

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EVELYN PATAYEK Y CALAG AND ARLENE GOYA Y TAYA, ACCUSED-APPELLANTS.

G.R. No. 123076. March 26, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the May 5, 1995 Decision of the Regional Trial Court, Branch 5, Baguio City convicting herein appellants Evelyn Patayek y Calag and Arlene Goya y Taya for violation of Section 4, Article II, of Republic Act 6425 (“The Dangerous Drugs Act”), as amended by Republic Act 7659.

The Information dated November 21, 1994 charged appellants as follows:

The undersigned accuses EVELYN PATAYEK Y CALAG and ARLENE GOYA Y TAYA of the crime of VIOLATION OF SECTION IV, ARTICLE II OF R.A. 6425 AS AMENDED BY R.A. 7659, committed as follows:

That on or about the 18[th] day of November, 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully (,) unlawfully and feloniously sell and deliver approximately three (3) kilos of suspected marijuana dried leaves with flowering tops wrapped with newspaper pages and light brown masking tape placed in a black travelling bag with yellow strap, a prohibited drug, well knowing that the sale and delivery of such drug is prohibited without authority of law to do so, in violation of the aforementioned provisions of law.

CONTRARY TO LAW.[1]

When arraigned on January 24, 1995, appellants pleaded not guilty.[2]

From the testimonies of SPO1 Modesto Carrera and forensic chemist Police Senior Inspector Alma Margarita D. Villaseñor, the prosecution established the following version:

On November 18, 1994, around 1:00 p.m., a male concerned citizen reported to Chief Inspector Jose Dayco at the 14th Narcotics Command (NARCOM) Regional Field Office, Baguio City the engagement by two women whom he referred to as Arlene and Evelyn in the sale of marijuana.[3] Dayco at once formed a team to conduct a buy-bust operation on the two.[4]

Carrera was designated as poseur-buyer and was handed marked money consisting of four one hundred peso (P100.00) bills in the total amount of P400.00 in which were sandwiched 20 pieces of boodle money which were cut out from light brown paper.[5]

Around 3:30 p.m. of the same day, the team, which was headed by Dayco, together with the concerned citizen, proceeded to the vicinity of Bermuda Hills, Naguilian Road, Baguio City.

On arrival at the Bermuda Hills, Carrera and the concerned citizen posted themselves in front of its gate while the others posted themselves at a distance of around 20 meters.[6]

Around 30 to 40 minutes later, appellants arrived. Appellant Evelyn approached the concerned citizen who introduced her to Carrera as a big time buyer of marijuana from Manila.

Carrera thereupon informed Evelyn that he was interested in buying 3 kilos of marijuana. Evelyn inquired from Carrera if he had the money and he replied in the affirmative. Evelyn then told Carrera to wait as she approached Arlene who was 10 meters away and who gave her a black bag with yellow strap.[7] Appellants then repaired to where Carrera and the concerned citizen were.[8]

Upon receiving the black bag, Carrera opened it and on ascertaining that it contained marijuana, he handed over the buy-bust money to Arlene and gave the pre-arranged “thumbs-up” signal to the other members of the team.[9]

The team members thereupon rushed to the scene of the transaction and arrested appellants from whom Carrera recovered the money. Appellants were brought to the NARCOM Regional Field Office where Carrera prepared a receipt[10] of the 3 bricks of marijuana weighing 1 kilo each[11] which were wrapped in newspaper and placed inside a black bag with yellow strap, and of the 4 pieces of P100.00 bills.

Carrera also prepared a request for laboratory examination[12] of the 3 bricks which he submitted to the Philippine National Police (PNP) Crime Laboratory Service at Camp Dangwa, La Trinidad, Benguet.

By the account of the PNP forensic chemist Alma Margarita, all 3 bricks which were subjected to physical, chemical and confirmatory tests[13] were positive for marijuana.[14]

Appellants denied the accusation and proffered that they were framed up. They claimed that on November 18, 1995, Arlene visited Evelyn, a tupperware dealer, at her house. On Arlene’s suggestion, the two proceeded, at around 10 a.m., to the house of Arlene’s sister Mila Abdol who might be interested to buy tupperware, bringing with them a dozen tumblers. Appellants stayed in Mila’s house up to 5:00 p.m. when they decided to go home.[15]

While appellants were on their way to get a ride at the highway, they saw a man picking up a bag under a tree. As the man looked at them in a strange manner, they walked faster. The man followed them, however, and as they reached the highway, a red passenger jeep with approximately ten men on board pulled over in front of them. Two of the men forced them to board the jeep and attributed ownership of the black bag to them, which they denied. A man wearing a bonnet then took the money inside Evelyn’s belt bag, prompting appellants to ask for its return, but the men hit them in their heads and ordered them to keep quiet.[16]

Upon reaching Burnham Park, the men drew their guns and threatened to salvage them as they proceeded to the NARCOM Regional Field Office. The men shouted at them and forced them to take hold of the marijuana. They then were asked to produce “more” money if they wanted to be released, but they maintained their innocence of the “accusation” against them.[17]

The trial court convicted appellants by the assailed decision[18] of May 5, 1995, the dispositive portion of which reads, quoted verbatim:

WHEREFORE, the Court finds and declares the accused EVELYN PATAYEK y CALAG and ARLENE GOYA y TAYA guilty beyond reasonable doubt of the crime of illegal sale and delivery of three (3) kilos of marijuana as charged and hereby sentences EACH of them to suffer an indeterminate penalty of TWENTY (20) YEARS of reclusion temporal, as minimum, to FORTY (40) YEARS of reclusion perpetua, as maximum, to pay a fine of P 500,000.00, without subsidiary imprisonment and to pay their proportionate shares in the costs.

In the service of their sentence the accused shall be credited with their respective preventive imprisonment under the terms and conditions prescribed in Article 29 of the Revised Penal Code, as amended.

The confiscated marijuana (Exhibits “C” and “D”) and their container (Exhibit “B”) are declared forfeited in favor of the Government and upon the finality of this decision, the Branch Clerk of Court shall turn over the same to the Dangerous Drugs Custodian (NBI) for disposition in accordance with law.

Pursuant to Circular No. 4-92-A of the Court Administrator, the Warden of the City Jail of the Baguio is directed to immediately transfer the same accused to the custody of the Bureau of Corrections, Muntinlupa, Metro Manila.

Let a copy of this Decision be furnished the Warden of the City Jail of Baguio for his information and guidance.

SO ORDERED. (Emphasis supplied; underscoring in the original.)

Hence, the present appeal, appellants contending that the trial court erred:

- in not finding the evidence of the prosecution weak and full of inconsistencies;
- in giving full credence to the testimony of SPO1 Modesto Carrera despite his proven lack of credibility;
- in shifting burden to the accused to prove their innocence;
- in not acquitting the accused for the failure of the prosecution to prove their guilt beyond reasonable doubt.[19]

This Court finds appellants’ appeal bereft of merit.

In every prosecution, the guilt of the accused has to be established invariably by proof beyond reasonable doubt. The elements of the crime must be shown to exist and be adequately proven.[20]

Two basic elements for the charge of sale of prohibited drugs to prosper are: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and payment therefor.[21]

Contrary to appellants’ assertion, the prosecution has proven the elements of the crime charged. The object of the sale was found by the PNP chemist positive for marijuana. The buy-bust money was recovered from them after the transaction.

All the elements of the crime were in fact established through Carrera’s testimony, the material portions of which are as follows:

PROS. CABURIAN:

x x x

Q:

And what happened when you reached the gate of Bermuda Hills, Naguilian Road, Baguio, at 3:30 in the afternoon?

A:

We were waiting for the two suspects, sir.

Q:

Waiting for the two suspects, Are we made to understand that you did not see anybody when you arrived

there?

A:

Not yet.

Q:

And how long did you wait for these suspects?

A:

About 30 to 40 minutes, sir.

Q:

And after the lapse of 30 to 40 minutes, what happened?

A:

The two suspects arrived at the area of transaction, sir.

Q:

When they arrived, what happened next?

A:

A certain, one of them, sir, approached the concerned citizen, and the concerned citizen approached me as a big time buyer from Manila.

Q:

How many of them arrived?

COURT:

Q:

You said big time buyer?

A:

Big time buyer from Manila, sir.

PROS. CABURIAN:

Q:

Buyer of what?

A:

Marijuana, sir.

Q:

By the way, these two persons whom you said arrived, if you will see them again, will you be able to identify them?

A:

Yes, sir.

Q:

Will you point to them if they are present in court?

A:

The one wearing a black jacket, sir.

INTERPRETER:

Witness is pointing to a lady inside the courtroom who gave her name as Evelyn Patayek.

WITNESS:

And the other one is she.

INTERPRETER:

Witness pointing to a lady inside the courtroom who gave her name as Arlene Goya.

PROS. CABURIAN:

Q:

Of the two persons whom you identified in court, who is that person whom you said approached the concerned citizen whom you were introduced as a big time buyer of marijuana from Manila, who of the two.

A:

Evelyn Patayek, sir, the one wearing black jacket, sir.

Q:

And while you were being introduced by the concerned citizen to Evelyn Patayek, where was the other companion who turned out to be Arlene Goya, where is she?

A:

She was also around, sir, may be at a distance of ten meters, sir.

Q:

Distance of ten meters, from where?

A:

From Evelyn, sir.

Q:

And?

A:

And us, sir.

Q:

What did you notice of these two persons when they arrived?

A:

The other female person, sir, is carrying a black bag, sir, with yellow strap.

Q:

And who of the two female persons was carrying that black with yellow straps, who of the two?

A:

A certain Arlene, sir.

COURT:

Q:

A certain Arlene, or Arlene?

A:

Arlene, sir.

PROS. CABURIAN:

Q:

If that bag which you noticed to have been carried or was being carried by Arlene Goya, will be shown to you again, will you be able to identify the same?

A:

Yes, sir.

Q:

Now, showing to you a black bag with yellow strap, which was previously marked in evidence for the prosecution as Exhibit "B", will you tell the Honorable Court if you can recognize that bag?

A:

Yes, sir, this bag, its the same, sir.

Q:

Now, I notice that there are markings in black placed on the yellow strap of this bag, do you recognize these markings?

A:

Yes, sir. I recognize because this is my signature, this one, sir.

Q:

How about this, what is this marking?

A:

That is my marking also, sir, date, sir.

Q:

What is this date?

A:

Eleven-eighteen-zero four, sir.

Q:

What is this zero-four?

A:

Eleven is November, sir. Eleven-eighteen-ninety four, sir.

Q:

And what is the purpose of this marking that you placed on the yellow strap of this bag?

A:

To mark this evidence for the use of this Honorable Court, sir.

PROS. CABURIAN:

May we pray, Your Honor, that the marking identified by the witness be marked in evidence as, which composed the date 11/18/94, and his initial, be marked in evidence as Exhibit "B-2", Your Honor.

COURT:

Mark it.

PROS. CABURIAN:

Q:

And during the conversations what, after the introduction to this Evelyn by the concerned citizen, after your introduction to you with this Evelyn by this concerned citizen, what happened next?

A:

We talked about, for few minutes, we talked about, regarding the sale of marijuana to be sold by the suspects, sir.

Q:

What did you ask her if any?

A:

I asked her if the stuff if (sic) already in their possession, sir.

COURT:

Q:

That was the first question you asked?

A:

Yes, sir.

Q:

Why did you already, did you have a previous agreement that she should bring the stuff at the place?

A:

No, sir, no sir, pardon. My first approach to her, sir, is I am a buyer from Manila, sir.

Q:

Yes, and what was her reaction to that?

PROS. CABURIAN:

Q:

And after you told her that you are a big time buyer from Manila, what did she say, if any?

A:

She asked me if the money is available, the money for buying marijuana is available in my possession, sir.

Q:

And what did you tell her?

A:

I response (sic), yes, sir.

Q:

And after that you told her that the money to buy marijuana was already available and with you at that time, what did she say?

A:

She told me that I wait for a while, sir, then, she after telling that, wait for a while, she approached the other female person, sir.

COURT:

Q:

She did not ask you anything, when you told her that you are ready with the money to buy marijuana, she told you to wait and left, she did not ask anything?

A:

I showed first the money, sir.

Q:

Please answer my question. I am asking whether or not she asked anything from you?

A:

No more, sir.

PROS. CABURIAN:

Q:

And you said that she approached the other person, who is that other person that she approached?

A:

Arlene Goya, sir.

Q:

And after she approached Arlene Goya, what happened next?

A:

Arlene Goya is, she turned over the bag, sir, the black bag with yellow strap.

Q:

To whom did Arlene Goya turn over the black bag with yellow strap?

A:

To Evelyn, sir.

Q:

And after Evelyn received the black bag with yellow strap from Arlene Goya, what happened next?

A:

She go (sic) back to our place, sir.

Q:

And after she came back to where you were, what happened?

A:

She handed the bag, sir, and demanded the money, sir.

Q:

To whom did she hand the bag?

A:

To me, sir.

Q:

Immediately after she arrived at where you were?

A:

Yes, sir.

Q:

And what did you do upon receipt of that bag which was handed to you? by Evelyn?

A:

I examined the contents of the bag, sir, if the marijuana is positive, sir.

Q:

When you said that you examined the bag, to see if the marijuana is positive, what do you mean by that?

A:

After ascertaining, sir.

Q:

After?

A:

After ascertaining, sir, that the contents of the bag is marijuana, I immediately handed the money.

Q:

You said that after ascertaining that the contents of the bag is marijuana, what did you see inside the bag?

A:

A bricks (sic) of marijuana, sir.

Q:

Bricks of marijuana?

A:

Yes, sir.

Q:

If those bricks of marijuana will be shown to you, will you be able to identify the same?

A:

Yes, sir.

Q:

Before you are two packages, the first package which was previously marked in evidence as Exhibit "C", consisting of two bricks and the second package which was previously marked as Exhibit "D", consisting of one brick, will you tell the Court if this is the marijuana that you are referring to that you saw inside the black bag?

A:

Yes, sir, this is the one, sir.

Q:

And to whom ... and after you have verified that the content was indeed marijuana, what did you do next?

A:

I handed the money, sir.

Q:

To whom did you hand the marked money?

A:

Arlene, sir.

Q:

To Arlene?

A:

Yes, sir.

Q:

Where was Evelyn when you handed the money to Arlene?

A:

She is also near to us, sir.

COURT:

Q:

Did you not say that Arlene was about ten meters away from you that is why Evelyn even told you to wait as she approached Arlene to get the black bag?

A:

Yes, sir.

Q:

So when Evelyn handed to you the bag, you were one ... ten meters away from where you were to approach Arlene to give her the entrapment money, is that what you are telling the court

A:

Clarification, in my answer, sir. After handed to Evelyn, sir.

Q:

What, what was handed to Evelyn?

A:

The color black bag with strap yellow, sir, they go back together to the place of transaction, sir.

PROS. CABURIAN:

Q:

When you said they go back together, you mean they came where you were together?

A:

Yes, sir.

Q:

After you handed the money to Arlene, what happened?

A:

I immediately gave the pre-arranged signal, sir.

Q:

How did you give that pre-arranged signal?

A:

By having my thumb up, sir.

COURT:

Q:

FVR style?

A:

Yes, sir.

PROS. CABURIAN:

Q:

And after you have given that thumb-up signal, what happened next?

A:

The members of the team rushed up to the scene, sir.

Q:

And after the members of the team rushed to the place, what happened next?

A:

We effected the arrest, sir.

x x x[22] (Underscoring supplied.)

Appellants, however, assail the credibility of Carrera's testimony as not straightforward, they claiming that he even appeared reluctant to testify in court and had, along with other NARCOM operatives, the propensity to fabricate cases.[23]

While the trial court observed that Carrera "has time and again given himself away as clumsy in testifying," it nevertheless held that "such detracts nothing from the core of the testimony he has given in the case at bench which exonerably points to the guilt of the accused." [24]

Appellants' defense that they were merely framed-up does not thus persuade. It bears emphasis that frame-up as a defense has been invariably viewed with disfavor, for it can easily be concocted and is a common standard defense ploy in most prosecutions for violations of the Dangerous Drugs Act.[25] That is why clear and convincing evidence is required to prove the defense[26] which, in appellants' case, they failed to discharge.

Absent any proof of intent on the part of the police authorities to falsely impute such a serious crime against appellants, the presumption of regularity in the performance of their official duty, as well as the doctrine that findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the self-serving and uncorroborated claim of appellants that they had been framed-up.[27]

As correctly observed by the trial court:

[T]he claim of the accused that a man merely picked up the travelling bag containing the contraband from under a tree is too fantastic to merit belief. In fact, Mila Abdol, the sister of Arlene, did not even bother to come forward to bear out the allegation of the accused that they then came from her house where they sold her Tupperware products worth P2,000.00. It is also very unrealistic for Carrera to say that the prohibited drug came from the accused if that were not the case. For why should Carrera target them, among all people, and subject them to a trumped-up charge. They have not pointed out any reason why they should specially be chosen for such a nefarious operation. And why should Carrera use such a large quantity of the stuff if he were out only to machinate and plant evidence on the accused? A smaller quantity would have sufficed and the rest reserved for planting on another victim.

x x x[28] (Emphasis supplied.)

A word on the penalty imposed by the trial court. The trial court divided reclusion perpetua[29] into three periods and accordingly applied the Indeterminate Sentence Law. While Section 17 of Republic Act 7659, which amended “The Dangerous Drugs Act,” fixed the duration of reclusion perpetua from 20 years and 1 day to 40 years, there was no clear legislative intent to alter its classification as an indivisible penalty, hence, it remains as such.[30]

WHEREFORE, the May 5, 1995 Decision of the Regional Trial Court, First Judicial Region, Branch 5, Baguio City convicting appellants Evelyn Patayek and Arlene Goya of violation of Section 4 of Republic Act 6425, as amended by Republic Act 7659, is hereby AFFIRMED with MODIFICATION in that appellants are sentenced to suffer the penalty of reclusion perpetua, and to each pay a Fine of P500,000.00, without subsidiary imprisonment in case of insolvency.

Costs against appellants.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Records at 1.

[2] Id. at 20, 25.

[3] Transcript of Stenographic Notes (TSN), March 7, 1995 at 12.

[4] Ibid.

[5] Id. at 13-14.

[6] Id. at 14-16.

[7] Id. at 15-16.

[8] Id. at 19.

- [9] Id. at 20.
- [10] Exhibit “G”; Records at 62.
- [11] Exhibit “C” and “D.”
- [12] Exhibit “A”; Records at 39.
- [13] TSN, March 7, 1995 at 6.
- [14] Exhibit “E”; Records at 40.
- [15] TSN, March 14, 1995 at 2-4.
- [16] Id. at 4-6, 14-16.
- [17] Id. at 15-16.
- [18] Records at 252-260.
- [19] Rollo at 42-43.
- [20] *People v. Chen Tiz Chang*, 325 SCRA 776 (2000).
- [21] *People v. Cueno*, 298 SCRA 621 (1998).
- [22] TSN, March 7, 1995 at 15-20.
- [23] Rollo at 45-46.
- [24] Records at 257-258.
- [25] *People v. Barita*, 325 SCRA 22 (2000).
- [26] *People v. Lacbanes*, 270 SCRA 193 (1997).
- [27] Id.
- [28] Records at 257.
- [29] Section 20 of RA 6425, as amended by RA 7659 reads:

SECTION 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 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x

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

x x x

- [30] *People v. Lucas*, 240 SCRA 66 (1995).

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