

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. ARSENIO DEOCARIZA Y BALLE, DEFENDANT/APPELLANT.

G.R. No. 103396. March 03, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused-appellant Arsenio Deocariza y Balle was charged with violation of the Dangerous Drugs Act in an information,[1] dated 22 May 1990, which read as follows:

“The undersigned City Prosecutor accuses ARSENIO DEOCARIZA y BALLE, who was born on November 11, 1969 at Molo, Iloilo City of the crime of VIOLATION OF SEC. 4, ART. II, RA. 6425 (otherwise known as Dangerous Drugs Act of 1972, as amended), committed as follows:

That on or about the 17th day of May, 1990, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and criminally sell and/or distribute dried marijuana leaves with seeds, a source of prohibited drugs, without having the authority to sell and/or distribute the same; that one (1) plastic pack of suspected dried marijuana leaves with seeds approximately weighing ten (10) grams and one (1) piece P50.00 bill with Serial No. AG032552 were recovered.

CONTRARY TO LAW.”

At arraignment, on 14 June 1990, the accused pleaded not guilty.[2]

After trial, the trial judge rendered a decision dated 15 May 1991 finding the accused guilty beyond reasonable doubt and sentencing him to life imprisonment and to pay a fine in the amount of P20,000.00.

The present appeal assigns the following as errors, allegedly committed by the trial court:

I

The court a quo erred in convicting the accused based on the uncorroborated, biased and highly doubtful or improbable testimony of prosecution witness, Sgt. Dande Deocampo;

II

The court a quo erred in not giving credence to the testimony of accused that the dried marijuana leaves and the P50 marked bill were only “planted” on him by the apprehending officers; and

III

The court a quo erred in convicting accused based on evidence obtained in violation of his constitutional right against unreasonable search and seizure.

The evidence for the prosecution consisted of the testimonies of Staff Sgt. Dande Deocampo and Capt. Zenaida Sinfuego, as well as real evidence comprised of (a) one pack of marijuana leaves with seeds approximately weighing nine (9) grams, and (b) a photocopy of a P50.00 bill allegedly representing the marked money used to purchase the prohibited drug. Capt. Sinfuego was the forensic chemist who had conducted the examination of the

pack allegedly confiscated from the accused. Sgt. Deocampo, on the other hand, was the only witness to testify on the events leading to the arrest of the accused. His testimony was summarized by the trial judge in the following manner:

“[O]n May 17, 1990, Narcom Agents, acting on reports that selling of prohibited drugs was rampant at a “Tiangge” located at San Juan Blvd., Molo, Iloilo City, decided to conduct a “buy-bust” operation thereat. Sgt. Dande Deocampo was designated as the poseur-buyer. The marked money (Exh. A) was initialed by Sgt. Benito Bonete and its serial number recorded. At the appointed time, Sgt. Deocampo loitered near the “Tiangge” where he saw two persons and a child. After a short while, one of the two persons approached him and inquired, if he was waiting for somebody. Sgt. Deocampo replied that he was looking for “damo” (referring to marijuana leaves) as he wanted to smoke. The man then asked how much worth of “damo” he wanted as he was selling 1/4th of a plastic pack for P50.00. On hearing this Sgt. Deocampo forthwith handed to the man the marked fifty peso-bill he had. The man after receiving the money looked around and then retrieved from his pocket a plastic pack which he handed to Sgt. Deocampo. Suspecting the pack to contain marijuana, Sgt. Deocampo introduced himself as a Narcom Agent and arrested the man. Sgt. Benito Bonete who surfaced at that precise moment asked the suspect to allow him to frisk him (suspect). On frisking the man, the marked money was recovered. When asked where he got the marijuana leaves, the man remained silent. The arresting officers were able to [ascertain the] identity of the man at their headquarters. He gave his name as Arsenio Deocariza. He was then made to sign a receipt [for] the property seized (Exh. E). The plastic pack was then turned over to the PC Crime Laboratory and the result [of a laboratory examination] confirmed what the Narcom agents suspected all along that it contained marijuana leaves (Exh. D).

The accused had a very different version of the events which transpired on 17 May 1990 at around 3 o’clock in the afternoon. His testimony was summarized by the trial judge as follows:

“[A]ccused, at about 3:00 p.m., of May 17, 1990, was at San Juan Blvd., Molo, Iloilo City, purposely to ask money from his sister Thelma, to buy medicines as he was then suffering from an Asthma attack, [of] which ailment, he has been afflicted with since childhood. At the particular time that three persons suddenly frisked him, he was inside a store purchasing candies. Not finding what they were looking for from him, he was mauled. Then a Metrodiscom jeep arrived and into which he was loaded. The three persons who searched him proceeded to the house of his sister and after a short while returned and boarded the jeep. The jeep proceeded to Camp Delgado whereat he was placed inside a room and mauled. He was particularly boxed and kicked several times on the stomach in their effort to compel him to admit the charge that he was selling marijuana. He never admitted the imputation, however. The signature appearing on the document denominated “Receipt of Property Seized” is not that of accused as he signs differently.”

The version of the accused, in respect of the time and circumstances of his arrest by the NARCOM agents, was corroborated by Marcos Palle and Thelma Teodosio. Marcos Palle declared that about 2:30 p.m. on 17 May 1990, he was seated some seven (7) meters from the store where accused was seated. He noticed that accused had difficulty breathing and was panting. Later, he noticed that three (3) men approached the accused. Palle subsequently learned that these three were agents of the Narcotics Command. The accused was seized by the NARCOM agents and placed on board their pick-up truck. Palle did not hear any conversation between the agents and the accused from the time the police approached and seized accused and led him to their vehicle. He saw the Narcom agents thereafter proceed to the house, owned by accused’s sister, some 50 meters from the store.

Thelma Teodosio testified that her brother, accused Arsenio, was visiting her in San Juan, Molo Blvd. Accused was residing with their mother at Rizal, Pala-pala. At the time accused was apprehended by the Narcom agents, Thelma was at a beauty parlor located across the store. A small boy reported to her that her brother was arrested. She ran outside the parlor and saw her brother already inside the police vehicle. She asked the accused why he was arrested but the latter himself did not know the cause for his arrest. Thelma proceeded to her house to bring

home her two children and was surprised to find Narcom agents ransacking her house. They asked her if she was the owner of the house. After she had replied affirmatively, they got onto the pick-up and left for Camp Delgado with accused on board. Thelma, with her mother, failed to see the accused in Camp Delgado despite their repeated requests to visit the accused. They saw the accused the day after his arrest at the provincial hospital where he had been brought in view of an asthma attack.

There is here clearly a direct conflict between, on the one hand, the positive testimony of Sgt. Deocampo, the sole witness for the prosecution to testify on the circumstances of the buy-bust operation and, on the other hand, the statements given in open court by the accused and Marcos Palle regarding the circumstances surrounding the arrest of the accused. The trial judge however, having had the opportunity to observe the detailed demeanor of the prosecution and defense witnesses, and to listen to their respective testimonies, chose to give “full faith and credit” to the statements of Sgt. Deocampo that a buy-bust operation had indeed been conducted. The trial court disbelieved the accused’s version of the facts consisting of mere denials which cannot prevail over the positive identification of the poseur-buyer who was, in this case, the same officer who apprehended the accused.

Ordinarily, this Court would rely upon the well-settled rule that “findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by the appellate courts.”[3] There are, however, certain well-recognized exceptions to this rule. This Court may disregard the rulings of the trial court on credibility of witnesses if, e.g., there are facts and circumstances which were overlooked by the trial court and which would substantially alter the results of the case; where the judgment is based on misapprehension of facts; and where the inferences drawn by the trial court from the facts are manifestly absurd and impossible.[4]

We have carefully reviewed the record and it appears to us that there was some misapprehension of facts in this case and either the deriving of inferences from facts which are manifestly mistaken or failure to draw reasonable inferences from the facts shown by record.

The Court, firstly, notes that the testimony of Sgt. Deocampo is seriously flawed. The sergeant testified that the accused was caught in the course of a buy-bust operation prepared and planned by Sgt. Bonete. The operation was apparently conceived upon receipt of a report from an undisclosed informant of rampant selling of illegal drugs at a basketball court beside the store where accused was arrested. In a notable departure from the ordinary or standard operating procedure of law enforcement agents in this respect, the “tip” from their informant did not identify any suspect, much less mention the name of the accused. The tip intimated only that illicit drug trafficking was rampant in San Juan, Molo Blvd. Nothing more. Yet no surveillance of that area was first conducted by the law enforcement agents before the actual “bust.” They had no suspect, not even a description of the suspect’s face nor a name. Yet the testimony of Sgt. Deocampo clearly stated that as soon as the information was called in, the anti-narcotics agents immediately repaired to the area and conducted a buy-bust operation. We note also that the agents did not meet their informer at the designated place. Neither did their informer introduce the poseur-buyer to any suspect. It is unlikely for officers of the law to deal so cavalierly with “tips” about drug trafficking as not to even concern themselves with securing names and identities of alleged or probable suspects. Moreover, the supposed buy-bust procedure employed by the Narcom agents here seems to us extra-ordinary and hard to believe. We find it improbable that Sgt. Deocampo, with no particular suspect in mind, should be able to attract the attentions of a peddler of illegal drugs and negotiate a sale and apprehend accused all within three (3) minutes from arriving at the scene of the crime. The testimony of Sgt. Deocampo appears to us contrived in its tenor and, accordingly, the trial court should not have relied solely upon the presumption of regularity of the performance of official duties.

Secondly, the Court observes that the evidence in chief of the prosecution consisted of the uncorroborated

testimony of Sgt. Deocampo. Generally, there is no law which requires that the testimony of a single witness has to be corroborated to be believed.[5] The un rebutted testimony of one prosecution witness subjected to cross-examination is sufficient to prove the case for the people. Under the circumstances obtaining in the present case, however, the details of the buy-bust operation, as well as the circumstances leading to accused's arrest, were not testified to with sufficient clarity. We find the uncorroborated testimony of the state's star witness, even if coming from a police officer, is not sufficient to induce moral certainty. We note that the public prosecutor was aware that corroborating evidence was necessary to complete the testimony of Sgt. Deocampo. But no legitimate corroboration was submitted. The public prosecutor did not present a corroborating witness; instead, he moved that the testimony of Sgt. Deocampo be adopted as the testimony of Sgt. Bonete, without Sgt. Bonete actually being called and testifying. The transcripts of stenographic notes dated 12 December 1990[6] reveal that:

Prosecutor Aninao:

"x x x x x x x x

Your Honor please, we abbreviate proceedings if there's no objection on the part of counsel for the accused. Instead of presenting Sgt. Bonete, your Honor we would like to adopt the testimony of Sgt. Deocampo here as the testimony of Sgt. Bonete so that we will not present Sgt. Bonete anymore. His testimony would only corroborate to what was said here by Sgt. Deocampo, your Honor.

x x x x x x x x

Atty. Anilao

So, your honor please, the testimony of the fact and considering that there is no objection, we would like to adopt the testimony of Sgt. Deocampo as the testimony of Sgt. Bonete to testify in court concerning all of the facts surrounding the circumstances of the buy-bust operation and the arrest of the accused Arsenio Deocariza who was caught selling marijuana and the marked money as recovered from his possession. x x x"
(Underscoring supplied)

The procedure employed by the public prosecutor was obviously irregular and did not in any way corroborate the testimony of Sgt. Deocampo. The "adoption" of Sgt. Deocampo's testimony as the testimony of a non-witness effectively deprived the accused of his right to cross-examine Sgt. Bonete on such vicarious testimony. In fact, this procedure gives rise to an inference that if Sgt. Bonete had been presented, his testimony would not have supported the case of the prosecution nor corroborated the testimony of Sgt. Deocampo. The failure of the defense counsel to object to this appalling procedure did not legitimate it.

Thirdly, the testimony of the accused, as noted earlier, was corroborated by the testimony of Marco Palle. The trial court did not, however, give any weight to Marco's testimony for the sole reason that he was the uncle of the accused. Neither did the trial judge ascribe any weight to the testimony of Thelma, again for the sole reason that she was the accused's sister. It is settled that the testimony of a relative is not, for that reason alone, necessarily flawed or to be denied any weight.[7] The judge should have subjected their testimonies, especially that of Marco Palle, to the ordinary processes of evaluation and accordingly assigned to each its proper intrinsic weight.

The testimony of the accused himself, as corroborated by that of Marcos Palle, was to the effect that no buy-bust operation had in fact been conducted. The accused was sitting under the shade gasping for breath and apparently experiencing the onset of an asthma attack when the three men seized him.

He was not informed of the cause for his arrest. More importantly, he was not previously known to the Narcom agents as a drug peddler or pusher. As already noted, the lead of the Narcom agents did not include the name or description of any suspect they intended to entrap. Neither was the accused introduced by any informer to Sgt.

Deocampo as the peddler of illicit drugs. Under these circumstances, the denial of the accused effectively offset the alleged positive identification by Sgt. Deocampo. We are aware that as a general principle, bare denials do not overcome the positive identification of witnesses.[8] However, as in this case, where the defense has sufficiently overcome the prima facie case of the people, the burden of evidence then shifts back to the prosecution. The accused could of course have subpoenaed the police authorities who had seized him, as hostile witnesses; he failed to do so. It is a fundamental rule, however, that the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused to prove that he was in fact innocent.

We turn to the pack of marijuana allegedly delivered by the accused to Sgt. Deocampo for P50.00. The evidence which links the marijuana to the accused consisted of (a) the testimony of Sgt. Deocampo who said he had received the pack from the accused; and (b) the Receipt of the property allegedly seized.[9] As earlier noted, we consider the testimony of Sgt. Deocampo as contrived and improbable; thus, such testimony does not constitute sufficient proof of actual sale and delivery of the pack of marijuana. The remaining piece of evidence is the Receipt of the Property marked for the people as Exhibit "E". This piece of evidence was introduced into the record under the following circumstances:

"Q :

Do you have any proof or evidence to show that you confiscated or seized this marijuana from the accused in this case Arsenio Deocariza?

A :

Yes, sir. This is the receipt of the property seized for the marijuana which was confiscated.

Q :

Can you tell us whose signature is this above the name Sgt. Deocampo?

A :

My signature.

Q :

I respectfully request your Honor that his receipt of property seized dated May 17, 1990 be marked as Exhibit E and the signature above the typewritten name Sgt. Deocampo be bracketed and marked as Exhibit E-1.

Prosecutor Aninao:

No further questions for the witness, your Honor."

Exhibit "E" was offered in evidence for the purpose of showing that the marijuana marked as Exhibit "C" was confiscated from the accused. But all that may be reasonably inferred from this piece of evidence is that Sgt. Deocampo signed a receipt to attest to his statement that he had received the marijuana from the accused. It should not have been difficult for the trial court to understand the true nature of this piece of evidence. It was but the self-serving assertion of Sgt. Deocampo of the same tenor as his oral declaration and must be evaluated as such. Exhibit "E" is not independent or additional proof that the marijuana had indeed come from the accused.

It is true that Exhibit "E," the Receipt for Property, purported to bear the signature of the accused. But the accused vigorously denied that the signature on the Receipt was his;[10] on the witness stand, he signed his name several times and the resulting signatures are markedly different from his supposed signature on Exhibit "E." [11] There is a more fundamental reason why his alleged signature in Exhibit "E" cannot be appreciated adversely to

the accused. To the extent that accused is supposed to have signed Exhibit “E” as an acknowledgment that the pack of marijuana had been confiscated or received from him, to that extent also that signature would constitute self incriminatory evidence, much like an extra-judicial confession. The prosecution did not attempt to prove that the constitutional law requisites for admission of an extra-judicial confession had been complied with in the instant case.

The Court is, of course, cognizant of the drug menace threatening the lives of our young people, and attacking the moral fiber of the nation. At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance, or even simply for making one’s “quota” of arrests. By the very nature of anti-narcotics operations -- 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 the pockets or hands of unsuspecting “provincianos,” and the secrecy that inevitably shrouds drug trafficking -- the possibility of abuse is great. Courts must hence be extra vigilant in trying drug charges lest an innocent person is made to suffer the very severe penalties for drug offenses.[12]

We have examined in great detail the prosecution’s evidence and find that there is left much to be desired. The presumption of regularity of the performance of the official duty of Sgt. Deocampo, alone, does not induce moral certainty in our mind of appellant’s guilt.[13] The demands of proof beyond reasonable doubt have not been met.

WHEREFORE, for failure of proof beyond reasonable doubt of his guilt, the accused Arsenio Deocariza y Balle is hereby ACQUITTED of the crime charged. The decision of the trial court dated 15 May 1991 is hereby REVERSED. Costs de officio.

SO ORDERED.

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

[*] Justice Hugo E. Gutierrez, Jr. is on terminal leave.

[1] Records, p. 1.

[2] Records, p. 6.

[3] People v. Lati, 184 SCRA 336 (1990); People v. Tejada, 170 SCRA 497 (1989).

[4] People v. Yutuc, 188 SCRA 1 (1990); People v. Taruc, 157 SCRA 182 (1988); People v. Salcedo, 195 SCRA 345 (1991); People v. Noyeras, 130 SCRA 265 (1984); People v. Martinez, 144 SCRA 303 (1986); Arcadio Cortes y Vengzon v. Court of Appeals and People, 163 SCRA 139 (1988); People v. Alvarez, 163 SCRA 745 (1988); People v. Dorado, 30 SCRA 53 (1969); People v. Espejo, 36 SCRA 400 (1970).

[5] People vs. Lucas, 125 SCRA 813 (1983); People vs. Marilao, 177 SCRA 271 (1989); People vs. Cortez, 163 SCRA 139 (1988); People vs. Rumeral, 200 SCRA 194 (1991); People vs. Javier, 182 SCRA 830; People vs. Martinez, 127 SCRA 260; People vs. Francia, 154 SCRA 495 (1987).

[6] See Records, p. 41.

[7] People v. Canada, 144 SCRA 121 (1986); People v. Ruiz, 93 SCRA 739 (1979); People v. Abejuela, 92 SCRA 503 (1979); People v. Ciria, 106 SCRA 381 (1981); People v. Puesca, 87 SCRA 130 (1978); People v. Dajay, 10 SCRA 385 (1964); People v. Asmawil, 13 SCRA 497 (1965); People v. Libed, 14 SCRA 410 (1965).

[8] See People v. Sucro, 195 SCRA 388 (1991); People v. Khan, 161 SCRA 406 (1988); People v. Paco, 170 SCRA 681 (1989).

[9] See TSN of 6 December 1990, p. 3; Records, p. 26.

[10] TSN, 9 January 1991, p. 11; Records, p. 58.

[11] Id., Records, p. 62.

[12] *People v. Ale*, 145 SCRA 50 (1986).

[13] *People v. Salcedo*, 195 SCRA 345 (1991); *People v. Yutuc*, 188 SCRA 1 (1990); *People v. Ale*, 145 SCRA 51 (1986); *People v. Fernando*, 145 SCRA 151 (1986); *People v. Flores*, 165 SCRA 71 (1988).

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