

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISA BAGUS Y DACAYAN ACCUSED-APPELLANT.*G.R. No. 111824. August 11, 1997*

Ponente: FRANCISCO, J.

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Appellant Eliza D. Bagus was charged in an information,[1] dated December 17, 1990, for violating Section 4 of Republic Act 6425. When arraigned, appellant entered a plea of “Not Guilty”. Trial, thereafter, ensued. On September 7, 1992, the trial court[2] found the appellant guilty as charged and sentenced her “to suffer life imprisonment, to pay a fine of P 20,000.00 and pay the costs.”[3] Aggrieved, appellant interposed the instant appeal maintaining her innocence and arguing that the evidence against her “is doubtful”. [4]

The facts of the case as narrated by the Office of the Solicitor General are as follows:

“The evidence for the prosecution shows that on December 12, 1990, about 9:00 a.m., at the Bagong Silang police Sub-Station, Kalookan City, Lt. Norberto Surara conducted a “briefing” wherein a team composed of P/Cpl. Perfecto Sobejana, Pat. Alfredo Antonio and P/Aide Bonifacio Lapuz, who was designated as the poseur-buyer, was formed in order to Gatchalian (TSN, January 24, 1992, pp.16-17). On the same day, at 5:00 p.m. said team police officers went to Barrio San Lorenzo, Tala, Kalookan City and saw Danilo Gatchalian, who was smoking and acting suspiciously (TSN, January 24, 1993, p. 8; TSN, August 14, 1991, p. 9). Pat. Antonio asked Gatchalian “to bring out everything out inside his pocket” and he (Gathalian) brought out five (5) tea bags of Marijuana from the pocket of his pants (TSN, August 14, 1991, p.9). The size of each tea bags of marijuana was one inch by one inch (TSN, October 16, 1991, p. 16). Gatchalian was arrested by the police officers and he informed them that he had purchased the five (5) tea bag of marijuana from Rodel San Pedro (TSN, August 14, 1991, p. 10). The police officers agreed to pursue their plan to conduct a buy-bust operation AGAINST San Pedro (TSN October 16,1991, p. 7). Hence, they proceeded to the house of San Pedro at Barrio San Roque, Tala Kalookan City, where from a distance, Gatchalian pointed appellant to them. Appellant is the wife of San Pedro and was then standing near the aforesaid house (TSN, October 16, 1991, p. 8; TSN January 14, 1992, p. 10). Since San Pedro could not be seen by the police officers, they agreed to conduct the buy-bust operation against appellant (TSN, October 16, 1991, pp. 9-10). While the (sic) P/Cpl. Sobejana, Pat. Antonio and Gatchalian hid in strategic places, P/Aide Lapuaz approached appellant and told her that she was a friend of her husband and would like to buy two (2) tea bags of marijuana (TSN, October 16, 1991, p. 9 ; TSN October 30, 1991 p. 7; TSN, January 24, 1992, p, 10). P/Aide Lapuz handed the marked P 20.00 bill to appellant, who went inside the house and gave Lapuz two (2) tea bags of marijuana in return (TSN, January 24, 1991, p. 10). When P/Aide Lapuz, by raising his hand , signalled to P/Cpl. Sobejana and Pat. Antonio that the sale of marijuana had been consummated, appellant ran out of the house and tried to escape, but Lapuz overtook and arrested her (TSN, October 16, 1991, p. 11). Appellant “confessed” that her husband was the drug pusher and pointed to the police officers the sixty- five tea bags of marijuana hidden under the dogs cage inside the house (TSN, October 16, 1991, pp. 12-13; TSN, January 24, 1992, p.13). Thereafter, the police officers, brought appellant to their head quarters at Bagong Silang Police Sub-Station, Kalookan City (TSN, August 14, 1991, p. 15).

“The seventy-two (72) tea bags of marijuana (5) were taken from Danilo Gatchalian and sixty-seven (67) from the appellant, each of which had the same size of one inch by one inch, were sent to the National Bureau of Investigation for laboratory examination, which showed that they were positive for marijuana (TSN, July 17, 1991, p.5).

“In her defense, appellant presented herself, Alfredo Santos and Fernando Bagus, Jr. as witnesses.”

“Appellant’s main defense is denial. She denied that a buy-bust operation was conducted by the police officers against her on December 12, 1990 (TSN, April 24, 1992, p. 7). She gave a different version of the incident. She testified that on December 12, 1990, from 5:00 p.m. to 6:00 p.m., two (2) security guards of Daily Security Forces, who were Resty delos Santos and Rodel Gingco, and an unidentified man, who was handcuffed, arrived at her house at Barrio San Roque, Tala, Kalookan City (TSN, April 24, 1992, pp. 7-8). Resty delos Santos, Rodel Ginco and the handcuffed man were looking for appellant’s husband, Rodel San Pedro (TSN April 24, 1992, p. 8). Not finding Rodel San Pedro in his house, they (Santos, Gingco, and the handcuffed man) brought appellant to the Bagong Silang Police Station for investigation, where he was detained for three (3) days (TSN, April 24, 1992, pp. 9-10). She did not know why the law enforcers testified against her (TSN, April 24, 1992, p.12).[5]

“[Defense] Witness, Alfredo Santos, testified that on or about December 12, 1990, between 5:00 to 6:00 p.m. three (3) male persons, one of them was in handcuffs, arrived at the house of their neighbor, the appellant herein. He knows the two (2) as security guards of the Daily Security Force (Tala Security Force) but not the one in handcuffs. At the time of their arrival, he was picking camote tops at the yard of the appellant and he was around three(3) meters away from the latter.

“The security guards were looking for Rodel San Pedro, live-in partner of appellant but they were informed by the latter that he (R. San Pedro) was out; One of the security guards entered the house of appellant and later came out saying that Rodel San Pedro was not there.

“Pointblank, witness declared that he did not witness any buy busting that take place during the time. Neither did he see any plastic bag of marijuana taken within the premises nor in chicken cage, nor dog house, by the security guards.

“Further testifying, witness started that he knows, as neighbor of appellant, that the latter has no dog house or chicken cage or any dog or chicken. Likewise, there are no tree/s around the place of the appellant and from the time the two (2) security guards and the person in handcuffs arrived and up to the time they left together with the appellant, he was at the yard of the latter.

“On cross-examination, same witness testified, that –

“He knows appellant about three (3) years, since the time that she became his neighbor; his family relationship with appellant’s is harmonious, as what he knows, appellant was invited by the two (2) security guards of Tala Security Force at the Tala Security Force at the Tala Headquarters; and that, he did not have a chance to see appellant at the office of the security personnel.”[6]

The appeal is impressed with merit.

The Court Generally respect the trial court’s finding on the credibility of the witnesses, but where certain facts of substance and value are overlooked which if considered would affect the result of the case then such finding is not conclusive to us,[7] as in this present appeal.

In the case of bench, there was three (3) alleged eyewitnesses, viz: P/Cpl. Sobejana Pat Cpl. Sobejana, Pat. Antonio, and poseur-buyer Lapuz. While these witnesses planned and conducted, as a group, the supposed entrapment of herein appellant the Court is disturbed on the material differences of their accounts. Hereunder are

the substantial parts of the testimony of P/Cpl. Sobejana contrasted with the testimony of Pat. Antonio, thus:

P/Cpl. Sobejana

Pat. Antonio

1. On the source of the information of the alleged drug deal.

Q

Tell us, Mr. Witness?

A

While we were at the said police station, a civilian informer came to us and informed that there is a tip that a marijuana deal will take place at Tala?

Q

Caloocan City?

A

Yes, your Honor.

Q

And that was a telephone call?

A

No, your Honor. We do not have a telephone. (TSN, Oct. 16, 1991, p. 4)

Q

While thereat, do you remember if your office received a call from an informer that a drug deal will take place at Tala?

A

We received the information from a certain person from Tala, sir.

Q

Who received that call from that informer?

A.

Lt. Surara, sir.

Q

Was that through telephone call?

A

Yes, sir. (TSN, Aug. 14, 1991, p. 4)

2.

On the type of vehicle used in going to the target place.

Q

What did you do. Mr. Witness, after you informed him of that alleged drug deal that will take place in Tala, Caloocan City?

A

Yours truly, together with Pat. Antonio and P/A Bonifacio Lapuz were dispatched at Tala, Caloocan City.

Q

Did you proceed there with a vehicle or what ?

A

Yes, your Honor. We boarded on my owner-type jeep. (Id., p.5.)

Q

How did you proceed to the place of operation at Barrio San Lazaro, Tala, Kalookan City?

A

We were on board the mobile of Bagong Silang Police Sub-Station, sir.

Q

There were three of you inside that mobile car?

A

Yes, sir. (Id., p.8.)

3.

On the Source of the tea bags taken from Mr. Gatchalian

Q

What was revealed to you by Mr. Gatchalian ?

A

That the confiscated tea-bags of marijuana were sold by Eliza Bagus.

Q

So to that effect you went to the residence of Elisa Bagus, is that what you mean?

A

After making a plan for the operation, we proceeded to the place or to the residence of Elisa Bagus, Sir. (TSN, Oct. 30, 1991, p. 6)

Q

Did that person Danilo Gathalian inform the name of that source?

A

Yes, sir.

Q

And who was that person, the source of those teabags of marijuana?

A

What I know, It was certain Rodel San Pedro, Sir. (Id., p. 10)

4.

On where the additional teabags of marijuana were found.

WITNESS (A)

After trembling, she confessed that her live-in partner is the pusher and pointed to us under the shack under the dog's cage where we could find the marijuana stuff.

Q

When she pointed the place, how far were you from her?

A

We were very close.

Q

So she pointed to the dog's cage where you could find those teabags?

A

Yes, sir. (TSN, Oct. 16, 1991, p. 12)

Q

Did she tell you the source of the marijuana which was handed to Police Aide Lapuz?

A

She pointed where the marijuana was hidden, sir.

Q

And did you find the other marijuana?

A

It was retrieve, sir because she pointed it .

Q

Whereat?

A

Under the Chicken coop which is inside the house, sir (Id., p. 14)

5.

On the source and denomination of the buy-bust money.

Q

What was the money or what denomination was that money?

A

It was a P 20.00 bill.

Q

How could you identified that?

A

If presented I could identify it .

Q

Mr. Witness, who provided that P20.00 as the money that would be used in that buy-bust operation against Rodel?

A

It was the money of Police Aide Lapuz, sir. (Id., p.7)

Q

How about the money that will be used by the poseur-buyer, what was done to it?

A

There was money delivered, sir, one P 20 bill and one P 10 bill.

Q

To whom did Lt. Surara give those two money bill.

A

To Police Aide Bonifacio Lapuz, sir. (Id., p.7)

6.

On what the appellant was doing in the subject area.

Q

By the way, when you first saw Elisa Bagus, exactly were was she?

A

She also identified their shanty/house, sir.

Q

What was she doing then?

A

She was carrying her baby. (Id., p. 9)

Q

Did you see this Eliza Bagus, after learning that Rodel San Pedro was not there, and how did you see Eliza Bagus?

A

She was beside their house, sir. (Id., p.11)

7.

On the conduct of the alledged buy-bust operation.

Q

How far were you then when you saw Elisa Bagus handing something to Lapus and Lapus handing something or the money to her?

A

About 7 to 8 meters.

FISCAL SISON (Q)

Which came first, Mr. Witness—the handing of the buy-bust money or the thing handed over by Elisa bagus?

A

With that distance as I said earlier, we saw that P/Aide Lapuz handed the P 20.00 bill to Eliza bagus and then she (sic) [should be “he”] came out and signalled (sic) that he has the teabags, so we proceeded immediately to the shanty together with Danilo Gatchalian.

FISCAL SISON (Q)

Tell us which came first x x x ?

A

I said the handling of the money came first.

Q

And then?

A

And then Lapuz signalled (sic) us when he came out from the house of Elisa Bagus showing to us that he already bought the stuff.

FISCAL SISON (Q)

So actually where did that handling of the buy-bust money and handing over the teabag take place?

WITNESS (A)

It was within the premises of Elisa Bagus.

Q

Outside her shanty?

A

Inside because P/A Lapuz went inside the house. (Id., pp. 9-11)

Q

How far were you from Elisa Bagus and Police Aide Lapuz?

A

About five meter, sir.

Q

And you saw how the sale was being transacted?

A

Yes, sir.

Q

Tell us how they transacted?

A

I saw them handing each other the money and the marijuana, sir.

Q

You said you saw them handing to each other money and marijuana. Which was the first person handing that thing to the other?

A

It was Police Aide Lapuz who received the marijuana first, sir.

Q

You mean the buy-bust money was not given first?

A

It was simultaneously, sir.

Q

After handing the buy-bust money and the marijuana,, what happened next?

A

Cpl. Sobejana approached them because it was already positive that there was a sale of marijuana, sir.

Q

How about you , what did you do?

A

I also approached them, sir. (Id., p.13)

8.

On what the appellant did after the sale of marijuana.

Q

So what happened to Elisa Bagus?

A

So Elisa tried to escape but we were able to pursue her together with her baby.

Q

How did she try to escape, tell us?

A

She tried to run.

Q

Outside the house?

A

Yes, sir.

Q

Who was able to catch her then?

A

It was P/A Lapuz. (Id., p. 11)

Q

So, what did you do with the accused then, after both of you and Cpl. Sobejana approached the two, I am referring to Lapuz and Elisa Bagus?

A

We talked to Elisa Bagus since we had already caught her in possession of marijuana, and asked her who was the source of the marijuana, sir. (Id., p. 14)

The obvious contradiction between the testimonies of P/Cpl. Sobejana and Pat. Antonio are accentuated by the testimony of the assigned poseur-buyer, Lapuz. Thus, While the two policeman are united in stating that there were only three persons in the group tasked to conduct the "buy-bust" operation Lapuz insist otherwise, hence:

Q

So there were 3 of you in the group by Lt. Surara?

A

We are many, sir.

Q

How many of you all in all?

A

Five or six members. I do not know the names of the other members, sir". (TSN, January 24, 1992, p.6)

A marked disagreement among the witnesses on the source of the “buy-bust” money also exists. P/Cpl. Sobejana asserts that the money came from Lapuz, while Pat. Antonio’s testimony impliedly points to Lt. Surara as the the one who doled-out the peso bills. Lapuz, for his part, had this to say:

Q

Who provided the P20.00 you used to buy 2 tea-bags of marijuana from San Pedro’s wife?

A

Cpl. Sobejana, sir.” (TSN January 24, 1992, p.10)

Moreover, it appears to be the standard operating procedure in “buy-bust” operations that the marked money bills are normally photocopied before their use. In the case at bench the authorities deviated from this procedure for no cogent reason. Thus:

Q

The photocopy of the alleged buy-bust money was done after it was utilized as buy-bust?

A

Yes, sir.

Q

After it was utilized for the buy -bust on the 11th day?

A

No, sir. It was used during the buy-bust operation, sir.

Q

Then after that you photocopied the same?

A

Yes, sir. “(PO3 Gilbert Dioso, TSN, October 30, 1991, p. 24).

Anent the manner on the purported “Buy-bust” operation, Lapus narrates a different tale: Thus:

Q

Were you able to see the wife of Rodel San Pedro?

A

Yes, sir.

Q

Where exactly did you see her, Mr. Witness?

A

Beside the house, sir.

Q

And what was the wife doing at the time you saw her beside their house?

A

She was just standing, sir, beside the house.

Q

What did you do next when Danilo Gatchalian pointed to the wife of San Pedro from whom he got those 5 tea-bags of marijuana?

A

Cpl. Sobejana ordered me to buy marijuana from her, sir.

Q

Were you able to buy marijuana from the wife of San Pedro?

A

Yes, sir.

Q

Tell us how were you able to buy marijuana from San Pedro's wife ?

A

I introduced myself to her as a friend of her husband, Rodel San Pedro and that I need two tea-bags of marijuana.

Q

And then?

A

She gave me the 2 tea-bags of marijuana and then I paid P 20.00 for it, sir.

Q

When you received from her already those 2 tea-bags of marijuana, what did you do next?

A

I grabbed her and then my companions responded, sir.

Q

What happened to the P 20.00 which you used to buy those tea-bags of marijuana?

A

It was taken from her by Cpl. Sobejana, sir. (TSN, January 24, 1992, p. 10)

The testimonies of P/Cpl. Sobejana, Pat. Antonio and poseur-buyer Lapuz, alleged eyewitnesses, leave much to be desired. They are fraught with irreconcilable contradictions and substantial inconsistencies which thereby cast serious doubt over the veracity of the charge against herein appellant. Indeed, the Court is baffled how

P/Cpl. Sobejana and Pat. Antonio who were situated outside the house at a distance of five (5) to eight (8) meters can see and clearly observe the supposed transaction or sale of marijuana inside appellant's residence. Worse, such scenario was incompatible with the narrative of poseur-buyer Lapuz who indicated that the sale took place not inside but outside the house. The exclusion in the information, with no tenable reason, of the sixty five (65) tea bags supposedly taken from the custody of the appellant adds suspicion on the authenticity of the prosecution's case. The credibility of the poseur-buyer also appears unreliable as shown by the following passage in his testimony, thus:

Q

But you remember that you executed a Joint Affidavit of Apprehension in connection with this case?

A

Yes, sir.

Q

And if that will be shown to you, will you be able to identify the same?

A

Yes, sir.

Q

Will you please look in this Joint Affidavit of Apprehension if this was the same which you have said you executed in connection with this case? (Public Prosecutor showing to the witness Exhibit "H").

A

Yes, sir. This is the one.

Q

I noticed that you have not signed that Joint Affidavit of Apprehension. Tell us why you failed to sign that Joint Affidavit of Apprehension?

A

Because when this case was inquested, I went to the comfort room but I was with them when Elisa Bagus was brought before the Inquest Fiscal, sir.

Q

Do you still affirm the contents of this Joint affidavit of Apprehension?

A

Yes, sir.

Q

Please sign it, Mr. Witness?

A

Yes, sir (witness is affixing his signature above his typewritten name P/Aide Bonifacio Lapuz).

FISCAL SISON:

May I request that the signature of the witness be marked as Exhibit "I-2", your Honor.

ATTY. SACLAYAN:

For the record, your Honor, as an observation, the witness signed the affidavit without reading the same. (TSN, January 24, 1992, p.11)

xxx xxx xxx In the face of the prosecution's distressing evidence, appellant's denial assumes significance. Appellant's averment that "the prosecution" is in a hurry "to beat the deadline of (sic) the filing of the case and avoid the possible offense of arbitrary detention"[8] and that perhaps her incarceration is a ploy to entice and force her husband to surrender to the police is far credible than the conjured tale of the apprehending officers and alleged poseur-buyer. We find that the appellant's assertion was corroborated not only by the testimony of disinterested witness,[9] but also by the testimony of PO3 Dioso, a police investigator and an additional prosecution witness. Thus:

"WITNESS:

PO3 GILBERT DIOSO, 31 years old, married, presently assigned at Station Investigation Division, Urduja PNP Station, Camarin Road, Kalookan City.

Q: When was she inquested for the alleged offense of Republic Act 6425?

A: That was on the 16th of December, sir.

Q

Do you mean to say Mr. Witness that Miss Elisa Bagus was in your office from 2:30 to 3:30 in the 11th of December 1990 up to the 15th of December 1990?

A

Yes, sir.

Q

May I know the reason, Mr. Witness, why Miss Bagus was held in custody of the sub-station for that period of time?

A

The reason is the my colleague then was still conducting a follow-up operation for the possible arrest of the live-in partner of Elisa Bagus, sir, and we were also awaiting for the result of the laboratory test conducted by the NBI, sir.

Q

So you were waiting for the result of the laboratory test. Is it not a fact that, according to the records, Mr. Witness that these marijuana were delivered to the laboratory of the NBI on 5:55 or 5:59 p.m. of December 15, 1990?

A

Yes, sir.

Q

And that is the time when you waited?

A

As I have said earlier, we were conducting a follow-up investigation against the live-in partner of Elisa Bagus.

Q

You want to impress the Honorable Court that there is a necessity for you to wait for the other suspects before you deliver her to the proper Courts without violating her constitutional rights?

A

Because the suspect Elisa Bagus agreed to point to the arresting officer the whereabouts of her live-in partner that is why we were not able to file case against her as already set.

Q

Did you reduce that into writing in order to protect your sub-station?

A

No, sir. (PO3 Gilbert Dioso, TSN, October 30, 1991, pp. 3, 23-24).

It is our considered view that appellant's denial merits credence and has to be accorded weight than the prosecution's disputable accusation.

Prescinding from the foregoing observations, the Court feels that the guilt of the appellant was not proved beyond reasonable doubt. Mere suspicion of guilt should not sway judgment. Every evidence favoring the accused must be duly considered.[10] In *People v. Sadie*[11] and *Perez v. Sandiganbayan and People of the Philippines*,[12] this Court reiterated the ancient principle that "no one shall be found guilty of crime except upon proof beyond reasonable doubt ." We note that the presumption of innocence in favor of the appellant was not successfully rebutted, hence her acquittal is inevitable. In closing, the Court takes this opportunity to reiterate its admonition in *People v. Cruz*[13] on the trial of drug cases especially on buy-bust operations, thus:

"Trial courts are admonished to always require precise and convincing testimony in cases involving buy-bust operations. x x x. Except for influential persons or those who can afford the best lawyers, it is well nigh impossible to refute a charge that drugs were 'planted' and not possessed or 'pushed'. The complaints of mulcting activities by unscrupulous policemen, especially by those who are assigned to traffic duties or some other chores but who somehow stumble on possession of prohibited drugs by teenagers or provincianos, are legion. It is for this reason that trial courts should be more wary and careful in assessing conflicting, ambiguous, or non-relevant testimony. More important than apprehending and convicting criminals is faithful adherence to due process, the need to accord to every accused the protections guaranteed to him or her by the Constitution."

WHEREFORE, the appealed decision is REVERSED and SET ASIDE. Appellant ELISA BAGUS Y DACAYAN is hereby ACQUITTED on reasonable doubt. Her IMMEDIATE RELEASE IS ORDERED, unless there is other valid ground for her continued incarceration.

SO ORDERED

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] The Information reads as follows:

"The undersigned Assistant City Prosecutor accuses ELISA BAGUS Y DACAYAN and JOHN DOE (true name, real identity and present whereabouts of the last named accused still unknown), of the crime of 'VIO. OF SEC. 4,

RA 6425”, committed as follows:

“That on or about the 12th day of December 1990 in Kaloocan City, MM and within the jurisdiction of this Honorable Court, the above-named accuses, without having been authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver to one P/A BONIFACIO LAPUZ, two (2) tea bags of Marijuana worth P 20.00 knowing the same to be a prohibited drug under the provisions of the above-cited law.

“Contrary to Law,” (Records, p.1)

[2] Regional Trial Court, Branch 124, National Capital Judicial Region, Caloocan City, Presided by Hon. Rene Victoriano.

[3] RTC Decision, p. 7; Rollo, p. 44.

[4] Brief for the Appellant, p. 7; Rollo, p. 35.

[5] Brief for the Appellee, pp.4-8.

[6] Brief for the Appellant, pp. 3-4; Rollo, 31-32.

[7] People v. Flores, 165 SCRA 71 citing U.S. v. Estrada, 24 Phil. 401, People v. De Otero, 51 Phil. 201, People v. Caboverde, G.R. No. 66646, April 15 1988, and People v. Capulong, G.R. No. 65674, April 15, 1988.

[8] Brief for the Appellant, p. 6; Rollo, p. 34.

[9] Alfredo Santos, See TSN, April 10, 1992, pp.. 1-10.

[10] People v. Caboverde, 160 SCRA 550, 559.

[11] 149 SCRA 240, 244.

[12] 180 SCRA 9.

[13] 215 SCRA 339, 348.

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