

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. STEPHEN CADLEY Y CIANO, APPELLANT.

G.R. No. 150735. March 15, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the November 5, 2001 Decision[1] of the Regional Trial Court of Angeles City, Branch 59, in Criminal Case No. 597 finding Stephen Cadley y Ciano (appellant) guilty of violating Section 4, Article II of Republic Act No. 6425 otherwise known as the Dangerous Drugs Act.

The accusatory portion of the Information[2] charging appellant for violation of Republic Act No. 6425 reads:

That on or about 11[th] day of June, 2000, in the municipality of Mabalacat, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, STEPHEN CADLEY y CIANO, without having been lawfully and permitted and authorized, did then and there willfully, unlawfully and feloniously deliver and/or give away to a poseur buyer SEVEN HUNDRED NINETY GRAMS and SEVEN THOUSAND FOUR HUNDRED TWENTY ONE TENTH THOUSANDTHS OF A GRAM (790.7421 g) of dried marijuana leaves, a prohibited drug.

Contrary to law.

Appellant pleaded not guilty during his arraignment on June 27, 2000.[3]

As culled from the records of the case, the prosecution established the following facts:

In May 2000, following information received from a female civilian informant that a certain “Steve” was a supplier of marijuana, team leader SPO4 Venusto Jamisolamin of the PNP Narcotics Group at Camp Olivas, San Fernando, Pampanga instructed his men to conduct surveillance and intelligence investigation at Agusos, Dau, Mabalacat, Pampanga.[4]

On June 10, 2000, PO2 Luisito Ubias who was designated as poseur-buyer and the civilian informant arranged with “Steve” by telephone for the sale of 50 kilos of marijuana to be made on June 11, 2000, at 4:00 a.m., at the Dau bus terminal station in Dau, Mabalacat, Pampanga.

As scheduled, the buy-bust team composed of SPO4 Jamisolamin, PO2 Ubias, PO1 Avelino Lopez, Jr., four other police officers, and the civilian informant proceeded to the Shell gasoline station near the Dau bus terminal station. Except for PO2 Ubias and the civilian informant who waited for the suspect near the San Trans bus terminal,[5] the other members of the team positioned themselves in such a way that they would be able to observe the transaction.

After waiting for more or less 25 minutes, the civilian informant called PO2 Ubias’ attention to a man wearing a “blue or green t-shirt” who directly approached them. The man, later identified as Stephen Cadley, herein appellant, showed a rectangular object wrapped in newspaper, with a hole through which the contents could be

seen,[6] and informed the two that he had left 70 kilos of marijuana with his companion.[7] PO2 Ubias took a sample of the contents of the rectangular object and once he was convinced that it was marijuana,[8] he wiped his face with a face-towel several times, the pre-arranged signal for the rest of the team members to approach them.

Appellant was at once arrested and the rectangular object was brought to the PNP Regional Crime Laboratory where laboratory tests conclusively proved that it contained marijuana weighing 790.7421 grams.[9]

Hence, the indictment of appellant.

In defense, appellant, who gave his occupation as a vegetable vendor at La Trinidad, Benguet, claimed as follows:

A certain Binyang who hails from Angeles City goes to his stall at least once a month to buy vegetables during which she would ask him if he knows of any marijuana for sale to which he would always respond in the negative. Sometimes, Binyang would also offer to sell him shabu.

On June 9, 2000, appellant informed Binyang that he was going down to Manila with his friends the following day, or on June 10, 2000, at 10:00 p.m., to buy spare parts for his vehicle, and they would stop-over in Tarlac.

Appellant left for Manila as planned and while on a stop-over at the Victory Bus Terminal in Tarlac, he saw Binyang and went to talk to her while his companions went to the comfort room. While he was talking to her, somebody approached him and poked a gun at him, saying, "NARCOM ito, huwag gagalaw." More persons, who later arrived, along with the persons who identified himself as a "NARCOM," forcibly dragged him inside a vehicle. Inside the vehicle, the persons mauled him, poked a gun at him, and demanded that he show them where the marijuana was and give the names of the persons in Benguet engaged in selling the same. He, however, denied having brought any marijuana or knowing any such persons.[10]

He was later brought to Camp Olivas, Pampanga where the police confiscated his personal belongings without issuing him a receipt therefor. PO2 Ubias then told him that he would be set free if he could produce P60,000.00. Using PO2 Ubias' cellphone, he thus called his brother McCoy[11] and uncle Sgt. Efren Aberin who repaired to Manila from Baguio City with the said amount.

Despite giving money to the police, he was not released and his brother and uncle were even charged with attempted bribery.[12]

With respect to the marijuana brick allegedly taken from him, appellant denied any knowledge thereof, he claiming that the purpose of his arrest was to extort money from him.

Testifying for appellant, his uncle Sgt. Aberin declared that he and McCoy, bringing with them P60,000.00, left Baguio City and arrived at Camp Olivas, Pampanga in the early morning of June 12, 2000. They refused to part off with the money, however, as appellant was not being released. They were then told to return on June 13, 2000, June 12, 2000 being a holiday. They thus returned to the camp on June 13, 2000 and which McCoy turned over the money to a certain SPO1 Gamit, upon which he (Sgt. Aberin) and McCoy were handcuffed and charged with attempted bribery.[13] He further declared that despite their delivery of P60,000 to the police, the police reported receiving only P10,000.

Testifying for the defense, Larry Pantig who, together with Benigno Guillermo, accompanied appellant to Manila, declared that while they were on a stop-over at the Victory Bus Station in Tarlac, they saw appellant talking to a lady after which five men held appellant at gunpoint and forced him to board a red vehicle with white stripes; and they (Pantig and Guillermo) thereupon boarded their own vehicle and followed the red vehicle bearing appellant and the five men until the gate of Clark, Pampanga, but were forced to return to Baguio when the vehicle stopped and one man got out cocking his firearm.[14]

The case was heard by different judges.[15]

As stated early on, the trial court convicted appellant by the assailed decision,[16] the dispositive portion[17] of which reads:

WHEREFORE, the Court finds accused STEPHEN CADLEY y CIANO guilty beyond reasonable doubt of the offense of Violation of Section 4, Article II of Republic Act No. 6425, as amended, and hereby sentences him to suffer a penalty of Reclusion Perpetua and a fine of Five Hundred Thousand Pesos (P500,000.00) and to pay the costs.

SO ORDERED.

Appellant assails the decision on the following grounds:

I.

THE APPEALED DECISION WAS RENDERED BY A NEWLY APPOINTED JUDGE WHO HAS NOT PERSONALLY HEARD ANY OF THE WITNESSES PRESENTED AND, THEREFORE, HAD NO OPPORTUNITY TO OBSERVE THEIR Demeanor VIS-A-VIS THE TRUTHFULNESS OF THEIR VERSIONS.

II.

THE COURT A QUO GRAVELY ERRED IN:

A. BEING PARTIAL, BY TOTALLY BELIEVING THE INCREDIBLE VERSION OF THE PROSECUTION; BY NOT APPRECIATING THE MAJOR INCONSISTENCIES OF THE PROSECUTION WITNESSES' TESTIMONIES AND THEIR LACK OF PERSONAL KNOWLEDGE ABOUT THE DETAILS OF THE ALLEGED BUY-BUST OPERATION; BY TOTALLY IGNORING THE EXCULPATORY FACTS IN FAVOR OF THE ACCUSED; AND BY NOT APPRECIATING THE CREDIBLE VERSION OF THE DEFENSE.

B. RELYING ON SURMISES AND CONJECTURES.

C. NOT DISMISSING THE INFORMATION FOR LACK OF JURISDICTION. GRANTING FOR THE SAKE OF ARGUMENT THAT THE COURT A QUO HAD JURISDICTION OVER THE INSTANT CASE, IT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED.

D. NOT APPRECIATING THAT THE ACCUSED'S DETENTION, INQUEST CONDUCTED, AND INFORMATION FILED WERE LEGALLY FLAWED/INFIRMED FROM THE VERY START AMOUNTING TO BLATANT VIOLATION OF THE CONSTITUTIONAL AND PROCEDURAL RIGHTS OF THE ACCUSED WHICH SHOULD ENTITLE THE LATTER FOR (sic) HIS IMMEDIATE RELEASE.

Appellant draws attention to the fact that the judge who wrote the decision did not hear the case, hence, did not have the opportunity to observe the demeanor of the witnesses. That a judge did not hear a case does not necessarily render him less competent in assessing the credibility of witnesses. He can rely on the transcripts of stenographic notes of their testimony and calibrate them in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law.[18]

Appellant goes on to call the buy-bust operation a fabrication in light of the lack of surveillance conducted on him, the admission of the prosecution that no buy-bust money was involved or used in the operation, and his

immediate arrest after his alleged production of only one brick of marijuana even if PO2 Ubias and the civilian informant were allegedly offered 70 kilos. He posits that no seller of marijuana would openly carry a brick thereof under his arm and negotiate its sale in the open. And he contends as denting the case for the prosecution its failure to present the confidential informant as a witness, and the inconsistency of statements of its witnesses.

In another vein, appellant argues that the trial court has no jurisdiction over the offense as the incident actually occurred in Tarlac City, and not in Dau, Pampanga. And he questions his warrantless arrest and his detention as violative of Article 125 of the Revised Penal Code, he not having waived its provision, and of Department of Justice Circular No. 61, September 21, 1993 on New Rules on Inquest.

Appellant's appeal does not lie.

A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method.[19] Flexibility is a trait of good police work. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process,[20] the courts will not pass on the wisdom thereof.

Neither is the fact that no money changed hands a critical factor that affects the outcome of the case at bar. There is no rule of law which requires that in buy-bust operations there must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.[21]

Moreover, Article II, Section 4 of Rep. Act No. 6425 punishes not only the sale but also the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer has been accepted by the seller of prohibited drugs.[22]

As the information reflects, appellant was charged with the unlawful delivery and/or giving away to a poseur buyer of 790.7421 grams of dried marijuana leaves. Since the prosecution has discharged its onus of proving the accusation as in fact it presented the prohibited drug and identified appellant as the offender,[23] it is immaterial that no payment was made to appellant.

As for the alleged inconsistencies in the testimonies of PO2 Lopez and SPO4 Jamisolamin, the same are minor and do not detract from the veracity and weight of the salient points thereof.

What is important is that the testimonies are supported by the physical evidence consisting of the marijuana block presented before the court in its original newspaper wrapper (bearing the initials of the arresting officers), and Chemistry Report No. D-0592-2000[24] "the genuineness, due execution and the truth of the contents" of which were admitted by appellant during the pre-trial on July 26, 2000 as shown by the Pre-Trial Order dated July 27, 2000.[25]

As to why the police arrested appellant after receiving only one brick of marijuana instead of waiting for the receipt of the rest of the 70 kilos offered for sale, PO2 Ubias explained that his instructions were to effect the pre-arranged signal once he had determined that what appellant was offering was indeed marijuana, and there was no instruction for him to try to recover the rest of the marijuana. Moreover, he proffered that when appellant was asked where the remainder of the marijuana was, appellant responded that "the other 70k were in the possession of his companion." [26]

Neither is it improbable for appellant to deal in drugs openly in a public place to persons he hardly knew, for drug dealers are known to sell their goods even to strangers. They ply their wares wherever prospective customers may be found. They have indeed become increasingly daring and openly defiant of the law.[27]

As for the non-presentation by the prosecution of the confidential informant, it is well-settled that except when the

appellant vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against appellant, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it would merely be corroborative of the apprehending officers' eyewitness testimonies.[28]

In the case at bar, the presentation of the confidential informant, whose identity must be hidden to preserve his invaluable service to the police,[29] the sale having been adequately proven by prosecution witnesses.[30]

Like alibi, frame-up as a defense has invariably been viewed with disfavor as it is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. Clear and convincing evidence is required to prove the defense of "frame-up" which appellant has failed to proffer.

If the only reason appellant was brought to the police station was, as he claims, to extort money, why did he fail to file charges — administrative or criminal — against the policemen, especially in light of the fact that his uncle who came to his rescue is a military sergeant and, therefore, ought to have been aware and knowledgeable of appellant's rights in the premises.

Neither is there any basis for appellant's contention that the incident occurred in Tarlac City, Tarlac, and not in Dau, Pampanga. The policemen were clear and straightforward in furnishing details of their location, whereas the description made by appellant and the witnesses for the defense as to the place of the alleged arrest is bereft of details determinative of the exact location of the arrest.

Parenthetically, albeit appellant had manifested that he had an independent witness who would testify to the occurrence of the incident in Tarlac City, no such witness was presented.

Finally, appellant's challenge on his warrantless arrest fails. When an accused is apprehended in flagrante delicto, under Section 5, Rule 113, paragraphs (a) and (b) of the 1985 Rules on Criminal Procedure, as a result of a buy-bust operation, as in appellant's case, the police are not only authorized but duty-bound to arrest him even without a warrant.[31]

As for appellant's contention that his detention was unlawful because there was no waiver of the provisions of Article 125 of the Revised Penal Code, the same likewise fails.

While a public officer who thus detains a person beyond the legal period may be held criminally liable, the proceeding taken against him for the act he has committed remains unaffected, for the two acts are distinct and separate.[32] (Underscoring supplied)

It is gathered that after appellant was arrested on June 11, 2000, and the Information indicting him was prepared by the Provincial Prosecutor on June 13, 2000 (the day before was a holiday), and was filed before the trial court on June 14, 2000. Assuming arguendo that the delay in the filing of the Information was intentional, appellant should have taken steps to report or file charges against the officers, failing which he cannot now rely on administrative shortcomings of police officers to get a judgment of acquittal.[33]

At all events, appellant's entry of a valid plea[34] and active participation in the trial cured any defect in his arrest.[35]

In fine, the trial court did not err in rendering the appealed decision.

WHEREFORE, the decision of the Regional Trial Court, Branch 59, Angeles City finding appellant, STEPHEN CADLEY y CIANO, guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, as amended, is hereby AFFIRMED.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 13-43.

[2] Records at 4.

[3] Id. at 17 and 19.

[4] Transcript of Stenographic Notes (TSN), November 23, 2000 at 24.

[5] TSN, October 18, 2000 at 5-10.

[6] Id. at 11.

[7] Id. at 13.

[8] Id. at 14.

[9] Exhibit "B," Chemistry Report No. D-0592-2000, Records at 139.

[10] TSN, Feb. 14, 2001, at 4-8; Exhibit "6," Sworn Statement of Stephen Cadley, Records at 207-208.

[11] Also referred to as "Macoy" in the TSNs.

[12] TSN, March 7, 2001 at 4-8; Exhibit "8," Information, Records at 212.

[13] TSN, March 7, 2001 at 2-8; Exhibit "8-B," Records at 214.

[14] TSN, May 2, 2001 at 3-6; Exhibit "9," Sworn Statement of Pantig and Guillermo, Records at 215.

[15] Judge Eliezer R. De Los Santos presided over the arraignment and pre-trial until he was appointed as Associate Justice of the Court of Appeals; Judge Ofelia Pinto served as pairing judge until the case was assigned to Judge Bernardita Gabitan-Erum who presided over most of the hearings; while Judge Ma. Angelica Paras-Quiambao took over from Judge Gabitan-Erum and penned the assailed decision.

[16] Rollo at 13-43.

[17] Rollo at 43.

[18] *People v. Sansaet*, G.R. No. 139330, February 6, 2002, 376 SCRA 426, 431; *People v. Hapa*, G.R. No. 125698, July 19, 2001, 361 SCRA 361, 375; *People v. Espanola*, G.R. No. 119308, April 18, 1997, 271 SCRA 689, 716; *People v. Rayray*, G.R. No. 90628, February 1, 1995, 241 SCRA 1, 8-9.

[19] *People v. Lacanes*, 270 SCRA 193 (1997), citing *People v. Tranca*, 235 SCRA 455 (1994).

[20] *People v. Hajili*, G.R. Nos. 149872-73, March 14, 2003; *People v. Tranca*, G.R. No. 110357, August 17, 1994, 235 SCRA 455, 463.

[21] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 703; *People v. Ganenas*, G.R. No. 141400, September 6, 2001, 364 SCRA 582; *People v. Agustin*, G.R. No. 98362, November 13, 1992, 215 SCRA 725, 732-733.

[22] *People v. Fabro*, G.R. No. 114261, February 10, 2000, 325 SCRA 285, 294.

[23] *People v. Rodriguez*, G.R. No. 144399, March 20, 2002; *People v. Fabro*, *supra*; *People v. Doria*, *supra*;

People v. Agustin, supra; People v. Lucero, G.R. No. 84656, January 4, 1994, 229 SCRA 1.

[24] Exhibit "B," Records at 139.

[25] Records at 35.

[26] TSN, October 18, 2000 at 13.

[27] People v. Eugenio, G.R. No. 146805, January 16, 2003, 395 SCRA 317, 327.

[28] Vide People v. Zheng Bai Hui, G.R. No. 127580, August 22, 2000, 338 SCRA 420, 475-476; People v. Doria, supra at 699-700.

[29] Ibid.

[30] People v. Doria, supra at 700.

[31] People v. Sibug, G.R. No. 108520, January 24, 1994, 229 SCRA 489, 500; People v. Labarias, G.R. No. 94953, September 5, 1994, 217 SCRA 483, 487.

[32] People v. Mabong, 100 Phil. 1069, 1071 (1957).

[33] People v. Tejada, G.R. No. 81520, February 21, 1989, 170 SCRA 497, 507.

[34] Records at 17 and 19.

[35] People v. Nazareno, G.R. No. 103964, August 1, 1996, 260 SCRA 256, 263.

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