

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLEN BASILGO Y CANONIGO, ACCUSED-APPELLANT.

G.R. No. 107327. August 05, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellant Allen Basilgo y Canonigo was accused of violation of Article II, Section 4 of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1977, filed before the Regional Trial Court of Cebu - Branch 28, Mandaue City, in an Information which reads as follows:

"That on or about the 24th day of November, 1991 in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the aforementioned accused, with deliberate intent and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to another or act as a broker in selling, delivering and giving away to another one hundred (100) gms. of marijuana dried leaves with buds, seeds and stalks, a prohibited drug.

CONTRARY TO LAW."[1]

Upon arraignment, Basilgo entered a plea of not guilty to the charge. Thereafter, trial ensued.

On June 5, 1992, a decision[2] was rendered by the court a quo finding the accused guilty beyond reasonable doubt of the offense charged, sentencing him to life imprisonment and to pay a fine of P20,000.00 with subsidiary imprisonment in case of insolvency and to pay the costs. Being a detention prisoner, the accused was credited with the full time of his preventive imprisonment.

The evidence for the prosecution established that the accused was arrested in a buy-bust operation conducted by the agents of NARCOM in Lahug, Cebu City on November 24, 1991.

Agent Johnny Arriesgado testified that, upon instructions from Major Essa Hassan to verify the reports that marijuana was being sold in Mandaue City, he conducted a surveillance on one named Allen Basilgo on November 21, 1991. On November 22, 1991 in Fatima Valley, Arriesgado proposed to buy marijuana from Basilgo. Both agreed that Basilgo would sell the marijuana worth P250.00 to Arriesgado if the latter would return on the 24th.

After a briefing on the conduct of the operation, Arriesgado arrived at Fatima Valley, Pagsabungan, Mandaue on November 24, 1991. The rest of the team composed of Sgt. Alejandro Biñan, Sgt. Frank Sevillano and Sgt. Ibrahim Said, positioned themselves about five (5) meters away from where the transaction was to take place at a vantage point where they could observe everything without being noticed. Arriesgado approached Basilgo's house. Upon seeing him, appellant invited him to get inside the fence surrounding the house and to sit on the bamboo bench located just outside the door of appellant's house.[3] Without wasting any time, Arriesgado reminded Basilgo of their agreement two days before, to which the appellant responded that he had the order covered. He then went inside and came out within minutes with a packet containing the marijuana. After receiving

the marijuana,[4] agent Arriesgado gave to appellant the marked money consisting of two (2) P100.00 bills and one (1) P50.00 bill, all initialed by Sgt. Biñan,[5] making the pre-arranged signal of touching his head. The team then quickly approached Basilgo and arrested him after introducing themselves as NARCOM agents and announcing the reason for his arrest. Sgt. Biñan then asked that Arriesgado surrender his remaining stocks of marijuana to them, which the accused did by surrendering to them a cement-wrapper of buds, seeds and dried marijuana leaves.[6] All the confiscated marijuana were sent to the PNP Crime Laboratory for examination, after which Chemistry Report No. C-593-91 was issued by Police Inspector Myrna Areola, who found the confiscated goods positive for tetra hydrocannabinol.

The accused, a 26-year old family man who worked as a rattan decorator and piece-worker in different rattan factories like Interlude, High Craft, Cancio and Select Art, and earned a minimum of P800.00 a week, testified in his behalf. He alleged that on November 24, 1991, which was a Sunday, at around 4:45 p.m., he was at his residence in Fatima Valley together with his family, getting ready for church services, when Arriesgado arrived and inquired whether he was Allen Basilgo; that when he answered in the affirmative, around eight of Arriesgado's companions rushed inside his house, handcuffed him and searched his dwelling; that they asked his wife for "the gun;" that when there was none, they all went out bringing along with them the appellant to the nearby NARCOM headquarters; that they persisted on knowing the identity of "the woman who always delivered marijuana to him" despite his denial of any association with her; that the investigating agent got a red weighing scale and after placing a cement-wrapper, commanded that he unwrap the bag; that when he refused to obey the order, he was boxed on the nape; that he was forced to unwrap the cement bag which contained "grass" that weighed 100 grams; and finally, that he denied having smoked marijuana or having engaged in any transaction involving the same.

On April 22, 1992, the RTC - Branch 28 of Mandaue City rendered judgment in Criminal Case No. DU-2626, finding the accused guilty beyond reasonable doubt of violation of Section 4, Article II of R.A. 6425 as amended, sentencing him to life imprisonment and a fine of P20,000.00 plus costs.

From this judgment of conviction, the accused filed the present appeal praying for his acquittal, alleging that the court a quo erred in finding that he sold dried marijuana leaves for P250.00 to agent Arriesgado but assuming that he did, the trial court erred in not finding that he did so only upon inducement of the NARCOM team.

Appellant's contention is untenable.

Once again, the rule that findings of fact of the trial court on the issue of credibility of the witnesses are accorded great weight and respect on appeal, comes to fore.[7] "Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the trial court's findings." [8] Two important considerations reinforce the correctness of the findings of the trial court. Firstly, the testimonies of the arresting officers are positive in character while that of the accused is negative. Secondly, no improper motive has been imputed to the arresting officers who are presumed to have regularly performed their official duty in the absence of any evidence to the contrary.

The accused-appellant was caught in flagrante delicto. His conviction was based on the testimony of the poseur-buyer, the principal prosecution witness, corroborated by the testimonies of the other team agents who conducted the buy-bust operation. The stuff bought from him was hidden in his house and found to be marijuana leaves and fruiting tops. Moreover, the identity of the packet and bag of marijuana which constitutes the corpus delicti was fully established in court. Proof of the transaction suffices.

In *People v. Juma*, [9] we held that:

"Entrapment is the employment of such ways and means for the purpose of trapping or capturing a law

breaker. Oftentimes it is the only effective way of apprehending a criminal in the act of the commission of the offense x x x A criminal is caught committing the act by ways and means devised by peace officers.

It must be distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. In entrapment ways and means are resorted to for the purpose of capturing the law-breaker in flagrante delicto. In entrapment, the crime had already been committed while in instigation, it was not and could not have been committed were it not for the instigation by the peace officer."

Clearly, there was no instigation here because when the poseur-buyer Arriesgado offered to buy marijuana from the accused by handing over to him the buy-bust money and in exchange therefor, the latter readily gave him the packet containing P250.00 worth of marijuana, the crime was already consummated. All that the NARCOM agents had to do was to apprehend the accused. This procedure, commonly known as a "buy-bust operation," is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of the offense. Entrapment has received judicial sanction as long as it is carried out with due regard to Constitutional and legal safeguards.

We turn, finally, to the determination of the penalty properly imposable upon appellant Basilgo. Under Sections 15 and 20 of Republic Act No. 6425, as last amended by R.A. No. 7659, and construed and applied with retroactive effect in the very recent decision of this Court in *People v. Martin Simon* (G.R. No. 93028, 29 July 1994), and given the circumstances that (a) the "shabu" sold by appellant Basilgo weighed 100 grams and that (b) no aggravating or mitigating circumstance was found in the instant case, the penalty properly imposable upon appellant Basilgo is prison correccional in its medium period. Applying the Indeterminate Sentence Law, again in accordance with the majority ruling of this Court in the *Martin Simon* case, appellant Allen Basilgo is properly sentenced to imprisonment for a term ranging from, as a minimum, six (6) months of arresto mayor to a maximum of two (2) years and four (4) months of prison correccional in its medium period.

WHEREFORE, for all the foregoing, the Decision of the Regional Trial Court of Cebu, Branch 28 in Criminal Case No. DU-2626 dated April 22, 1992 is hereby AFFIRMED, with the modifications, however, that the fine of P20,000.00 is deleted, and that appellant shall suffer imprisonment for an indeterminate period ranging from six (6) months of arresto mayor as minimum to two (2) years and four (4) months of prison correccional as maximum. Costs against appellant.

SO ORDERED.

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

[1] Rollo, p. 8.

[2] Rollo, pp. 8-12.

[3] TSN of February 27, 1992, pp. 24-25.

[4] Exh. "B."

[5] Exhs. "E" to "E-2."

[6] Exhs. "C" and "C-1."

[7] *People v. Macuto*, G.R. No. 80112, August 25, 1989, 176 SCRA 762.

[8] People v. Pascual, G.R. No. 88282, May 2, 1992, 208 SCRA 393; People v. Rumeral, G.R. No. 86320, August 5, 1991, 200 SCRA 194.

[9] G.R. No. 90391, March 24, 1993, 220 SCRA 432.

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