

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISANTA SANTOS Y GADASA, ACCUSED-APPELLANT.

G.R. No. 106213. September 23, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

Crisanta Santos was charged with the sale of prohibited drugs in violation of Article 2, Section 4, of Rep. Act. 6425 and pleaded not guilty.[1] She later plea-bargained for the lesser offense of mere possession but the prosecution objected and her motion was denied.[2] After trial, she was convicted of the original charge and sentenced to life imprisonment and a fine of P20,000.00.[3] She now raises legal and factual questions in her appeal for exoneration.

From the evidence submitted by the prosecution, the trial court found that in the morning of October 19, 1991, the Anti-Narcotics Unit of the Kalookan City Police Force received two successive reports of marijuana peddling in Maypajo, Kalookan, by a couple named Bundoy and Antang. A buy-bust team was forthwith organized with SPO4 Juan Grajo as leader and SPO3 Renato Dizon, SPO2 Juan Sapin, Jr., and SPO2 Vivencio Corpuz as members. Corpuz was to pose as the buyer and was supplied with two marked ten-peso bills[4] for the purpose. The team proceeded to the target area at about 6:30 a.m. While the rest of the team deployed themselves some ten meters away, an informer introduced Corpuz to Antang, the herein appellant. Corpuz asked to buy two teabags of marijuana, which Antang immediately produced in exchange for the marked money. As the other team members closed in at the pre-arranged signal from Corpuz, Antang sensed danger and ran into her house nearby. The team members chased her and there placed her under arrest. They recovered the marked money from her. Upon interrogation, she admitted to possessing a red box and an iron pot hanging from the ceiling but claimed they were empty. All told, 17 tea bags and 25 cigarettes were seized from her.[5] These were duly marked and sent for examination to the PC Crime Laboratory, where they were later found positive for marijuana.[6]

The above narration was made by prosecution witnesses Grajo, Sapin and Corpuz, members of the buy-bust team, and Elizabeth Ayonon, forensic chemist of the PC Crime Laboratory, who analyzed the seized articles.[7]

For the defense, the only witness was Crisanta Santos herself. She flatly denied the charge against her. She said there was no buy-bust operation at all. What really happened was that in the morning in question, six policemen and their barangay chairman barged into her house while she was sleeping and immediately conducted a warrantless search despite her objections. Claiming to have found marijuana in an iron pot and a novelty box, they took her to the police station and booked her for selling illegal drugs. She immediately telephoned her common-law husband, Bundoy, who arrived soon and offered to take her place in the detention cell.[8] He was, however, released after a while on the ground that the evidence was seized not from him but from Santos.[9]

In this appeal, Santos reiterates her arguments in her earlier motion to be allowed to plead guilty to the lesser charge of possession in lieu of the selling of marijuana. She says again that the marijuana belonged to Bundoy and not her and that she had in fact often berated him for engaging in the sale of this narcotic. She insists that it is

Bundoy and not her who should have been charged.

Alternatively, she suggests that the marijuana was "planted" on her by the policemen who raided her house that morning. Taking still another tack, she protests that the marijuana was seized from her as a result of an invalid warrantless search that rendered the seized articles inadmissible evidence against her.

The appeal must fail.

The evidence clearly shows that there was a valid entrapment of the appellant. All the three team members who testified positively identified her as the person who sold the two teabags of marijuana to Corpuz during the sham transaction. The marked money was retrieved from her upon her arrest. The 17 teabags and 25 cigarettes seized in her house were found to be positive for marijuana by the forensic chemist who subjected them to laboratory examination. Although Santos denied it later, she had earlier admitted their possession in her plea-bargaining motion.[10]

The seizure of the marijuana in the house was not unlawful because it was incident to a lawful arrest.[11] The arrest itself was valid because Antang was caught red-handed, while in the act of selling the prohibited articles to the sham buyer. Under Rule 113 of the Rules of Court, particularly Section 5(a), a warrantless arrest may be made by any person -

When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

The evidence of the prosecution shows that it was Antang who, upon questioning, voluntarily produced the novelty box and pointed to the iron box containing the marijuana teabags and cigarettes. Even if her later denials were accepted, the seizure would still not thereby be invalidated for the rule is that, in the course of a lawful arrest, a warrantless search may be made not only on the person of the suspect but also in a permissible area within his reach.[12] In the case at bar, the search and seizure was made incidental to a lawful arrest and within the permissible area of search.

The lawfulness of Santos' arrest and search should refute her complaint that she was not accorded the right to a preliminary investigation prior to the filing of the information against her. Rule 112, Section 7, of the Rules of Court clearly provides:

When a person is lawfully arrested without a warrant for an offense cognizable by the Regional Trial Court, the complaint or information may be filed by the offended party, peace officer or fiscal without a preliminary investigation having been first conducted, on the basis of the affidavit of the offended party or arresting officer or person.

The purpose of a preliminary investigation is to determine "whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof and should be held for trial." That sufficient ground had already been determined with the arrest of the suspect in the act of selling the prohibited drugs to the arresting officers as described in their joint affidavit.[13]

The appellant seeks to throw suspicion away from her and focus it on her common-law husband by claiming that the marijuana belonged to him and it was he who was selling it. She faults the police for charging her with his offense.

While she correctly argues that she had no obligation to prove Bundoy guilty, it is equally true that the prosecution also had no similar duty. Its duty was to prove her guilty, on the strength particularly of her admission

that the marijuana belonged to her. The prosecution had no obligation to present Bundoy as its witness. If the defense felt that Santos was being unjustly accused, it was not prevented from calling Bundoy to the stand and exposing him as the real culprit. Each party has a right to call its own witnesses according to its own strategy.[14]

In this connection, the prosecution also had the option not to present the informer as its witness if it believed that his testimony would not be crucial but only corroborative.

The defense points to a number of inconsistencies in the testimonies of the three policemen who conducted the buy-bust operation and stresses that these contradictions impair their credibility. The Court does not think so. There are indeed such imperfections but we do not find that they have substantially flawed the essential veracity of their common narration of the entrapment. Minor contradictions among the several witnesses of a particular incident are to be expected in view of their differences in impressions, memory, vantage points and other relevant factors.

We shall sustain the factual findings of Judge Adoration S. Angeles of the Regional Trial Court of Kalookan City, owing to her superior opportunity to observe the witnesses while on the stand and to ascertain from their demeanor whether they were to be believed or not. We do not find that her conclusions on this matter are arbitrary or without substantial basis and so should be reversed. We also hold that the seized marijuana was lawfully admitted as evidence against the appellant because it was taken in the course of a lawful warrantless search incidental to a lawful arrest.

The trial court sentenced the appellant to life imprisonment and a fine of P20,000.00, under Article 2, Section 4, of Rep. Act No. 6425, as amended. Pending the resolution of this appeal, Rep. Act No. 6425 was further amended by Rep. Act No. 7659, which took effect December 31, 1993.

In *People v. Martin Simon y Sunga*[15], the Court held that the provisions of Rep. Act No. 7659 which are favorable to the accused should be given retroactive application, pursuant to Article 22 of the Revised Penal Code. Accordingly, the provisions of Rep. Act No. 7659 lowering the penalty that can be imposed on the appellant shall be applied in this case.

The appellant was convicted of selling two teabags of marijuana. She is therefore covered by Section 20 of Rep. Act No. 7659 reading as follows:

Application of Penalties, Confiscation and Forfeiture of the Proceeds of 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 x x x x x

5. 750 grams or more of indian hemp or marijuana.

x x x x x 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.

In *Simon*, the Court harmonized the provisions of Section 20, in view of the obvious error on the imposable penalties. The penalty of reclusion perpetua is given as the maximum of the penalty where the amount of drugs involved is less than the amount specified under the first paragraph of Section 20 (i.e., less than 750 grams of marijuana), and also as the minimum of the penalty where the amount of drugs involved is more than that specified in the first paragraph (i.e., more than 750 grams).

The Court held that the penalty to be imposed where the quantity of the drugs involved is less than the quantities stated in the first paragraph of Section 20 shall range from prision correccional to reclusion temporal. The quantity of drugs enumerated in the second paragraph of Section 20 shall be divided into three, with the resulting quotient, and double or treble the same, as the bases for allocating the penalty proportionately among the three periods. Furthermore, modifying circumstances can be appreciated to fix the proper period of the penalty imposable, provided, however, that the lowest penalty shall in any event be prision correccional so as not to depreciate the seriousness of drug offenses.

The Court also held that Section 1 of the Indeterminate Sentence Law shall be applied to drugs cases under Rep. Act No. 7659, as the latter act had adopted the penalties under the Revised Penal Code.

Conformably to these rulings, the penalty to be imposed on the appellant pursuant to Rep. Act No. 7659 is prision correccional. Applying the Indeterminate Sentence Law, we hold that the appellant must be, and is hereby, sentenced to the penalty of six (6) months of arresto mayor as minimum to six (6) years of prision correccional.

WHEREFORE, the appeal is DISMISSED and the challenged decision is AFFIRMED, with the modification that the accused is sentenced to the indeterminate penalty of six (6) months of arresto mayor as minimum to six years of prision correccional as maximum. The confiscated marijuana sticks and flowering tops shall be turned over immediately to the Dangerous Drugs Board for destruction in accordance with law. Costs against the appellant.

SO ORDERED.

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

[1] Original Records, p. 7.

[2] Ibid., p. 31.

[3] Id., pp. 176-180.

[4] Exhibits "I" and "J."

[5] TSN, January 28, 1992, p. 5 and 10; April 6, 1992, p. 3.

[6] Exhibit "F."

[7] TSN, January 28, 1992, pp. 2-11; April 6, 1992, pp. 1-6; April 28, 1992, 2-6; March 16, 1992, pp. 3-4.

[8] TSN, June 1, 1991, pp. 41-45; 55.

[9] Ibid., pp. 46-47.

[10] Original Records, p. 26.

[11] Rule 126, Sec. 12, *People v. Eligino*, 216 SCRA 320; *People v. Peñero*, 213 SCRA 536; *People v. Damaso*, 212 SCRA 547; *People v. Fernandez*, 209 SCRA 1.

[12] *People v. Catan*, 205 SCRA 235; *People v. Liquen*, 212 SCRA 288.

[13] Original Records, p. 3.

[14] *People v. Mauyao*, 207 SCRA 732; *People v. Collantes*, 208 SCRA 853; *People v. Acuram*, 209 SCRA 281; *People v. Simbulan*, 214 SCRA 537.

[15] G.R. No. 93028, July 29, 1994.

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