

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JOSERIEL RIGODON Y RESTON AND EFREN TORREJANO Y APARICIO, ACCUSED, JOSERIEL RIGODON Y RESTON, ACCUSED/APPELLANT.

G.R. No. 111888. November 08, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

Appellant Joseriel Rigodon y Reston and accused Efren Torrejano y Aparicio were charged with violation of Section 4, Article 2 of the Dangerous Drugs Act of 1972 (Republic Act 6425, as amended) before the Regional Trial Court of Bohol, Branch II, allegedly committed as follows:

"That on or about the 31st day of July, 1992, in the municipality of Clarin, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring, confederating and mutually helping each other, with intent to gain, did then and there willfully, unlawfully, feloniously and knowingly have in their possession and control 15 sticks of handrolled marijuana cigarettes and thereafter did then and there willfully, unlawfully and feloniously sell, push, deal, dispense, deliver and give away 5 sticks thereof for a consideration to a poseur-buyer; to the damage and prejudice of the Republic of the Philippines.

"Acts committed contrary to the provisions of Sec. 4, Art. 2 in relation to Sec. 2(a), par. 1, Art. 1 of R.A. No. 6425 Otherwise known as the Dangerous Drugs Act of 1972, as amended." (Rollo, p. 4).

Upon arraignment, the accused pleaded not guilty to the crime charged.

The trial court's findings were reproduced in the Appellee's Brief as follows:

"PO3 Abundio Vistal, witness for the prosecution, declared that on March 23, 1992 he was assigned by the Station Commander of the NARCOM Detachment, as Intelligence Section of the Jagna Police Station. His duties were to conduct surveillance and follow-ups, buy-bust operation and effect arrest (pp. 3-5, tsn, Oct. 21, 1992).

"That in the month of July 1992 he was in his office of the NARCOTIC Command, Tagbilaran City. He conducted surveillance at Clarin, Bohol as ordered by the Detachment Commander Ranulfo Villamor. They received from the then Confidential Agents PO3 Hercules Chatto and Fulgencio Claro reports that transactions of marijuana were rampant. The corresponding surveillance was conducted which yielded positive result. They reported the matter to the Detachment Commander (pp. 6-7, supra).

"That in the afternoon of July 30, 1992 there was a report that a drug pusher was selling marijuana. They decided to conduct a buy-bust operation. The Detachment Commander PO4 Ranulfo Villamor, assembled them and formed a team which was composed of PO3 Hercules Chatto, PO3 Fulgencio Claro and himself (pp. 8-9, supra).

"They went and arrived at Tubigon and proceeded to Clarin between 6:30 to 7:30 o'clock in the evening of July 31, 1992 (p.5, tsn, Oct. 23, 1992) where they met their confidential agent. He approached a person near a building shop and told him that he would buy five pieces of marijuana for P30.00 (pp. 11-13, tsn, Oct. 21,

1992). His companion (sic) served as a back-up. He was able to buy from Joseriel Rigodon and Efren Torrejano. It was the accused Joseriel Rigodon who handed to him the five sticks of marijuana for which he paid P30.00 Philippine currency consisting of two ten-peso bills and two five-peso bills (p.14, supra). He then examined the five sticks of marijuana and smelled them and found the same to be marijuana (p.15, supra). At this juncture he signaled to his companions by taking off his Piercing (sic) cap. His companions immediately effected the arrest of the two accused Joseriel Rigodon and Efren Torrejano and recovered the money he paid. The bills paid were initialed by their Detachment Commander (pp. 15-17, supra). There were ten more marijuana sticks taken from the accused Joseriel Rigodon. The two accused were brought to Clarin (pp. 18-19, supra).

"The prosecution offered in evidence the following exhibits, to wit:

"Exh. A & A1, Marked money of two ten-peso bills

B & B1, Another marked money of two five-peso bills

C, Complaint (pp. 2-3, tsn, Nov. 5, 1992)." (Rollo, pp. 42-44)

On the other hand, appellant Rigodon's and accused Torrejano's versions of the events which led to their arrest were summarized by the trial court as follows:

"Joseriel Rigodon, one of the accused in the instant case, declared that at 7:00 o'clock in the morning of January 31, 1992 he was at the store of Norma Torrejano located at Poblacion Centro, Clarin, Bohol, located along the national highway to buy gillet (sic) blade because somebody came to him to have a haircut. He was not able to buy for the owner of the store was busy. While waiting for the storekeeper there was an unusual incident. Somebody approached and asked him if he knew Dondong Aleman which he answered in the affirmative. As requested he went to the house of Dondong Aleman. It turned out that the person who requested him to go to the house of Dondong Aleman was Patrolman Vistal.

"Upon his return from the house of Dondong Aleman, Patrolman Vistal requested to accompany him which he consented. They then rode in a jeep. He did not know the person during the ride in the jeep. The person at his side was SPO4 Villamor. There were many persons at the back of the jeep. Upon reaching the house of Dondong they disembarked from the jeep. He accompanied them to the house of Dondong Aleman. While at the house of Dondong he saw Villamor and Dondong talking. Then they left. Upon arrival at Tubigon they were made to go to the police headquarters. In the police headquarters, his companions were Efren, Villamor, Vistal and Claro. From Tubigon they rode in a passenger bus for Tagbilaran together with Efren, Claro and Vistal. At the office of the NARCOM they were escorted by Vistal.

"Efren Torrejano, accused in the instant case, declared that in the morning of July 31, 1992 he was at Poblacion Centro, Clarin, Bohol. That his house is located below the public market of Clarin. He is a carpentry helper. On July 31, 1992 he had a work. Before he went to work he went to the store of Norma Torrejano to buy cigarettes. He was then bringing a paleta, an instrument used in mixing cement and sand. He was held and required by Mr. Claro to ride in a jeep with several policemen from Tubigon. He complained but was told not to ask questions. The jeep stopped at the house of Dondong Aleman. The accused Joseriel Rigodon and Villamor alighted from the jeep. They went to the municipal building of Clarin. From Clarin they were brought to Tubigon, then to Tagbilaran. He told his mother that he was maltreated.

"The defense offered in evidence the following exhibits, to wit:

"Exh. 1, Complaint

1-A & 1-D, Portion on Exhibit 1

1-B & 1-C, Withdrawn" (Rollo, pp. 15-16)

The defense also presented Cecilio Bayal who testified that he was constructing a new house and accused Torrejano was one of the carpenters; said construction began in 1991 and ended on July 31, 1992 (Rollo, p.15).

After assessing the evidence adduced at the trial, the trial court found appellant Joseriel Rigodon guilty beyond reasonable doubt of the offense charged and sentenced him to suffer the penalty of reclusion perpetua and to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs (Rollo, p.18). Torrejano, on the other hand was acquitted. The dispositive portion of said decision reads as follows:

"PREMISES CONSIDERED, the court finds the accused Joseriel Rigodon guilty of the crime of Violation of Sec. 4, Art. 2 of Republic Act No. 6425 and hereby sentences him to suffer an imprisonment of Reclusion Perpetua and a fine in the amount of P20,000.00 without subsidiary imprisonment in case of insolvency (Par. 3 of Art. 35 Revised Penal Code) with the accessories of the law and to pay the costs.

"The sticks of marijuana cigarettes which are the subject matter of the instant case are hereby ordered confiscated in favor of the government.

"It appearing that the accused Joseriel Rigodon has undergone preventive imprisonment, he is entitled to the full term of his preventive imprisonment to be deducted from his term of sentence if he has executed a waiver, otherwise, he will only be entitled to 4/5 of the time of his preventive imprisonment to be deducted from the term of his sentence if he has not executed a waiver.

"The accused Efren Torrejano is hereby acquitted of the crime as charged, with costs de oficio.

"SO ORDERED." (Rollo, p.18)

In assailing the trial court's decision, appellant assigns the following errors allegedly committed by the court a quo:

"1. The Honorable Judge of the Regional Trial Court of Bohol, Branch Two (2) erred in overlooking the principle of conspiracy where the guilt of one is the guilt of all; and the acquittal of one in the conspiracy is also the acquittal of the other.

"2. The Honorable Judge of the Regional Trial Court of Bohol, Branch Two (2) erred in convicting Joseriel Rigodon despite the fact that there is no evidence against him. That he should have been acquitted like co-accused Efren Torrejano, because the role played by Joseriel Rigodon was actually for the pointing out of the dwelling and person of the big time supplier of marijuana in Bohol. That his conviction is an irony.

"3. That the Honorable Judge of the Regional Trial Court of Bohol, Branch Two (2) erred in convicting Joseriel Rigodon despite the fact that the prosecution completely failed to present the alleged 15 sticks of marijuana, completely failed to present any laboratory analysis, completely failed to present their named chemist. What was presented was only the complaint and the two (2) ten peso bills and two (2) five peso bills claimed as marked which can easily be produced by anybody." (Appellant's Brief, pp. 1-2)

On the other hand, the Solicitor General submitted, in lieu of brief, a Manifestation and Motion praying for the acquittal of appellant.

The Court agrees.

This Court has held that the elements necessary for a charge of illegal sale of marijuana are: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefore (People v. Esguerra, 221 SCRA 261 [1993]; People v. Rumeral, 200 SCRA 194 [1991]).

Not all the evidence required for proving the crime charged were presented by the prosecution. It is indispensable that the identity of the marijuana which constitutes the corpus delicti must be established before the court (People

v. Gesmundo, 219 SCRA 743 [1993]).

During the trial, the sticks of marijuana were never presented as evidence to prove that appellant indeed sold the same during the entrapment operation. It is an entrenched rule in our jurisprudence that indispensable in every prosecution for illegal sale of marijuana, a prohibited drug, is the submission of proof that the sale of the illicit drug took place between the poseur-buyer and the seller thereof, and the presentation further of the marijuana, the corpus delicti, as evidence in court (People v. Pacleb, 217 SCRA 92 [1993]; People v. Labarias, 217 SCRA 483 [1993]).

As elucidated in the case of People v. Gesmundo (supra):

"On the issue of non-delivery of the seized marijuana to the court, the trial court held that it takes 'judicial notice of the usual practice of the San Pablo City police force of retaining possession of confiscated specimens suspected of being marijuana by immediately forwarding them to the NBI or to an NBI accredited physician for preliminary examination before filing a case with the city prosecutor's office. The mere tolerance by the trial court of such a practice does not make it right. Clearly, such practice violates the mandatory requirements of the law and defeats the very purpose for which they were enacted. Speculations as to the probability of tampering with the evidence cannot then be avoided.'"(Underscoring supplied)

The trial court found appellant guilty beyond reasonable doubt despite the fact that the sticks of marijuana allegedly bought and found in appellant's possession were never presented before it. The court a quo merely relied on the uneducated opinion of PO3 Abundio Vistal that what he recovered from appellant were indeed sticks of marijuana.

True, a chemical analysis is not an indispensable requisite to establish whether a certain substance offered in evidence is a prohibited drug or not, the reason being that the ability to recognize these drugs can be acquired without a knowledge of chemistry to such an extent that the testimony of a witness on the point may be entitled to great weight (People v. Enrique, Jr., 204 SCRA 674 [1991]).

In this case, the apprehending officer's declaration that what he examined and smelled was indeed marijuana is incompetent and inadmissible in evidence. In People v. Enrique (supra), the police officer involved therein conducted an immediate field testing called "Narcotest Disposakit 9" in his office to make sure that the evidence obtained from the accused was indeed marijuana. This kind of test was declared judicially admissible owing to the fact that said officer underwent special training for the purpose and whose initial finding was confirmed by the PC crime laboratory.

As aptly observed by the Solicitor General, the apprehending officer's alleged ability to recognize a prohibited drug in the case at bar was not the product of any training or experience as a narcotics agent. On the contrary, it was based merely on the alleged briefing given by the detachment commander.

PO Vistal testified as follows:

"Court: Why do you say that they are marijuana?

"A: Because I smelled them your honor.

"Q: Now, what was the smell?

"A: When I smelled it, the smell was the same as marijuana.

"Q: Did you conduct a seminar regarding the identification of marijuana?

"A: I have not attended a seminar.

"Q: What is the basis of this conclusion that the 5 sticks of marijuana were in fact and in truth marijuana?

"A: Because we were briefed before by our detachment commander." (Rollo, pp. 46-47)

This Court sustains the rule that police officers in buy-bust operations are entitled to the presumption of having acted pursuant to official duty (*People v. Cruz*, 215 SCRA 339 [1992]). However, this presumption that official duty is regularly performed cannot prevail over the constitutional presumption of innocence accorded to an accused (*People v. Taruc*, 157 SCRA 178 [1988]) especially so where there is no sufficient evidence to warrant a conviction. It is a settled rule that an accused is entitled to the constitutional presumption of innocence which may be overcome only with proof beyond reasonable doubt that he is guilty of the offense charged (*People v. Colcol, Jr.*, 219 SCRA 107 [1993]). Absent the corpus delicti and its examination as a proof of its being a prohibited merchandise, the conviction of appellant has no leg to stand on.

WHEREFORE, appellant Joseriel Rigodon is hereby ACQUITTED on the ground of reasonable doubt and is ordered immediately released from detention unless he is being held for some other legal cause or ground.

SO ORDERED.

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

Feliciano, J., on leave.

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