

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL ELAMPARO Y FONTANILLA, ACCUSED-APPELLANT.

G.R. No. 121572. March 31, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On May 31, 1995, the Regional Trial Court of Caloocan City,[1] convicted appellant of the crime of illegal possession of drugs, imposing upon him the penalty of reclusion perpetua and ordering him to pay a fine of P9,000,000.00.

As summarized by the solicitor General, the facts of this case which we find to be supported by the records are as follows:[2]

"On February 12, 1995, at about 5:00 in the morning, prosecution witness Police Officer Romeo Baldonado, while attending to his duties as supervising policeman of the Kalookan Police Station, received a report from an informant that 'some people are selling shabu and marijuana somewhere at Bagong Barrio, Caloocan City' (TSN, April 11, 1995, p. 3; TSN, April 4, 1995, p. 3). Said informant stated that he himself succeeded in buying said drugs (ibid., p. 3).

Hence, Police Officer Baldonado formed a 'buy-bust' operation team with himself as team leader and Police Officers Ernesto Andala, Ronielo Reantillo and Bismark Gaviola as members (TSN, April 4, 1995, p. 4). Said team proceeded to the area reported to at Progreso P. Gomez, Bagong Barrio, Kalookan City at around 5:45 in the morning of the same day (ibid., p. 3). Ky-le

Upon arrival at the area, prosecution witness Gaviola, together with the informant 'asset' stood at the corner of P. Gomez Street, Bagong barrio, Kalookan City, since the said spot was identified to be the 'market' or where the buyers of marijuana await a runner (seller). Thereafter, a runner later identified to be Erwin Spencer approached the poseur-buyer, Gaviola, who was asked 'Iiscore ba kayo' (TSN, April 5, 1995, p. 22). Having answered, 'Iiscore kami', Spencer then left and returned after five minutes with the marijuana (ibid., p. 22). Gaviola then handed over the marked money and arrested Spencer, but who freed himself and ran (TSN, April 4, 1995, p. 7).

Then, the 'buy-bust' team pursued Spencer, who ran inside a bungalow-type house with steel gate (ibid., p. 8). Having trapped Spencer inside the house, the police officers frisked him and recovered the marked money (ibid., p. 9). The police officers likewise found appellant repacking five (5) bricks of 'marijuana' wrapped in a newspaper on top of the round table inside the house's sala (TSN, April 11, 1995, p. 7). Appellant was then arrested and he confessed that the source of the 'marijuana' was Benguet (TSN, April 4, 1995, p. 10).

Spencer and appellant were later taken to the precinct where they were delivered to the inquest fiscal for further investigation (TSN, April 11, 1995, p. 8). The arresting officers then executed an affidavit on the incident and made a request for the National Bureau of Investigation to conduct examination of the drugs seized (TSN, May 3, 1995, p. 2). The NBI Report confirmed the drugs seized to be 'marijuana' weighing five (5) kilos (ibid., p. 3)."

On February 15, 1995, the City Prosecutor charged appellant with the crime of illegal possession of drugs under the following Information:[3]

"That on or about the 12th day of February 1995 in Kalookan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control 5.208 kgs. of Marijuana, knowing the same to be a prohibited drugs (sic).

CONTRARY TO LAW."

On March 1, 1995, appellant, duly assisted by counsel de oficio, entered a plea of not guilty.[4]

During trial, the prosecution presented as its witnesses (1) PO2 Bismark Gaviola, the poseur-buyer, (2) SPO2 Romeo Baldonado, one of the police officers who took part in the buy-bust operation, and (3) Juliet Gelacio Mahilum, a forensic chemist at the National Bureau of Investigation (NBI). Mahilum testified that she conducted three types of examination on the five (5) bricks of marijuana flowering tops (chemical examination, microscopic examination, and chromatographic examination) and that each of the five (5) bricks gave positive results for marijuana.[5]

For the defense, appellant and Angelo Bernales, a boarder at appellant's house, testified. Their version of the incident is as follows:[6]

"JOEL ELAMPARO y FONTANILLA, the accused herein, gave a very different version of the incident. At around 6:00 to 7:30 in the morning of February 12, 1995, he was at their house when somebody knocked at their door. His father opened the same and was informed that somebody was looking for him. He went out and saw Erwin Spencer with handcuffs and being held by an arresting officer. He likewise sighted PO3 Bismark Gaviola holding a big box. When he persistently questioned Erwin Spencer as to why he was arrested, the arresting officers got mad at him prompting them to likewise bring him to the police station where he was detained. The arresting officers demanded the amount of P15,000.00 for his release. He remained in jail as he refused to accede to their demand. On the other hand, Erwin Spencer was released two (2) days after they were jailed for the latter gave money to the police officers. (TSN, pp. 1-8, May 9, 1995).

ANGELO BERNALE (sic), a student, testified that he is renting a small room at the accused' (sic) house located at No. 2 P. Gomez St., Bagong Barrio, Kalookan City. On February 12, 1995, at about 6:00 to 7:00 o'clock in the morning he was about to go out of the accused' (sic) house to bring breakfast to his father when he sighted Erwin Spencer in handcuffs, in the company of three policemen one of whom was holding a box. Then he saw the policemen knocked at the door of the accused' (sic) house. Shortly thereafter, the accused was taken away by the policemen."

After trial, the court rendered its decision,[7] disposing as follows:

"WHEREFORE, premises considered, this Court finds accused JOEL ELAMPARO Y FONTANILLA, GUILTY beyond reasonable doubt for violation of Section 8, Art. II of R.A. 6425, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and a fine of NINE MILLION (P9,000,000.00) PESOS, pursuant to Section 17 of the Death Penalty. With Costs.

SO ORDERED."

Hence, the present appeal. Appellant now contends that the trial court erred in -[8]

I. ...GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND DISREGARDING THE THEORY OF THE DEFENSE.

II. ...FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF

SECTION 4 [SHOULD BE SEC. 8] OF R.A. 6425.

III. CONTENDING ARGUENDO THAT THE ACCUSED IS GUILTY OF THE OFFENSE CHARGED, THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF MINORITY.

In his brief, appellant assails the credibility of the prosecution witnesses. He contends that it is highly unusual for arresting officers to act on an 'information' of an unknown source without confirming the veracity of the report, and that it is incredible that a peddler of marijuana would be so brazen as to approach total strangers and offer to sell them marijuana. Appellant insists that he was charged with illegal possession of marijuana because he failed to pay the police officers the amount of P15,000.00 for his release, unlike Spencer, who paid said amount. Appellant assails the legality of his arrest inside the house of his father for failure of the apprehending officers to secure a search warrant. Lastly, appellant contends that if found guilty, the privileged mitigating circumstance of minority should be appreciated in his favor.

The Office of the Solicitor General, for the State, contends that further surveillance was unnecessary because the police "asset" had personal knowledge of the open buying and selling of "marijuana" in the area, having purchased his "marijuana" a few hours before reporting the matter to the police. Appellant also misrepresented himself in saying that Spencer was released without charges considering that a separate investigation was conducted against the latter. The OSG contends that appellant's arrest was an incident to a lawful hot pursuit made against Spencer. Appellant, in the course of the pursuit was surprised in plain view to be repacking the five (5) bricks of marijuana. The OSG concedes, however, that the privileged mitigating circumstance of minority should be appreciated in favor of appellant.

Considering the assigned errors and the foregoing contentions, we find that here the issues pertain, first, to the assessment of credibility of witnesses; second, the validity of appellant's arrest; and third, the correctness of the penalty imposed by the trial court.

As to the first issue, it is well-settled that the assessment of credibility of witnesses is within the province of the trial court which had an opportunity to observe the witnesses and their demeanor during their testimonies. Unless the trial court overlooked substantial facts which would affect the outcome of the case, we accord the utmost respect to their findings of facts. As compared to the baseless disclaimers of appellant, the narration of the incident by the prosecution witnesses appears worthy of belief, coming as it does from law enforcers who are presumed to have regularly performed their duty in the absence of proof to the contrary.[9]

Appellants claims that it is highly suspect that Spencer would offer to sell marijuana to total strangers. However, in many cases, drug pushers did sell their prohibited articles to prospective customers, be they strangers or not, in private as well as in public places, even in the daytime. Indeed, some drug pushers appear to have become exceedingly daring, openly defiant of the law. Hence, what matters is not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting sale and delivery of prohibited drugs.[10] As found a quo, it was the consummated sale between PO2 Gaviola and Spencer which led to the eventual arrest of appellant.

As to the warrantless search, Section 2 Article III of the 1987 Constitution prohibits a search and seizure without a judicial warrant. Further, Section 3 thereof provides that any evidence obtained without such warrant is inadmissible for any purpose in any proceeding.

However, not being absolute, the right against unreasonable searches and seizures is subject to exceptions. Thus, for example, Section 12 of Rule 126, of the Rules on Criminal procedure, provides that a person lawfully arrested may be searched for "dangerous weapons or anything which may be used as proof of the commission of an

offense, without a search warrant."

Five generally accepted exceptions to the right against warrantless searches and seizures have also been judicially formulated, viz: (1) search incidental to a lawful arrest, (2) search of moving vehicles, (3) seizure in plain view, (4) customs searches, and (5) waiver by the accused themselves of their right against unreasonable search and seizure.[11]

Considering its factual milieu, this case falls squarely under the plain view doctrine. In *People v. Doria*, 301 SCRA 668, 710-711 (1999), we held that -

"Objects falling in plain view of an officer who has a right to be in the position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent."

When Spencer wrenched himself free from the grasp of PO2 Gaviola, he instinctively ran towards the house of appellant. The members of the buy-bust team were justified in running after him and entering the house without a search warrant for they were hot in the heels of a fleeing criminal. Once inside the house, the police officers cornered Spencer and recovered the buy-bust money from him. They also caught appellant in flagrante delicto repacking the marijuana bricks which were in full view on top of a table. PO2 Gaviola testified as to the circumstances of appellant's arrest as follows - [12]

PUBLIC PROSECUTOR EULOGIO MANANQUIL, JR.

Q: Now how were you able to enter the house?

PO2 GAVIOLA:

A: Because the door was already open.

Q: When you entered the house, what happened inside the house?

A: We saw Joel Elamparo, sir. He was then repacking five (5) bricks of marijuana wrapped in a newspaper.

Q: Where was it placed, this five (5) packed (sic) of marijuana?

A: It was placed on top of the table, sir.

Q: Was Joel Elamparo alone when you saw him repacking these five (5) bricks of marijuana?

A: He has some companions in the house, his wife, 2 other women, his father and there was one man there who was a boarder.

Q: Now you said that you saw Joel Elamparo repacking five bricks of marijuana, now who was his companion in repacking the same?

A: He was alone, sir.

Hence, appellant's subsequent arrest was likewise lawful, coming as it is within the purview of Section 5 (a) of Rule 113 of the 1985 Rules on Criminal Procedure, to wit:

"Sec. 5. - Arrest without warrant, when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

..."

Section 5 (a) is commonly referred to as the rule on in flagrante delicto arrests.[13] Here two elements must concur: (1) the person to be arrested must execute an overt act indicating the he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[14] Thus, when appellant was seen repacking the marijuana, the police officers were not only authorized but also duty-bound to arrest him even without a warrant.

Although the caption of the Information charges the appellant with violation of Section 4 of Article II of Republic Act No. 6425, as amended by Republic Act No. 7659,[15] otherwise known as the death penalty law, which refers to the sale, administration, delivery, distribution and transportation of prohibited drugs, the body of the Information charges appellant with the crime of illegal possession of prohibited drugs under Section 8 of Article II of R.A. No. 6425, as amended by R.A. No. 7659. We have held that it is not the designation of the offense in the Information that is controlling but the allegations therein which directly apprise the accused of the nature and cause of the accusation against him.[16] Appellant having been fully apprised of the elements of the crime of illegal possession of prohibited drugs, he may properly be convicted of the crime of illegal possession of marijuana.

In drug cases, the quantity of prohibited drugs involved is determinative of the imposable penalty. Section 20 of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659, provides that when the quantity of indian hemp or marijuana is 750 grams or more, as in this case, the penalty shall be reclusion perpetua to death and fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000.00).

Appellant having been born on January 9, 1978,[17] was only 17 years, 1 month, and 3 days old, at the time of the commission of the crime on February 12, 1995. Beginning with our decision in *People v. Simon*,[18] and reiterated in a number of decisions thereafter, the Court has recognized the suppletory application of the rules on penalties in the Revised Penal Code to the Dangerous Drugs Act after the amendment of the latter by Republic Act No. 7659. Appellant being a minor over fifteen and under eighteen at the time of the commission of the crime, he is entitled to a reduced penalty due to the privileged mitigating circumstance of minority under Article 13 (2) of the Revised Penal code. Article 68 (2) of the Revised Penal Code provides that the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. Applying the provisions of Article 61 (2) of the Revised Penal Code which prescribes the rules for graduating penalties, the imposable penalty on appellant is the penalty next lower in degree immediately following the lesser of the penalties prescribed in the respective graduated scale. The penalty next lower in degree than reclusion perpetua is reclusion temporal. There being no generic mitigating or aggravating circumstances, the penalty of reclusion temporal shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum shall be within the range of the penalty next lower in degree which is prision mayor. No fine is imposable in this case, for it is imposed as a conjunctive penalty only if the penalty is reclusion perpetua to death.[19]

WHEREFORE, the decision of the Regional Trial Court, Caloocan City, Branch 121, in Criminal Case No. C-48478 (95) finding appellant JOEL ELAMPARO Y FONTANILLA guilty beyond reasonable doubt of the crime of illegal possession of drugs is hereby **AFFIRMED WITH MODIFICATION** that he is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum, and seventeen

(17) years, four (4) months and one (1) day of reclusion temporal, as maximum. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Branch 121, Judge Adoracion G. Angeles, presiding, in Criminal Case No. C-48478 (95).

[2] Rollo, pp. 66-69.

[3] Records, p. 1.

[4] Id. at 8.

[5] TSN, April 5, 1995, p. 5.

[6] Appellant's Brief, Rollo, pp. 32-33.

[7] Records, pp. 67-73.

[8] Appellant's Brief, Rollo, pp. 28-29.

[9] People v. Requiz, G.R. No. 130922, November 19, 1999, p. 8; People v. Blas, 209 SCRA 339, 347 (1992).

[10] People v. Requiz, G.R. No. 130922, November 19, 1999, pp. 10-11; People v. Nario, 224 SCRA 647, 650 (1993); People v. Blas, 209 SCRA 339, 346 (1992).

[11] People v. Lacerna, 278 SCRA 561, 573 (1997); See also People v. Fernandez, 239 SCRA 174, 182-183 (1994).

[12] TSN, April 4, 1995, pp. 8-9.

[13] People v. Doria, 301 SCRA 668, 720 (1999); Malacat v. Court of Appeals, 283 SCRA 159, 174 (1997).

[14] People v. Doria, 301 SCRA 668, 720 (1999); People v. Burgos, 144 SCRA 1, 14 (1986).

[15] An Act to Impose the Death Penalty On Certain Heinous Crimes, which took effect on December 31, 1993.

[16] People v. Resayaga, 159 SCRA 426, 430-431 (1988).

[17] Exhibit "I", Records, p. 16.

[18] 234 SCRA 555 (1994); People v. Medina, 292 SCRA 436-450 (1998).

[19] People v. Simon, 234 SCRA 555, 573 (1994).

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