term with him as of today?

A.

Yes, sir, he is good Inding.

Q.

This Misa you are in good term with him as of today?

A.

I have not talked with Misa.

Q.

You know (sic) Inding and Misa both of them only after your arrest?

A.

Yes, sir."[30]

A reading of the aforequoted testimony of the accused reveals that there was no improper or ill-motive that may be attributed to Narcom Agents, Sgt. Inding and Sgt. Misa, to frame him up. Neither was there any allegation that said Narcom Agents made any extortion attempt on him. On the contrary, the accused testified that he is in good terms with Sgt. Inding. On the part of Sgt. Misa, accused knew him only at the Narcom office.

As We have held in the case of *People v. Como*,^[31] the defense that accused was framed up by the police officers requires stronger proof because of the presumption that public officers acted in the regular performance of their official duties. There is nothing in the record to suggest that the Narcom Agents were compelled by any motive other than to accomplish their mission to capture a drug pusher in the execution of the crime. Hence, We find the claim of the accused that he was framed by the prosecution witnesses or there was extortion on their part as unbelievable.

Going now to the contention of the Solicitor General that it is highly suspect for the prosecution to charge only the accused in the information and not include a certain Bienvenido Genonsalao whom the members of the buy-bust operation team identified in their joint affidavit (Exhibit 2) as the person who handed the accused some sticks of marijuana and who had escaped.

Section 1, Rule 110 of the Rules on Criminal Procedure provides that "(a)ll criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefore." (Underscoring supplied.) The law makes it a legal duty for prosecuting officers to file the charges against whomsoever the evidence may show to be responsible for an offense. This does not mean, however, that they shall have no discretion at all; their discretion lies in determining whether the evidence submitted justify a reasonable belief that a person has committed an offense. What the rule demands is that all persons who appear responsible shall be charged in the information, which implies that those against whom no sufficient evidence of guilt exists are not required to be included.^[32] Hence, it is discretionary on the part of the fiscal whether to include Bienvenido Genonsalao depending on the evidence available to him.

The offense of illegal sale of marijuana requires merely the consummation of the selling transaction whereby the accused hands over the sticks of marijuana upon the agreement of the poseur buyer to exchange it for money. In the case at bar, prosecution witness Sgt. Inding positively and categorically identified the accused Adrian Enriquez as the person who sold the marijuana cigarettes to him. The only instance linking Genonsalao to the offense is that the accused ordered him to get the 10 sticks of marijuana cigarettes. Hence his participation was not sufficiently established which may be the reason why the fiscal did not include him in the information.

The Solicitor General also finds "it highly incredible for accused to be still calling out to Genonsalao to give him some sticks of marijuana when he has in his back pocket 47 sticks of marijuana cigarettes." [33]

The foregoing does not strike Us as highly incredible because the 47 sticks of marijuana found in the possession of the accused were "probably intended for a different purpose like another sale or its direct use by the possessor." [34]

The Solicitor General also finds it incredible that Sgt. Misa who was a member of the entrapment team would not be apprised of the details of their operation, i.e. the marked money which constitutes the next if not equally most important piece of evidence as the prohibited merchandise. [35]

It will be noted that Sgt. Misa was designated as the back-up of poseur-buyer Sgt. Inding. He was not the poseur-buyer hence it is understandable that he was not apprised of the facts about the marked money. Besides, evidence on record shows that it was Sgt. Inding who recovered the marked money from the accused. He also identified the same during the trial.

Lastly, the questions as to who frisked the accused's pocket is a minor detail that does not destroy the credibility of the prosecution witnesses. Total recall or perfect symmetry is not required. As long as the witnesses concur on material points, slight differences in their remembrance of the details do not reflect on the essential veracity of their testimony. [36]

WHEREFORE, in the light of the foregoing findings, We hold that the evidence was sufficient to sustain the verdict, finding the accused guilty beyond reasonable doubt of the crime as charged. The findings of the trial Court are hereby AFFIRMED.

SO ORDERED.

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

[*] Penned by Judge Bernardo Ll. Salas

[1] Records, pp. 1-2.

[2] Ibid., p. 12.

[3] Ibid., p. 51.

[4] Appellant's Brief, p. 2.

[5] TSN, June 14, 1991, p. 8.

[6] Ibid., p. 5.

[7] Ibid., p. 10.

[8] Ibid., p. 8.

- [9] Ibid., p. 5.
- [10] Ibid., p. 3.
- [11] Ibid., p. 11.
- [12] Ibid., pp. 11-12.
- [13] Ibid., p. 12.
- [14] Ibid., p. 7.
- [15] Ibid., p. 13.
- [16] Ibid., p. 7.
- [17] TSN, June 17, 1991, p. 2.
- [18] TSN, July 15, 1991, p. 2.
- [19] Ibid., pp. 2-3.
- [20] Ibid., p. 3.
- [21] Ibid., p. 4.
- [22] Supra, note 4 at p. 3.
- [23] People vs. Rojo, 175 SCRA 119 (1989).
- [24] People vs. Como, 202 SCRA 200 (1991).
- [25] Supra, note 22.
- [26] Rollo, p. 2.
- [27] Supra, note 20.
- [28] Decision, p. 2; Records, p. 47.
- [29] TSN, July 4, 1991, p. 4.
- [30] TSN, July 15, 1991, pp. 5-6.
- [31] Supra, note 24 at p. 210, citing People vs. Sucro, and People vs. Macuto, 176 SCRA 762 (1989).
- [32] Guiao v. Figueroa, 94 Phil. 1018 (1954).
- [33] Appellee's Brief, pp. 4-5.
- [34] People vs. Manalansan, 189 SCRA 619 (1990).
- [35] Appellee's Brief, p. 7.
- [36] People vs. Jonathan Alaban y Joshep; G.R. No. 97431, September 28, 1992.

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