PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EVANGELINE GANENAS Y URBANO, APPELLANT.

G.R. No. 141400. September 06, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In drug cases, entrapment is a normal police technique to catch the culprit in flagrante delicto. On the other hand, denial and frame-up are the usual defenses set up by the accused. Here, affirmative statements are given greater weight than mere denials. In any case, the issue becomes factual and the findings of trial courts, which had firsthand opportunity to observe the demeanor of the witnesses, deserve highest respect.

The Case

Evangeline Ganenas y Urbano appeals the December 1, 1999 Decision[1] of the Regional Trial Court, Branch 103, Quezon City, in Criminal Case No. 99-81866, in which she was found guilty beyond reasonable doubt of violating Section 4, Article II of RA 6425 as amended, and was sentenced to suffer the penalty of reclusion perpetua and to pay a fine in the amount of one million pesos (P1,000,000).

In an Information dated March 15, 1999,[2] Assistant City Prosecutor Conrado R. Refuerzo charged appellant as follows:

> "That on or about the 12[th] day of March, 1999, in Quezon City, Philippines, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to one PO3 ORLANDO HERRERA, a poseur-buyer two (2) bricks of dried Marijuana fruiting tops weighing 951.70 (nine hundred fifty one point seventy) grams and 919.00 (nine hundred nineteen point zero zero) grams or a total of 1,870.70 (one thousand eight hundred seventy point seventy) grams, a prohibited drug, in violation of the said law."

Upon her arraignment on June 23, 1999, appellant, assisted by her counsel de oficio, Atty. Diosdado Savellano, pleaded not guilty.[3] After trial in due course, the court a quo rendered its Decision, the dispositive portion of which reads as follows:

> "ACCORDINGLY, accused Evangeline Ganenas y Urbano is hereby found GUILTY beyond reasonable doubt of violation of Section 4, Article II of RA 6425, as amended, as charged herein, and she is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay a fine of one million pesos (P1,000,000.00)."[4]

Hence, this appeal.[5]

The Facts

Version of the Prosecution

The Office of the Solicitor General, in its Brief,[6] presents the factual antecedents of the case in this manner:

> "A few days before March 12, 1999, the District Police Intelligence Unit (DPIU) of the Central Police District

(CPD) Headquarters in Camp Karingal, Quezon City received an information from a confidential informant that Edgardo Ganenas alias `Egay' and his wife, appellant Evangeline Ganenas, were engaged in the selling of illegal drugs.

"On order of his superiors to verify the information and to conduct a surveillance, PO3 Orlando Herrera proceeded to the area of Macaneneng, Bagong Barrio, Caloocan City where the spouses Ganenas were said to be residing. The queries made by PO3 Herrera in the neighborhood of that area confirmed the veracity of the information.

"Thereafter, an entrapment team was formed to conduct a buy-bust operation against the Spouses Ganenas. PO3 Herrera was assigned as the poseur buyer, to be assisted and introduced to the seller by the confidential informant who had previously told the Ganenas, that he had an interested and ready buyer of marijuana. The designated back-up officers were SPO4 Benjamin Elenzano, Jr., SPO2 Regie Antolin, SPO1 Ricardo Duque, SPO1 Jhonalden Tabios, PO2 Ramon Tolentino, and PO2 Resty Tudillo.

"During the briefing, the marked money was also prepared for the operation. It consist[ed] of two (2) pieces of genuine five hundred peso[-bills] (P500.00) x x x with Serial No. BL232579 and AV102746, and six (6) fake five hundred peso[-bills] (P500.00). PO3 Orlando Herrera wrote his initials `OH' at the lower right portion of the said bills.

"The rendezvous was set at 6:00 p.m. under the overpass bridge in Camachile Road, Quezon City.

"Upon arriving there at the designated place on the appointed time, PO3 Herrera, who was wearing sando, maong pants, and slippers, was introduced as the interested buyer by the informant to a woman who was already waiting there. The woman, who later on turned out to be the appellant, demanded the money from PO3 Herrera before she would hand over the marijuana leaves, wrapped in newspaper, which she was carrying. PO3 Herrera handed the money and appellant in turn handed to him the wrapped marijuana. When the exchange (`kaliwaan') took place and PO3 Herrera saw that the wrapped item handed to him by appellant consisted of two (2) bricks of suspected dried Marijuana leaves and upon noticing that appellant was all alone, he placed his arm around appellant's shoulder, identified himself to her as an undercover police officer and told her that she was being arrested. At this time, the back-up officers, who had earlier positioned themselves separately in different strategic locations where they witnessed the deal taking off and the arrest being effected by PO3 Herrera, approached them one after the other. Recovered from appellant's grip was the buy-bust marked money.

"The team investigated appellant on the spot about her source of the illegal drugs, and she led them to her residence in 25 Cadena de Amor, Macaneneng, Bagong Barrio, Caloocan City. PO3 Herrera and the confidential informant did not join the team in going to appellant's residence.

"Inside what appear[ed] to be a `bodega' in appellant's house in Caloocan, the officers saw nine (9) decks or bricks of suspected dried Marijuana leaves. Some were wrapped in a newspaper, others were not. One of the officers, PO2 Resty Tudillo, then got a big black travelling bag from the same room and placed all the bricks inside that bag. Afterwards, the team returned to Camp Karingal with the appellant and the bag.

"At Camp Karingal, PO3 Herrera and PO2 Tudillo executed their sworn statements. A police report was prepared by the officer-on-case, SPO4 Benjamin Elenzano, Jr., signed by the Chief of the CPD-DPIU, P/Supt. Cipriano Erfe Querol, Jr., Al-Haj. On the two (2) decks or bricks of suspected dried Marijuana leaves, subject of the buy-bust operation, PO3 Herrera wrote his initials `OH1' and `OH2.' On the other hand, PO2 Tudillo wrote his initials `RT1' to `RT9' on the nine (9) bricks that they got in Caloocan.

"Upon a request by the police for a laboratory examination of the total eleven (11) bricks or deck of suspected dried Marijuana leaves, the PNP Crime Laboratory thru Forensic Chemical Officer, Engr. Isidro L. Carino, conducted a qualitative examination thereof. All of the eleven (11) bricks, including the two (2) bricks subject

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of the buy-bust operation, yielded a positive result to the test for Marijuana, a prohibited drug."[7]

Version of the Defense

The trial court's findings of facts were adopted by and reproduced in appellant's Brief.[8] Being essentially the same as the prosecution's version, they need not be quoted here.

The Trial Court's Ruling

The trial court ruled that the "buy-bust" operation was conducted properly. It explained in this wise:

"3. As held in People vs. Boco (G.R. No. 129676, June 23, 1999, En Banc), material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. Corpus delicti has two elements: (1) proof of the occurrence of a certain event - for example, that a man has died or a building has been burned; and (2) some person's criminal liability for the act. The principal witnesses to the commission of the offense for which the accused is charged clearly established the above elements: an illegal sale of the dangerous drug actually took place and the accused was the author thereof. There are no material inconsistencies in the testimonies of the principal prosecution witnesses. Rather, they complement each other to give a complete picture of how the accused's illegal sale of the prohibited drug transpired, and how the sale led to her apprehension in flagrante delicto. At the very least, their testimonies establish beyond doubt that dangerous drugs were in the possession of the accused who had no authority to possess or sell them.

"4. The law enforcers enjoy the presumption that they have regularly performed their official duties in the absence of proof to the contrary. The imputation by the accused of an ill-motive to the police officers by claiming that PO3 Herrera and the husband of the accused, who are allegedly cousins, had a fight just before the accused was arrested is not enough to convince this court that the accused was a mere victim of a frame-up by an allegedly vengeful PO3 Herrera. This is so because firstly, both the claim of relationship as cousins as well as the contention that there was a prior fight were not corroborated, not even by the `centennial' lady witnesses for the accused despite their claim of being long time residents in the area; secondly, credibility[-]wise, the court leans in favor of the prosecution witnesses, the police officers, who ought to be commended for a successful operation; thirdly, the seizure of the huge quantity of drugs (11 bricks of marijuana leaves weighing around 900 grams each) by the officers make a very serious case against the accused and the court believes that no low-ranking police officer would be in a position to secure such quantity and use the same to falsely charge a heinous crime against someone who claims to be [the] mere housewife of a tricycle driver.

"5. Assuming arguendo that the black traveling bag containing (9) bricks of marijuana leaves was seized not from the house of the accused but from the house of a certain `Kiko' or Francisco Ramos in Macaneneng, Caloocan City, the instant case, however, involves not the seizure of said drugs but the seizure of the two (2) bricks of marijuana leaves which were the subject of the buy-bust operation earlier in Camachile, Quezon City. The denial by the accused of her arrest during the entrapment as well as her alibi that she was in Caloocan washing clothes are weak defenses as she was positively identified as the actual seller by the arresting officers including the poseur buyer.

"6. Moreover, when the accused testified in court, both on direct and cross-examination, the court has observed her demeanor to be evasive and sometimes she was responding belatedly or absent-mindedly to questions propounded to her with head bowed giving thereby a clear impression of shame and guilt."[9]

The Issues

Appellant submits the following assignment of errors:

"I

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> The trial court overlooked certain facts of substance and value in convicting the accused-appellant of violation of Section 4, Article II of Republic Act 6425, which could have altered the result of the case
>
> "II
>
> The trial court erred in finding that the law enforcers regularly performed their official duties"[10]

The Court's Ruling

The appeal has no merit.

Main IssueAppreciation of Evidence

Appellant argues that the trial court overlooked certain substantial facts that could have altered the outcome of the case. She harps on the alleged inconsistencies in the testimonies of the police officers with respect to the identities of the leader and the members of the team.

We are not persuaded. The alleged inconsistencies in the testimonies of the prosecution witnesses refer to minor or trivial incidents that do not detract from the fact that appellant was caught in flagrante delicto as a result of the buy-bust operation.[11] The identities of the leader and the members of the police team are nonessential matters that have no direct bearing upon the actual commission of the offense. Witnesses testifying on the same event do not have to be consistent in every detail, as differences in recollections, viewpoints or impressions are inevitable.[12] So long as they concur on the material points of their respective testimonies, slight differences in these matters do not destroy the veracity of their statements.[13]

Appellant likewise assails the genuineness of the surveillance conducted by the team, pointing out that the leader was not directly involved. She also stresses the failure of the prosecution to present the informer who could have corroborated the police officers' testimonies. Furthermore, she cites its failure to prove that her fingerprints appeared on the marked money allegedly received by her.

There is no requirement that surveillance should first be conducted before a buy-bust operation can be undertaken, especially when -- as in this case -- the operatives were accompanied to the scene by their informant.[14] To be sure, the prior surveillance of the suspected offender, the testimony of the informant, and the presentation of the buy-bust money are not indispensable to the prosecution of drug cases.[15]

Section 4, Article II of Republic Act No. 6425, as amended, penalizes not only the sale but also the delivery of prohibited drugs. The law defines deliver as "a person's act of knowingly passing a dangerous drug to another with or without consideration."[16] Considering that appellant was charged with the sale, the delivery and the giving away of prohibited drugs, the consummation of the crime may be sufficiently established even in the absence of marked money.

In support of her defense of denial, appellant claims that it would have been highly improbable for her to peddle prohibited drugs to the alleged poseur-buyer, considering that she knew the latter as a policeman and cousin of her husband.

Appellant's ratiocination is apparently misplaced. Sad as it may seem, the realities of contemporary times reveal that transactions involving drugs have transcended the boundaries of secrecy and discretion. Drug pushers sell their prohibited articles to any prospective buyer -- a stranger or not, in private or in public places, at daytime or at nighttime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law.[17] Moreover, knowledge by appellant that the poseur-buyer was a policeman was not a ground for inferring that she could not have sold the drugs to him, because such drugs are sold even to police officers nowadays.[18]

The presence of appellant at the scene of the crime and her act of selling two (2) bricks of marijuana in violation of RA 6425, as amended, were clearly and convincingly established by the testimony of PO3 Orlando Herrera, who had acted as the poseur-buyer; and by the corroborative statements of the other members of the buy-bust team, who had witnessed the illegal transaction. The police officer testified to the incidents that led to the arrest of herein appellant, as follows:

"Q.

On March 1999 where were you assigned?

A.

District Police Intelligence Unit, Camp Karingal

Q.

What [were] your specific duties?

A.

Intelligence and operatives.

Q.

On March 12 in the afternoon around 6:00, do you remember having reported for duty?

A.

Yes, sir.

Q.

Do you likewise remember if you were dispatched to a certain mission?

A.

Yes, sir.

Q.

What mission was that?

A.

To act as a poseur buyer.

Q.

Before you were dispatched to this buy bust operation, what preparation if any did you make?

A.

Marked money amounting to P4,000.00[,] 2 of which were genuine money and 6 were boodle money we used x x x in our buy bust.

Q.

Do you have any companion?

A.

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Yes, sir.

Q.

Who were your companion[s]?

A.

[SP]O4 Antolin, S[P]O1 Duke, S[P]O1 Tobias, P[O]2 Tolentino and P[O]3 Tudillo.

Q.

Before the actual buy bust was the briefing made?

A.

Yes, sir.

Q.

In the briefing, [did] you already kn[o]w the subject[?]

A.

Personally, [I did] not know the subject yet because our confidential informant [was] the one [who] made the arrangement regarding x x x the premise.

Q.

In the briefing, was the confidential informant present?

A.

Yes, sir.

Q.

What information was relayed to you by that informant, if any?

A.

Prior to the said buy[-]bust he already contacted the said drug pusher in her residence in Caloocan and they agreed that we [would] meet at Camachile and bring the stuff and we [would] give them the money.

Q.

What time more or less [did] the confidential informant and the suspect x x x me[e]t at Camachile?

A.

6:00 p.m.

Q.

You said you are a poseur buyer, how about your companion what was his designation?

A.

They were my back up.

Q.

Did you and your companion including the confidential informant [go] to Camachile Quezon City on that day?

A.

Yes, sir.

Q.

What time more or less did you arrive?

A.

6:00, sir.

Q.

What transportation did you take?

A.

We [used] 2 cars.

Q.

Who were the occupants of the car which you [were] in?

A.

S[PO]1 Antolin, P[O]2 Tudillo, [the] confidential informant and myself.

Q.

How about the other car?

A.

Duke, Tobias and Tolentino.

Q.

Upon arriving at the scene will you [describe to] the court your actual positioning there?

A.

We placed our car in a strategic place. My colleague[s] x x x also positioned themselves in a strategic place within x x x viewing distance x x x while x x x the confidential informant [and I] separated [from] them.

Q.

You said you and your confidential informant [were] separated from your back up?

A.

Yes, sir.

Q.

Aside from you and your confidential informant, who else were with you [o]n that spot where the supposed buy[-]bust [took place]?

A.

Only the 2 of us.

Q.

Upon arrival in Camachile how long did you wait [for] the suspect?

A.

The said suspect was already there.

Q.

What transpired next?

A.

When we arrived there our confidential informant introduced me to the said suspect [who] later on was identified as Mrs. Ganenas[; she] introduced me as the one who [was] interested in buying marijuana leaves.

Q.

Will you describe what your attire [was]?

A.

Sando, slipper[s] and maong pants.

Q.

How about the informant?

A.

T-shirt, short pants, slippers.

Q.

Upon being introduced to Ganenas, what happened next?

A.

She demanded [that I] show the money.

Q.

When this Ganenas demanded the money [from] you, what did you do?

A.

I show[ed] the money to her and likewise she took it [from] me and she handed 2 bricks of marijuana wrapped in a newspaper.

Q.

Upon giving her the money she gave you the merchandi[s]e?

A.

`Kaliwaan'

Q.

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After that what happened next?

A.

Since she was alone there [and] a woman I introduced myself as a police officer [and] I immediately effected her arrest.

x x x x x x x x x

Q.

Upon effect[ing] her arrest, what happened next?

A.

From the time when my back up [saw] the completion of the arrest they immediately approached us.

Q.

And what happened next?

A.

They subjected the subject [to a] spot interview and questioning"[19]

Appellant was caught in flagrante delicto in a legitimate entrapment operation conducted by the police. Hence, her identity as the seller of the prohibited drugs[20] cannot be doubted anymore. Such positive identification prevails over her weak defense of denial.[21]

Courts generally view with disfavor the defense of denial, on account of its aridity and the facility with which the accused can concoct it to suit their defense.[22] Negative and self-serving, it deserves no weight in law when unsubstantiated by clear and convincing evidence. Thus, it cannot be given greater evidentiary weight than that given to the testimonies of credible witnesses who testify on affirmative matters.[23] Thus, when the issue hinges on the credibility of the witnesses vis-à-vis the appellant's denial, the trial court's findings in that respect are generally not disturbed on appeal.[24]

The Supreme Court will not alter the trial courts' findings on the credibility of witnesses. Appellate courts give such findings greater weight and respect, because trial courts are in a better position to decide the issue of credibility.[25] Absent any showing of a fact or circumstance that the latter failed to appreciate, and which would have changed the result if it were considered, factual findings it laid down remain binding upon this Tribunal.[26]

Second IssuePresumption of Regularity in the Performance of Official Duty

Appellant casts suspicion on the means or methods by which the police officers conducted the operation. More particularly, she claims to be the victim of a frame-up. She further avers that the trial court gave scant consideration to the testimonies of her neighbors, who testified that the police operatives had gone to her house and illegally conducted a raid. According to her, the trial court relied heavily on the police officers' testimonies that what had actually transpired was a buy-bust operation, which resulted in her arrest.

We are not convinced. The records of the case show that neighbors of appellant had indeed seen her being escorted by police operatives in the vicinity of her house in Caloocan Cityon the alleged date of the crime. However, these neighbors had no idea that she had just been apprehended in Quezon City for selling marijuana to a poseur-buyer in a buy-bust operation. Their testimonies claiming that they saw the police officers searching her house, even if presumed true, would not negate or controvert the latter's testimonies regarding their anti-drug

operation that had led to her arrest and to the confiscation of two bricks of marijuana from her.

The testimonies of the police officers with respect to appellant's participation in the drug-related transaction, which was the subject of the operation, carried with it the presumption of regularity in the performance of official functions.[27] Courts accord credence and full faith to the testimonies of police authorities, as they are presumed to be performing their duties regularly, absent any convincing proof to the contrary.[28] In this case, no sufficient reason or valid explanation was presented to deviate from this presumption of regularity on their part.

In almost every case involving a buy-bust operation, the accused put up the defense of frame-up. The Supreme Court views such claim with disfavor, because "it can easily be feigned and fabricated."[29] Thus, in People v. Uy[30] the Court explicitly enunciated its position on the matter, as follows:

> "We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can easily be concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts x x x accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. x x x." (Italics supplied)

Finally, appellant challenges the legality of the raid conducted by the police officers in her house right after her arrest. She contends that she was not informed of her constitutional rights upon her apprehension, and that she did not voluntarily lead them to her house where nine (9) more bricks of marijuana were found.

Suffice it to say that if the police fail to inform the accused of the latter's constitutional rights upon arrest, the uncounselled confession, as well as its fruit, is inadmissible in evidence.[31] Likewise inadmissible are the prohibited drugs seized by the police from the house of the accused after the latter's arrest on the street, because such seizure does not fall under a valid warrantless search incidental to a lawful arrest.[32]

However, for purposes of this appeal, it is worthy to note that appellant was charged with and convicted of the sale, delivery and giving away of the two bricks of marijuana, which were the subject of the buy-bust operation. Hence, neither the legality of the subsequent search nor the admissibility of the nine bricks of marijuana found later can be put in issue. A finding on the matter, whether negative or affirmative, would be of no moment, because appellant's criminal liability in the instant case was based on his act of selling, delivering and giving away the two bricks of marijuana during the buy-bust operation, and not on the nine bricks subsequently found.

WHEREFORE, the appeal is hereby DENIED and the assailed Decision AFFIRMED. Costs against appellant.

SO ORDERED.
Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 14-18; penned by Judge Jaime N. Salazar Jr.

[2] Rollo, p. 6.

[3] Records, p. 27.

[4] RTC Decision, p. 5; Rollo, p. 18.

[5] This case was deemed submitted for resolution on March 26, 2001, upon receipt by this Court of Appellee's Brief. Appellant's Brief, on the other hand, was submitted to this Court on October 10, 2000. The filing of a Reply

Brief was deemed waived, as none had been filed within the reglementary period.

[6] Rollo, pp. 83-100; signed by Solicitor General Simeon v. Marcelo, Asst. Solicitor General Rodolfo G. Urbiztondo and Solicitor Luis F. Simon.

[7] Appellee's Brief, pp. 3-7; Rollo, pp. 87-91.

[8] Rollo, pp. 29-64; signed by Attys. Arceli A Rubin, Teresita S. de Guzman and Susan O. Bilog of the Public Attorney's Office.

[9] Decision, supra, pp. 68-69.

[10] Appellant's Brief, p. 1; Rollo p. 31.

[11] People v. Morico, 246 SCRA 214, July 14, 1995.

[12] People v. Alas, 274 SCRA 310, June 19, 1997.

[13] People v. Somooc, 244 SCRA 731, June 2, 1995.

[14] People v. Alao, 322 SCRA 380, January 19, 2000; People v. Lacbanes, 270 SCRA 193, March 20, 1997; People v. Tranca, 235 SCRA 455, August 17, 1994.

[15] People v. Chen Tiz Chang, 325 SCRA 776, February 17, 2000.

[16] People v. Enriquez, 281 SCRA 103, October 23, 1997.

[17] People v. Requiz, 318 SCRA 635, November 19, 1999; People v. Elamparo, 329 SCRA 404, March 31, 2000.

[18] People v. Alegro, 275 SCRA 216, July 8, 1997; People v. Briones, 266 SCRA 254, January 16, 1997.

[19] TSN, September 14, 1999, at pp. 3-6.

[20] People v. Castro, 274 SCRA 115, June 19, 1997.

[21] People v. De Vera, 275 SCRA 87, July 7, 1997.

[22] People v. Magallano, 266 SCRA 305, January 16, 1997; People v. Dacoba, 289 SCRA 265, April 20, 1998.

[23] People v. Parazo, 272 SCRA 512, May 14, 1997.

[24] People v. Tabaco, 270 SCRA 32, March 19, 1997.

[25] People v. Maalat, 275 SCRA 206, July 8, 1997.

[26] People v. Valles, 267 SCRA 103, January 28, 1987; People v. Lapuz, 250 SCRA 250, November 23, 1995.

[27] People v. Salazar, 266 SCRA 607, January 27, 1997.

[28] People v. Sotto, 275 SCRA 191, July 8, 1997.

[29] People v. Zaspa, GR No. 136396, September 21, 2000, per Vitug, J.

[30] GR No.129019, August 16, 2000, per Kapunan, J.

[31] People v. Andan, 269 SCRA 95, March 3, 1997.

[32] Espano v. CA, 288 SCRA 558, April 1, 1998.

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