

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO BUENAVENTURA Y VILLARUEL, ACCUSED-APPELLANT.

G.R. No. 113028. November 14, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellant Romulo Buenaventura y Villaruel, together with Eduardo Mapa y Anghelical, were charged before the Regional Trial Court of Iloilo City, Branch 39, with violation of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act, in an information dated 3 May 1989 reading as follows:

"That on or about the 28[th] day of April 1989, in the City of Iloilo, Philippines, and within the juris-diction of this Honorable Court, herein accused, conspiring, confederating and helping one another, with deliberate and without any justifiable motive, did then and there wilfully, unlawfully and criminally sell and/or distribute dried marijuana leaves, a source of prohibited drug, without authority to sell and or distribute the same; that ten (10) grams of dried marijuana leaves and seeds and one (1) fifty (50) peso marked bill were recovered.

CONTRARY TO LAW." [1]

When arraigned, both accused assisted by their counsel pleaded not guilty. However, accused Eduardo Mapa later agreed to plead to a lesser offense under Section 8, Article II of Republic Act. No. 6425 and was sentenced accordingly. Trial thus proceeded only against accused-appellant Romulo Buenaventura.

On 10 June 1993, the trial court rendered a decision*, the dispositive part of which reads:

"WHEREFORE, premises considered, the accused Romulo Buenaventura is hereby found guilty beyond reasonable doubt of Violation of Section 4, Article II of RA 6425, as amended, and is hereby sentenced to suffer life imprisonment and to pay a fine of P20,000.00 and the costs.

The ten grams of dried marijuana leaves and seeds are hereby ordered confiscated and forfeited in favor of the government and shall be turned over to the Board through the National Bureau of Investigation (NBI) for proper disposal as provided under Section 20, RA 6425.

The marked money consisting of P50.00 is hereby ordered to be returned to the 6th Narcotics Command, at Gen. Luna St., Iloilo City.

SO ORDERED." [2]

The facts, as found by the trial court, are as follows:

"On April 28, 1989, at about 11:30 in the morning, Sgt. Freddie Cartel and Francisco Allaga were instructed by their Commanding Officer, Capt. Rustico Francisco to conduct a buy-bust operation at or along Delgado Street, Iloilo City. That the order to conduct 'buy-bust' operation was based on reports that 'drug pushing' is rampant in that street. They were instructed to proceed to the corner store located at the corner of Jalandoni and Delgado Streets, Iloilo City.

Upon arrival at the corner store, Freddie Cartel as previously agreed, posed as buyer while Sgt. Allaga acted as a back-up or look-out and stationed himself across the street or at the other side of the street.

When Freddie Cartel reached the store, he asked some bystanders about a person by the name of alias 'Cano' who later turned out to be Eduardo Mapa. When he was introduced to Eduardo Mapa, Freddie Cartel told him that he wanted to buy marijuana. Eduardo Mapa asked him how much he would like to buy and Freddie Cartel answered P50.00.

Freddie Cartel took from his pocket the marked money, in the amount of P50.00 with Serial No. VF-926531 and gave it to Mapa. Eduardo Mapa took the marked money in the amount of P50.00 and boarded a Lapaz bound passenger jeepney.

After about 40 minutes, Eduardo Mapa came back with marijuana wrapped in a plastic and was about to deliver it to Freddie Cartel.

However, before Eduardo Mapa handed the Marijuana to Freddie Cartel, the latter made the pre--arranged signal, by scratching his head, and Sgt. Allaga who was across the street approached them and frisked Eduardo Mapa, and the marijuana was taken from the possession of Eduardo Mapa. He was then brought to the Narcom headquarters at General Luna Street, Iloilo City, for investigation.

Upon investigation, Eduardo Mapa revealed that he took the marijuana from the other accused Romulo Buenaventura alias 'Along' or 'Talong' who is residing at Brgy. Luna, Lapaz, Iloilo City.

A follow-up operation was launched by Francisco Allaga and Freddie Cartel, accompanied by other agents namely; Sgt. Felecio, Cabasa and Bonite. They conducted the follow up operation at about 1:10 p.m.. They proceeded to Brgy. Luna accompanied by Eduardo Mapa, who guided them.

When they reached Brgy. Luna, Eduardo Mapa pointed to the place of residence of Romulo Buenaventura, who was found washing his clothes at the water pump or artesian well. They asked permission to frisk him and to search him and he consented. Francisco Allaga frisked Romulo Buenaventura and found the marked money of P50.00 with Serial No. VF-926531 on his right pocket. It was the same marked money which Freddie Cartel handed to Eduardo Mapa.

Buenaventura was brought to the NARCOM office and charged for violation of Section 4 of Republic Act 6425".[3]

Accused-appellant Romulo Buenaventura, while admitting that he was washing dishes at an artesian well when arrested, denied that he supplied marijuana to Eduardo Mapa. He further denied that the marked P50.00 bill was found on him. Buenaventura alleged that he was detained for three (3) days at Camp Delgado and that Sgt. Freddie Cartel was asking him for P10,000.00 "to settle his case".

The judgment of conviction rendered by the trial court was based on findings as to the credibility of witnesses for the prosecution as well as the conclusion that the positive evidence of the prosecution outweighed that of the defense which consisted of bare denials.

Accused-appellant, in his appeal to this Court, assigned the following errors to the trial court:

- "1. IN FINDING THAT THE APPELLANT CONSPIRED WITH EDUARDO MAPA TO SELL MARIJUANA;
 2. IN CONVICTING THE APPELLANT DESPITE THE ILLEGALITY OF HIS WARRANTLESS ARREST."
- [4]

The Solicitor General filed a "Manifestation and Motion" in lieu of the appellee's brief, which likewise seeks a reversal of the conviction of accused-appellant Romulo Buenaventura y Villaruel. The Solicitor General's

recommendation is based on arguments that:

1. The prosecution's evidence is insufficient to overcome the constitutional presumption of innocence.
2. There is no evidence of conspiracy between accused-appellant and co-accused Eduardo Mapa.
3. The marked money is inadmissible in evidence or, assuming it is admissible, it is insufficient for conviction.

We agree that accused-appellant's guilt has not been proved beyond reasonable doubt and consequently we reverse the judgment convicting him.

It is of note that Eduardo Mapa, through his counsel, offered to plead guilty to the lesser offense of possession of marijuana under Section 8, Article II of Rep. Act. No. 6425, even before the two (2) members of the buy-bust team, Sgt. Francisco Allaga and PO3 Freddie Cartel, had testified. This indicates that Mapa could not overcome the testimonies of the two (2) police officers to the effect that he was about to deliver marijuana to PO3 Cartel in return for the P50 bill Mapa had earlier received from PO3 Cartel, when the buy-bust team pounced on him (Mapa). A review of the transcripts of the testimonies of Sgt. Allaga and PO3 Cartel indeed shows that Eduardo Mapa's decision to plead guilty to possession of marijuana was a sensible move on his part since the testimonies of the two (2) police officers clearly show that Mapa was poised to deliver marijuana leaves to PO3 Freddie Cartel who acted as the poseur-buyer in the buy-bust operation. Had Eduardo Mapa not pleaded guilty to the lesser offense of possession of marijuana, the evidence for the prosecution undoubtedly would have resulted in his conviction for drug pushing.

Eduardo Mapa's guilt however does not necessarily lead to the conclusion that accused-appellant Romulo Buenaventura is also guilty. The peculiar facts of this case require that accused-appellant's participation, if any, in the crime committed be determined independently from that of Mapa.

It cannot be disputed that the buy-bust operation conducted by the NARCOM agents ended when Eduardo Mapa was apprehended just when he was about to hand over the marijuana subject of the sale to PO3 Freddie Cartel. The subsequent "follow-up operation" which resulted in the arrest of accused-appellant cannot be construed as a continuation of the buy-bust operation.

The prosecution contends that Eduardo Mapa pointed to accused-appellant as the source of the marijuana sold to PO3 Cartel. This revelation, allegedly made by Mapa, became the basis of the "follow-up" operation. However, the failure of the prosecution to present Eduardo Mapa is fatal to the case against accused-appellant, for without Mapa's testimony, the assertions of the members of the buy-bust team that he (Mapa) pointed to the accused-appellant as his source of the prohibited drug is hearsay evidence which is inadmissible against accused-appellant.

Furthermore, since the follow-up operation was distinct from the buy-bust operation, accused-appellant can be convicted of drug pushing only if it can be shown that he acted in conspiracy with Mapa in selling marijuana. A careful examination of the records shows that, in spite of the presumption that official duty has been regularly performed, there is no evidence to link accused-appellant to Eduardo Mapa.

In *People v. Enrile*[5] a case with similar facts, as the present case, this Court through Mr. Justice Isagani A. Cruz, acquitted Antonio Enrile, who like accused-appellant in this case, was allegedly pointed to as the source of marijuana. In *Enrile*, this Court held that the warrantless arrest of Enrile was not justified under Rule 113, Section 5 of the Rules of Court.

In the present case, even if it is assumed *arguendo* that the arrest of accused-appellant was valid and that the marked money bill allegedly found in his possession is admissible, there is still nothing to prove that he is a drug

pusher since Eduardo Mapa was not presented to testify to the alleged transaction between him and accused-appellant. As in *Enrile*, the discovery of marked money on accused-appellant does not mean that he was caught in *flagrante delicto* of selling marijuana. As correctly pointed out by the Solicitor General, "There is no such crime as illegal possession of marked money". Unless the prosecution is able to prove the connection between the possessor of the marked money and the sale of the prohibited drug, the presumption of innocence of the possessor of the marked money should be upheld.

We do not discount the possibility that accused-appellant could have indeed delivered marijuana to Eduardo Mapa but in this case where the prosecution's evidence failed to pass the test of moral certainty required for conviction, this Court is compelled by law and the Constitution to uphold the presumption of innocence in favor of accused-appellant.

WHEREFORE, the judgment appealed from is hereby REVERSED. Accused-appellant is ACQUITTED based on reasonable doubt and is ORDERED to be immediately RELEASED unless he is being detained for some other lawful cause.

SO ORDERED.

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

[1] Rollo, p. 7.

* Penned by Judge Jose G. Abdullah.

[2] Rollo, p. 23.

[3] Rollo, pp. 15-17.

[4] Rollo, p. 35.

[5] G.R. No. 74189, 26 May 1993, 222 SCRA 586.

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