

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOBBY DE PAZ Y GADITANO, ACCUSED-APPELLANT.

G.R. No. 104277. July 05, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Bobby de Paz was charged for violating Section 4, Article II of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended, in a criminal complaint filed with the Municipal Trial Court (MTC) of Catbalogan, Samar on 5 March 1991.[1] Having failed to submit counter-affidavits despite the favorable action on his motion for an extension of time within which to do so, the court declared him to have waived his right to a preliminary investigation and, finding a prima facie case against him, forwarded the records of the case to the Office of the Provincial Public Prosecutor of Samar for appropriate action.[2]

On 25 April 1991, the Provincial Public Prosecutor of Samar filed with the Regional Trial Court (RTC) therein an Information[3] charging the accused with the violation of Section 4, Article II of The Dangerous Drugs Act of 1972, as amended. The Information recounts:

"That on or about the 4th day of March, 1991, at nighttime which was purposely sought, at Barangay No. 9, Ubanon District, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give fifteen (15) sticks of marijuana cigarettes or 'Indian Hemp', a prohibited drug, to one P01 Leo Letrodo who acted as poseur-buyer.

CONTRARY TO LAW."

The case, docketed as Criminal Case No. 3374, was raffled off to Branch 27 of the said court.

Arraigned on 23 May 1991,[4] the accused entered a plea of not guilty.

During the trial on the merits, the prosecution presented P/Lt. Vicente Armada, PO1 Leo Letrodo, SPO2 Elpidio Digdigan and SPO2 Porferio Mañoso. The defense, on the other hand, presented Victoria Cordova and the accused himself as its witnesses.

On 7 January 1992, the trial court promulgated its decisions[5] finding the accused guilty as charged. The dispositive portion thereof reads:

"WHEREFORE, and in view of all the foregoing, the court hereby pronounces accused BOBBY DE PAZ y GADITANO guilty beyond reasonable doubt of the violation of Section 4, Article II of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended, and accordingly sentences him to suffer the penalty of life imprisonment and to pay a fine of TWENTY-THOUSAND PESOS (P20,000.00), as well as the costs of this action."[6]

The conviction is based on the evidence duly established by the prosecution and summarized by the trial court as follows:

"In the afternoon of March 4, 1991, a police team composed of P01 Leo Letrodo of the NARCOM, 8th Narcotics Regional District, Tacloban City, P02 Elpidio Digdigan and P02 Porferio Mañoso, the latter two of the 361st PNP Company, Camp Lukban, Catbalogan, Samar, with the participation of a female confidential informant, conducted a 'buy-bust' operation in Ubanon District, in this capital town of Catbalogan, with herein accused Bobby de Paz as the target-suspect, and Letrodo acting as poseur-buyer. Letrodo, Digdigan and Mañoso went to Brgy. 9, Ubanon District at around 5:30 pm. In Ubanon, Letrodo made contact with the confidential agent and the latter in turn contacted the accused. Near an area where dried fish are sold, the confidential agent introduced Letrodo to the accused de Paz as one from Tacloban City who wanted to buy marijuana from said accused. Digdigan and Mañoso positioned themselves around 10 meters away from, and in full view of Letrodo, the accused and the confidential agent. Letrodo asked accused (sic) how much was the price of the drug and the latter informed the former that three (3) sticks of marijuana cigarettes cost P10.00. Letrodo then informed the accused that if the latter had some available marijuana, the former wanted to buy P50.00-worth of the drug. Letrodo then handed to accused de Paz a marked P50.00 bill (Exh. "A") which accused placed in his pocket after which accused left the place. A few minutes later, the accused came back and handed to Letrodo fifteen (15) rolled up sticks of marijuana cigarettes. Upon receiving the sticks of marijuana cigarettes, Letrodo opened one of the sticks, and after determining by its smell that it indeed contained marijuana, the lawman scratched his head as a signal to Digdigan and Mañoso who immediately approached Letrodo. Letrodo introduced himself as a NARCOM agent and apprehended the accused. Digdigan and Mañoso likewise introduced themselves to the accused. Letrodo searched de Paz's pocket and got from it the marked P50.00 bill (Exh. "A") he had earlier given said accused. Letrodo and his companions then brought the accused to the headquarters of the 361st PNP Company for investigation. The fifteen (15) sticks of suspected marijuana cigarettes were later submitted to the PNP Crime Laboratory Service, RUC 8, Camp September 21st Movement, PNP Hills, Palo, Leyte, where they were subjected to qualitative examination and found positive for marijuana, a prohibited drug."[7]

On the other hand, the trial court's summary of the evidence for the defense is as follows:

"At around 6:30 p.m. of March 4, 1991, accused Bobby de Paz was in the grocery store of Victoria Cordova in front of the church in Ubanon District when three men whose identities were then unknown to him but whom he now knows to be Sgt. Digdigan, SPO2 Mañoso and a certain Captain Marcelo, approached him asking where they could buy some dried fish. Accused led the three men to another store of Victoria Cordova where dried fish were sold, but finding there the price of dried fish to be high, the three men, together with the accused, went to the nearby store of Fidel Gaditano, where they bought a kilo of dried fish. Accused and the three men then went out of Gaditano's store and parted ways. Accused then proceeded on his way to the warehouse ('casa') where he was working, but before he could reach the place, he was called by one Emma Alcantara who was near the gate of the church. When accused approached Alcantara, the latter requested him to buy for her some marijuana from a certain Frankie Dacallos. Accused begged off and asked Alcantara to go to Dacallos herself as she was known to him. Alcantara reiterated her request and so he got the P50.00 from the former and went to the house of Dacallos nearby to buy marijuana. Accused failed to buy marijuana from Dacallos as he had none of the stuff at the time. When accused went back to Alcantara, the latter requested him to buy marijuana instead from one 'Taba', whose real name is Renato Albat. Accused told Alcantara that he would take a bath first, but because Alcantara requested him to do her the favor as it would not take long anyway, accused proceeded to the house of Taba which is very near where Alcantara was at the time. In the house of Taba accused bought P50.00 worth of marijuana which Taba handed to him wrapped in a newspaper. Accused then went to Alcantara and gave her the marijuana he had bought from Taba. After the two parted ways, accused proceeded on his way to the place where he was working, but after he had taken five steps, he heard a gun report. As accused quickened his steps, P02 Mañoso put his arm around the shoulders of the former, telling him not to run so nothing would happen to him, and to go with him (Mañoso) towards the (sic) downtown. Mañoso took the accused to a Petron gasoline station followed by the former's two companions in buying the dried fish earlier. At the gasoline station, accused was made to board a motor vehicle, and shortly after the vehicle's engine had started, Emma Alcantara arrived and handed to Captain Marcelo the wrapped

marijuana accused had earlier purchased for Alcantara from Taba. The lawmen then brought the accused to the PNP Headquarters in Camp Lukban, Brgy. Maulong, also of this capital town. Accused was brought to the office of Captain Marcelo, and upon being asked from whom he bought the marijuana, told the officer that he bought them from Renato Albat. Captain Marcelo then ordered Mañoso to bring the accused to Sgt. Digdigan.”[8]

The court a quo gave full faith and credit to the prosecution's evidence as the witnesses who took part in the buy-bust operation are police officers who are presumed to have performed their duties in a regular manner; moreover, nothing in the record suggests any reason or motive as to why they would testify falsely against the accused. The court, however, rejected the accused's version not only because his testimony was uncorroborated, but also because he admitted possessing the fifteen sticks of marijuana cigarettes before the same were seized by the law enforcers. Furthermore, "[T]he evidence shows that for a period before the 'buy-bust' operation was actually conducted, the police placed the accused under surveillance, convincing the lawmen that accused was engaged in the illicit and highly pernicious practice or business of 'drug-pushing'; specifically, of selling marijuana to interested or willing customers or buyers.”[9]

His motion for the reconsideration of the decision[10] having been denied by the trial court in the Order of 5 February 1992,[11] the accused filed on 10 February 1992 his Notice of Appeal.[12] This Court accepted the appeal in the Resolution of 8 June 1992.[13]

In his Appellant's Brief, the accused pleads for the reversal of the trial court's decision because it allegedly erred:

"I. X X X IN NOT FINDING THAT THERE IS INSTIGATION IN THE INSTANT CASE; and

II X X X IN FINDING THE VERSION OF THE PROSECUTION AS 'DULY CORROBORATED' AND THEREBY WANTING ANY REASON TO MOTIVATE THE POLICE OFFICERS TO TESTIFY FALSELY AGAINST ACCUSED.”[14]

Anent the first error, the accused maintains that the evidence relied on to convict him clearly indicates the presence of instigation which would entitle him to an acquittal considering that instigation is an absolatory cause akin to an exempting circumstance in criminal law.[15] According to him, the idea to purchase marijuana did not come from him; he claims that it originated from Emma Alcantara, the alleged confidential informant and "asset" of the police officers. Nor could he be prosecuted for illegal possession under Section 8 of R.A. No. 6425 as he had no intention to possess the marijuana at all; he merely ran an errand for Alcantara.

In support of the second assigned error, the accused contends that the version submitted by the prosecution "is in fact not corroborated, full of glaring contradictions and material inconsistencies, absurd and concocted situations." He argues that the evidence on the illegal transaction is anchored solely on the testimony of PO1 Letrodo, which was uncorroborated. Hence, the same should not be given weight and credence as doubt exists as to whether the accused really sold the merchandise to the latter; the accused contends that the doubt should be resolved in his favor. More importantly, he claims that the said police officer had a sinister motive for testifying falsely against him. The accused avers that he was merely being used to flush out the drug pushers in the locality.

The primordial issue in this case is factual and involves the credibility of the witnesses.

It is doctrinally settled that when the issue of the credibility of witnesses is involved, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during trial, unless certain facts or circumstance of weight have been overlooked, misunderstood or misapplied which, if considered, might affect the result of the case.[16] Having reviewed the records of this case and evaluated the evidence of both parties, we find no compelling reason to depart from the factual findings of the trial court.

We have likewise consistently held in several drugs cases that absent any proof to the contrary, law enforcers are presumed to have regularly performed their duty.[17] In the instant case, aside from the accused's bare allegation of a sinister motive on the part of the law enforcers to use him "to flush out the drug pushers in Ubanon District, Catbalogan, Samar, particularly the suspected drug dealers, Frankie Dacallos and Renato Albat,"[18] no other evidence was introduced to rebut the presumption of regularity. The allegation of a sinister motive is at once self-serving and baseless because the fact of the matter is that the accused had been under surveillance precisely for drug pushing. It is, therefore, unlikely that he would be used at all to flush out the drug pushers in Ubanon District.

We thus find no merit in the accused's claim that he was instigated, not entrapped and, therefore, should be absolved since instigation "is an absolatory cause or akin to an exempting circumstance." [19] As incontrovertibly disclosed by the evidence for the prosecution, a buy-bust operation -- with PO1 Leo Letrodo as the poseur-buyer -- was successfully carried out in this case. Letrodo, after contacting the accused, offered to buy sticks of marijuana cigarettes from him; the latter then accepted. Consequently, Letrodo handed the marked P50.00 bill to the accused who then left and returned a few minutes later to deliver the fifteen sticks of marijuana cigarettes. Letrodo opened up one stick and, after determining that it contained marijuana, gave the pre-arranged signal to his teammates who swooped down on the accused. Clearly, the accused was caught in flagrante. The operation, a definite entrapment, was hatched to expose, arrest and prosecute the accused, a drug trafficker. Since he was actually committing a crime, no one else was needed to induce him to consummate his evil intentions. In short, the criminal intent did not originate from Letrodo, but from the accused himself.[20] Entrapment has consistently proven to be an effective method of apprehending drug peddlers.[21]

There is, as well, no merit in the second assigned error as Letrodo's testimony is not uncorroborated. On the contrary, the said testimony was in fact corroborated by the testimonies of the other policemen who were present during the buy-bust operation. Besides, even if there was no corroboration, the testimony is credible by itself and would require no further avouchment. We have ruled that the testimony of a single witness, if credible, is sufficient to convict.[22]

While the accused has practically admitted that he was caught in possession of fifteen sticks of marijuana cigarettes, he still argues that he was merely acting as an errand boy for the police informer. We are not persuaded. The fact that he had the prohibited drug with him and accepted the P50.00 as payment for it clearly established a consummated sale of the illegal drug which is punishable under Section 4, Article II of the Dangerous Drugs Act of 1972, as amended. Section 4 provides:

"SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. -- The 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 P.D. No. 1675, 17 February 1980.)

The law does not require the element of intent to sell or possess in order to obtain a conviction. Nor is it essential that the ownership of the prohibited drug be established or known. The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction.[23] As has been proven and established by clear and convincing evidence, the accused committed the said unlawful act.

Thus, the challenged decision is in accordance with the facts and the law.

WHEREFORE, the decision of Branch 27 of the Regional Trial Court of Samar, 8th Judicial Region, in Criminal Case No. 3374 is hereby AFFIRMED in toto.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), 3.

[2] Id., 39.

[3] OR, 1.

[4] Id., 43.

[5] Id., 112-116; Rollo, 15-19. Per Judge Sinforiano A. Monsanto.

[6] OR, 116; Rollo, 19.

[7] OR, 112-113; Rollo, 15-16.

[8] OR, 113-115; Rollo, 16-18.

[9] OR, 115; Rollo, 18.

[10] OR, 136-140.

[11] Id., 144.

[12] Id., 146.

[13] Rollo, op. cit., 25.

[14] Id., 47-48.

[15] Citing *People vs. Periodica*, 178 SCRA 120 [1989].

[16] *U.S. vs. Ambrosio*, 17 Phil. 295 [1910]; *People vs. de la Cruz*, G.R. No. 102063, 20 January 1993, citing *People vs. Gonzaga*, 77 SCRA 140 [1977]; *People vs. Oñate*, 78 SCRA 43 [1977]; *People vs. Ramos* 167 SCRA 476 [1988]; *People vs. Payumo*, 187 SCRA 64 [1990]; *People vs. Vocente*, 188 SCRA 100 [1990].

[17] *People vs. Fernandez*, 209 SCRA 1 [1992].

[18] Rollo, 56.

[19] Rollo, 48.

[20] *People vs. Madriaga*, 211 SCRA 698 [1992].

[21] *People vs. Valmores*, 122 SCRA 922 [1983]; *People vs. Gatong-o*, 168 SCRA 716 [1988].

[22] *People vs. Mision*, 194 SCRA 432 [1991]; *People vs. Catubig*, 195 SCRA 505 [1991]; *People vs. Lazo*, 198 SCRA 274 [1991].

[23] *People vs. del Pilar*, 188 SCRA 37 [1990].

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