

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EVELYN GARCIA Y DELIMA, ACCUSED-APPELLANT.

G.R. No. 105805. August 16, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Evelyn Garcia y Delima was charged before the Regional Trial Court of Cebu City in Criminal Case No. CBU-21653 with the violation of Section 4, Article II of R.A. No. 6425 (the Dangerous Drugs Act of 1972), as amended, in an information[1] dated 16 April 1991, the accusatory portion of which reads as follows:

"That on or about the 12th day of April, 1991, at about 12:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there sell and deliver, without authority of law, fifteen (15) sticks of marijuana cigarettes, a prohibited drug, to a person who posted himself as buyer after having received buy bust money in the amount of P20.00 bearing serial No. KL518411.

CONTRARY TO LAW."

The case was raffled off to Branch 5.

After the requisite proceedings, the trial court promulgated on 24 January 1992 its decision[2] finding the accused guilty as charged and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P20,000.00. It further ordered the burning of the fifteen sticks of marijuana cigarettes in the presence of the representatives of the Narcotics Command (NARCOM), the prosecution, and the court.

The evidence adduced by the prosecution established that sometime before 5 April 1991, the office of the NARCOM based in Cebu City received a report from an informer that the accused, a resident of Lorega St., Cebu City, was engaged in the sale of marijuana. Acting upon this information, Maj. Esa Hassan, commanding officer of the said office, instructed Sgt. Basilio Sarong to conduct a surveillance on her. On 5 April 1991, Sgt. Sarong, accompanied by the informer, proceeded to the slum area of Lorega and upon arrival thereat, positioned himself at the house of the informer's friend from where he had a clear view of her hangout. Peeping through a window, Sgt. Sarong saw her selling marijuana to certain persons. He then reported to Maj. Hassan her illegal activity.

On 10 April 1991, Sgt. Sarong conducted another surveillance on the accused for the purpose of preparing for a buy-bust operation.[3] His surveillance yielded a positive result, which he immediately reported to Maj. Hassan who then formed a buy-bust team composed of Sgt. Sarong as the poseur buyer and Sgt. Eduardo Misa, Sgt. Hermes Recla, and other NARCOM officers as members of the back-up team. Sgt. Sarong was provided with a P20.00 marked bill (Exhibit "D") bearing serial number KL518411 (Exhibit "D-1") and containing the initials of Maj. Hassan (Exhibit "D-2").[4]

On 12 April 1991 at around 12:30 p.m., the members of the team proceeded to Lorega Street. Sgt. Sarong went directly to the hangout of the accused while his companions strategically posted themselves in a place where they

could monitor Sgt. Sarong's movements. When he entered the hangout, the accused approached and asked him if he wanted to buy marijuana to which he answered yes. He gave her the marked P20.00 bill. She told him to wait for a while and then left. When she came back, she delivered to him fifteen sticks of marijuana cigarettes. He opened one handrolled cigarette and smelled it. After ascertaining that it was indeed marijuana, he gave the pre--arranged signal (by scratching his head) to his companions who immediately closed in and arrested her. The team recovered from her the P20.00 marked bill.

The accused was brought to their office for investigation. The fifteen sticks of marijuana were given to C1C Ceballos, the evidence custodian, who marked each cigarette and conducted a field test which yielded a positive result for marijuana (Exhibit "E").[5] The fifteen sticks of marijuana were later sent to the PNP Crime Laboratory for examination (Exhibit "A") and submitted to Lt. Myrna Areola, Chief Chemist, who examined the specimens and found the same positive for marijuana (Exhibit "C").[6]

On the other hand, the accused denied the prosecution's story and claimed that at about 12:30 p.m. of 12 April 1991, she was in her house playing bingo with her mother, Teresita, and her neighbors. A man approached her, suddenly placed his arms around her shoulders, and led her to a road forty meters away from her house. She did not hesitate to go with him because she thought that the man was her friend or relative. While on the road, another man alighted from the service vehicle of the NARCOM and showed her some marijuana leaves wrapped in a piece of paper. When asked by the man if she had marijuana, she replied in the negative and asserted that she had never seen a marijuana in her life. The man then frisked her and took P55.00 from her pocket. She was told to board the vehicle and was brought to the office of the NARCOM.[7]

On rebuttal, Sgt. Hermes Recla declared that he was one of the NARCOM officers who arrested the accused whom they caught selling fifteen sticks of marijuana cigarettes to Sgt. Sarong.[8] On sur-rebuttal, the accused claimed that she had not seen Sgt. Hermes Recla at the time she was arrested by the NARCOM officers but admitted that she does not know of any reason why he would falsely charge her of the crime.[9]

Insisting on her innocence, the accused appealed and in her Appellant's Brief[10] imputes upon the trial court the commission of the following errors:

"1. IN FAILING TO NOTE THAT THE OBJECTS IN EVIDENCE WERE PLANTED EVIDENCE.

2. IN FAILING TO NOTE THAT THE PROSECUTION NEVER IDENTIFIED THE ONE AND ONLY CIGARETTE THAT CONTAINED THE ALLEGED SMELLED MARIJUANA AND THAT THE PROSECUTION NEVER SHOW[ED] TO THE COURT THAT THE ALLEGED CIGARETTES WERE THE SAME HANDROLLED CIGARETTES ALLEGEDLY TAKEN DURING THE BUY-BUST OPERATION.

3. IN ADMITTING THE EXHIBITS OFFERED IN EVIDENCE BY THE PROSECUTION, AS THE SAID EVIDENCE ARE [sic] INADMISSIBLE EVIDENCE.

4. IN FAILING TO OBSERVE THAT THE ACCUSED, EVELYN GARCIA Y DELIMA, WAS NEVER IDENTIFIED DURING THE HEARINGS."[11]

The issue of the credibility of the witnesses confronted the trial court. It found "reasons to believe and g[a]ve more credence to the categorical and clear testimonies of the prosecution witnesses" because there was no iota of evidence that the prosecution witnesses who are police officers were actuated by any improper motive in charging the accused of a serious crime and testifying against her in court. It noted that she even admitted that she had no misunderstanding with the NARCOM agents and could not think of any possible motive why they would charge her with selling marijuana cigarettes. It ruled that the bare denials she put up in her defense cannot prevail over the positive identification made by the NARCOM agents and their affirmative testimonies, and that her claim in

her Memorandum that her arrest and search were illegal is baseless for she was caught in flagrante in a buy-bust operation; hence, the law enforcers were not only authorized but were under obligation to apprehend her even without a warrant of arrest and to search her for dangerous weapons or anything which may be used as proof of the commission of the offense without a search warrant.[12]

After a careful review of the records and the evidence, we are convinced that the trial court committed no error in its challenged decision. We accept its assessment of the credibility of the witnesses, an issue which is primarily addressed to it because it is in a better position to resolve it, having heard the witnesses and observed their deportment and manner of testifying during the trial. This assessment will not be disturbed on appeal unless there is a showing (of which there is none here) that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[13]

The prosecution's evidence established with moral certainty that the accused was caught in flagrante during a buy-bust operation. She sold the marijuana cigarettes to the poseur-buyer and accepted the consideration therefor -- the P20.00 marked bill.

A buy-bust operation is a form of entrapment. In entrapment, ways and means are resorted to for the purpose of trapping and capturing law breakers in the execution of their criminal plan. It is a procedure or operation sanctioned by law and which has consistently proved itself to be an effective method of apprehending drug peddlers.[14] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves full faith and credit.

The accused miserably failed to prove or even suggest, so as to cast doubt on the credibility of the members of the buy-bust team, that any of them had ulterior or sinister motives against her. The conclusion then is inevitable that they performed their official duty to eradicate, or at least diminish, the drug menace and arrest drug pushers who have already wrought immeasurable destruction to society and to the lives of many. No improper motive impelled their conduct of action. The law disputably presumes that official duty has been regularly performed.[15] In several drugs cases, this Court has repeatedly held that absent any proof to the contrary, law enforcers are presumed to have regularly performed their duty.[16] It is also settled that where there is no evidence and nothing to indicate that a witness was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[17]

The accused's conviction then merits affirmance. Nonetheless, for her satisfaction, we shall take up seriatim her assignment of errors.

In support of the first assigned error, she contends that: (1) the fifteen sticks of marijuana cigarettes and the marked P20.00 bill offered as exhibits have the "earmarks of planted evidence" because the appearance of the cigarettes presented during the trial is different from those allegedly recovered by Sgt. Sarong: the cigarettes had no markings[18] and "were not glued during the buy-bust operation and somewhat torn when presented in evidence"; (2) as regards the marked bill, assuming that it was actually retrieved from her possession, the NARCOM officers should have issued a receipt to her and its recovery should have been reported in the "records of the NARCOM"; and (3) Sgt. Sarong took out the marked bill from his pocket while he was testifying, which is not proper considering that it was presented in evidence in the preliminary investigation and made a part of the records forwarded to the court.[19]

We are not persuaded. In the first place, she is not even certain if the exhibits were planted -- she only claims that they have the "earmarks of planted evidence." In the second place, as correctly pointed out by the appellee, the so-called "earmarks" are merely the result of the normal handling of the evidence. After the buy-bust operation,

Sgt. Sarong handed the handrolled cigarettes to C1C Ceballos who marked the cigarettes with the initials of the accused and conducted a field test. C1C Ceballos then made a Certification of Field Test. Thereafter, they were sent to the PNP Crime Laboratory for laboratory examination. They were subsequently subjected to extensive laboratory examination by Lt. Myrna Areola.[20]

The non-issuance of a receipt for the marked P20.00 bill does not affect the prosecution's case. Nor does Sgt. Sarong's taking out from his pocket the marked bill while testifying affect its integrity as a piece of evidence. As a matter of fact, since the sale of the marijuana was already established by other evidence, the presentation of the buy-bust money is not indispensable.[21] Also, the transcripts of the proceedings in the court a quo do not show that the counsel for the accused objected to the presentation of these exhibits.

Her contentions in her second assigned error that Sgt. Sarong could not identify or single out the stick which was the basis of his conclusion that the other fourteen sticks contained marijuana and that the marijuana cigarettes offered as evidence were not the same cigarettes allegedly taken from her[22] deserve scant consideration because it was clearly established by the prosecution that all the marijuana cigarettes she sold to him were found positive for marijuana and that these were the same articles which were offered in evidence.

Nor is there merit in her claim in the third assigned error that the marijuana cigarettes and the P20.00 marked bill are inadmissible against her for having been obtained without a search warrant in violation of her constitutional right against unreasonable search and seizure. She was caught in flagrante in a buy-bust operation selling marijuana to the poseur-buyer, Sgt. Sarong. Pursuant then to Section 5(a), Rule 113 and Section 12, Rule 126 of the Rules of Court, she could be lawfully arrested without a warrant and searched for dangerous weapons or anything which may be used as proof of the commission of the offense. In *People vs. Paco*,[23] this Court explained the consequences of a valid warrantless arrest:

"Having caught the appellant in flagrante as a result of the buy-bust operation, the policemen were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest. And since appellant's arrest was lawful, it follows that the search made incidental to the arrest was also valid (Rule 126, Sec. 12; *Alvero vs. Dizon*, 76 Phil. 637 (1946); *People vs. Claudio*, G.R. No. 72564, April 15, 1988)."

In the instant case, since the warrantless search was an incident to a lawful arrest, the marijuana sticks and the marked bill are admissible in evidence.

The last assigned error is baseless. The prosecution witnesses identified the accused in court as the seller of the marijuana sticks who had received the marked P20.00 bill. In his direct testimony, Sgt. Sarong even pointed to her. Thus:

"FISCAL SANTIAGO:

x x x

Q: Do you know a certain Evelyn Garcia y Delima?

A: Yes.

x x x

Q: If she is in the courtroom point her?

A: That one.[24]

x x x

Q: You pointed a while ago a person whom you said was reported to your office for selling prohibited drugs.

This person who was arrested by Sgt. Recla together with you as poseur buyer selling prohibited drugs, is she before the court?

A: Yes.

Q: Is she the person you pointed a while ago?

A: Yes.

Q: Will you please point her again?

A: That girl (witness pointing to a girl who wears white t-shirt with collar with pink trouser)."[25]

Sgt. Recla also testified as follows:

"FISCAL SANTIAGO:

x x x

Q: Will you please look at Evelyn Garcia inside the courtroom if she is here who was the one who sold marijuana? Will you please point her out?

A: The one, the lady on blue polo shirt answering to the name Evelyn Garcia."[26]

More than anything else, she never asserted that she is not the Evelyn Garcia referred to by the said witnesses as the one arrested on 12 April 1991.

While we affirm the conviction of the accused, the penalty imposed upon her must, however, be modified in view of the new amendments introduced by R.A. No. 7659[27] to Section 4, Article II, and Section 20, Article IV of R.A. No 6425, as amended. R.A. No. 7659 was approved on 13 December 1993 and took effect on 31 December 1993. As thus further amended, the penalty prescribed in Section 4 was changed from "life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos" to "reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos." However, pursuant to Section 17 of R.A. No. 7659, which amends Section 20 of R.A. No. 6425, the new penalty shall be applied if the quantity of the dangerous drugs involved falls within the first paragraph of the amended Section 20, and if the quantity is lower than those specified in said first paragraph, the penalty shall be from "prision correccional to reclusion perpetua." The pertinent portion of the amended Section 20 reads as follows:

"SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime. -- The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x

5. 750 grams or more of Indian hemp or marijuana;

x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision correccional to reclusion perpetua depending upon the quantity."

The penalty then in Section 4 is now based on the quantity of the prohibited drugs involved, except where the victim is a minor or where the prohibited drug involved in any offense under Section 4 is the proximate cause of the death of the victim, in which case the maximum penalty prescribed in Section 4 shall be imposed regardless of the quantity of the prohibited drugs involved.[28]

In *People vs. Martin Simon y Sunga*,^[29] decided on 29 July 1994, this Court ruled as follows:

(1) Provisions of R.A. No. 7659 which are favorable to the accused shall be given retroactive effect pursuant to Article 22 of the Revised Penal Code.

(2) Where the quantity of the dangerous drug involved is less than the quantities stated in the first paragraph of Section 20 of R.A. No. 6425, the penalty to be imposed shall range from prision correccional to reclusion temporal, and not reclusion perpetua. The reason is that there is an overlapping error, probably through oversight in the drafting, in the provisions on the penalty of reclusion perpetua as shown by its dual imposition, i.e., as the minimum of the penalty where the quantity of the dangerous drugs involved is more than those specified in the first paragraph of the amended Section 20 and also as the maximum of the penalty where the quantity of the dangerous drugs involved is less than those so specified in the first paragraph.

(3) Considering that the aforesaid penalty of prision correccional to reclusion temporal shall depend upon the quantity of the dangerous drugs involved, each of the component penalties thereof -- prision correccional, prision mayor, and reclusion temporal -- shall be considered as a principal imposable penalty depending on the quantity, such that the quantity of the drugs enumerated in the second paragraph should then be divided into three, with the resulting quotient, and double or treble the same, as the bases for determining the appropriate component penalty.

(4) The modifying circumstances in the Revised Penal Code may be appreciated to determine the proper period of the corresponding imposable penalty or even to effect its reduction by one or more degrees; provided, however, that in no case should such graduation of penalties reduce the imposable penalty lower than prision correccional.

(5) In appropriate instances, the Indeterminate Sentence Law shall be applied and considering that R.A. No. 7659 has unqualifiedly adopted the penalties under the Revised Penal Code with their technical signification and effects, then the crimes under the Dangerous Drugs Act shall now be considered as crimes punished by the Revised Penal Code; hence, pursuant to Section 1 of the Indeterminate Sentence Law, the indeterminate penalty which may be imposed shall be one whose maximum shall be within the range of the imposable penalty and whose minimum shall be within the range of the penalty next lower in degree to the imposable penalty.

With the foregoing as our touchstones, and it appearing that the accused sold only fifteen (15) sticks of marijuana cigarettes, the second paragraph of Section 20 of R.A. No. 6425, as further amended by Section 17 of R.A. No. 7659, is applicable and considering such quantity, the proper imposable penalty should be prision correccional.

Applying the Indeterminate Sentence Law, the accused may then be sentenced to suffer an indeterminate penalty ranging from six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum.

WHEREFORE, the challenged decision of Branch 5 of the Regional Trial Court of Cebu in Criminal Case No. CBU-21653 is hereby **AFFIRMED**, subject to the modification of the penalty. Accused-Appellant EVELYN GARCIA Y DELIMA is hereby sentenced to suffer an indeterminate penalty ranging from Six (6) months of arresto mayor as minimum to Six (6) years of prision correccional as maximum.

Costs against accused-appellant.

SO ORDERED.

Bellosillo, Quason, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

- [1] Original Records (OR), 1; Rollo, 2.
- [2] OR, 47-56; Rollo, 11-20; 53-62. Per Judge Celso M. Gimenez.
- [3] TSN, 25 September 1991, 3-6.
- [4] TSN, 23 September 1991, 12-13.
- [5] TSN, 25 September 1991, 8-13.
- [6] TSN, 23 September 1991, 5-6; OR, 16.
- [7] TSN, 9 December 1991, 3-6.
- [8] TSN, 19 December 1991, 3-7.
- [9] TSN, 20 December 1991, 4-7.
- [10] Rollo, 40-52.
- [11] Appellant's Brief, 1; Id., 41.
- [12] Citing *People vs. Bati*, 189 SCRA 97 [1990]; Section 5(a), Rule 113; and Section 12, Rule 126, Rules of Court.
- [13] *People vs. Florida*, 214 SCRA 227 [1992]; *People vs. Matrimonio*, 215 SCRA 613 [1992].
- [14] *People vs. Valmores*, 122 SCRA 922 [1983]; *People vs. Gatong-o*, 168 SCRA 716 [1988]; *People vs. Rumberal*, 200 SCRA 194 [1991]; *People vs. Ramos*, 203 SCRA 237 [1991]; *People vs. Madriaga*, 211 SCRA 698 [1992].
- [15] Section 3(m), Rule 131, Rules of Court.
- [16] *People vs. Fernandez*, 209 SCRA 1 [1992], and the cases cited therein.
- [17] *People vs. Simon*, 209 SCRA 148 [1992].
- [18] Appellant's Brief, 4; Rollo, 44.
- [19] Rollo, 45.
- [20] OR, 17; TSN, 23 September 1991, 8-10.
- [21] *People vs. Pascual*, 208 SCRA 393 [1992].
- [22] Rollo, 46; 48.
- [23] 170 SCRA 681, 686 [1989]. See also, *People vs. Rodriguez*, 172 SCRA 742 [1989]; *People vs. Fernandez*, *supra*.; *People vs. Madriaga*, *supra*.
- [24] TSN, 23 September 1991, 12.
- [25] Id., 17.
- [26] TSN, 19 December 1991, 6.
- [27] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes."

[28] Section 4, second paragraph, as amended by R.A. No. 7659. See also Section 5, second and third paragraphs; Section 15, second paragraph; and Section 15-a, second and third paragraphs, as amended by R.A. No. 7659.

[29] G.R. No. 93028.

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