

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT CASIMIRO Y SERILLO, ACCUSED-APPELLANT.

G.R. No. 146277. June 20, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated October 17, 2000, of the Regional Trial Court, Branch 6, Baguio City, finding accused-appellant Albert Casimiro guilty of violating Republic Act No. 6425, §4, as amended, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00 and the costs.

The information against accused-appellant alleged:

That on or about the 17th day of August 1999, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or deliver to SPO2 DOROTHEO SUPA of the 14th Regional Field Office, Narcotics Unit, posing as buyer, about nine hundred fifty (950) grams of marijuana dried leaves in brick form, without any authority of law to do so and knowing fully well that the article is a prohibited drug, in violation of the aforecited provision of law.[2]

Upon arraignment, accused-appellant pleaded not guilty to the crime charged, whereupon the trial of the case followed.[3]

Three (3) witnesses testified for the prosecution: PO2 Dorotheo Supa,[4] Alma Margarita D. Villaseñor, and PO3 Juan Piggangay, Jr. Their testimonies established the following:

On August 16, 1999, a civilian informer, named Rose, walked into the office of Police Chief Inspector Benson Dagiw-a Leleng at the 14th Regional Narcotics Office, DPS Compound in Baguio City. She informed Chief Inspector Leleng and PO3 Juan Piggangay that a certain Albert Casimiro, accused-appellant herein, was engaged in the distribution or sale of marijuana. As proof, Rose told the police officers to wait and accused-appellant would call them up on that day. Accused-appellant, however, did not call up. Nonetheless, Police Chief Inspector Leleng formed a buy-bust team composed of P/Insp. Edgar Afalla as team leader, PO2 Dorotheo Supa as poseur-buyer, and SPO2 Marquez Madlon and PO3 Juan Piggangay, Jr. as back-up men.[5]

The following day, August 17, 1999, Rose again told the Narcotics agents to wait for a call from accused-appellant. True enough, at around 4:00 p.m., the telephone rang. When PO2 Supa answered the telephone, he found that it was accused-appellant who was calling. Rose introduced on the telephone PO2 Supa to accused-appellant as someone who wanted to buy marijuana. Accused-appellant allegedly agreed to meet PO2 Supa at around 1:00 p.m. the following day outside Anthony's Wine and Grocery at the YMCA Building, Post Office Loop, Upper Session Road. PO2 Supa said he wanted to buy one kilogram of marijuana and accused-appellant said it would cost P1,500.00. Accused-appellant said he would wear white pants and a black leather jacket to their meeting the following day.[6]

On August 18, 1999, at around 1:00 p.m., PO2 Supa and Rose went to the grocery store. SPO2 Madlon and PO3 Piggangay waited secretly inside the Post Office building, around 12 meters across the street, where they could see PO2 Supa and Rose. At around 1:30 p.m., accused-appellant arrived. Rose greeted him, “O Bert, heto na yung sinasabi ko sa iyong buyer. Bahala na kayong mag-usap. Aalis na ako.” (Bert, here is the buyer I told you about. I’ll leave you two alone to talk.) Rose then left the two men alone.[7]

PO2 Supa said he had P1,500.00 with him and asked for the marijuana. Accused-appellant gave the poseur-buyer a paper bag, which contained an object wrapped in plastic and newspaper. After determining from its appearance and smell that the object inside was marijuana, PO2 Supa gave a signal for the back-up team to make an arrest by combing his hair. He testified that he no longer gave the marked money to accused-appellant because he placed the latter under arrest, reciting to him his rights, while the back-up team ran from across the street.[8]

After arresting accused-appellant, the policemen took him to the 14th Narcom Office, where PO2 Supa, SPO2 Madlon, and PO3 Piggangay wrote their initials on the brick of marijuana before giving it to the evidence custodian. The policemen prepared a booking sheet and arrest report, affidavits, and a request for the laboratory examination of the confiscated marijuana.[9] They also prepared a “receipt of property seized,” dated August 18, 1999, (Exh. L) which states:

18 August 1999

RECEIPT OF PROPERTY SEIZED

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that I, SPO2 Marquez K. Madlon PNP, the undersigned seizing Officer have seized and taken possession of the property described hereunder from the

- Suspect: ALBERT CASIMIRO Y SERILLO, 24 yrs.-old, single, waiter, native of Mandaluyong, Metro Manila and resident of #2 Happy Homes, Old Lucban, Baguio City.
- Facts of the case: Suspect was arrested by elements of this office on or about 181330H August 1999, in front of Anthony’s Grocery along the vicinity of Post Office Loop, Baguio City.
- Nature of the Case: Violation of Section 4 Art. II of RA 6425 as amended by RA 7659.

EXHIBIT

QUANTITY/ DESCRIPTION

REMARKS

“A”

One (1) Bricks Marijuana Dried Leaves wrapped in a newspaper page placed inside a black plastic bag with markings Prime wear shirt haus place[d] inside a dark gray paper bag with markings Spencer & SM City

Delivered by the suspect to a poseur buyer.

WITNESSES:

(signed)

1. PO3 Juan A. Piggangay

PNP

(signed)

ALBERT CASIMIRO Y CERILLO

(Suspect/ Owner)

(signed)

2. PO2 Dorotheo T. Supa

PNP

(signed)

SPO2 Marquez K. Madlon

PNP (Seizing Officer)

Accused-appellant signed the receipt without the assistance of counsel.[10] The dried leaves were then examined by the PNP Crime Laboratory Service, Cordillera Administrative Region.[11] Police officer and forensic chemist Alma Margarita Villaseñor found the specimen to weigh 904.6 grams. The chemistry report dated August 20, 1999, signed by Villaseñor, stated that the leaves were positive for marijuana.[12]

The defense then presented evidence showing the following: Accused-appellant, then 25 years old, residing at No. 1 Old Lucban Street, Happy Homes, Baguio City,[13] said that at around 8:00 a.m. of August 16, 1999, he took the child of his neighbor to the Christian Mission Center School near the Baguio General Hospital. He then went home and stayed there during the day, as he usually did, except when he needed to fetch the boy from school. At around 5:00 or 5:30 p.m., he reported for work at the Perutz Bar[14] on Magsaysay Avenue, where he worked as a waiter, until 3:00 a.m. of the next day.[15]

On August 17, 1999, accused-appellant said he received a call from Rose, an acquaintance who worked as a guest relations officer at a club on Magsaysay Avenue. Rose offered to help him find a better job and asked that they meet at Anthony's Wine and Grocery. In the past, Rose had offered to sell him shabu or marijuana, but he refused to buy from her as he had no money.[16] At around 1:00 or 2:00 p.m., accused-appellant met Rose in front of the grocery store. While she talked to him about a job opening in a club in Dagupan City, PO3 Piggangay grabbed his hands from behind even as he shouted "I-handcuff, i-handcuff!" (Handcuff him, handcuff him!) Accused-appellant was then taken to the Regional Narcotics Office by the policemen, accompanied by Rose.[17]

At the Narcotics Office, PO3 Piggangay confronted accused-appellant about the marijuana allegedly seized from him. Accused-appellant said he denied having carried the bag of marijuana which he had seen Rose carrying earlier.[18] After taking pictures of him pointing at the bag, the policemen threatened to shoot him in a secluded place if he did not admit owning the marijuana. After failing to make him admit ownership of the marijuana, PO3 Piggangay offered to release accused-appellant if he gave them money. When accused-appellant replied that he had no money, PO3 Piggangay said, "If you have no money, then we will work on your papers so that you will go to Muntinlupa." The policemen then took accused-appellant to a hospital for a physical examination and afterwards asked him to sign a receipt of property, a booking sheet, and an arrest report without explaining their contents or allowing him to read them.[19]

On October 17, 2000, the trial court rendered a decision finding accused-appellant guilty of the crime charged. The dispositive portion of its decision states:

WHEREFORE, the Court finds the accused Albert Casimiro guilty beyond doubt of Violation of Section 4 of Article II of Republic Act 6425 as amended by Sections 13 and 17 of RA 7659 (Sale or delivery of 904.6

grams of marijuana brick) as charged in the Information and hereby sentences him to suffer the penalty of reclusion perpetua and to pay a Fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The marijuana brick weighing 904.6 grams (Exhs. J to J-4) being the subject of the crime and a prohibited drug is hereby declared confiscated and forfeited in favor of the State to be destroyed immediately in accordance with law.

The accused Albert Casimiro, being a detention prisoner, is entitled to be credited in the service of his sentence 4/5 of his preventive imprisonment in accordance with the provisions of Article 29 of the Revised Penal Code.

SO ORDERED.[20]

Hence, this appeal. Accused-appellant contends that the evidence against him is insufficient to prove his guilt beyond reasonable doubt.[21]

We find the appeal meritorious. Although the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal, the rule does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended, or misapplied by the trial court.[22] In this case, several such circumstances stand out as having been overlooked or misapprehended by the lower court which entitle accused-appellant to an acquittal.

First. With respect to the receipt of property seized from accused-appellant, the lower court declared:

The fact that there was a receipt of property seized issued by the police which was signed by the accused does not affect the liability of the accused. The receipt of property seized was issued by the police in accordance with their standard operating procedure in a buy bust operation to show what property was seized. The receipt should not be treated as an admission or confession.[23]

Indeed, the receipt (Exh. L) could not be considered evidence against accused-appellant because it was signed by him without the assistance of counsel.[24] Art. III, §12(1) of the Constitution provides:

Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

The receipt states that a brick of dried marijuana leaves was delivered by the suspect to a poseur buyer and signed by accused-appellant Albert Casimiro as "suspect/ owner." In effect, accused-appellant admitted that he delivered a prohibited drug to another, which is an offense under the law. Having been made without the assistance of counsel, it cannot be accepted as proof that marijuana was seized from him. It is inadmissible in evidence.[25]

In *People v. Obrero*,[26] this Court held that an uncounseled statement is presumed by the Constitution to be psychologically coerced. Swept into an unfamiliar environment and surrounded by intimidating figures typical of the atmosphere of a police interrogation, the suspect needs the guiding hand of counsel.

PO2 Supa testified that he informed accused-appellant of his Miranda rights while he was being arrested outside the grocery:

Q:

What happened after you brought out your comb and started combing your hair?

A:

Sir, my two companions went to our place and effected the arrest of the suspect.

Q:

What else happened after the two members of the team rushed to your place?

A:

We apprised the suspect of his constitutional rights and brought him to our Narcotics office.

Q:

How did you apprise the suspect of his rights as you said?

A:

Sir, we informed him of his constitutional rights by saying, "You are under arrest for violation of 6425. You have the right to remain silent. You have the rights to call for a lawyer of your own choice. Anything you say may be used as evidence in favor or against you." And we brought him to the office, sir.

Q:

What happened after that?

A:

Sir, we investigated him and the suspect identified himself as Albert Casimiro.[27]

The warning was incomplete. It did not include a statement that, if accused-appellant could not afford counsel, one would be assigned to him. The warning was perfunctory, made without any effort to find out if he understood it. It was merely ceremonial and inadequate in transmitting meaningful information to the suspect.[28] We cannot say that, in signing the receipt without a lawyer, accused-appellant acted willingly, intelligently, and freely. What is more, the police investigators did not pause long enough and wait for accused-appellant to say whether he was willing to answer their questions even without the assistance of counsel or whether he was waiving his right to remain silent at all.

Second. Nor is there other credible evidence against accused-appellant. As he points out, he could not have been so careless as to call the telephone number of the 14th Regional Narcotics Office and offer marijuana to the policemen there. Nor can we believe that when accused-appellant finally showed up at the appointed place, Rose could simply introduce PO2 Supa as the one who wanted to buy marijuana as if the latter were buying something not prohibited or illegal. While drugs may indeed be sold to police officers,[29] these transactions are usually done face-to face. It is improbable that a drug dealer would discuss the details of an illegal sale over the telephone with someone he has never seen before.

Third. The prosecution failed to establish the identity of the prohibited drug which constitutes the corpus delicti of the offense, an essential requirement in a drug-related case.[30]

In *People v. Mapa*,[31] accused-appellant was granted an acquittal 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. In *People v. Dismuke*,[32] this Court ruled that the failure to prove that the specimen of marijuana examined by

the forensic chemist was that seized from the accused was fatal to the prosecution's case. In *People v. Laxa*,^[33] the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of accused-appellant. One policeman admitted that he marked the seized items only after seeing them for the first time in the police headquarters. It was held:

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.

In this case, the prosecution failed to prove the crucial first link in the chain of custody. The prosecution witnesses PO2 Supa, SPO2 Madlon, and PO3 Piggangay admitted they did not write their initials on the brick of marijuana immediately after allegedly seizing it from accused-appellant outside the grocery store but only did so in their headquarters.^[34] The narcotics field test, which initially identified the seized item as marijuana, was likewise not conducted at the scene of the crime, but only at the narcotics office.^[35] There is thus reasonable doubt as to whether the item allegedly seized from accused-appellant is the same brick of marijuana marked by the policemen in their headquarters and given by them to the crime laboratory for examination.

According to PO3 Piggangay, the bag that he saw accused-appellant give PO2 Supa was colored gray or blue, the same color as that of the bag sent to the PNP Crime Laboratory Service for laboratory examination.^[36] PO2 Supa stated, however, that the bag of marijuana which accused-appellant was carrying in the grocery was colored brown.^[37] The discrepancy in the testimony of these two police officers casts additional doubt on the identity of the prohibited drug which constitutes the corpus delicti.

Indeed, there is failure in this case to observe standard operating procedure for a buy-bust operation. The government's drive against illegal drugs deserves everybody's support. But 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 the insidious encroachment by men of zeal, well meaning but without understanding."^[38] Our desire to stamp out criminality cannot be achieved at the expense of constitutional rights. For these reasons, we cannot uphold the conviction of accused-appellant.

WHEREFORE, the decision of the Regional Trial Court, Branch 6, Baguio City is REVERSED and accused-appellant Albert Casimiro 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 hereby ordered to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), and Corona, JJ., concur.
Quisumbing, J., abroad, on official business.

[1] Per Judge Ruben C. Ayson.

[2] Rollo, p. 10.

[3] Order dated September 30, 1999; Records, p. 27.

[4] Also known as "Doroteo Supa."

- [5] TSN (PO2 Dorotheo Supa), pp. 3-5, 21-22, Feb. 7, 2000; TSN (PO3 Juan Piggangay, Jr.), pp. 5-6, 8, March 14, 2000.
- [6] Id., pp. 5-8; TSN (PO2 Dorotheo Supa), pp. 13-14, Feb. 29, 2000.
- [7] Id., p. 8; TSN (PO3 Juan Piggangay, Jr.), pp. 11-12, March 14, 2000.
- [8] TSN (PO2 Dorotheo Supa), pp. 8-10, 15 Feb. 7, 2000; TSN (PO3 Juan Piggangay, Jr.), pp. 12-13, March 14, 2000.
- [9] TSN (PO2 Dorotheo Supa), pp. 10-11, Feb. 7, 2000; TSN (PO2 Dorotheo Supa), pp. 15-16, Feb. 29, 2000; TSN (PO3 Juan Piggangay, Jr.), pp. 14-18, March 14, 2000.
- [10] Exh. L; Records, p. 11.
- [11] TSN (PO2 Dorotheo Supa), p. 12, Feb. 7, 2000; TSN (PO3 Juan Piggangay, Jr.), p. 18, March 14, 2000.
- [12] Exh C; Folder of Exhibits.
- [13] TSN (Albert Casimiro), p. 2, April 4, 2000.
- [14] Also known as “Parrot’s Bar” or “Ferrets Bar.”
- [15] TSN (Albert Casimiro), pp. 2-8, April 4, 2000; TSN (Albert Casimiro), p. 2, May 9, 2000.
- [16] Id., pp. 8-14; id., pp. 2-5, 7.
- [17] TSN (Albert Casimiro), pp. 8-12, May 9, 2000.
- [18] Id., pp. 12-16.
- [19] TSN (Albert Casimiro), pp. 2-9, May 17, 2000; TSN (Albert Casimiro), pp. 2-7, June 23, 2000.
- [20] Decision, p. 11; Records, p. 125.
- [21] Accused-Appellant’s Brief, p. 1; Rollo, p. 50.
- [22] People v. Laxa, G.R. No. 138501, July 20, 2001; People v. de los Santos, 314 SCRA 303 (1999).
- [23] Decision, p. 9; Records, p. 123.
- [24] Exh. L; Records, p. 11. Accused-appellant also claims that the policemen tried to make him sign the arrest report and the booking sheet, although he refused to do this.
- [25] People v. Lacbanes, 270 SCRA 193 (1997).
- [26] People v. Obrero, 332 SCRA 190 (2000).
- [27] TSN (PO2 Dorotheo Supa), pp. 9-10, Feb. 7, 2000.
- [28] People v. Obrero, 332 SCRA 190 (2000).
- [29] People v. Flores, 243 SCRA 374 (1995).
- [30] People v. Lacap, G.R. No. 139114, October 23, 2001; People v. Chen Tiz Chang, 325 SCRA 776 (2000).

[31] 220 SCRA 670 (1993).

[32] 234 SCRA 51 (1994).

[33] *People v. Laxa*, G.R. No. 138501, July 20, 2001.

[34] TSN (PO2 Dorotheo Supa), pp. 10-11, Feb. 7, 2000; TSN (PO2 Dorotheo Supa), pp. 15-16, Feb. 29, 2000; TSN (PO3 Juan Piggangay, Jr.), pp. 14-18, March 14, 2000.

[35] Certificate of Narcotics Field Test dated August 18, 1999; Records, p. 16.

[36] TSN (PO3 Juan Piggangay), p. 11, March 14, 2000.

[37] TSN (PO2 Dorotheo Supa), p. 9, February 7, 2000.

[38] *People v. Laxa*, G.R. No. 138501, July 20, 2001.

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