

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LOWELL SALUDES Y DE GUZMAN @ “NONOY KALOG” AND NELSON SUMALINOG (AT LARGE), ACCUSED.

G.R. No. 144157. June 10, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] dated February 1, 2000 of the Regional Trial Court of Davao City, Branch 15, in Criminal Case No. 35,562-95, convicting LOWELL SALUDES y DE GUZMAN alias `NONOY KALOG',[2] of violation of Section 4, Article II of Republic Act No. 6425 (The Dangerous Drugs Act of 1972), as amended by Republic Act No. 7659, and sentencing him to suffer the penalty of Reclusion Perpetua.

Appellant Lowell Saludes and Nelson Sumalinog were charged in an information that reads:

That on or about 25 July 1995, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and helping one another, without being authorized by law, willfully, unlawfully and feloniously sold to a NARCOM Agent acting as a poseur-buyer 1,940.8 grams of Marijuana dried leaves with stalks placed in a white backpack and a gray traveling bag which was sold in the total amount of Ten Thousand (10,000.00) Pesos, which is a prohibited drug.

CONTRARY TO LAW.[3]

Since Nelson Sumalinog was at-large, only appellant was arraigned. He entered a plea of guilty,[4] after which, the case was tried on its merits.

The facts, as established by the prosecution, are as follows:

On July 25, 1995, at 10:00 a.m., the 11th Narcotics Field Unit of the Philippine National Police, based in Davao City, received word from a confidential informer (CI) that appellant and his co-accused, Nelson Sumalinog, were awaiting delivery of a stock of marijuana from Kidapawan, North Cotabato. Police Inspector Efren Alcuizar, the unit's Commanding Officer, organized a six-member police team[5] to conduct a buy-bust operation. SPO1 Bartolome Impuerto was designated as the poseur-buyer, while SPO3 Benedicto Redoble and the others were to act as back-up in securing the area.[6]

At 3:00 p.m. of that same day, SPO1 Impuerto, SPO3 Redoble and the CI proceeded to the house of Nelson on Mabini Boulevard, Davao City to commence the operations. Redoble waited around 10-15 meters away from the house while Impuerto and the CI went inside. The CI introduced Impuerto as the prospective buyer to Nelson and appellant.[7] Impuerto told them that he was interested in buying ten kilos of marijuana. Nelson replied that they only have four kilos, and when Impuerto expressed his desire to close the deal right there and then, Nelson refused and said that he does not sell near his house.

Thus, Nelson and appellant agreed to meet with Impuerto at 8:00 p.m. in the Aldevinco Market on Claro M. Recto

Street to deliver the marijuana. Thereafter, the policemen went back to the precinct where they reported the arrangement to P/Insp. Alcuizar. The buy-bust team met and decided that Impuerto will raise his right hand to his head as a signal that the delivery was complete.

At 8:00 that night, the buy-bust team proceeded to the Aldevinco Market. Impuerto stood in front of Miami Foods and waited for appellant. Redoble positioned himself directly across the street fronting Aldevinco Shopping Center. Commanding Officer Alcuizar and the CI waited nearby in a parked car. The other members of the team were located around the premises. After about five minutes, Nelson and appellant arrived in a taxicab. They were each carrying a bag. They approached Impuerto and, upon reaching him, appellant opened his white backpack to show its contents. Immediately after seeing the contents of the bag, Impuerto gave his pre-arranged signal to the team and declared, "NARCOM ako." He then grabbed appellant while Redoble gave chase to Nelson but failed to catch him.[8]

The officers arrested appellant and confiscated the two bags. They asked him the whereabouts of Nelson and he said they might find him in his house at Mabini Boulevard. The officers, together with appellant, proceeded to Nelson's house where they were able to talk to his wife, who said she did not know where her husband was.[9] The police then brought appellant to the police station.[10] It was established that the white backpack belonged to appellant while the gray traveling bag was owned by Nelson.[11] The arresting officers subsequently executed their joint affidavit of arrest.[12] The duty investigator, SPO2 Jaime Santillan, thereafter forwarded[13] the items to the Philippine National Police-Crime Laboratory in Ecoland, Davao City for examination. P/Insp. Noemi Austero, the Senior Chemist later testified that the items[14] seized were dried marijuana fruiting tops with a total combined weight of 1.691 kilos.[15]

In his defense, appellant testified that between 7:00 and 8:00 p.m. of July 25, 1995, he went to the house of one Larry Daylo on Claveria Street to buy marijuana to help him fall asleep. He bought four grams of marijuana for P 100.00, which Larry handed to him in a white backpack.

As he was walking home, he met several men in an alley. They pointed a gun at him and accused him of stealing. The men frisked him, grabbed his backpack, and ordered him to board their vehicle parked on Claveria Street. Appellant was unable to speak out of shock and fear. They stopped at Mabini Boulevard, where the men alighted and entered a nearby house. He was left in the car with one of their companions. Half an hour later, the men returned carrying a gray traveling bag which they placed in another vehicle together with the white backpack. One of them called the media and the barangay captain and, shortly thereafter, news reporters arrived and took pictures of the house and the bags. Appellant was brought to Camp Domingo Leonor where he was detained. He disclaimed any knowledge about the gray traveling bag and the house where it came from.[16]

On February 1, 2000, the trial court rendered the appealed decision, the dispositive portion of which states:

WHEREFORE, the prosecution having proven the guilt of the accused, LOWELL SALUDES is hereby sentenced to RECLUSION PERPETUA. The marijuana shall be given to the Dangerous Drugs Board and/or the Regional Narcotic Command. The preventive imprisonment of Lowell Saludes shall be credited in the service of his sentence if he agrees in writing to abide by the same disciplinary rule imposed upon a convicted prisoner pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.[17]

In this appeal, appellant contends that the trial court erred in finding him guilty beyond reasonable doubt of the crime charged despite the fact that there was no legitimate buy-bust operation which led to his alleged apprehension.[18]

The appeal hangs mainly on the alleged lack of credibility of the prosecution witnesses and the frame-up theory. It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[19]

Appellant claims that based on the testimonies of the prosecution witnesses, it can be established that there was no buy-bust operation since there was actually no marked money involved, contrary to what the arresting officers tried to show.[20] According to him, these police officers perjured themselves in court to vindicate whatever irregularities they may have committed in the performance of their duties, which led to his illegal apprehension.[21]

This factual issue raised by accused-appellant will not exculpate him.

A buy-bust operation is a form of entrapment that is resorted to for trapping and capturing felons in the execution of their criminal plan. The operation is sanctioned by law and has consistently proved to be an effective method of apprehending drug peddlers. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies with respect to the operation deserve full faith and credit.[22]

Appellant's reliance on the alleged inexistence of the buy-bust money to disprove the fact of sale is misplaced. We have previously ruled that the use of dusted money is not indispensable to prove the illegal sale of drugs. In fact, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale.[23]

In the case at bar, we find that the prosecution was able to establish the fact of sale, starting from the time that Officers Impuerto and Redoble first went to Mabini with the CI at 3:00 p.m. of July 25, 1995 for their initial negotiation. Their agreement to meet at the Aldevinco Public Market at 8:00 p.m. that same night was only for purposes of confirming the sale by the delivery of the marijuana. As far as the sale is concerned, the same was perfected earlier at 3:00 p.m.

Appellant's claim of frame-up must also fail. For the officers to frame him up, they must have known him prior to the incident. However, not a single shred of evidence was shown to bolster this claim. Rather, what was established was that Officer Impuerto became aware of appellant and his illegal trade only at 10:00 a.m. of July 25, 1995, when he learned of the tip from the CI. The informant even had to introduce Officer Impuerto to appellant and his companion before the officer began to negotiate a deal with him. Appellant himself admitted that he did not know the officers prior to this incident. There was, therefore, no motive for the officers to frame him up. Without proof of motive to falsely impute such a serious crime against appellant, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over his claim of having been framed.[24]

Quite simply, appellant's denial cannot prevail over the positive testimonies of the prosecution witnesses. We are not unaware of the reality that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, we view the defense of frame up with disfavor as it can easily be concocted and is 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, solely on the basis of the policemen's alleged rotten reputation, 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.[25]

Having established that a legitimate buy-bust operation occurred in the case at bar, there can now be no question as to the guilt of accused-appellant. Such operation has been considered as an effective mode of apprehending drug pushers.[26] If carried out with due regard to the constitutional and legal safeguards, it deserves judicial sanction.[27]

Section 4 of R.A. 6425, as amended by R.A. 7659, prescribes the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos on any person who, unless authorized by law, shall sell a prohibited drug. Such penalty shall be applied in all cases involving seven hundred fifty (750) grams or more of indian hemp or marijuana.[28] Since there were neither mitigating nor aggravating circumstances attending the sale by appellant of approximately 1.691 kilos of marijuana, the trial court correctly imposed the lesser of the two indivisible penalties — reclusion perpetua.[29]

In addition, we sentence appellant to pay the amount of P1,000,000.00 as fine, pursuant to the above-cited Section 4 of R.A. 6425, as amended, and current jurisprudence.[30] An appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors.[31]

WHEREFORE, in view of the foregoing, the decision dated February 1, 2000 of the Regional Trial Court, Branch 15, Davao City in Criminal Case No. 35,562-95, finding appellant Lowell Saludes y de Guzman @ "Nonoy Kalog" guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that appellant is further sentenced to pay a fine of One Million Pesos (P1,000,000.00).

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Penned by Judge Jesus V. Quitain.

[2] Also referred to as "Noel" Saludes in the records.

[3] Rollo, p. 9.

[4] Record, p. 42.

[5] Composed of SPO1 Bartolome Impuerto, SPO3 Benedicto Redoble, SPO2 Bato, P/Insp. Efren Alcuizar, SPO2 David Lastimosa and one other officer; TSN, 11 July 1995, pp. 3-6; TSN, May 22, 1997, p. 60.

[6] Id.

[7] Id.

[8] TSN, July 11, 1996, pp. 6-8; TSN, May 22, 1997, p. 56.

[9] TSN, September 5, 1996, p. 32.

[10] Id.

[11] TSN, June 10, 1997, p. 87.

[12] Joint affidavit dated July 27, 1995, Record, pp. 3-4.

- [13] Via a Letter Request signed by P/Insp. Efren B. Alcuizar dated 26 July 1995, Record, p.5.
- [14] Designated as Specimen `A' and `B', weighing 862.9 and 829.9 grams respectively.
- [15] TSN, July 9, 1997, pp. 94-97; Exhibit `B', Chemistry Report No. D-137-95 dated May 21, 1997.
- [16] TSN, July 14, 1999, pp. 180-185.
- [17] Record, pp. 22-30.
- [18] Accused-Appellant's Brief, Record, p. 73.
- [19] *People v. Bongalon*, G.R. No. 125025, January 23, 2002, citing *People v. Johnson*, 348 SCRA 526 (2000) and *People v. Uy*, 327 SCRA 325 (2000).
- [20] Accused-Appellant's Brief, p. 20, Record, p.92.
- [21] *Id.*
- [22] *Supra*.
- [23] *People v. Gireng*, 241 SCRA 11, 16 (1995), citing *People v. Pascual*, 208 SCRA 393 (1992) and *People v. Hoble*, 211 SCRA 675 (1992).
- [24] *Supra*, note 19.
- [25] *Id.*
- [26] *People v. Salazar*, 266 SCRA 607 (1997).
- [27] *Id.*; *People v. Herrera*, 247 SCRA 433 (1995).
- [28] R.A. 6435, Article IV, Section 20, as amended.
- [29] Revised Penal Code, Article 63 (2).
- [30] *People v. Ganenas*, G.R. No. 141400, September 6, 2001, 364 SCRA 582.
- [31] *People v. Lucero*, G.R. Nos. 102407-08, March 26, 2001, citing *People v. Listerio*, 335 SCRA 40 (2000).

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