

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERDINAND CERCADO Y MOZADA, ACCUSED-APPELLANT.

G.R. No. 144494. July 26, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal assailing the Decision of the Regional Trial Court of Urdaneta, Pangasinan, Branch 46, finding appellant Ferdinand Cercado y Mozada guilty of violating Section 4, Article II of Republic Act (R.A.) No. 6425, as amended by R.A. No. 7659, and sentencing him to suffer the penalty of Reclusion Perpetua and to pay a fine of P1,000,000.00 without any subsidiary penalty.

Appellant is charged under the following Information:

“That on or about November 5, 1999, in the evening, at Barangay Calipangpang (sic), Pozorrubio, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously (sic) sell one (1) brick (of) marijuana dried leaves, a prohibited drug, wrapped in a white plastic bag and weighing one (1) kilo, without the necessary permit or authority to do so.

CONTRARY to Sec. 4, Art. II, R. A. No. 6425, as amended by R. A. No. 7659.”[1]

Upon arraignment, appellant pleaded “Not Guilty” and then underwent trial.

The prosecution presented the testimony of the following witnesses: PO2 Edgar C. Torres, PO2 Teogenes N. Perez, P/Supt. Theresa Ann Bugayong-Cid, and P/Sr. Inspector Christopher N. Abrahano.

PO2 Edgar C. Torres testified that he was one of the elements of the First Regional Narcotics Office, Philippine National Police (PNP) Narcotics Group who arrested appellant by acting as poseur-buyer in a buy-bust operation on 5 November 1999 at Brgy. Alipangpang, Pozorrubio, Pangasinan. He recounted that while he was in his office at San Fernando City, La Union in the morning of 5 November 1999, a civilian confidential informant reported that he could buy one (1) kilo of marijuana from a certain “Alyas Imok” (who later turned out to be appellant Ferdinand Cercado y Mozada) of Brgy. Alipangpang, Pozorrubio, Pangasinan. He relayed this information to his Team Leader, P/Insp. Christopher N. Abrahano, who evaluated the report and ordered a buy-bust operation. P/Insp. Abrahano designated PO2 Torres as poseur-buyer and gave him the boodle money consisting of one (1) P1,000.00 bill[2] and two (2) P500.00 bills.[3] P/Insp. Abrahano, PO2 Rolando C. Navarette and PO2 Teogenes N. Perez were to act as back-up arresting officers. He narrated that the team thereafter proceeded to the PNP Pozorrubio Station to coordinate with the local police in charge with the narcotics operations in the area. He presented a Memorandum[4] addressed to the Chief of Police of Pozorrubio to prove that they in fact coordinated with the latter. After the PNP of Pozorrubio entered the Memorandum in the blotter, the team proceeded to the house of appellant at around 5:00 o’clock in the afternoon. Upon reaching the house of appellant, the confidential informant introduced PO2 Torres to “Alyas Imok” as an interested buyer of one (1) kilo of marijuana which appellant priced at P2,000.00 per kilo. Appellant told PO2 Torres and the confidential informant to wait for him and left the house. They waited in front of the house of appellant for about four (4) hours. When appellant arrived

at around 9:00 o'clock in the evening, he handed a plastic bag to PO2 Torres and demanded for the payment. PO2 Torres, in turn, gave appellant the P2,000.00 boodle money. After having ascertained that the material inside the plastic bag was marijuana, PO2 Torres lit a cigarette, the pre-arranged signal, and his back-up arresting officers rushed to arrest the appellant. PO2 Perez recovered the boodle money and the brick of marijuana from appellant. After the arrest, the team, together with appellant, went back to the PNP Pozorrubio Station to blotter the case. Subsequently, they proceeded to their sub-office in Nancayasan, Urdaneta City for proper investigation. The Booking Sheet,[5] Arrest Report, Affidavit of Arrest[6] and other documents relevant to the filing of the case were prepared in this office.[7]

PO2 Teogenes N. Perez, also a policeman assigned at the First Regional Narcotics Office, testified that he was one of the back-up arresting officers who arrested appellant. He corroborated the testimony of PO2 Torres on material points. From his position as back-up arresting officer, he recounts that he and his teammates strategically positioned themselves at a store near the house of appellant. From where he was, he saw appellant, PO2 Torres and the confidential informant talking with each other. At around 9:20 o'clock in the evening, or after an interval of about four (4) hours, PO2 Torres lit a cigarette, their pre-arranged signal. They rushed to apprehend appellant, conducted a body search and found the P2,000.00 boodle money in his possession. He also identified the brick of marijuana that they confiscated from appellant as the same brick of marijuana on exhibit and likewise identified one of the signatures in the wrapper of the marijuana as his own.[8]

P/Supt. Theresa Ann Bugayong-Cid, a Forensic Chemist at the PNP Regional Crime Laboratory Office of San Fernando City, La Union testified that they submitted to her one (1) white plastic bag with markings containing one (1) brick of suspected dried marijuana leaves and seeds, weighing 905.3 grams. Based on a Physical Science Report, the specimen was found positive for the presence of marijuana, a prohibited drug.[9]

P/Sr. Inspector Christopher N. Abrahano, the Team Leader of the Narcotics Group on the buy-bust operation, testified and corroborated the testimonies of PO2 Torres and PO2 Perez. He added that they arrived at the scene of the buy-bust operation at around 5:30 o'clock in the afternoon. He also said that he saw appellant leave and proceed at the back of his house. After waiting for more or less three (3) hours, he saw PO2 Torres light a cigarette, their pre-arranged signal. He and his men proceeded to apprehend the appellant, informed him of his constitutional rights and found in his possession the boodle money and a brick of marijuana which he identified as the same ones on exhibit. He further stated that they were only able to know the identity of appellant after he was apprehended. After the arrest, they brought appellant to their sub-office in Nancayasan, Urdaneta City for proper documentation. They also requested for medical and physical examination and made necessary receipts for the confiscated items. The confiscated brick of marijuana was subjected to a field test using the Narcotics Test Disposakit Identification which gave positive result to the test for Tetra Hydrocannabinol (THC). He identified the Certification of Field Test on exhibit.[10] After conducting the field test, they indorsed the marijuana for laboratory examination.

The defense presented the sole testimony of appellant. He testified that on 5 November 1999, the time the alleged incident took place, he was inside his house at Brgy. Alipangpang, Pozorrubio, Pangasinan. At around 7:00 o'clock in the evening, three (3) unidentified men allegedly entered and ransacked his house. He was then with his wife and two (2) children. He narrates that the three (3) men had guns and one of them was carrying a bag. Appellant asked for their names but got no reply. After searching the whole house without presenting any warrant, the three men brought appellant outside and asked him to admit possession of the marijuana inside the bag that one of them was carrying. They likewise asked appellant to give them P5,000.00. When he refused to admit and give them money, the three (3) men beat him up and later brought him to the "barangay".[11] He later learned that one of them was PO2 Perez. He never knew the names of the two (2) others, except that he remembers they

have ID's and thinks that they are policemen. On cross-examination, appellant maintained that the brick of marijuana was merely planted by the police operatives.[12]

The court a quo found appellant guilty as charged. Hence, this appeal.

In his Brief, appellant assigns the following errors:

“I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES PO2 EDGAR TORRES, PO2 TEOGENES PEREZ AND P/SR. INSPECTOR CHRISTOPHER NORTES ABRAHANO.

II

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND RASONABLE (sic) DOUBT.”[13]

On the first assignment of error, appellant contends that the version of the prosecution is not credible. He considers it contrary to human experience and beyond comprehension that appellant would openly sell marijuana, a prohibited drug, to people he hardly knew, to the point of exposing himself to a possible arrest. He likewise argues that the failure of the prosecution to identify and present the confidential informant weakens the case against him, citing the case of *People vs. Rojo*. [14]

On the second assignment of error, appellant contends, that granting *arguendo*, he sold one (1) kilo of dried marijuana leaves, the evidence remains insufficient to convict him since the prosecution failed to prove that he had no legal authority to sell marijuana. Relying on *People vs. Pajenado*, [15] he invokes the rule that negative allegations need no proof except when such negative allegation is an essential element of an offense. Hence, in this case, where the lack of authority or license to sell marijuana is an essential element of the offense charged, the failure of the prosecution to prove this negative allegation entitles him to an acquittal.

We affirm the conviction of appellant.

The court a quo did not err in according weight and credence to the testimonies of the prosecution witnesses. Their testimonies on how the buy-bust operation was conducted are free from contradiction or fabrication and find corroboration in irrefragable pieces of evidence.

In contrast, the version of appellant that three (3) men entered their house without any search warrant and that he was mauled when he refused to give them P5,000.00 is far from persuasive. He was not able to show any evil motive on the part of the prosecution witnesses to plant evidence against him, extort money from him, or testify falsely against him. His testimony is wanting and uncorroborated. Not even his wife and his two (2) children came forward to corroborate his testimony. The defense of frame-up in drug cases is easy to concoct and to be believed, must be supported by strong and convincing evidence. Appellant failed to discharge this burden of proof.

Appellant's submission that it is incredible to engage in open selling of marijuana to strangers is rejected. As correctly observed by the prosecution, over time, drug pushers have become increasingly daring and openly defiant of the law, [16] especially where law enforcement is weak and feeble.

Appellant likewise faults the prosecution for not presenting the informant. The presentation of the informant is not per se necessary. There is no need to present him if the sale of prohibited drug has been adequately proved by the prosecution witnesses. If the elements of the offense have been proved, the informant's testimony would be merely corroborative and cumulative. [17] His non-presentation would not create a hiatus in the evidence for the

prosecution.

We reiterate the case law that material to a 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.[18] In the case at bar, all these elements were proven. First, there was meeting of the minds between the buyer and the seller. PO2 Torres, the poseur-buyer, was willing to buy marijuana from appellant at P2,000.00 per kilo. Second, there was consideration for the sale, the parties having agreed upon the amount of P2,000.00. Third, there was delivery of one (1) kilo of dried marijuana leaves, the subject of the sale.

We also find no merit in the second assignment of error of the appellant. The doctrine in Pajenado has been modified in the case of *People v. de los Reyes*.^[19] In *de los Reyes*, we held that the Dangerous Drugs Act applies generally to all persons and proscribes the sale of dangerous drugs by any person and no person is presumed authorized to sell such drugs. It is the accused, claiming the benefit of the exemption, who must prove that he falls under the protective mantle of the exemption.

In *People v. Manalo*,^[20] we explained the rationale for the modification of the rule, thus:

“The general rule is that if a criminal charge is predicated on a negative allegation, or a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule admits of exceptions. Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the onus probandi rests upon him. Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant’s knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarly within his knowledge and he must establish the fact or suffer conviction (29 Am. Jur., 2d 184). Even in the case of *Pajenado*, this Court categorically ruled that although the prosecution has the burden of proving a negative averment which is an essential element of a crime, the prosecution, in view of the difficulty of proving a negative allegation, “need only establish a prima facie case from the best evidence obtainable. (Supra, at p.817) x x x ”^[21]

In the case at bar, it is clear that appellant had no authority or license to sell marijuana leaves. He was caught selling the prohibited drug in front of his house. He himself delivered the drug to the poseur-buyer and accepted the buy-bust money. He did not protest his arrest on the ground that he has authority to sell the drug. Until now, he has not produced any authority by way of defense.

Finally, we hold that the trial court correctly imposed the penalty of reclusion perpetua. Under Sec. 20 of R.A. No. 6425, as amended by R.A. No. 7659, if the dangerous drug involved is 750 grams or more of indian hemp or marijuana, the penalty to be imposed shall be reclusion perpetua to death and a fine ranging from P500,000.00 to P1,000,000.00. In this case, the brick of marijuana weighs over 750 grams. Hence, the penalty of reclusion perpetua and payment of a fine of P1,000,000.00 is within the ambit of the law.

WHEREFORE, premises considered, the appealed decision is **AFFIRMED** in toto. Costs against accused-appellant.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

- [1] Original Record (OR), pp. 18-19.
- [2] With Serial No. AA672159 and marked as Exhibit “A-1”.
- [3] Both bills bear the Serial No. BS134317 and are marked as Exhibits “A-2” and “A-3”.
- [4] Exhibit “B”; Folder of Exhibits, p. 9.
- [5] Exhibit “C”; Folder of Exhibits, p. 6.
- [6] Exhibit “D”; Folder of Exhibits, p. 3.
- [7] TSN, PO2 Edgar C. Torres, 17 February 2000, pp. 1-9 and 6 March 2000, pp. 19-22.
- [8] TSN, PO2 Teogenes N. Perez, 22 February 2000, pp. 1-9 and 6 March 2000, pp. 16-18.
- [9] TSN, P/Supt. Theresa Ann Bugayong-Cid, 6 March 2000, pp. 1-4.
- [10] Exhibit “I”; Folder of Exhibits, p. 4.
- [11] TSN, Ferdinand M. Cercado, 11 April 2000, p. 6.
- [12] Id., 11 April 2000, pp. 1-7 and 9 May 2000, pp. 1-4.
- [13] Brief for Accused-Appellant, p.1; Rollo, p. 42.

[14] 175 SCRA 119 (1989).

[15] 31 SCRA 812 (1970).

- [16] Brief for Plaintiff-Appellee, p. 11; Rollo, p. 84.
- [17] People v. Valdez, 304 SCRA 140, 153 (1999), citing People v. Salazar, 266 SCRA 607, 621 (1997).
- [18] People v. Boco, 309 SCRA 42, 56 (1999).
- [19] 229 SCRA 439 (1994), citing U.S. v. Chan Toco, 12 Phil 262, at 269-270 (1908).
- [20] People v. Manalo, 230 SCRA 309 (1994).
- [21] Ibid., pp. 318-319.

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