

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TONY PEDRONAN Y LIMMAYOG, APPELLANT.

G.R. No. 148668. June 17, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Baguio City, Branch 6, in Criminal Case No. 17145-R, finding appellant, Tony Pedronan @ "Totoy", guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act 6425 (The Dangerous Drugs Act of 1972), as amended by Republic Act 7659, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.

Appellant Pedronan was charged on October 25, 1999 in an information that reads:

That on or about the 22[nd] day of October 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 deliver to SPO2 FREDERICK LAOANG, a member of the Philippine National Police who acted as poseur-buyer, five (5) bricks of dried flowering tops of marijuana each wrapped in a newsprint paper contained in a plastic bag with markings, all placed in a green backpack with markings weighing 4.026 kilograms, a prohibited drug, well knowing that the sale and delivery of such drug is prohibited without authority of law to do so, in violation of the aforementioned provisions of law.

CONTRARY TO LAW.[2]

Upon arraignment, appellant entered a plea of not guilty.[3] Thereafter, trial proceeded forthwith.

The prosecution's version of the facts is as follows:

At 4:00 p.m. of October 21, 1999, the Criminal Investigation and Detection Group, Cordillera Administrative Region (CIDG-CAR) stationed at DPS Compound, Baguio City, headed by P/Supt. Isagani Nerez, received a tip from a female civilian informant (CI) that a certain "Totoy" was engaged in the illegal sale of dried marijuana bricks at the Bahay Kawayan restaurant on Abanao, Baguio City.[4]

A police team, headed by P/Insp. Rodolfo Castil, Jr.,[5] was formed to conduct a buy-bust operation. On that same afternoon, some members of the team proceeded to Bahay Kawayan to see if the place was suitable for a drug entrapment operation.[6] The following day, October 22, 1999, at 3:00 p.m., the 6-member[7] police team proceeded to Bahay Kawayan Restaurant. SPO2 Frederick Laoang was designated as the poseur-buyer, while the others were ordered to secure the area. Laoang had with him the buy-bust money amounting to P4,000.00, which had been previously dusted with fluorescent powder at the National Bureau of Investigation office in Baguio.[8]

The actual operation started when Laoang and the female CI known only as "Mamang" went inside the restaurant, sat on a table and ordered drinks while waiting for appellant. At 4:00 p.m., a man who later turned out to be the appellant, Tony Pedronan, arrived. Mamang stood up to greet him and introduced SPO2 Laoang as "Jerry." When Mamang told him that Jerry wanted to buy dried marijuana bricks, appellant immediately offered two kilos of

marijuana at P1,750.00 per kilo. After reaching an agreement, appellant told Jerry and Mamang to wait inside the restaurant while he left to get the merchandise.[9]

As soon as appellant left, SPO2 Laoang went outside to inform the team about the agreement and to tell them to wait for the return of the appellant. Later, at around 7:30 p.m., appellant arrived with a green backpack slung on his right shoulder.[10] He told Laoang that the bag contained four kilos of dried marijuana bricks instead of two as agreed upon, and asked for additional payment.

SPO2 Laoang opened the backpack and saw five plastic bags of marijuana bricks. He immediately removed his bullcap, which was the pre-arranged signal to alert the team.[11] Thereafter, the members of the team rushed to the scene and arrested appellant.[12] Police Officers Modesto Carrera, Fernando Fernandez and Arturo Lavarias identified themselves as members of the CIDG Narcotics and read the appellant his rights.[13] Pedronan was subsequently booked[14] and arrested for violation of Section 4, Article II of R.A. 6425, as amended, for the sale of marijuana.

The five bricks contained in the green backpack were subsequently forwarded to NBI Forensic Chemist Ma. Carina Madrigal for laboratory examination.[15] The forensic examination confirmed that the bricks, which weighed 4.026 kilograms, consisted of marijuana.[16] The green backpack was also found positive[17] for marijuana leaves. Appellant was brought to the City Prosecutor's Office of Baguio for inquest, and thereafter detained at the Baguio City Jail.[18]

In his defense, appellant claimed that at 4:00 p.m. on October 22, 1999, he was in his house at No. 3932 Purok 3, Kias, Baguio City, doing repairs. At 7:00 p.m., he went to Bahay Kawayan at Abanao Street to have dinner before taking the 11:00 p.m. bus trip to Manila, where he intended to follow-up his application for overseas employment in Palau, New Guinea.[19]

As he was about to order food, police officers Laoang and Carrera approached him and invited him to their office. Appellant knew Carrera and Laoang to be policemen since he was in high school, so he acceded to their invitation.[20]

Upon boarding the van that would take them to the CIDG office in DPS Compound in Baguio City, Officer Carrera frisked appellant and took his wallet containing P8,000.00 in cash. When they reached the CIDG office, Carrera began to undress him and look for shabu.[21] When Carrera did not find any shabu, appellant asked him to return the money and have it receipted.[22] Carrera refused, so appellant tried to punch him and pushed Laoang and another officer which prompted the three police officers to subdue him. They put a black bag on his head and mauled him. The police officers only prepared their report of his alleged arrest thirty minutes after he was beaten up.[23]

At the time of appellant's arrest, he was carrying a blue traveling bag containing two pairs of maong pants, two t-shirts and two pairs of underwear.[24] He denied that he had a green backpack, which the police allegedly confiscated during his arrest. According to him, the police officers brought out a green bag when they were preparing their report.[25] He also denied knowing Mamang, the female confidential informant.[26]

The defense also presented Pacita Farinias, the sister of appellant, who testified that on October 22, 1999 her brother was at home from 8:00 a.m. and did not leave until around 6:30 to 7:00 p.m.[27]

After trial, the lower court rendered the following judgment:

WHEREFORE, the Court finds the accused Tony Pedronan guilty beyond reasonable doubt for the offense of sale or delivery of 4.026 kilograms of marijuana in violation of Section 4, Article 2 of R.A. 6425 as amended by Rep. Act 7659 as charged in the information and hereby sentences him to Reclusion Perpetua and to pay the

fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the cost.

The accused, Tony Pedronan, being a detention prisoner is entitled to be credited with 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code. The 4.026 kilograms of dried marijuana bricks contained in 5 plastic bags in the green and black backpack are declared confiscated and forfeited in favor of the State being the subject of the offense and instruments thereof to be destroyed immediately in accordance with law.

SO ORDERED.[28]

Appellant interposed the instant appeal on the lone assigned error:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED DESPITE FAILURE ON THE PART OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

Appellant contends that the evidence of the prosecution is full of contradictions and irregularity which to an unbiased mind, leads only to one conclusion, that the police fabricated the case against him. He cited the fact that the prosecution had three different versions with respect to the buy-bust money. According to him, since SPO2 Laoang allegedly went through a lot of trouble in preparing the buy-bust money by having it dusted with fluorescent powder, it is unusual that he did not make use of it. He also points to the fact that the members of the buy-bust team cannot seem to agree on the denominations of the money they allegedly prepared and whether or not the team actually conducted surveillance on the appellant the day before the alleged buy-bust operation.[29]

We agree with the appellant.

Although the trial court's evaluation of the credibility of the witnesses and their testimonies is entitled to great weight and will not be disturbed on appeal, this 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.[30] In the case at bar, several circumstances warrant the appellant's acquittal.

A thorough examination of the record of the case exposes flaws in the testimonies of Police Officers Laoang and Carrera. For one, they cannot agree on the amount and denomination of money used in the buy-bust operation. Officer Laoang claimed that they used four P1,000.00 bills but SPO2 Fernandez, the team leader, claims that the buy-bust money only amounted to P3,500.00 in denominations of P500.00.[31] Another team member, Officer Castil, claimed that the money consisted of three P500.00, or a total of P1,500.00 only.[32] Furthermore, the NBI Forensic Chemist, Ma. Carina Madrigal, testified that no letter request for ultraviolet dusting was received by her from the CIDG-CAR with respect to the buy-bust operation, contrary to the claims of the police officers.[33] The trial court itself remarked that it was unusual that the police officers went through a lot of trouble to have the money dusted only to keep it and not use it to pay the accused during the operation. Thus:

Q. You likewise testified, Mr. Witness that at the time you arrested the accused you were in possession of the P4,000.00 buy-bust money, is it not?

A. Yes, sir.

Q. Your prior arrangement, according to you, was for you to pay the accused once he delivers the marijuana to you is it not?

A. Yes, sir.

Q. But the buy-bust money remained in your possession up to the time that the accused was arrested and in fact, you never gave the money to him, is it not?

A. Yes, sir.

Q. That money was called buy-bust money purposely for you to entrap the accused, is it not?

A. Yes, sir.

Q. Of selling marijuana?

A. Yes, sir.

Q.

Where is the buy-bust money now, Mr. Witness?

A. It was used in some other operation, sir.

Q. You turned it over to your superior, is that what you are saying?

A. To my team leader, sir.

Q. Who was team leader?

A. At that time it was SPO2 Fernando Fernandez.

Q. So you don't know now where is the buy-bust money?

A. Yes, sir.

COURT: (To witness)

Q: You are telling this court that you went to a lot of trouble of having the buy-bust money marked with fluorescent powder by the NBI and yet when it came to the actual transaction you did not use it?

A. Because the suspect, sir, brought with him not the exact weight of the marijuana. (Emphasis ours.)[34]

More importantly, the prosecution failed to establish the identity of the prohibited drug which constitutes the corpus delicti of the offense, an essential requirement in drug-related cases.[35] In *People v. Mapa*,[36] appellant was acquitted after the prosecution failed to clarify whether the specimen submitted to the NBI for laboratory examination was the same one allegedly taken from him. In *People v. Dismuke*,[37] we ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the appellant was fatal to the prosecution's case.

In the case at bar, the five dried marijuana bricks presented in evidence cannot be relied upon because of the irregularity in its handling, a fact observed by the trial court itself when it admonished Officer Laoang for changing the wrappings of the marijuana bricks allegedly seized from appellant, thus:

COURT:

Did it occur to your mind that what could distinguish one brick of marijuana from another brick of marijuana that may have been previously confiscated; because they are almost always the same is their wrapper, precisely?

A. Not actually, sir.

Q. It did not occur to your mind? Are you telling us that you would be able to distinguish immediately what particular brick of marijuana was confiscated on what occasion from another occasion without their wrappers?

A. No, sir.

X X X X X X X X

Q.

Are you sure you did not change the marijuana?

A. No, sir.

Q. Because this is the first time that the court has come across the placing of a name on the crust of the marijuana, not on the wrapper but on the brick itself. Is that your standard operating procedure?

A. Yes, sir.

Q. How come it is not done by others?

A. I don't know, sir.

COURT:

You know, for the record, the court will call the attention of your superiors on this matter that you did not use the money that was dusted with fluorescent powder when you took pains and effort to have it dusted and that you changed the wrappers of the marijuana, thereby tampering and affecting the integrity of the evidence you submitted here. (Emphasis ours.)[38]

Apparently, not only was Officer Laoang remiss in his duties as arresting officer, he was also careless in handling the evidence. He admitted changing the original wrappings of the marijuana bricks, yet he failed to report such fact when it was his duty to do so in order to preserve the integrity of the chain of custody.

Q. When you changed the wrappers, did you write that in your report?

A. No, sir.

Q. You did not deem it necessary that the wrappers you changed would be needed in court?

A. No, sir.[39]

It is worthy to note that Officer Laoang began his law enforcement career in 1987 and had been a member of the Regional Criminal Investigation and Detection Group-Cordillera Administrative Region (RIDG-CAR) since 1996. The main function of the RIDG-CAR is to investigate dangerous drugs cases and effect arrests in connection with the same. Therefore, officer Laoang is not a green recruit unschooled in dangerous drugs cases and all matters related to it, hence, his errors with respect to the handling of the marijuana are inexcusable. As an officer of the law, SPO2 Laoang is presumed to be aware of his duties and responsibilities in apprehending criminals, securing the evidence related to arrests and protecting the chain of custody, just as it is presumed that in dispensing said duties, he acts with regularity.

In this case, the prosecution failed to prove the crucial first link in the chain of custody. There is a serious cloud of doubt as to whether the marijuana bricks allegedly seized from the appellant were the same bricks marked and forwarded by the police officers to the crime laboratory for examination and later presented in court for identification. In *People v. Casimiro*,^[40] this Court held:

x x x. 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." Our desire to stamp out criminality cannot be achieved at the expense of constitutional rights. x x x.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Baguio City, Branch 6, finding appellant 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, is REVERSED and SET ASIDE. Appellant Tony Pedronan is ACQUITTED on the ground of reasonable doubt. Consequently, he is ordered RELEASED from custody, unless he is being lawfully held for another lawful cause. The Director of the Bureau of Corrections is ordered to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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

[1] Penned by Judge Ruben C. Ayson.

[2] Record, p. 1.

[3] Record, p. 24.

[4] TSN, February 24, 2000, pp. 6-8.

[5] Also referred to as Rodolfo Castel in the records.

[6] Id.

[7] Composed of P/Insp. Rodolfo Castil, Jr., as the leader, SPO2 Frederick Laoang as poseur-buyer, and SPO1 Modesto Carrera, SPO2 Fernando Fernandez, PO1 Ruelito Peregrino, SPO2 Arturo Lavarias as members, Id.

- [8] TSN, April 11, 2000, pp. 9-12.
- [9] TSN, February 24, 2000, pp. 13-21, 23, 43.
- [10] TSN, April 11, 2000, p. 14.
- [11] Id. pp. 24-26.
- [12] TSN, April 3, 2000, p. 15.
- [13] Id. pp. 27-30.
- [14] Exhibit `A', Booking Sheet and Arrest Record dated October 22, 1999, Record, p. 6.
- [15] Exhibit `D', Letter request dated October 26, 1999, Folder of Exhibits, p. 1.
- [16] Exhibit `E', Certification by NBI Forensic Chemist Ma. Carina P. Madrigal dated October 23, 1999, Folder of Exhibits, p. 2.
- [17] Exhibit `F', Dangerous Drugs Marijuana Report No. DDM-99-03-CAR, Folder of Exhibits, p. 3.
- [18] Record, p. 36.
- [19] TSN, July 7, 2000, pp. 2-3.
- [20] Id.
- [21] Id., at pp. 4-5.
- [22] Id.
- [23] Id.
- [24] Id.
- [25] Id.
- [26] Id., at p. 16.
- [27] TSN, July 14, 2000, pp. 4-5.
- [28] Record, pp. 41-42.
- [29] Appellant's Brief, p. 2; Rollo, p. 57.
- [30] People v. Casimiro, G.R. No. 146277, 20 June 2002, citing People v. Laxa, G.R. No. 138501, 20 July 2001 and People v. de los Santos, G.R. No. 126998, 14 September 1999, 314 SCRA 303.
- [31] Record, p. 60.
- [32] Id.
- [33] Appellant's Brief, p. 7, Record, p. 62.
- [34] TSN, March 15, 2000, pp. 17-19.
- [35] People v. Lacap, G.R. No. 139114, 23 October 2001, 368 SCRA 124; People v. Chen Tiz Chang, 382 Phil. 669 (2000).
- [36] G.R. No. 91014, 31 March 1993, 220 SCRA 670.

[37] G.R. No. 108453, 11 July 1994, 234 SCRA 51.

[38] TSN, March 22, 2000, pp. 3-5.

[39] Id.

[40] G.R. No. 146277, June 20, 2002, citing *People v. Laxa*, G.R. No. 138501, July 20, 2001.

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