PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO LAXA Y MANLICLIC, @ JANGGO AND MARLINDA LAXA Y AQUINO, ACCUSED.

G.R. No. 138501. July 20, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from a decision,[1] dated April 29, 1999, of the Regional Trial Court, Branch 59, Angeles City, insofar as it finds accused-appellant Ernesto M. Laxa[2] guilty of violation of Art. II, §8 of R.A. No. 6425, as amended by R.A. No. 7659, and sentences him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.

The information against accused-appellant and his co-accused alleged:

> That on or about the 30th day of November, 1998, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, without authority whatsoever, did then and there willfully, unlawfully and feloniously have in their possession and under their control ten (10) colored and white plastic bags containing more or less a total of EIGHT THOUSAND EIGHT HUNDRED (8,800) GRAMS of dried Marijuana fruiting tops, one (1) medium sized transparent plastic bag with a "Victoria Pure Sugar" marking containing more or less SIX GRAMS and SEVENTY HUNDREDTHS OF A GRAM (6.70 grams) of dried Marijuana fruiting tops and one (1) piece of red and white plastic bag containing more or less FORTY HUNDREDTHS (0.40) OF A GRAM of dried Marijuana fruiting tops for a total weight of approximately EIGHT THOUSAND EIGHT HUNDRED ONE GRAMS AND TEN HUNDREDTHS OF A GRAM (8,807.10 grams) of Marijuana fruiting tops, which is a prohibited drug.[3]

Upon arraignment, the Laxas pleaded not guilty to the crime charged, whereupon they were tried.[4]

The prosecution presented as witnesses PO2 Jerry Espadera, Arthur Tanjuakio, PO2 Hersologo Trivino, and PO1 Narciso Pangilinan. Their testimonies are to the following effect:

At around 1 p.m. on November 30, 1998, several police officers belonging to the Angeles City Anti-Crime Task Force, together with a member of the Citizens Crime Watch, conducted a buy-bust operation at Villapaz, Barangay Pampang, Angeles City. The entrapment led to the arrest of Edna Ocampo and Jocelyn Aquino, sister-in-law of accused-appellant Ernesto M. Laxa.[5] Jocelyn offered to name the drug pushers in the neighborhood in exchange for her freedom. She pointed out the houses of those whom she believed had marijuana, including accused-appellant's house which is near his lumberyard.[6]

The policemen claim that accused-appellant was taken to their police headquarters after they had found the prohibited substance near his residence. Their version is that they found a small plastic bag marked "Victoria Pure Sugar," which contained around 6.70 grams of marijuana, near the gate of the lumberyard and seven red and white colored plastic bags with marijuana particles weighing around 0.40 grams at a place used to manufacture hollow

blocks.[7]

According to Arthur Tanjuakio, a member of the Citizens Crime Watch, the policemen caught accused-appellant in the act of throwing bags containing marijuana over a fence. While inside his van, Tanjuakio said he saw from a distance of 20 or 30 meters a man walking hurriedly in a small alley near the shanties. The man was 10 or 15 meters away from the lumberyard and carried two bulky plastic bags with red and white stripes.[8]

Tanjuakio claimed he followed the man, whom he later identified as accused-appellant, to find out what he was doing. With him were PO2 Hersologo Trivinio and PO1 Narciso Pangilinan. They allegedly saw accused-appellant throw a plastic bag over a wire fence. As Trivinio and Pangilinan arrested accused-appellant, PO2 Trivinio ran to the other side of the fence to check the contents of the bags. Trivinio found that each of the two red and white bags contained five identical bags, which contained substance that looked like marijuana. Accused-appellant was brought to Camp Tomas Pepito, where the confiscated items were marked by PO2 Jerry Espadera with his initials, "JME."[9]

The defense presented the testimonies of Angelito Serrano, Marlinda Laxa, Rosalia Nacu, Brgy. Capt. Fidel Ocampo, Jaime Dongoya, and Ernesto Laxa.

The defense denied that accused-appellant was ever caught in possession of marijuana. It was claimed that when accused-appellant and his brother-in-law, Angelito Serrano, arrived at his residence from a trip in Bocaue, Bulacan, they found the policemen and about 40 to 50 people gathered outside the lumberyard. The policemen asked if they could search the house and accused-appellant gave his consent. The police found nothing, but they took accused-appellant with them to Camp Tomas Pepito for questioning on the assurance that the latter would be allowed to go home afterwards. Accused-appellant was instead arrested after a certain Rey Malig arrived at the police station around two hours later and turned over to the police some bags of marijuana allegedly found in the former's lumberyard.[10]

On April 29, 1999, the trial court rendered a decision, the dispositive portion of which stated:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> - For failure to prove the guilt of accused Marlynda Laxa beyond reasonable doubt, said accused Marlynda Laxa is hereby ACQUITTED of the crime charged in the Information.
>
> - For illegal possession of eight thousand eight hundred (8,800) grams of marijuana, accused Ernesto Laxa is found GUILTY of the crime charged and is hereby sentenced to suffer the penalty of reclusion perpetua;
>
> - Accused Ernesto Laxa is also further ordered to pay a fine of five hundred thousand (P500,000.00) pesos.
>
> SO ORDERED.[11]

Hence, this appeal. Appellant presents the following issues for resolution:

- Whether or not the lower court erred in believing the testimony of the prosecution witnesses, especially that of Arthur Tanjuakio, which is allegedly "seriously flawed and inconsistent."

- Whether or not accused-appellant Ernesto Laxa is guilty beyond reasonable doubt of the crime charged.

We find the appeal to be meritorious. We begin with the basic presupposition of our constitutional system that the burden of proving that an accused is guilty of the offense charged lies upon the prosecution. That burden must be discharged and the prosecution must rely on its own evidence, whatever may be the reputation of the accused. For the law presumes the accused innocent unless shown otherwise by proof beyond reasonable doubt. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the

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innocence of the accused and the other consistent with his guilt, then the evidence is not sufficient to support a conviction.[12]

After reviewing the records of this case, we are of the opinion that the decision of the trial court should be reversed and that accused-appellant should be acquitted because of the failure of the prosecution to satisfy the quantum of evidence required for conviction of the accused in criminal cases.

First. The credibility of prosecution witnesses is in question. This is a matter of great significance in determining whether or not the degree of proof required in a criminal case has been met.[13] For although it is well-established that the trial court's assessment of the credibility of witnesses and their testimonies is binding on appellate courts, the rule does not apply where, as in this case, it is shown that any fact of weight and substance has been overlooked, misapprehended, or misapplied by the trial court.[14]

1. The testimonies of the prosecution witnesses Espadera, Tanjuakio, and Trivinio are conflicting both as to minor as well as material points. To the simple question of who brought the marijuana to the police headquarters, the policemen allegedly involved in the operation gave contradictory answers. PO2 Hersologo Trivinio said that he and another police officer requested Rey Malig, a civilian, to bring the bags of marijuana to the headquarters using the latter's vehicle:

> Q:
>
> It is now correct as you said a while ago that it was Rey Malig who brought the items?
>
> A:
>
> Yes, Sir. But I was the one who picked it up.
>
> Q:
>
> Because Rey Malig was the one who brought physically the 2 bags to your office and you merely helped him?
>
> A:
>
> Kaming dalawa ni PO2 Alfonso, Sir. Pinakisuyo namin kay Rey Malig kasi meron siyang sasakyan na pwedeng ilagay.[15]

Trivinio's statement contradicts, however, the testimony of PO2 Jerry Espadera who said that it was his fellow police officers, not Rey Malig, who brought the marijuana to the headquarters. Espadera testified:

> Q:
>
> You made mention of a certain Rey Malig and you said he was with you at that time?
>
> A:
>
> Yes, sir he was always with us. Para makita ang trabaho namin.
>
> Q:
>
> He is a member of the media?
>
> A:
>
> Yes, sir.
>
> Q:

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Who brought these bulky plastic bag to the headquarters?

A:

My police companions, sir.

Q:

You are sure of that?

A:

Yes, sir.

Q:

Under your oath?

A:

Yes, sir.

Q:

Was it not Rey Malig who brought it to the headquarters?

A:

No, sir.

Q:

Are you aware of the seriousness of stating something are you aware of that?

A:

Yes, sir.

Q:

You may be put to jail if you are not telling the truth.

A:

Yes, sir that's what I know.

Q:

Who was your companion who brought the alleged marijuana to the headquarters?

A:

SPO2 Trivinio, Calado, Vital, Miser, Laxa. . . . [16]

2. Several prosecution witnesses testified that they saw accused-appellant throw bags containing marijuana over a fence, on the basis of which he was apprehended.[17] This is contrary to Trivinio's testimony that the police gave the marijuana to Malig in order for them to hide it from accused-appellant and thus prevent him from questioning his arrest. Assuming he was telling the truth, Trivinio's reason for hiding the marijuana from accused-appellant is

flimsy and, worse, not allowed by the law. As he testified:

Q:

Rey Malig is a police officer?

A:

No, sir.

Q:

He was a civilian?

A:

Yes, sir. And he is attached to the Anti-Crime Task Force being an NGO supporting our campaign against illegal drugs.

Q:

You said there were 2 vans that were using, how many police officers were then present at that particular time on November 30?

A:

I cannot recall, sir.

Q:

What type of vehicles are these vans?

A:

L-300, sir.

Q:

Are you trying to impress before this Court that you entrusted these 2 plastic bags of marijuana because they cannot fit in any of the 2 vans?

A:

That is not the reason, sir.

Q:

What was the reason?

A:

The best reason being an investigator, I did not want to let Jangco and his wife to see those items on that particular time.

Q:

You did not want Jangco to see this particular item at that particular time?

A:

Yes, sir.

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Q:

If these plastic bags were allegedly thrown by Jangco, what is the reason as why you did not want Jangco to see these 2 plastic bags?

A:

Just to avoid question and question from the suspect. Because whenever we confiscate an item, we did not let this come to him to avoid lots of question and just to avoid answering question.[18]

3. Arthur Tanjuakio's testimony is riddled with flaws and inconsistencies too serious and too numerous to ignore.

Tanjuakio testified during his direct examination that he was 30 to 40 meters from accused-appellant Ernesto Laxa when he saw the latter allegedly throw a bag over the fence:

Q:

When you noticed you said a while ago when you saw him walking hurriedly bringing several plastic bags colored red and white and you saw also him threw one plastic bag color red and white over the fence and according to you, the Narcom agents who were with you looked at that bag that was thrown and they found the contents as marijuana dried leaves, what about the other bag colored red and white carried by accused Ernesto Laxa what happened to those bags?

A:

I saw one bag which was thrown probably, that was the last bag. He was 30-40 meters away from me and I have to pass several shanties to be able to be in the place.[19]

When cross-examined, however, Tanjuakio said he was only five to six meters away from accused-appellant:

ATTY. TORRES:

Q:

Did he notice your presence?

A:

Yes, sir.

Q:

He knew you?

A:

No, sir.

Q:

This alley, could 2 people meet?

A:

Even 4 ft.

Q:

You are sure of that?

A:

Yes, sir.

Q:

How far a distance were you from the accused when he allegedly threw one of the bags?

A:

Approximately 5-6 meters away.[20]

Tanjuakio claimed that PO2 Nelson Mendoza acted as poseur-buyer in the buy-bust operation:

ATTY. DE GUZMAN:

. . . .

Q:

Who acted as poseur-buyer?

A:

Mendoza, sir.

Q:

Are you sure of that?

A:

Yes, sir.

Q:

Because you saw Mendoza acted as a poseur-buyer?

A:

Yes, sir. Because I was in my van.[21]

But PO2 Espadera said it was he who acted as the poseur-buyer,[22] and his claim was corroborated by PO2 Trivinio[23] and PO1 Pangilinan.[24]

Tanjuakio said there were no by-standers when they confiscated the marijuana from accused-appellant,[25] but PO2 Espadera said there were many people present at the time.[26]

Tanjuakio stated that he did not know accused-appellant before he was arrested,[27] but Trivinio said that, when he allegedly saw a man throw a plastic bag over the fence, Tanjuakio said, "Sir, si Janggo [accused-appellant] may tinapon sa bakod."[28] It would thus appear that Tanjuakio knew accused-appellant even before the latter's arrest.

Tanjuakio made other inconsistent statements regarding his position at the time marijuana was found on the other side of the fence. At first, he said both he and the policeman went around the fence and found the drug. He said:

Q:

What did you and the Narcom Agents do when you saw the accused Ernesto Laxa throw a plastic bag over the

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fence?

A:

What I did then, I would just check what he threw. I told the policeman to check it. We went to the other side of the fence and we found marijuana leaves.[29]

But later, he testified that he stayed behind and did not actually see what the policeman or policemen were doing behind the fence:

Q:

You mentioned that you told Trivinio that you saw this Ernesto Laxa throw a bag over the fence?

A:

Yes, sir. And then he went to the other side of the fence.

Q:

He jumped?

A:

No, sir. He has to pass several shanties.

Q:

He was alone?

A:

With several policemen also. I do not know who.

Q:

They went to the place?

A:

Yes, sir.

Q:

From your position can you see what is happening on the other side?

A:

No, sir. Because the height is 6 1/2 ft.[30]

Tanjuakio made more conflicting statements after being asked if he inspected the contents of the bag. He initially said:

Q:

Did you inspect each bag containing suspected marijuana?

A:

I believe I don't have the right to inspect.[31]

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Later on, he said:

Q:

Did they say anything as to what kind of substance?

A:

I was told marijuana, sir.

Q:

Who told you that?

A:

Officer Reyes, sir.

Q:

I thought you inspect also the contents?

A:

Yes, sir. [32]

Thus, Tanjuakio failed to give a clear, consistent, and convincing picture of the events leading to the arrest of accused-appellant.

4. There are serious discrepancies between the affidavit executed by PO2 Jerry Espadera and PO2 Nelson Mendoza and Espadera's declarations in court.

In the affidavit, PO2 Espadera stated that he saw accused-appellant throw plastic bags over the fence. These bags supposedly contained around 8.80 kg. of marijuana,[33] the possession of which became the basis for the conviction of accused-appellant in the lower court.[34] In his testimony in chief, however, he stated that the first time he saw the bags with the 8.80 kilograms of marijuana was in the police headquarters.

How could Espadera have seen accused-appellant in the possession of the prohibited substance if, as he later said, the first time he saw the bags containing the prohibited substance was after they had been brought to the police headquarters? Thus, Espadera testified:

COURT: (to witness)

Q:

These bulky plastic bags weighing more or less 7.60 gms. of dried marijuana fruiting tops from where in particular did you get this which appeared in your affidavit from the husband and wife?

A:

These ten (10) bulky plastic bags of marijuana it was PO2 Trivinio and Arthur Tanjuakio who saw these items. . . . Sinabi lang po sa akin na nakita nila si Ernesto Laxa tapos iyong narecover na seven plastic bags na may marijuana kami ang nakarecover sa bahay niya.

Q:

The question is about ten (10) bulky plastic bags.

A:

I did not see it, sir.

Q:

Why did you place this in your affidavit that the same was confiscated from Ernesto Laxa, if you did not see these items?

WITNESS:

A:

Hersologo, Trivinio and Arthur Tanjuakio were with me, sir.

COURT: (to witness)

Q:

In fact you were there all of you together but you were saying that you did not see and it was Trivinio and Tanjuakio who saw it.

A:

When it was actually taken I did not see it, sir.

Q:

What did you see?

A:

I only saw the seven plastic bags na may particles.

. . . .

PROS. PORSNILLOS: (to witness)

Q:

When for the first time did you see those ten (10) bulky plastic bags containing marijuana weighing more or less 8.80 kilograms?

A:

When we were at the office, sir.

. . . .

PROS. QUIAMBAO:

Why do you know these were the 10 plastic bags which you saw in the office at the time of the arrest of the accused?

A:

I placed my initials on each of the plastic bags.[35]

Second. The prosecution likewise failed to establish the identity of the prohibited drug which constitutes the corpus delicti of the offense. This is an essential requirement in a drug-related case.[36] In People v. Mapa,[37]

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we ruled in favor of the accused after the prosecution failed to clarify whether the specimen submitted to the NBI for laboratory examination was the same one allegedly taken from the accused. Similarly, in People v. Dismuke,[38] we held that the failure to prove that the specimen of marijuana examined by the forensic chemist was that possessed by the accused was fatal to the prosecution's case.

In this case, the records do not show whether PO2 Hersologo Trivinio or Arthur Tanjuakio placed markings on the confiscated items immediately after they had allegedly apprehended accused-appellant. PO2 Jerry Espadera, the custodian of the evidence, said he marked these items only after seeing them for the first time in the police headquarters.[39] This deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana. Were the bags which the policemen allegedly recovered from the scene of the buy-bust operation the same ones which PO2 Espadera marked in the police headquarters? This question gives rise only to surmises and speculations, and cannot prove beyond reasonable doubt the guilt of accused-appellant.

For all these reasons, we cannot uphold the conviction of accused-appellant. The government's drive against illegal drugs deserves everybody's support. But it cannot be pursued by ignoble means which are violative of constitutional rights. It is precisely when the government's purposes are beneficent that we should be most on our guard to protect these rights. As Justice Brandeis warned long ago, "the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

WHEREFORE, the decision of the Regional Trial Court, Branch 59, Angeles City is REVERSED and accused-appellant Ernesto Laxa is ACQUITTED on the ground of reasonable doubt. Consequently, he is ordered forthwith released from custody, unless he is being lawfully held for another crime.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), Buena, and De Leon, Jr., JJ., concur.
Quisumbing, J., on official business.

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[1] Per Judge Eliezer R. De los Santos

[2] Also known as "Ernesto Lacsa," "Jangco," and "Janggo."

[3] Records, p. 1.

[4] Id., p. 27.

[5] TSN (PO2 Jerry Espadera), pp. 5-8, Feb. 16, 1999; TSN (Arthur Tanjuakio), p. 4, Feb. 17, 1999; TSN (Arthur Tanjuakio), p. 7, Feb. 18, 1999.

[6] TSN (PO2 Jerry Espadera), pp. 8-11, 13, 17-19, 22, Feb. 16, 1999; TSN (Arthur Tanjuakio), p. 5, Feb. 17, 1999.

[7] Id., pp. 8-11, 13, 17-19, 22; Id., p. 5.

[8] TSN (Arthur Tanjuakio), pp. 3-6, Feb. 17, 1999.

[9] TSN (PO2 Jerry Espadera), pp. 15, 20, 38, Feb. 16, 1999; TSN (Arthur Tanjuakio), pp. 7-9, 16-18, 22-23, Feb. 17, 1999; TSN (PO2 Hersologo Trivinio), pp. 7-8, 10, 13, 19, 23, 39-41, 47, Feb. 18, 1999; TSN (PO1 Narciso Pangilinan), p. 6, Feb. 24, 1999.

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[10] TSN (Angelito Serrano), pp. 3-25, March 2, 1999; TSN (Marlynda Laxa), pp. 3-23, March 4, 1999; TSN (Rosalia Nacu), pp. 2-23, March 10, 1999; TSN (Fidel Ocampo), pp. 3-17, March 11, 1999; TSN (Ernesto Laxa), pp. 3-23, March 18, 1999; TSN (Jaime Donoya), pp. 23-45, March 18, 1999.

[11] Decision, pp. 13-14; Records, pp. 281-282.

[12] People v. Diopita, G.R. No. 130601, Dec. 4, 2000; People v. Malbog, G.R. No. 106634, Oct. 12, 2000; Peoplev. Ferras, 289 SCRA 94 (1998).

[13] Caubang v. People, 210 SCRA 377 (1992).

[14] People v. De los Santos, 314 SCRA 303 (1999).

[15] TSN (PO2 Hersologo Trivinio), p. 32, Feb. 18, 1999.

[16] TSN (PO2 Jerry Espadera), p. 35, Feb. 16, 1999.

[17] TSN (PO2 Jerry Espadera), pp. 15, 20, 38, Feb. 16, 1999; TSN (Arthur Tanjuakio), pp. 7-9, 16-18, 22-23, Feb. 17, 1999; TSN (PO1 Narciso Pangilinan), p. 6, Feb. 24, 1999.

[18] TSN (PO2 Hersologo Trivinio), pp. 34-35, Feb. 18, 1999.

[19] TSN (Arthur Tanjuakio), pp. 6-7, Feb. 17, 1999.

[20] Id., p. 21.

[21] Id., p. 34.

[22] TSN (PO2 Jerry Espadera), p. 5, Feb. 16, 1999.

[23] TSN (PO2 Hersologo Trivinio), p. 7, Feb. 18, 1999.

[24] TSN (PO1 Narciso Pangilinan), p. 20, Feb. 24, 1999.

[25] TSN (Arthur Tanjuakio), p. 37, Feb. 17, 1999.

[26] TSN (PO2 Jerry Espadera), p. 38, Feb. 16, 1999.

[27] TSN (Arthur Tanjuakio), p. 4, Feb. 17, 1999.

[28] TSN (PO2 Hersologo Trivinio), p. 19, Feb. 18, 1999.

[29] TSN (Arthur Tanjuakio), p. 6, Feb. 17, 1999.

[30] Id., p. 12.

[31] Id., p. 10.

[32] Id., p. 16.

[33] Joint affidavit of PO2 Jerry Espadera and PO2 Nelson Mendoza, dated Nov. 30, 1998; Records, pp. 6-7.

[34] Decision, pp. 13-14; Rollo, pp. 97-98.

[35] TSN (PO2 Jerry Espadera), pp. 14-20, Feb. 16, 1999.

[36] People v. Rigodon, 238 SCRA 27 (1994).

[37] 220 SCRA 670 (1993).

[38] 234 SCRA 51 (1994).

[39] TSN (PO2 Jerry Espadera), pp. 15, 20, 38, Feb. 16, 1999.

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