

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. JUNNY UTINAS, ACCUSED-APPELLANT.*G.R. No. 105832. December 22, 1994*

Ponente: BELLOSILLO, J.

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JUNNY UTINAS was sentenced to life imprisonment for selling 1.5 grams of marijuana worth P20.00.[1] He is now before us reasserting his innocence.

The evidence of the prosecution shows that on 27 June 1990, after receiving reports of rampant marijuana peddling in Poblacion Norte, Ivisan, Capiz, the 6th Narcotics Regional Unit formed a buy-bust team to investigate and apprehend the drug pushers in the area.[2] At about twelve noon, a team of NARCOM agents composed of T/Sgt. Rizaldo Labitan, Jr., and Pat. Jesus Monajan conducted a surveillance of the area. After obtaining substantial information that accused-appellant JUNNY UTINAS was regularly dealing in the sale of marijuana, the two police officers proceeded to his residence where they found him standing in the front yard of their house. T/Sgt. Labitan, Jr., the designated poseur-buyer, casually approached the accused while Pat. Monajan strategically positioned himself a few meters away from where the entrapment was to take place.

T/Sgt. Labitan, Jr., negotiated for the purchase of marijuana with the use of marked bills consisting of one (1) P10.00-bill and two (2) P5.00-bills.[3] After receiving the marked bills, the accused went inside his house and when he came out he handed over to the NARCOM agent two (2) plastic tea bags of marijuana. Upon receiving the tea bags, T/Sgt. Labitan, Jr., introduced himself and immediately apprehended the accused.[4] He then telegraphed the pre-arranged signal to Pat. Monajan to indicate the completion of the entrapment. Pat. Monajan rushed to the scene to assist in the arrest. The marked bills were recovered by the NARCOM agents from the person of the accused.

After the arrest, the accused was brought to the Ivisan Police Station so that the incident could be recorded in the police blotter. The accused was then turned over to the temporary office of the 6th Narcotics Unit at Beehive, Roxas City, for proper investigation.

In the meantime, the two (2) plastic tea bags of marijuana were brought to the PNP Crime Laboratory Services at Camp Delgado, Iloilo City. A laboratory examination conducted by Capt. Zenaida S. Sinfuego, Forensic Chemist, yielded positive findings of marijuana which were recorded in Chemistry Report No. D-088-90 dated 28 June 1990.[5]

The defense has a different version. Leonidas Utinas, mother of the accused, narrated that at about twelve forty-five in the afternoon of 27 June 1990 NARCOM agents arrived at their residence while they were having lunch. When her son JUNNY approached the police officers to inquire about the purpose of their visit, he was immediately collared and handcuffed by the NARCOM agents.[6] Then he was brought to the Ivisan Police Station. Adalia Alvarez, a neighbor, corroborated the testimony of Leonidas.[7]

On his part, the accused averred he was arbitrarily arrested for his previous refusal to act as an informer for T/Sgt. Labitan, Jr., and Pat. Monajan.[8] He maintained that sometime in May 1990 he had the opportunity to meet the NARCOM agents near the church of Ivisan, Capiz, where he was requested by the two police officers to act as their informer. But since he did not accede, he was warned then and there that something untoward would happen to him.[9]

On 27 November 1991, the Regional Trial Court of Roxas City, Br. 17,[10] found the accused JUNNY UTINAS guilty of having sold and delivered a prohibited drug in violation of Sec. 4, Art. II, R.A. No. 6425, as amended, and "sentenced x x x to suffer the penalty of reclusion perpetua (life imprisonment) and to pay the fine of twenty thousand pesos x x x x "[11]

The accused interposes the instant appeal. He asserts that the trial court erred in giving credence to the testimonies of the prosecution witnesses while disregarding his defense.[12] The crux of this appeal thus revolves around the credibility of witnesses.

We defer to the judgment of the court a quo. It is a settled doctrine that questions of fact are best resolved by the trial court.[13] The findings of the trial court regarding the credibility of witnesses is a question better adjudged by the trial court having observed their demeanor and deportment during trial.[14] An assessment of the credibility of witnesses is received by the appellate court with much respect in the absence of established exceptions calling for its reversal.[15] The factual findings of the trial court must not be disturbed unless it is clearly shown that it had overlooked certain facts of substance or has arbitrarily disregarded circumstances of significance which would affect the result of the case.[16] In the case at bench, these excepting circumstances do not exist.

We agree with the court a quo that the evidence of the prosecution, which principally relies on the testimonies of the arresting officers, has shown that accused-appellant is indeed guilty beyond reasonable doubt. The positive and categorical testimonies of arresting officers T/Sgt. Labitan, Jr., and Pat. Monajan are both clear and convincing. The confidence bestowed by the trial court on the narration of the two officers will not be disturbed in the absence of proof to hold otherwise.

Credence should be accorded the testimonies of the prosecution witnesses who as police officers are presumed to have performed their duties in a regular manner in the absence of proof to the contrary[17]. In the absence of improper motive for testifying falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of duty by police officers.[18]

The defense impugns the credibility of T/Sgt. Labitan, Jr., and Pat. Monajan as doubtful and questionable because of an alleged material contradiction in their testimonies. Appellant claims that while T/Sgt. Labitan, Jr., testified that "after receiving information from concerned citizens that there was rampant drug pushing at Poblacion Norte, Ivisan, Capiz, he and Pat. Monajan decided to (merely) conduct a covert surveillance,"[19] while Pat. Monajan declared that "they went to Poblacion Norte, Ivisan, Capiz to immediately conduct a buy-bust operation."[20] Appellant argues that a covert surveillance is an investigation conducted to confirm reports of rampant drug pushing in an area by determining the identities and scope of the operations of drug pushers in said locality for the purpose of further operations thereafter, whereas a buy-bust operation is pursued after the information of drug pushing has already been validated, and the mission is to entrap the drug pushers through the use of a poseur-buyer, marked money, and a pre-arranged signal for the other members to assist in the arrest of the suspect. The defense submits that the discrepancy in the testimonies of the prosecution witnesses is very significant in the light of the fact that both are supposed to be conversant with the difference between "covert surveillance" and "buy-bust operation."

The alleged discrepancy in the testimonies of the police officers is more apparent than real. The testimony of T/Sgt. Labitan, Jr., shows that they went to Poblacion Norte to conduct a covert surveillance of the area. However, his testimony did not end there. He also stated that immediately after being informed that a certain JUNNY UTINAS alias "Jojo" was selling marijuana at the back of the Ivisan National High School, he and Pat. Monajan proceeded thereto and eventually conducted a buy-bust operation. T/Sgt. Labitan, Jr., testified thus -

Q. Why did you go to Poblacion Norte, Ivisan, Capiz (on 27 June 1990)?

A. Because we conducted a covert surveillance because according to concerned citizens there were (sic) rampant drug pushing.

x x x

Q. What was the result of your surveillance?

A. We gathered information that alias Jojo is (sic) one of the vendor(s) whose house at the back of the school was selling marijuana.

x x x

Q. What did you do after receiving information that alias Jojo was selling marijuana?

A. We followed up that information.

Q. How did you follow-up that information?

A. We went there at the exact area by the high school house.

x x x

Q. What did you do after going near Jojo?

A. I approach(ed) him and presented that I am (sic) a user.

Q. So, what did you tell him?

A. Then I inquired from him are you Jojo?

Q. What did he answer?

A. He replied I am the one, what do you want?

x x x

A. Then I told him, Parts, we came from Roxas City and we have some information that you have something and we want to score and we have nothing there at Roxas City. Then he told me, Parts, I have here, how much do you want?

Q. And what did you do?

A. Then I told him, Parts, I have here a twenty (peso) bill, how much can it buy?

x x x

Q. Did you give that P10.00-bill and P5.00-bill to alias Jojo?

A. Yes sir.

x x x

Q. After Jojo received P20.00 in one P10.00-bill and two P5.00-bill, what did he do?

A. Then he said, Parts, wait (for) me here.

Q. After telling you, Parts, wait for me here, what did he do?

x x x

Q. When he came back, what did he do?

A. When he came back he had with him 2 plastic bags of marijuana.

x x x

Q. When the accused Junny Utinas delivered to you the two plastic tea bags of marijuana, what did you do?

A. Then immediately I identified myself, Parts, sorry I am a Narcotics agent.

Q. After informing him that you are (sic) a Narcotics agent, what did you do?

A. Then I arrested him.[21]

From the testimony of T/Sgt. Labitan, Jr., it can be gleaned that immediately after the two NARCOM agents made a surveillance of the area, they proceeded to undertake a "buy-bust operation," although T/Sgt. Labitan, Jr., did not refer to the entrapment as a "buy-bust operation."

The defense likewise faults the trial court for allegedly failing to consider other manifest inconsistencies in the testimonies of the arresting officers that would make their credibility even more questionable. Appellant takes notice of the supposed contradictions: First, while T/Sgt. Labitan, Jr., recounts that it was a vendor who gave the exact address of the accused, Pat. Monajan claims that the information was obtained from a student; second, T/Sgt. Labitan, Jr., the poseur-buyer, stated that he communicated the pre-arranged signal to Pat. Monajan after placing the accused under arrest, whereas Pat. Monajan, the backup arresting officer, testified that the signal was given before the arrest was made; lastly, Pat. Monajan declared that the accused immediately got the marijuana from his pocket upon presentment of the marked bills, while T/Sgt. Labitan, Jr., stated that the accused first entered his house and then returned to the front yard to hand over the prohibited drug to the poseur-buyer.[22]

Appellant's argument is bereft of merit. The alleged contradictions pointed out by appellant refer to minor matters which do not diminish the integrity of the evidence of the prosecution nor reflect on the honesty of the witnesses because there still exists a fundamental agreement on the main points of the incident.[23] Minor contradictions among witnesses are to be expected in view of the differences of impressions, vantage points, memory, and other relevant factors.[24] In fact, minor inconsistencies even tend to strengthen, rather than weaken, the credibility of the witnesses as they negate any suspicion of a rehearsed testimony.[25]

Thus, a thorough and conscientious examination of the testimonies of T/Sgt. Labitan, Jr., and Pat. Monajan shows that there is a basic and substantial coherence in the testimonies of the two prosecution witnesses. Their narration clearly and convincingly establishes the fact that the appellant was caught in flagrante delicto selling marijuana as a result of a buy-bust operation.

The assertion of the defense that no entrapment actually took place is unavailing. Appellant claims that his arrest was actuated by improper motives on the part of T/Sgt. Labitan, Jr., and Pat. Monajan because of his previous failure to act as an informer of the two NARCOM agents. However, in his counter-affidavit executed during the preliminary investigation, appellant stated that he did not know the identities of the two police officers who apprehended him.[26] Such an inconsistent stand by appellant militates against the veracity of his subsequent

allegation that he was previously asked by T/Sgt. Labitan, Jr., and Pat. Monajan to be an informer before he was apprehended by the two police officers.[27]

Finally, the pronouncement of appellant that the alleged informant of the NARCOM agents should have been presented to strengthen the prosecution's cause is devoid of any legal basis. This Court has ruled that the testimony of an informant is not necessary for a successful prosecution of a drug-pushing case because his testimony would merely be corroborative to the testimony of the poseur-buyer who testified on the facts surrounding the circumstances of the entrapment.[28]

While we find no reason to overturn the judgment of conviction, we however find error in the way the penalty was imposed by the trial court. We have emphasized time and again that the penalty prescribed by The Dangerous Drugs Act of 1972 is life imprisonment and not reclusion perpetua,[29] and that life imprisonment is not synonymous with reclusion perpetua.[30] Hence, the lower court erred in imposing the penalty of reclusion perpetua in lieu of life imprisonment. The former carries with it the accessory penalties provided in the Revised Penal Code, while the latter does not. Nonetheless, appellant stands to benefit from Sec. 20 of R.A. 7659[31] which lowers the penalty imposable on certain violations under The Dangerous Drugs Act. In *People v. Simon*,[32] we said that if the quantity of marijuana involved was less than 750 grams the penalty to be imposed should range only from prision correccional to reclusion temporal. In order to determine the penalty to be imposed on appellant, we divide the amount of 750 grams into three (3) to correspond to the three (3) applicable penalties, namely, prision correccional, prision mayor, and reclusion temporal. Thus, if the marijuana seized weighs from 500 to 749 grams, the penalty to be imposed is reclusion temporal. If the marijuana seized weighs from 250 to 499 grams, the penalty to be imposed is prision mayor; and if the weight of the marijuana involved is below 250 grams, the penalty to be imposed is prision correccional.[33]

Appellant was apprehended only for selling 1.5 grams of dried marijuana fruiting tops, hence, the imposable penalty should be prision correccional. Applying the Indeterminate Sentence Law,[34] and in the absence of any mitigating or aggravating circumstance, the maximum penalty shall be taken from the medium period of prision correccional, which is two (2) years, four (4) months and one (1) day, to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor, the range of which is one (1) month and one (1) day to six (6) months, in any of its periods.

WHEREFORE, the decision appealed from finding accused-appellant JUNNY UTINAS guilty of violating Sec. 4, Art. II, R.A. 6425, as amended, is **AFFIRMED**, with the modification that accused-appellant is sentenced to suffer an indeterminate prison term of five (5) months of arresto mayor maximum as minimum, to three (3) years and two (2) months of prision correccional medium as maximum, with costs against him.

Considering that accused-appellant has been detained since 7 September 1990, or longer than his prison term herein imposed, his immediate release from custody is ordered unless he is held for another cause.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Rollo, p. 26.

[2] TSN, 7 January 1991, p. 5.

[3] *Id.*, pp. 7-8.

[4] *Id.*, p. 8.

- [5] Records, p. 118.
- [6] TSN, 26 September 1991, p. 68.
- [7] Id., 22 August 1991, pp. 49-54.
- [8] Id., 22 October 1991, pp. 79-81.
- [9] Id., p. 81.
- [10] Judge Ramon B. Posadas, presiding.
- [11] Rollo, p. 26.
- [12] Id., p. 35.
- [13] People v. Ruelo, G.R. Nos. 104737-38, 26 October 1994.
- [14] People v. Gornes, G.R. No. 104869, 23 February 1994, 230 SCRA 270.
- [15] Ibid.
- [16] People v. Lagrosa, G.R. Nos. 105956-57, 23 February 1994, 230 SCRRA 298.
- [17] People v. Gonzales, G.R. No. .106098, 7 December 1993, 228 SCRA 293.
- [18] People v. Ponsica, G.R. No. 108176, 14 February 1994, 230 SCRA 87.
- [19] TSN, 7 January 1991, p. 5.
- [20] Id., 18 July 1991, p. 37.
- [21] Id., 7 January 1991, pp. 5-8.
- [22] Rollo, pp. 45-47.
- [23] People v. Fernandez, G.R. No. 90019, 8 December 1993, 228 SCRA 301; People v. Mariano, G.R. No. 86656, 31 October 1990, 191 SCRA 136.
- [24] People v. Santos, G.R. No. 106213, 23 September 1994.
- [25] People v. Bautista, G.R. No. 102618, 12 October 1993, 227 SCRA 152; People v. Custodio, G.R. No. 96230, 27 May 1991, 197 SCRA 538.
- [26] Records, p. 144.
- [27] TSN, 22 October 1991, pp. 78-81.
- [28] People v. De Los Reyes, G.R. No. 106874, 21 January 1994, 229 SCRA 439.
- [29] People v. Lucero, G.R. No. 84656, 4 January 1994, 229 SCRA 1; People v. Malakas, G.R. No. 92150, 8 December 1993, 228 SCRA 310; People v. Marcelino, G.R. No. 85247, 30 July 1993, 224 SCRA 770.
- [30] People v. Malakas, G.R. No. 92150, 8 December 1993, 228 SCRA 310; People v. Bautista G.R. No. 102618, 12 October 1993, 227 SCRA 152; People v. Gerona, G.R. No. 100230, 8 November 1993, 227 SCRA 547.
- [31] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose The Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes.

[32] G.R. No. 93028, 29 July 1994, reiterated in *People v. Santos*, G.R. No. 106213, 23 September 1994 and *People v. Ruelo*, G.R. Nos. 104737-38, 26 October 1994.

[33] *People v. De Lara*, G.R. No. 94953, 5 September 1994; *People v. Simon*, G.R. No. 93028, 29 July 1994.

[34] Sec. 1 of the Indeterminate Sentence Law as explained in *People v. Simon*.

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