PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SHIRLEY ALAO Y SIMBURYO, ACCUSED-APPELLANT.

G.R. No. 126516. January 19, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

On 20 May 1993, accused-appellant Shirley S. Alao (hereafter SHIRLEY) was charged before the Regional Trial Court of Iloilo City with violation of Section 4, Article II of Republic Act No. 6425 (Dangerous Drugs Act of 1972), as amended. The case, which was raffled off to Branch 38 and docketed as Criminal Case No. 40528, was filed based on the following information:

> That on or about the 24th day of February, 1993, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and criminally sell and/or distribute one (1) bundle of dried marijuana fruiting tops, weighing more or less one (1) kilo in consideration of P1,000.00 in marked bills, a source of prohibited drug, without the authority to sell or distribute the same; That one (1) bundle of dried marijuana fruiting tops (bought) in consideration of P1,000.00 (and) ten (10) pcs. (of) P100.00 marked bills used as buy-bust money were recovered from the accused.
>
> CONTRARY TO LAW.[1]

The evidence for the prosecution established that the Narcotics Command (NARCOM) for Region 6, headed by Chief Superintendent Romulo Aquino, conducted surveillance of more than one week at the New Site Veterans Village, Iloilo City, "to verify and to confirm" an informant’s report[2] that a certain Shirley Alao was engaged in the sale of marijuana in the area.[3] Upon orders of Chief Supt. Aquino, a buy-bust operation was executed on 24 February 1993 under the command of team leader SPO3 Benito Bonete (hereafter SPO3 Bonete). The plan was to let civilian agent Fernando Rico (hereafter Rico), the designated poseur-buyer, transact with SHIRLEY using marked money. Once the sale is consummated, Rico would make a signal visible to the narcotics agents in their hiding places.

Rico arrived at the New Site Veterans Village around 1:30 in the afternoon of that day. There he met SHIRLEY who, after a brief conversation, agreed to sell to him a kilo of marijuana for P1,000. Rico gave SHIRLEY ten pieces of marked P100 bills, then the latter went to the store to get the "merchandise" from a can of Minola Cooking Oil hidden in a hole in the ground covered by a Pepsi cooler.[4] After verifying that it was marijuana, Rico went out to give the pre-arranged signal by scratching his head with his left hand, signifying that the deal had been consummated. Immediately, SPO3 Bonete, whose initials were on the upper right portion between PILIPINAS and 100 of each of the ten P100-bills,[5] and his companions emerged from their concealed stations, converged at the house, arrested SHIRLEY, and recovered the marked money from her.[6]

Upon learning that SHIRLEY still had several bundles of marijuana left in storage, the operatives summoned Barangay Captain Josefa Angayen so they could conduct a search of the house. The search yielded eight more

packages of marijuana, each weighing approximately one kilo. SHIRLEY was then brought to the NARCOM headquarters and the confiscated items were taken to the Philippine National Police Crime Laboratory at Camp Delgado, Iloilo City, for examination.[7] They were conclusively found positive for marijuana.[8]

SHIRLEY, however, denied that the marijuana seized during the buy-bust operation belonged to her. She also denounced the illegal search and seizure conducted by the NARCOM agents. According to her, on 24 February 1993, at about 1:30 p.m., a man, whom she later identified as Rico, arrived at their house on a tricycle. He was looking for her common-law husband, Avelino Rodriguez, alias Sipil (hereafter Sipil). After a short chat between the two men, Rico left with a transparent plastic bag containing a bundle wrapped in newspaper. This bag, which was apparently filled with dried marijuana leaves, was later presented, identified and offered in evidence for the prosecution. As soon as Rico left, Sipil gave SHIRLEY some money to buy fish, but she did not know that they were marked bills. She placed the money in the pocket of her duster without counting them. Later, Rico returned with several other men, talked to Sipil, then began searching their house. Upon someone's suggestion, Barangay Captain Angayen was called. The latter convinced Sipil to surrender the remaining stock. Ultimately, he pointed their location under the ground covered by a cooler. Sipil turned over eight plastic packages to the NARCOM agents, and SHIRLEY handed them the marked bills. Thereupon, she was placed under arrest and brought to the NARCOM Office for investigation and filing of the appropriate charges.[9]

After trial on the merits, the trial court rendered a decision on 29 November 1995,[10] the dispositive portion of which reads as follows:

> WHEREFORE, the accused, Shirley Alao y Siburyo, is hereby found guilty beyond reasonable doubt for violation of Section 4, Article II of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and is hereby sentenced to suffer a penalty of Life Imprisonment and to pay a fine of Twenty Thousand (P20,000.00) Pesos.
>
> The dried marijuana leaves subject matter of herein case weighing more than one (1) kilo as well as the eight (8) other bundles turned over by the common law husband of the accused to the NARCOM agents are forfeited in favor of the government. The Clerk of Court of this branch who has custody of one bundle of marijuana weighing more than one (1) kilo and marked in evidence by the prosecution as Exhibit "B" as well as the commanding officer, PNP Crime Laboratory, Region 6, Camp Delgado, Iloilo City, in whose possession the eight (8) bundles of marijuana weighing at least one (1) kilo each which was indorsed by NARCOM to said office for laboratory examination, are directed to turn them over to the Dangerous Drugs Board through the office of the National Bureau of Investigation, Region 6, Iloilo City, for proper disposal pursuant to present rules and regulations.
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> The accused being detained, the whole period of her detention shall be deducted in full from the period of her sentence provided she voluntarily agreed in writing to abide by the disciplinary rules imposed upon convicted prisoner(s;) otherwise, she shall be credited with four-fifths of the time during which she has undergone preventive imprisonment.
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> Considering the penalty imposed herein, the accused shall remain in detention until herein judgment shall become final and executory.
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> Costs against the accused.
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> SO ORDERED.

In convicting SHIRLEY, the trial court found the prosecution to have established the fact of buy-bust operation and her culpability for the sale of marijuana. It found no reason to deviate from the presumption regarding the credibility of prosecution witnesses, especially since they were peace officers or agents who are presumed, in the

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absence of proof to the contrary, to have regularly performed their official duties. Finally, the trial court found to be fatal to the defense the fact that SHIRLEY failed to prove that Rico and SPO3 Bonete had any ulterior motive to implicate her.

In her Appellant's Brief, SHIRLEY asserts that the trial court erred:

> I
>
> IN GIVING FULL CREDENCE TO THE COCK-AND-BULL STORY OF SPO3 BENITO BONETE AND NARCOM CIVILIAN AGENT FERNANDO RICO ON THE ALLEGED "BUY-BUST" OPERATION AGAINST THE ACCUSED-APPELLANT;
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> II
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> IN NOT CONSIDERING THE TESTIMONY OF BARANGAY CAPTAIN JOSEFA ANGAYEN OF VETERANS VILLAGE WHO WAS A VERY VITAL WITNESS ON THE ISSUE OF WHETHER THERE WAS A "BUY-BUST" OR THERE WAS A "RAID AND SEARCH" OPERATION; AND
>
> III
>
> IN CONVICTING THE ACCUSED-APPELLANT WITHOUT EVIDENCE PROVING HER GUILT BEYOND A REASONABLE DOUBT.[11]

Anent the first assigned error, SHIRLEY contends that the trial court should not have given full credence to the conflicting testimonies of Rico and SPO3 Bonete on the buy-bust operation. Rico said the sale of marijuana was complete when he made the pre-arranged signal. On the other hand, SPO3 Bonete maintained this was not possible because Rico did not know where he was. Moreover, SHIRLEY was the one who pointed the hiding place of the other bundles of marijuana. When Barangay Captain Angayen arrived, they had already recovered said bundles from an underground hole. Rico also disputed this when he said that after the marked money was turned over to him by SPO3 Bonete, they tried to contact Barangay Captain Angayen, and it was only when the latter had arrived that more bundles of marijuana were recovered.

In her second assignment of error, SHIRLEY avers that the testimony of Barangay Captain Angayen shows that the operation conducted by the NARCOM agents was not a "buy-bust" but a raid without a search warrant; hence, it was illegal and the evidence obtained therefrom, inadmissible in evidence.

SHIRLEY further points to other alleged testimonial discrepancies to prove that the prosecution's "buy-bust" theory is not true. One of these is the supposed variance in the quantity of marijuana recovered from her house as testified by SPO3 Bonete and Barangay Captain Angayen. For another, surveillance is before a "buy-bust" operation. SHIRLEY is wondering why SPO3 Bonete, who allegedly staked out her house for more than a week, did not know the people living in her house. She also questions the legality of the search conducted in this case, considering the inconsistent testimony of Rico and SPO3 Bonete regarding the place where she was nabbed. Rico said she was arrested outside the house, after he made the pre-arranged signal to the policemen lurking outside. SPO3 Bonete, however, maintained that after the signal, he arrested SHIRLEY on her way to the kitchen inside the house.

Lastly, SHIRLEY attacks the integrity and truthfulness of Rico and SPO3 Bonete because they were no longer connected with the NARCOM at the time they testified. They were apparently placed on "floating" status after their team was dissolved due to various complaints. When another team was organized, they were left out. SHIRLEY also faults the trial court for not considering her testimony on the extortion attempt by her captors in exchange for the dropping of the criminal charge.[12]

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We affirm SHIRLEY's conviction.

The issue before us deals with the credibility of the witnesses. It is well-settled that, generally, appellate courts will not interfere with the judgment of trial courts in passing upon the credibility of the witnesses unless there appears in the record some facts or circumstances of weight and influence which the trial court has overlooked or the significance of which it has misapprehended or misinterpreted. The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[13]

After a careful examination of the records of this case and a meticulous evaluation of the evidence of the parties, we find no reason to disturb the trial court's assessment of the credibility of the witnesses for the prosecution, and we are fully convinced that SHIRLEY's guilt for the offense charged had been proven beyond reasonable doubt.

The alleged inconsistencies pointed out by SHIRLEY are not material but relate only to minor matters. What is essential in a conviction for violation of Section 4, Article II of R.A. No. 6425 is that the sale of marijuana must be duly established. In this case, this was sufficiently established by the testimony of Rico and SPO3 Bonete. The first was the poseur-buyer; the latter personally witnessed the consummation of the transaction and did not waver in his testimony even on cross-examination.[14]

As the trial court observed:

> The submission of proof that the sale of the illicit drug took place between the poseur-buyer and the seller thereof is (indispensable) in every prosecution for (the) illegal sale of marijuana, coupled with the presentation of the corpus delicti as evidence. In the case at bar, the prosecution had proved with certainty all the elements necessary for (successfully prosecuting) the offense of illegal sale of marijuana which are: the identity of the buyer as well as the seller, the object and consideration of the sale, and the delivery of the thing sold and the payment therefor. Fernando Rico narrated in detail his transaction with the accused, (SHIRLEY) Alao. Agent Rico gave the price to the accused who placed it in the pocket of her duster. In return, she delivered the marijuana to the poseur-buyer. The accused confirmed the recovery of the buy-bust money from her by the NARCOM Agents. She also confirmed that the one (1) kilo of dried marijuana leaves presented by the prosecution was the one delivered to Agent Rico. NARCOM agents caused the drug to be examined at the PNP Crime Laboratory. The item weighing more than one (1) kilo (re-weigh by the court in the presence of the parties and counsels) was tested positive for marijuana. The chemistry report attested by Sr. Insp. Zenaida Sinfuego, Forensic Chemist, conclusively established the corpus delicti of the crime.[15] (Emphasis ours; citations omitted)

The other alleged inconsistency, i.e., whether or not the other bundles of marijuana were recovered in the presence of Barangay Captain Angayen, is irrelevant since SHIRLEY was charged only for the first bundle of marijuana involved in the buy-bust operation. The same can be said of SHIRLEY's contention that there is a variance in the quantity of marijuana recovered after the search of her house.

The argument in support of the second assignment of error does not persuade us. Barangay Captain Angayen merely witnessed the search for more marijuana after the buy-bust operation. Thus, she is in no position to testify on the circumstances surrounding the operation.[16]

As to SHIRLEY's opinion that surveillance should have been conducted before the buy-bust operation, it should be stressed that there is no such requirement, especially when the operatives were accompanied to the scene by their informant.[17] In the instant case, there was an informant, although it does not appear if he was with the buy-bust team members during the entrapment.[18] In any event, SPO3 Bonete did conduct a surveillance of more than one week of the place where the buy-bust was to be made, based on their informant's report.[19]

With regard to the legality of the post-operation search, we agree with the trial court that this is not relevant in the case at bar, for SHIRLEY was not indicted for possession of the rest of the marijuana recovered by virtue of such search.

Neither do we find any basis for SHIRLEY's accusation that SPO3 Bonete and Rico were scalawags and engaged in extortion activities. There is likewise nothing in the record to show that these police officers were actuated by any improper motive.

The crime charged was committed on 24 February 1993. The governing law was Section 4 of R.A. No. 6425, as amended, which read:

> Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. – The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of the victim thereof, the maximum penalty herein provided shall be imposed.

This was amended by R.A. No. 7659,[20] which took effect on 31 December 1993.[21] As amended by Section 13, it now reads:

> Section 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five thousand pesos to ten million shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.
>
> Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of the victim thereof, the maximum penalty herein provided shall be imposed.

Section 20 of R.A. No. 6425, which deals with the application of penalties, was also amended by Section 17 of R.A. No. 7659, thus:

> Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime. – The penalties for the offense under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
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> - 40 grams or more of opium;
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> - 40 grams or more of morphine;
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> - 200 gams or more of shabu or methylamphetamine hydrochloride;
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> - 40 grams or more of heroin;
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> - 750 grams or more of indian hemp or marijuana;
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> - 50 grams or more of marijuana resin or marijuana resin oil;
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> - 40 grams or more of cocaine or cocaine hydrochloride; or
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> - In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultation/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision

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correccional to reclusion perpetua depending upon the quantity.

Conformably with Article 22[22] of the Revised Penal Code, Section 20, in relation to Section 4, of R.A. No. 6425, as amended by R.A. No. 7659, may be given retroactive effect in this case if the penalty imposable on SHIRLEY is lower than that provided for in Section 4 before its amendment by Section 13 of R.A. No. 7659. This is possible only if the quantity of marijuana is less than 750 grams, as stated in Section 20(5) of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659.

The information in this case alleges "dried marijuana more or less one (1) kilo." The Chemistry Report[23] submitted by Forensic Chemist Zenaida Sinfuego states that the subject prohibition drug was "one (1) bundle of suspected marijuana fruiting tops wrapped with newspaper and masking tape weighing one (1) kilo." The trial court itself determined its weight to be "more than one (1) kilo"[24] after weighing Exhibit "B" at the Post Office in the presence of the prosecutor and defense counsel. In fact, it weighed one (1) kilogram and 22 grams, including the wrapper.[25]

We rule, therefore, that SHIRLEY is ineligible to benefit from Section 20, in relation to Section 4, of R.A. No. 6425, as amended. Consequently, she should be made to suffer the penalty correctly imposed by the trial court.

WHEREFORE, judgment is hereby rendered affirming the decision of 29 November 1995 of the Regional Trial Court of Iloilo, Branch 38, in Criminal Case No. 40528, finding accused-appellant SHIRLEY ALAO y SIMBURYO guilty beyond reasonable doubt of violating Section 4 of R.A. No. 6425, as amended.

Costs against accused-appellant.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record (OR), 1. The information is dated 19 May 1993.

[2] TSN, 6 March 1995, 31, 33; 20 March 1995, 4.

[3] TSN, 31 March 1995, 4-6.

[4] TSN, 6 March 1995, 4-9.

[5] Exhibits "D-1" to "D-5," "E-1" to "E-5"; OR, 155-156; TSN, 20 March 1995, 6.

[6] TSN, 6 March 1995, 10, 37.

[7] TSN, 6 March 1995, 11.

[8] Exhibit "B," OR, 304-305; Rollo, 19-20.

[9] OR, 305-306; Rollo, 20-21.

[10] Id., 303-311; Id., 18-26. Per Judge David A. Alfeche, Jr.

[11] Rollo, 63, 68.

[12] Citing TSN of 2 May 1995, 27.

[13] People v. Dismuke, 234 SCRA 51 (1994), citing United States v. Ambrosio, 17 Phil. 295 (1910); and a host of other cases beginning with People v. Tismo, 204 SCRA 535 (1991) up to People v. Kyamko, 222 SCRA 183

(1993)

[14] TSN, 31 March 1995, 11-13.

[15] Rollo, 22.

[16] TSN, 5 September 1995, 15-16.

[17] See People v. Lacbanes, 270 SCRA 193 (1997); People v. Ganguso, 250 SCRA 268 (1995); and People v. Tanca, 235 SCRA 455 (1994)

[18] TSN, 20 March 1995, 4.

[19] TSN, 6 March 1995, 31, 33; 20 March 1995, 4; 31 March 1995, 8-10.

[20] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending For the Purpose the Revised Penal Code, as Amended, other Special Penal Laws, and For other Purposes."

[21] People v. Simon, 234 SCRA 555, 569 (1994)

[22] It reads: Article 22. Retroactive effect of penal laws. – Penal laws shall have retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such law a final sentence has been pronounced and the convict is serving sentence.

[23] Exhibit "C," OR, 154.

[24] Supra note 15.

[25] TSN, 6 March 1995, 41.

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