

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTINA MACARIO Y PACATIN AND NIDA LASAGAN, ACCUSED, MARTINA MACARIO Y PACATIN, ACCUSED-APPELLANT.

G.R. No. 109616. January 25, 1995

Ponente: REGALADO, J.

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REGALADO, J.:

To a casual observer, accused-appellant Martina Macario y Pacatin can hardly play the devious role of a dealer of illicit drugs. She is, after all, just a young and plain barrio housewife with five children to boot. One would have expected then that she devoted her time to domestic preoccupations and in tending to her brood. Instead, it turned out that she had succumbed to the virus of cupidity. She was apprehended in the act of selling around twenty-one kilos of marijuana.

Appellant was indicted on August 30, 1990 in the Regional Trial Court of Baguio City, [1] together with accused Nida Lasagan who has remained at large. The information charged them with illegal sale and delivery of marijuana in violation of Section 4, Article II, in relation to Section 21, Article IV, of the Dangerous Drugs Act of 1972, as amended, allegedly committed as follows:

"That on or about the 20th day of June, 1990, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously sell and deliver twenty-two (22) kilos of dried marijuana leaves/flowering tops, a prohibited drug, to a NARCOM poseur-buyer, without authority of law to do so, in violation of the above-cited provision of the law." [2]

On June 3, 1991, appellant was arraigned and, with the assistance of counsel, she entered a plea of not guilty. [3] Trial then proceeded and on October 29, 1992, the court a quo rendered judgment [4] finding appellant guilty as charged. She was sentenced to suffer the penalty of life imprisonment, to pay a fine in the amount of P20,000.00 with subsidiary imprisonment in case of insolvency, and to pay the costs. The three sacks of marijuana seized from appellant were ordered confiscated in favor of the Government for proper disposition by the Dangerous Drugs Board.

The prosecution adduced evidence to the effect that on June 20, 1990, Capt. Allyn Evasco, Jr., commanding officer of the 14th Narcotics Unit, Philippine National Police Narcotics Command stationed in Camp Allen, Baguio City, formed a buy-bust team upon receiving information from an informant of an impending sale of marijuana. After they were briefed by Capt. Evasco, the police operatives, composed of T/Sgt. Arturo Eleazar, S/Sgt. Godofredo Fider, S/Sgt. Nestor Beato and PO3 Leonardo Galutan went to the house of the informant at about 11:00 A.M. of the same day and waited there for the arrival of a couple of female persons who were supposed to sell the illicit drug. [5]

The drug dealers, who turned out to be appellant and Nida Lasagan, did not arrive until 12:30 P.M. PO3 Galutan, who had been designated to act as poseur-buyer, dealt and negotiated with the two. It was agreed that Galutan

would purchase twenty-two kilos of marijuana at P200.00 per kilo, the payment to be given upon delivery of the marijuana at the Victory Liner station at Governor Pack Road in Baguio City. The duo then left to get the marijuana. [6]

However, only appellant thereafter turned up at the bus station. She unloaded three sacks from the taxicab where she rode and handed over to Galutan one of the sacks. The latter first inspected the contents of the same and, upon ascertaining that it contained marijuana, he gave appellant the buy-bust money, which actually consisted of a P100.00 bill placed on top of several sheets of paper cut to the same size, referred to in police jargon as "boodles." Galutan then signalled his colleagues about the consummation of the deal, upon which the latter immediately moved in and effected the arrest of appellant Macario. [7]

On her part, appellant raises no dispute about the fact of her arrest by the law enforcers at the Victory Liner station in Baguio City. She insists, however, that she was completely unaware about the illegal contents of the three sacks which she was bringing at the time of her arrest. Appellant explains that she was merely asked by her co-accused, Nida Lasagan, to bring the sacks to the aforementioned bus station of Victory Liner upon the representation of the latter that the same contained used clothes. She denied having been with Lasagan at the residence of the informant. [8]

In this appeal, appellant ascribes error on the part of the trial court when it (1) gave credence to the vague and hazy evidence of the prosecution; (2) disregarded her defense that she had no knowledge of the illicit contents of the three sacks seized from her; (3) imposed upon appellant the penalty of life imprisonment and a fine of P20,000.00 with subsidiary imprisonment in case of insolvency, assuming that she is guilty; and (4) convicted appellant of the crime charged in spite of the failure of the prosecution to establish her guilt beyond reasonable doubt. [9]

Appellant principally anchors her defense on her supposed lack of knowledge about the prohibited contents of the sacks. She avers that she was made to believe by Nida Lasagan, who was an acquaintance of hers in Kapangan, La Trinidad, that the three sacks contained used clothing. The trouble with this defense of appellant, when taken in light of her other assertions in court about the delivery of the bags at the bus station, is that it is too absurd to inspire belief.

Thus, according to Macario, she left her residence in Kapangan, La Trinidad in the early morning of June 20, 1990 to visit her uncle in Baguio City. Upon her arrival in the city at about 10:00 A.M. of that day, she proceeded to her uncle's house and stayed there for lunch. At around 12:30 P.M., while appellant was watching television together with her uncle and cousins, Nida Lasagan suddenly appeared at the door and requested her to deliver the sacks in question to the Victory Liner Station, to which she agreed. [10]

Appellant's convenient explanation about Nida Lasagan's appearance at her uncle's home, seemingly out of the proverbial blue, is that Lasagan was staying at a nearby house. This smacks too much of a coincidence because, first of all, there is nothing in the records of the case to suggest that Lasagan knew beforehand that appellant was going to stay at her uncle's house on that day. Moreover, it is unbelievable that Lasagan would pass on to appellant the burden of delivering the sacks to the Victory Liner bus station without even explaining to her the reason therefor. Lastly, as observed by the trial court, appellant agreed without much ado to Lasagan's request without even the slightest idea as to whom she was to deliver the three sacks.

There is no cogent reason, therefore, to depart from these factual findings of the court below which elucidated on its conclusions on the matter:

"We have here now a question of credibility as between the version of the prosecution and that of the defense. This Court is inclined to give more weight to the version of the prosecution. Firstly, the version of the defense

is incredible and contrary to human behavior. The accused admitted that she delivered three sacks which, she claims, contained used clothing to the Victory Liner Terminal upon the request of Nida Lasagan. This is rather unusual because she agreed to do what was requested of her not knowing where Victory Liner Station is and also not knowing the person, or what he looked like, to whom she will give the items. More so, she agreed to the request of a person who was a mere acquaintance and whom she hardly knew (TSN, Sept. 29, 1992, pp. 14-17). Secondly, the fact that Lasagan was at Buyagan, La Trinidad, Benguet when Macario went there to visit her uncle is, to the mind of the Court, more than just a mere coincidence. It must be noted that Lasagan and Macario who are from different barrios saw each other at Kapangan, Benguet on June 15, 1990. They must have planned and agreed to meet each other at Buyagan, La Trinidad for the purpose of selling marijuana. When asked why she was picked by Lasagan to bring the three sacks, Macario cannot give any explanation. She did not even bother to ask why, under the circumstances, she was chosen by Lasagan to deliver the sacks (TSN, Sept. 29, 1992, p. 16). x x x." [11]

Furthermore, it should be stressed that the prosecution firmly established the fact of appellant's valid entrapment by the composite team of police operatives. She was caught red-handed selling around twenty-one kilos of marijuana [12] to PO3 Leonardo Galutan and the latter categorically testified to her arrest by reason thereof. In turn, Galutan's testimony was corroborated by S/Sgt. Godofredo Fider who was present at the time of the apprehension of appellant. [13]

The positive testimonies of said law enforcers, when placed astride the negative assertions of appellant, obviously deserve more credence, not only because of the settled principle that positive testimony is weightier than a negative one, [14] but also because of the presumption, clearly un rebutted in this case, that official duties had been regularly performed by said officers. [15] Added thereto is the rule that the defense of denial, if unsubstantiated by clear and convincing proof, is considered as self-serving evidence undeserving of any weight in law. [16]

Appellant questions as well the supposed failure of the prosecution to establish the exact date and time of her arrest. Thus, while it was alleged in the information that appellant was collared on June 20, 1990, the testimony of PO3 Galutan tended to show that she was apprehended on June 21, 1990. Appellant also points to contradictions in Galutan's testimony when said officer asserted that he was at Buyagan, La Trinidad at 12:30 P.M. and then, later on, he declared that he was at the Victory Liner Station at that same hour of the day.

Said arguments, unfortunately for appellant, are all in vain. In the first place, appellant herself admitted the fact of her arrest by PO3 Galutan and his colleagues at the Victory Liner bus station. As earlier noted, the only defense she raises is her supposed lack of knowledge that the sacks contained marijuana. As a matter of fact, she asserted in her direct testimony that she was actually arrested and later detained at Camp Bado Dangwa on June 21, 1990. [17]

In the second place, as correctly submitted by the Solicitor General, time is not an essential element of the offense with which appellant was charged. In the prosecution of the offense of illegal sale of marijuana, what is material is proof that the sale took place, coupled with the presentation in court of the corpus delicti as evidence. [18] Furthermore, Section 11, Rule 110 of the Rules of Court permits the prosecution to aver in the information that the act constitutive of the offense charged was committed at a time as near to the actual date when the same was carried out. The non-prejudicial error in the date alleged in the information was accordingly of no material significance and was cured by the testimonies of the prosecution witnesses and of appellant herself.

As to the supposed inconsistency in the testimony of PO3 Galutan about his being in two places at the same time, the Court finds, after a review of the pertinent transcripts, that there exists no contradiction therein. Galutan clearly stated that he transacted with Lasagan and appellant at about 12:30 P.M. at Buyagan, La Trinidad after

which the duo left to get the marijuana at the Dangwa Bus terminal, with the understanding that the drug would be turned over to Galutan at the Victory Liner bus station in Governor Pack Road. [19]

It was at around 2:00 P.M., Galutan added, that appellant turned up at the Victory Liner station without Lasagan and it was at this point that she was arrested. [20] Now, if we take into account the time frame within which the foregoing sequence of events unfolded, the same is consistent with the traveling time and distance between La Trinidad and Baguio City, as both these places can be found and are in fact adjacent to each other in the Province of Benguet.

Finally, appellant assails the discrepancy between the allegation in the information that she was caught selling and delivering "dried marijuana leaves/flowering tops" whereas in Chemistry Report No. D-035-91 submitted by the forensic chemist, Lt. Lalaine M. Ong, dated August 19, 1991 (Exhibit "D"), the items were described as "marijuana fruiting tops." This discrepancy, however, may well be characterized, in the words of the Solicitor General, as a difference touching merely on "x x x the particular designation of the marijuana confiscated from appellant." It will be noted that in an earlier Chemistry Report No. D-033-90, dated June 29, 1990, submitted by P/Major Carlos V. Figueroa of the same crime laboratory (Exhibit "F"), all the said drugs are described as "marijuana flowering tops." Besides, the prosecutor should not be expected to have such expertise as to correctly give the correct technical and scientific designation.

In any case, said inconsistency is too trivial to affect the evidence for the prosecution. There can be no dispute that the marijuana confiscated from appellant, as contained in the three sacks, were the very same bundles of the illegal drug that were submitted to the Crime Laboratory Service, Cordillera Regional Unit at Camp Bado Dangwa for qualitative examination. There were in fact two such examinations conducted on the specimens thus submitted and, in both instances, the results proved to be positive, that is, the articles were indeed marijuana. [21] Furthermore, PO3 Galutan categorically identified in court the seized items as those which were confiscated from appellant. [22]

In sum, the requirements of the law in order that a person charged with the illegal sale and delivery of marijuana in violation of the Dangerous Drugs Act have all been abundantly complied with by the prosecution to the satisfaction of this Court. We, however, agree with appellant and the Solicitor General that since she was sentenced to suffer life imprisonment, the imposition of subsidiary imprisonment in case of non-payment of the fine is improper in view of the proscription thereon in Article 39, of the Revised Penal Code, as amended. The third paragraph thereof expressly states that "(w)hen the principal penalty imposed is higher than prison correccional no subsidiary imprisonment shall be imposed upon the culprit."

Consequently, that part of the fallo of the decision rendered by the trial court should be, as it is hereby, deleted. Also, it bears comment that despite this appellate affirmance of the verdict of the court below, appellant should at least deem it providential that she would have to suffer the consequences of her grievous acts only through lifelong incarceration. Had she been apprehended on or after December 31, 1993, [23] she would have had to contend with the possibility of being subjected to higher penalties.

ACCORDINGLY, subject to the MODIFICATION by deletion of the subsidiary imprisonment above indicated, the judgment of the court a quo appealed from is hereby AFFIRMED, with costs against accused-appellant Martina Macario y Pacatin.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.

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- [1] Criminal Case No. 8029-R, assigned to Branch 9, with Judges Hugo B. Sansano, Jr., Angel Valero Colet, and Romeo A. Brawner successively presiding.
- [2] Original Record, 1.
- [3] Ibid., 10.
- [4] Ibid., 84; penned by Judge Romeo A. Brawner.
- [5] TSN, September 4, 1991, 4-6.
- [6] Ibid., id., 6.
- [7] Ibid., id., 7.
- [8] Ibid., September 29, 1992, 5-6.
- [9] Accused-Appellant's Brief, 1-2; Rollo , 33-34.
- [10] TSN, September 29, 1992, 4-6, 15-16.
- [11] Original Record, 82-83.
- [12] In Chemistry Report No. D-033-90 of the Crime Laboratory Service, Cordillera Regional Unit, Camp Bado Dangwa, La Trinidad Benguet (Exh. F), the respective weights of the three sacks of marijuana, marked as Exhs. A, B, and C, were indicated as 6.4, 7.5 and 6.95 kilos.
- [13] TSN, September 24, 1991, 2-3.
- [14] People vs. Regalario, et al., G.R. No. 101451, March 23, 1993, 220 SCRA 368.
- [15] People vs. Juma, G.R. No. 90391, March 24, 1993, 220 SCRA 432; People vs. Balidiata, G.R. No. 101831, May 21, 1993, 222 SCRA 409.
- [16] People vs. Cobre, G.R. No. 110834, December 13, 1994; People vs. Cuachon, G.R. Nos. 106286-87, December 1, 1994.
- [17] TSN, September 29, 1992, 7-8.
- [18] People vs. Bay, G.R. No. 101310, May 28, 1993, 222 SCRA 723.
- [19] TSN, September 4, 1991, 6.
- [20] Ibid., id., 7.
- [21] Original Record, 26-27; Exhibits D and F.
- [22] TSN, September 4, 1991, 8.
- [23] This is the date of effectivity of R.A. No. 7659, amending R.A. No. 6425 (People vs. Simon, G.R. No. 93028, July 29, 1994) pursuant to which if the marijuana involved in the offense is 750 grams or more, the penalty shall be reclusion perpetua to death, plus a fine ranging from 500 thousand to 10 million pesos (Secs. 13 and 17).

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