

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIO MANAHAN, ACCUSED-APPELLANT.

G.R. No. 111550. November 14, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

This case was certified to us for review by the Court of Appeals, accused-appellant Julio Manahan (hereinafter "Manahan") having been meted the penalty of life imprisonment for violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, to wit:

"WHEREFORE, accused Julio Manahan is found GUILTY beyond reasonable doubt of the (sic) Violation of Section 4 of Republic Act No. 6425, otherwise known as the "The Dangerous Drugs Act of 1972" and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of TWENTY FIVE THOUSAND (P25,000.00) PESOS.

"Considering that the penalty of LIFE IMPRISONMENT has been imposed in the instant case, the same is now hereby certified to the Honorable Supreme Court for review.

"SO ORDERED" (Rollo, p. 54).

This criminal case originated from the Regional Trial Court of San Mateo, Rizal, Branch 76, where an Information was filed against accused Manahan as follows:

"That on or about the 28th day of May, 1989, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell to poseur-buyer marijuana fruiting tops having a total weight of 5.13 grams placed in two (2) paper rolls, in consideration of P20.00, which are prohibited drugs.

"Contrary to law" (Rollo, p. 64).

After trial, Manahan was found guilty of the crime charged and sentenced by the trial court to suffer the penalty of imprisonment of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months and to pay a fine of Twelve Thousand (P12,000.00) Pesos.

On appeal, the Court of Appeals affirmed the conviction of Manahan but modified the penalty to life imprisonment and increased the fine to P25,000.00, as aforequoted.

A perusal of the evidence for the plaintiff-appellee (hereinafter "prosecution") reveals the following relevant facts.

On or about May 27, 1989, the Station Commander of the San Mateo Police dispatched a team composed of Pfc. Manuel Alberto, Pfc. Ernesto Ravina, Pfc. Joselito dela Rosa and Pfc. Leonardo Encilla to Sitio Ampid, San Mateo, Rizal for a buy-bust operation and the possible arrest of Julio Manahan, a rumored pusher. At around five o'clock in the afternoon, the team arrived at the barangay hall of Barangay Ampid where they waited until

midnight for the arrival of their civilian informer. The informer told the team that Manahan was already in his (Manahan's) house. The team proceeded to the target area and positioned themselves five (5) to ten (10) meters from Manahan's house. While the rest of the team remained at such position, Pfc. Alberto went with the informer to the house of Manahan. The informer contacted Manahan while Pfc. Alberto acted as the poseur-buyer.

In his testimony, Pfc. Alberto narrated the succeeding events as follows:

Q When your C.I. contacted the suspect what transpired?

A I was the one who bought the marijuana.

Q How much marijuana did you buy?

A P20.00 ma'am.

Q Was the marijuana actually handed to you?

A At first, I gave him the money. Then he went inside. Afterwards, he returned and gave me the marijuana.

Q This suspect whom you have been talking (sic), is he here now?

A Yes, ma'am.

Q Will you point him out?

A (Witness pointing to a person who answered by the name of Julio Manahan)

(Rollo, p. 37).

Upon receipt of the marijuana, Pfc. Alberto gave the pre-arranged signal signifying the consummation of the deal. The other team members then approached the area and identified themselves as police officers of the San Mateo Police. They frisked Manahan and recovered from him the P20.00 bill which he received from Pfc. Alberto. Manahan was then brought to the police station where he was turned over to the duty investigator, Pat. Santos Landaos.

On the other hand, evidence for accused-appellant Manahan painted a different picture of the events that led to his arrest:

Testifying on his own behalf, Manahan narrated that between the hours of ten and twelve in the evening of May 28, 1989, while he and his common-law wife Baby Ramos were resting in his house, they heard a knock on the door. When he opened the door, four (4) policemen immediately handcuffed him and placed him under arrest. Confused, Manahan inquired from the policemen why he was being arrested, to which the latter countered by asking him whether or not he kept marijuana in his house. When Manahan denied any knowledge thereof, the policemen entered the house and searched Manahan's bedroom. Outside the house, Raul Buenaobra and Charlie Gal, one of the defense witnesses, were also handcuffed by the police. Manahan found out later that Pfc. Rabina wanted Buenaobra and Gal to impute upon him (Manahan) the ownership of the marijuana. They were taken to the municipal hall where, upon Manahan's refusal to admit that he was the source of the marijuana, he was incarcerated while Buenaobra and Gal were released.

Defense witness Gal corroborated the material points of Manahan's testimony.

In his appellant's brief, Manahan raises this lone assignment of error, to wit:

"THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT ONLY CONVICTING BUT ALSO MODIFYING THE PENALTY INCREASING THE TERM TO LIFE SENTENCE AS WELL AS

INCREASED THE FINE OF HEREIN ACCUSED-APPELLANT BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF SECTION 4 OF REPUBLIC ACT NO. 6426, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972 DESPITE THE WEAK AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES" (Rollo, p. 14).

It is a well-entrenched rule in this jurisdiction that findings of the trial court on the issue of credibility of the witnesses' testimonies are accorded great weight and respect on appeal. This is because the trial judge has first hand opportunity to examine and observe the conduct and demeanor of the witnesses during the giving of their testimonies (People vs. Marcos, 185 SCRA 154 [1990]). Unless it is clearly shown that the trial court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses (People vs. Simbulan, 214 SCRA 537 [1992]).

On the basis of the evidence presented, there seems to be no cogent reason to deviate from the general rule.

In his brief, accused-appellant Manahan relies on alleged inconsistencies in the testimonies of the witnesses to discredit the evidence of the prosecution against him. Specifically, Manahan pointed to the conflicting statements of Pfc. Manuel Alberto and Pfc. Joselito dela Rosa. Whereas Pfc. Alberto testified that it was the confidential informant who contacted Manahan by knocking at the door of the latter's house, Pfc. dela Rosa stated that the confidential informant was not with the police team when they went to the target area and that Pfc. Alberto was alone when he approached the house of Manahan. Another inconsistency involved the matter of the exchange of the money for the purchase of the marijuana. Pfc. Alberto averred that he first gave the money to Manahan before the latter went inside the house to get the marijuana. On the other hand, Pfc. dela Rosa testified that there was simultaneous exchange of the money and the drug.

In its decision, the Court of Appeals also noted some apparent inconsistencies:

"(1) Pfc. Alberto testified that he did not know if the accused had a companion on the evening when the latter was arrested (p. 21, t.s.n., May 16, 1990) whereas Pfc. Ravina averred that there was a woman in the house of the accused who asked who they were. One explanation for this discrepancy could be that Alberto, in talking of a companion of the accused (at the time of the buy-bust operation), was thinking of a trade companion rather than a domestic companion;

"(2) Pfc's Alberto and Ravina testified that the P20.00 marked money came from their chief, Lt. Martinez (p. 4, t.s.n., May 16, 1990 and p. 32, t.s.n., January 17, 1990) whereas dela Rosa said that the money came from Ravina (p. 11, t.s.n., March 9, 1990)" (Rollo, p. 49).

However, none of these alleged inconsistencies detract from the fact that Manahan sold two sticks of marijuana to Pfc. Alberto. In a prosecution for the sale of prohibited drugs, it is the fact of the sale which must be clearly established to sustain a conviction (People vs. Alilin, 206 SCRA 772 [1992]) and this, the prosecution was able to do in the present case. Moreover, Manahan was positively identified by the prosecuting witnesses. Thus, these inconsistencies do not have any bearing on the guilt of Manahan of the crime charged. If at all, they are just minor inconsistencies which do not diminish but even bolster the credibility of the prosecution witnesses as well as the veracity of their testimonies. As held in the case of People vs. Gamboa, (194 SCRA 372 [1991]) cited by the Court of Appeals in its decision:

"The aforecited contradictions and inconsistencies are normal infirmities that result from individual differences in the appreciation of events, time, place and circumstances. The rule is, as it were, that inconsistencies on minor details do not destroy the probative value of the testimonies of witnesses because, generally, they may be due to an innocent mistake and not to deliberate falsehood (People vs. Lagota, 194 SCRA 92). Rather than affect the credibility of the witnesses, their contradicting statements on minor details are badges of candor"

(Rollo, p. 50).

Further, despite these inconsistencies, the trial court found the prosecution witnesses to be more credible and worthy of belief:

"After a careful perusal of the records, we so hold for the prosecution. In the first place, we find as more convincing the testimony of the police officers. Concertedly taken together, the same bears the earmarks of truth and does not appear to be any sort of a planting of evidence (sic). The defense, likewise, has not shown the prosecution witnesses to be unworthy of credibility and of the conniving kind as to fabricate a case against the accused. It also has been shown that the prosecution does not have a bias against the accused or a motive as to weave together this story that the accused is a pusher" (C.A. Rollo, p. 27).

Going by the aforestated general rule, the above pronouncement will not be disturbed by this Court, especially where the said findings have been affirmed by the appellate court.

In an attempt to convince this Court that the evidence of the prosecution is weak, Manahan contested the application of the presumption of regular performance of duties to the policemen who testified as prosecution witnesses. Appellant points out that contrary to the conduct of a standard buy-bust operation, the prosecution witnesses did not place him under surveillance prior to the actual operation. Moreover, the money used in the transaction was not properly marked. At the trial, the prosecution did not even present the confidential informant as witness to testify against the accused-appellant.

These arguments deserve scant consideration. The arresting officers are presumed to have regularly performed their duty in the absence of proof to the contrary (*People vs. Khan*, 161 SCRA 406 [1988]). There is nothing in the records to suggest that these police officers were compelled by any motive other than to accomplish their mission to capture a drug pusher in the execution of the crime (*People vs. Como*, 202 SCRA 200 [1991]). More importantly, Manahan himself failed to provide any evidence to show that the prosecution witnesses had any ulterior motive to testify falsely against him. The fact that no record of the alleged surveillance was presented does not of itself destroy the presumption of regularity in favor of the prosecution witnesses. As this Court held in the case of *People vs. Cruda* (212 SCRA 125 [1992]), there is no fixed procedure for the conduct of a buy-bust operation. The absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation.

Similarly, the Court has ruled in the cases of *People vs. Castiller*, 188 SCRA 376 [1990] and *People vs. Mangusan*, 189 SCRA 624 [1990] that failure to mark the money or to present it in evidence is not material to the case since these facts will not disprove the sale. As for the non-presentation of the confidential informant as witness, we have likewise ruled in the cases of *People vs. Carpio*, 207 SCRA 569 [1992] and *People vs. Bagawe*, 207 SCRA 761 [1992] that his testimony is no longer necessary as it would merely corroborate the testimony of the poseur-buyer.

Coming now to the issue of the imposable penalty, it is clear that on the basis of the foregoing facts and the applicable law, the Court of Appeals correctly modified the penalty to life imprisonment. Prior to its amendment, Section 4 of Republic Act No. 6425 provides:

"Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions x x x."

However, certain amendments to Section 20 of R.A. No. 6429 recently introduced by Republic Act No. 7659 (An Act To Impose The Death Penalty on Certain Heinous Crimes), particularly Section 4 in relation to Section 17 thereof, which affect the imposable penalty in the present case may be retroactively applied as they are beneficial

to the accused (Articles 10 and 22, Revised Penal Code; *People vs. Moran*, 44 Phil 387 [1923]), as follows:

"Sec. 4. Sale, Administrative (sic), Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug or shall act as a broker in any of such transactions.

x x x"

"Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

'Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Sections 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:

'1. 40 grams or more of opium;

'2. 40 grams or more of morphine;

'3. 200 grams or more of shabu or methylamphetamine hydrochloride;

'4. 40 grams or more of heroin;

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

'6. 50 grams or more of marijuana resin or marijuana resin oil;

'7. 40 grams or more of cocaine or cocaine hydrochloride; or;

'8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultation/hearings conducted for the purpose.

'Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity (underscoring supplied).

x x x'"

Since the present appeal involves only 5.13 grams of marijuana, a quantity evidently less than the 750 grams stated in Section 20, R.A. No. 6429 as amended by Section 17 of R.A. No. 7659 aforequoted, the maximum penalty to be imposed upon appellant is prison correccional in its medium period. Applying the Indeterminate Sentence Law in consonance with *People vs. Martin Simon*, G.R. No. 93028, July 29, 1994 and *People vs. Martinez*, G.R. No. 105376-77, August 5, 1994, appellant is hereby sentenced to suffer imprisonment from six (6) months of arresto mayor, as minimum, to two (2) years and four (4) months of prison correccional as maximum. The fine of P25,000.00 is deleted.

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED WITH MODIFICATION** as regards the penalty imposed. Costs against appellant.

SO ORDERED.

Romero, Melo, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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