

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO YAP Y BOCA AND SIMPLICIO OSMEÑA Y OCAYA, ACCUSED-APPELLANTS.

G.R. No. 103517. February 09, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

"Do not conform any longer to the pattern of this world,.."

Romans 12:2

Accused-appellants Edgardo Yap and Simplicio Osmeña were charged with a violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, for having sold on October 1, 1989 in Ozamiz City six sticks of marijuana for a consideration of ten pesos.[1]

On May 21, 1990 appellants pleaded not guilty when arraigned with the assistance of counsel de parte, and thereafter stood trial. On November 9, 1990, the court a quo rendered judgment convicting both appellants of the crime charged, and sentenced them to serve the penalty of reclusion perpetua, to pay a fine of P20,000.00, to suffer all accessory penalties of the law and to pay the costs. The six marijuana cigarettes were forfeited in favor of the Government and appellant Yap was credited, in the service of his sentence, with four-fifths of the period of his preventive imprisonment.[2]

On June 12, 1993, after the filing of appellant's brief, appellant Simplicio Osmeña died due to gunshot and stab wounds,[3] hence his appeal was dismissed. The present proceeding is accordingly with respect to appellant Edgardo Yap, although the participation of Osmeña may occasionally be adverted to in this opinion.

From the evidence in this case, it appears that a report of rampant pushing of prohibited drugs by notorious pushers "Edgar" and "Simpoy," later identified as appellants Edgardo Yap and Simplicio Osmeña, respectively, was submitted by a civilian informer to the 10th Narcotics Regional Unit of the Philippine Constabulary (PC) stationed in Cotta, Ozamiz City.[4]

Acting on said report, a buy-bust team was organized by that unit, composed of S/Sgt. Reynaldo Miguel, as team leader, Sgt. Bernardino Mugot, Sgt. Rolando Malagayo and C1C Emilio de Guzman, as members, and with Percival Raterta, a PC Narcotics Command agent, as the poseur-buyer.[5]

At around 10:30 o'clock in the morning of October 1, 1989, two buy-bust operations were scheduled to be conducted simultaneously inside the public market of Ozamiz City. In the operations subject of the case at bar, S/Sgt. Miguel gave Raterta a ten-peso bill with serial number. JP 674717, marked by the signature of Miguel just below the printed signature thereon of then President Corazon C. Aquino, and which facts were duly entered in the log book of their office.[6]

When Raterta reached the public market, the other members of the team had already strategically deployed

themselves in their designated positions. Upon seeing appellants Yap and Osmeña, Raterta approached them and offered to buy marijuana, whereupon six sticks thereof were delivered to him by Osmeña after he handed the marked ten-peso bill to Yap, who put the money in the right pocket of his pants. Thereafter, Raterta went back to their headquarters and turned over the six marijuana cigarettes to their team leader, S/Sgt. Miguel.[7]

Immediately after the consummation of said sale of the six sticks of marijuana, Sgt. Mugot, who was four to five meters away, saw the two appellants go inside the public market. He and his companions surreptitiously followed both appellants. They did not immediately arrest the latter as they were still waiting for the result of the other buy-bust operation conducted by another group in the same vicinity, and knowledge of their presence might alarm other drug pushers who may be present therein. When the other group informed Sgt. Mugot that their operation failed, he and his companions forthwith arrested both appellants and brought them to their headquarters.

S/Sgt. Miguel then conducted a body search on appellants and retrieved the marked ten-peso bill from the right pocket of Yap's pants.[8] The six sticks of marijuana were brought by Sgt. Malagayo to the forensic chemist of the National Bureau of Investigation at Region 10 for laboratory examination and testing. These tests yielded positive results for marijuana.[9]

Appellants denied any participation in the aforesaid sale of prohibited drugs. Osmeña claimed that in the morning of that day, he was in their house doing some household chores when Yap came and asked him to accompany him to buy soap inside the public market. On their way, they met Frederick Lapitan and his cousin, Paul Suizo. Lapitan, their common friend, invited them for a round of drinks in the store of Charles Revil located inside the public market. At about 10:30 A.M., a group of rugged looking men entered the store and picked up Yap and Osmeña. The latter resisted and asked for a warrant of arrest, but a pistol was pointed at his head. The said group identified themselves as members of the Regional Special Action Force and brought them to their headquarters. The incidents narrated above were corroborated by Lapitan and Emerita Tionson, a regular customer of Osmeña's mother.[10]

Appellants raised seven assignments of errors, which can actually be simplified and consolidated into five propositions, and the same are hereunder discussed in light of the evidence on record.

1. Appellants claimed that the testimonies of the prosecution witnesses were never offered nor admitted in evidence, nor were the specific purposes for which they were offered duly stated, contrary to Sections 34 and 35, Rule 132 of the Rules of Court.

In actual practice, there is a difference between presentation or introduction of evidence and offer of such evidence at the trial of a case. The presentation of evidence consists of putting in as evidence the testimony of the witnesses or the documents relevant to the issue. An offer of evidence, on the other hand, means the statement made by counsel as to what he expects to prove through the witness. This is what trial lawyers understand by the "offer of evidence." Thus, "offer of evidence," as used in Section 34 of Rule 132 must be understood to include the presentation or introduction of evidence. What is essential in order that an offer of testimony may be valid, therefore, is that the witness be called and asked appropriate questions.[11]

All the prosecution witnesses were presented and examined before the court a quo, the questions and answers being taken down in writing, and such testimonies were offered thereafter to the trial court. Had appellants wanted the trial court to reject the evidence being introduced, they should have raised an objection thereto. They cannot raise the question for the first time on appeal.[12] The right to object is a privilege which the party may waive. It is not consistent with the ends of justice for a party, knowing of a supposed secret defect, to proceed and take his chance for a favorable verdict, with the power and intent to annul it as erroneous if it should be against him.[13]

2. Appellants asserted that the team of Sgt. Mugot was not provided with a warrant of arrest when appellants were apprehended. This specious argument is readily disposed of by Section 5(c) of Rule 113 which provides that a peace officer or a private person may effect an arrest without a warrant when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it. Sgt. Mugot had personal knowledge of the commission of the crime, having been present in the locus criminis and having actually witnessed the unlawful transaction. The interval between the commission of the crime and the time of the arrests was only four to five minutes.[14]

A buy-bust operation is a form of entrapment employed by peace officers to apprehend a malefactor in flagrante delicto, that is, to catch him red-handed while selling marijuana to a person acting as a poseur-buyer.[15] Consequently, and contrary to the claim of the defense, appellants were positively identified by the poseur-buyer, Raterta, and Sgt. Mugot, who were undeniably eyewitnesses to the crime.

3. Appellants, as is to be expected, sought to assail the credibility of the prosecution witnesses. Availing of the very same case cited by appellants, we reiterate the doctrine in *People vs. Baduya*[16] that the findings of fact of the trial court on the matter of credibility of witnesses will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. The exceptions mentioned therein do not obtain and find no application in the case under consideration.

4. The claim of the appellants that they were framed is absurd. The narcotics agents did not even know them before the operation and certainly had no grudge against or entertained any animosity towards them. It is difficult to conceive that said agents, for no reason at all, would pick out both appellants from the group with which they were drinking and arrest them for a crime that could mean imprisonment for life.

Aside from the presumption of regularity in the discharge of their functions,[17] there is no showing that the agents were actuated by improper motives, hence their testimonies are entitled to full faith and credit. The defense of frame-up must be proved by clear and convincing evidence. Like alibi, it is a weak defense that is easy to concoct and difficult to prove.[18]

5. Appellants invoke the discredited theory that it is unlikely for them to sell prohibited drugs to an unknown person like Raterta and in a public place like the market. In a long line of cases,[19] the Court has emphasized that drug pushers sell their prohibited wares to customers, be they strangers or not, in private as well as in public places. If pushers peddle drugs only to persons known to them, then drug abuse would not be as rampant as it is now and would not pose a serious and grave threat to society. What actually matters is not familiarity between the seller and buyer but their agreement and acts constituting the sale and delivery of the vile prohibited drugs.

Significantly, appellants mentioned the names of certain persons who could have bolstered their defense but whom they inexplicably did not present as witnesses, such as Charles Revil, the owner of the store who was present during the alleged frame-up of appellants. Some porters at the pier were allegedly there drinking at another table, and were even identified by appellants and Lapitan as George, Toto and Peter. These people were never called by the defense as witnesses. Paul Suizo, the cousin of Lapitan who was with them all the time on that occasion, was also not presented.[20]

Instead, despite the gravity of the case, the defense opted to merely rely on the testimonies of Frederick Lapitan, who admitted in open court that he was testifying in favor of appellants who are his close friends, and Emerita Tiongson, who was admittedly not only indebted to but likewise dependent for her only means of livelihood on the mother of Osmeña. In fact, Tiongson admitted that she testified for appellants because the mother of Osmeña told her to do so and even supplied her the name of Frederick Lapitan whom she did not even know.[21]

In fine, the Court is convinced that a conscientious evaluation of the evidence cannot but yield the irresistible conclusion that the disputable presumption of innocence in favor of appellant Yap has been successfully rebutted and that his guilt for the offense charged has been duly established beyond reasonable doubt.

WHEREFORE, the judgment of the trial court with respect to accused-appellant Edgardo Yap y Boca is hereby AFFIRMED, with the modification that the penalty imposed should be life imprisonment instead of reclusion perpetua and, as a consequence, the reference therein to the accessory penalties of reclusion perpetua should be, as it is hereby, deleted.

SO ORDERED.

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

Nocon, J., no part.

[1] Reproduced Information, Original Record, 1-2.

[2] Criminal Case No. OC-900-R, Regional Trial Court, Branch XV, Ozamiz City, Judge Feliciano M. Batoy, presiding; Original Record, 74-78.

[3] Original Record, 84-86.

[4] TSN, June 27, 1990, 4, 6, 10, 13.

[5] Ibid., id., 4-5; August 10, 1990, 3-4.

[6] Exhibits, A & A-1, Original Record, 14; TSN, June 27, 1990, 4, 9-10; August 10, 1990, 3-4.

[7] Ibid., id., 5-6, 11-13.

[8] Ibid., id., 6-9, 11, 14.

[9] Ibid., id., 8-9; Exhibits B and D, Original Record, 48-49.

[10] TSN, October 1, 1990, 3-5, 16-17, 19; October 2, 1990, 3-5.

[11] Chicago City R. Co. vs. Carrol, 206 111., 318, 68 N.E. 1087; Francisco, Revised Rules of Court in the Philip-pines, Volume VII, Part II, 1973 ed., 494-495.

[12] Asombra vs. Dorado, et al., 36 Phil. 883 (1917); Hodges vs. Salas, et al., 63 Phil. 567 (1936).

[13] Moran, Comments on the Rules of Court, Volume VI, 1980 Edition, 125.

[14] TSN, June 27, 1990, 14.

[15] People vs. Rodriguez, G.R. No. 95902, February 4, 1992, 205 SCRA 791.

[16] G.R. No. 84448, February 7, 1990, 182 SCRA 57.

[17] People vs. Bagawe, G.R. Nos. 88515-16, April 7, 1992, 207 SCRA 761.

[18] People vs. Fernandez, G.R. No. 86495, May 13, 1992, 209 SCRA 1.

[19] People vs. Manzano, G.R. No. 103393, August 24, 1993, and cases cited therein.

[20] TSN, October 1, 1990, 17, 19.

[21] TSN, October 1, 1990, 4, 10, 17-22, 25-26; October 2, 1990, 4-7, 9-10, 13.

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