

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSARIO GABRIEL Y POLA ALIAS BOY, ACCUSED-APPELLANT.*G.R. No. 110036. October 07, 1994*

Ponente: CRUZ, J.

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We shall affirm the conviction of the appellant in the case at bar, but we shall reduce the penalty to conform to R.A. No. 7659, to which we have given retroactive effect whenever favorable to the accused.

At the trial of Rosario Gabriel for violation of the Dangerous Drugs Act, the prosecution sought to prove that in the morning of November 29, 1989, Rodolfo Ventura, a 17-year old student, appeared before the Laoag City Integrated National Police with the information that the appellant was engaged in the illicit trade of marijuana in the town of San Nicolas, Ilocos Norte.[1] Station Commander Major Ricardo Antalan thereupon organized a buy-bust team composed of Cpl. Rodrigo Ventura, Cpl. Walter Tuzon, Pfc. Warlito Maruquin, Pfc. Marlin Ramos, Pat. Virgilio Adobas and Pat. Ruby Manuel Balolong. Rodolfo Ventura was designated as poseur-buyer and provided with two twenty-peso bills, the serial numbers of which were recorded in the police blotter of the Laoag City PNP.[2] At around 5:00 o'clock that afternoon, the team went to the San Nicolas market area where the police operatives deployed themselves. Ventura then approached Rosario (a male person) and asked to buy marijuana from him. The latter told him to wait and then left, returning after about 3 to 5 minutes with a package wrapped in aluminum foil. He handed this to Ventura after receiving the marked money.[3] At this juncture, the other team members closed in and arrested Rosario. They took him to the police station at San Nicolas where they retrieved the two marked bills from him. The team then went to the Laoag City INP where, after examination of the contents of the two packages and finding marijuana leaves therein, they forwarded the same to the Provincial Processing Center of the PC/INP Crime Laboratory Service at Camp Juan, Laoag City. Later, the specimens were taken to the Crime Laboratory of Camp Diego Silang, San Fernando, La Union, then to the PC/INP Crime Laboratory Service of Camp Crame, Quezon City, where the leaves were subjected to chemical, thin layer photographic, and microscopic examinations. The tests yielded positive results for marijuana.[4]

The defense had a different story. The accused testified that on November 29, 1989, he went to the barrio of Dingras, Ilocos Norte, to sell galunggong. Afterwards, he inquired about the current price of fish at the market of San Nicolas. As he was leaving for home, someone approached him and asked him "if there is something," but since he did not know what that person was talking about, he just ignored him. He then went home, changed his clothes, and proceeded to his brother's house, which was situated near the market.[5] As he was about to enter the house, four men grabbed him and boarded him in a vehicle, then took him first to the Municipal Hall of San Nicolas and later to the police station of Laoag City. He was searched there and nothing was found on him except the P700 he had earned from the sale of the fish. The policemen counted the money, took two P20.00 bills and copied the serial numbers. They then accused him of peddling marijuana.[6]

Grace Gabriel (also a male) corroborated the appellant's testimony. He declared that in the afternoon of November 29, 1989, while on his way home from work, he saw a vehicle which stopped in front of his house. Somebody got

off, approached and collared his half-brother Rosario, who was standing near the door of his house. He inquired what Rosario had done. All they said was that they were members of the police force. He asked Rosario what he had done and the latter replied that he had done nothing wrong. The policemen then forced the accused into the vehicle.[7]

Judge Minviluz C. Astudillo of the Regional Trial Court of Ilocos Norte chose to believe the prosecution and in her decision dated March 26, 1993, disposed as follows:

WHEREFORE, from the facts established, the Court finds ROSARIO GABRIEL Y POLA alias BOY GUILTY beyond reasonable doubt of the crime of selling a prohibited drug under Article II, Section 4, of Republic Act No. 6425 as amended, and imposes upon him the penalty of LIFE IMPRISONMENT. He is further ordered to pay a fine of TWENTY THOUSAND (P20,000.00) PESOS.

The appellant faults this decision in his appeal for alleged inconsistencies in the testimonies of the prosecution witnesses, but we find that they are only minor discrepancies that do not impair the essential veracity of their sworn declarations. We do not agree that the appellant was merely "framed," as he claims, for there is no evidence of this allegation. Neither are we persuaded that the policemen tried to extort money from him, as he also makes this assertion without proof. In the absence of clear and convincing evidence to the contrary, the presumption in favor of the apprehending officers that they have regularly performed their official duty should be observed.

We affirm the factual findings of the trial judge because she had the advantage of observing first-hand the deportment of the witnesses and was therefore in a better position to form accurate impressions and conclusions on their credibility. As we observed in *People vs. de Guzman*:^[8]

In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.

The questioned decision should, however, be modified in line with R.A. No. 7659, which took effect on December 31, 1993, and amended inter alia, R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972. Sections 13 & 17 of the new law provide that the penalty of reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00 shall be imposed for the sale, administration, delivery, transportation and distribution of 750 grams or more of indian hemp or marijuana. However, if the quantity involved is less than 750 grams, the penalty shall range from "prison correccional to reclusion perpetua, depending upon the quantity."

In the recent cases of *People vs. de Lara*^[9] and *People vs. Simon*,^[10] this Court held that where the quantity of the drugs involved is less than 750 grams, Section 17 of R.A. No. 7659 should be interpreted as providing for a penalty ranging from prison correccional to reclusion temporal only, and not reclusion perpetua. These cases also read the second paragraph of Sec. 17, particularly the phrase "prison correccional to reclusion perpetua depending upon the quantity," to mean that "if the marijuana involved is below 250 grams, the penalty to be imposed shall be prison correccional; from 250 to 499 grams, prison mayor; and 500 to 749 grams, reclusion temporal. Parenthetically, fine is imposed as conjunctive penalty only if the penalty is reclusion perpetua to

death."

In the instant case, the two packages of marijuana fruiting tops had a total weight of only 9.98 grams as averred in the information itself. Hence, the penalty to be imposed should be prision correccional, which, under the Indeterminate Sentence Law as interpreted in the Simon Case, may be lowered to an indeterminate penalty ranging from arresto mayor, as minimum, to prision correccional, as maximum.

ACCORDINGLY, the appealed judgment is AFFIRMED, but with the modification that the appellant shall be sentenced to suffer an indeterminate penalty of FIVE (5) months of arresto mayor, as minimum, to FIVE (5) years of prision correccional, as maximum, conformably to R.A. No. 7659. Costs against the appellant.

SO ORDERED.

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

[1] TSN, October 30, 1990, p. 5-6; Exh. "1-B."

[2] Ibid., October 30, 1990, pp. 5-9; December 17, 1990, pp. 12-13.

[3] Id., December 17, 1990, pp. 14-16.

[4] id., April 12, 1991, pp. 5-7; Exh. "H."

[5] id., November 20, 1991, pp. 26-28.

[6] id., pp. 29-31.

[7] id., February 25, 1992, pp. 61-65.

[8] 188 SCRA 406.

[9] G.R. No. 94953, September 5, 1994.

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

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