

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRIQUE LOPEZ AND BIENVENIDA MISERICORDIA, DEFENDANTS-APPELLANTS.

G.R. NO. 172369. March 07, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

On appeal to this Court is the October 12, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 00411 affirming an earlier decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 98, which found herein appellants Enrique Lopez y Diodor (Lopez) and Bienvenida Misericordia y Reytas @ "Nida" (Misericordia) guilty of violating Section 4, Article II in relation to Section 2(e)1, F and I of Republic Act (R.A.) No. 6425, as amended by Batas Pambansa (BP) Blg. 179, otherwise known as the Dangerous Drugs Act of 1972.

On July 11, 1997, in the RTC of Quezon City, an Information[3] for violation of Section 4, Article II in relation to Section 2(e)1, F and I of R.A. No. 6425, as amended, was filed against appellants Lopez and Misericordia. Docketed in the RTC as Criminal Case No. Q-97-71868 which was raffled to Branch 98 of the court, the Information alleges:

That on or about the 8th day of July, 1997, in Quezon City, Philippines, the said accused, conspiring and confederating with and mutually helping each other, not having been authorized by law to sell, dispense, deliver, transport or distribute any prohibited drug, did then and there willfully and feloniously sell or offer for sale 51.98 grams of marijuana hashish, a prohibited drug to poseur-buyer SPOIII VENUSTO T. JAMISOLAMIN, in violation of said law.

CONTRARY TO LAW.

On arraignment, both accused entered a plea of "Not Guilty" to the crime charged.

However, on the day the trial was originally scheduled to commence, both accused, through counsel, manifested their willingness to plead guilty. Accordingly, counsel moved for a suspension of the trial in order to file the necessary pleading and to obtain the prosecution's conformity to the intended plea of guilty. The trial court granted the motion.

Later, the two accused, again through counsel, filed a motion for a re-examination of the allegedly confiscated item to determine the qualitative and quantitative contents thereof of marijuana hashish in the hope of availing of the right to bail. Counsel, however, failed to attend several subsequent hearings impelling the trial court to appoint a new counsel in behalf of both accused. The new counsel reiterated the earlier motion for a re-examination of the confiscated item expressing intention towards plea bargaining should the results of the re-examination justify the filing of a new and less serious charge. Though granted, the desired re-examination yielded the same result.

In time, trial ensued. Two conflicting versions of events emerged from the varying testimonies of the prosecution and defense witnesses.

To substantiate its charge, the prosecution presented police narcotics operatives SPO2 William Manglo, a member of the buy-bust team, and SPO4 Venusto Jamisolamin, the alleged poseur-buyer. The testimony of the forensic chemist was dispensed with after stipulations were made as to what she would have testified on.

As narrated by SPOs Manglo and Jamisolamin, the prosecution's version of the incident is as follows:

At eight o'clock in the morning of July 1, 1997, a report was made that a certain "Iking" of Don Pepe St., Brgy. Sto. Domingo, Quezon City was engaged in the sale of shabu, marijuana and hashish. Thereafter, a surveillance team was formed headed by P/Insp. Joselito Dominguez and composed of SPO2 Wilmer G. Antonio, SPO2 Manglo, SPO4 Jamisolamin and the confidential informant. The surveillance conducted by the team from July 2 to 5, 1997 confirmed the report of illegal drug activities of "Iking" which turned out to be a mere alias for accused Lopez. The surveillance further disclosed that co-accused Misericordia was working with "Iking" in the latter's illegal activities.

On July 7, 1997, the police informant accompanied SPO4 Jamisolamin to the place of Lopez where a test-buy was successfully conducted. Lopez and Misericordia handed over a sample of marijuana to

SPO4 Jamisolamin and it was agreed that a bigger volume of marijuana would be made available the next night.

At eight o'clock in the following evening, July 8, 1997, the team returned to the place of Lopez where its members positioned themselves in the vicinity while the informant and the disguised poseur-buyer, SPO4 Jamisolamin, entered Lopez's house. SPO4 Jamisolamin brought along P10,000.00 boodle money and a Voyager alarm signal. When SPO4 Jamisolamin flashed the money, Lopez ordered Misericordia to get the drugs and the latter promptly handed over to SPO4 Jamisolamin a rectangular object wrapped in aluminum foil. While examining the object, SPO4 Jamisolamin pressed the Voyager alarm and returned to where his companions were stationed. The team then apprehended the two accused and brought them to the police station while the seized evidence was forwarded to the PNP Crime Laboratory for technical analysis. The standard tests were conducted, the result of which proved that the seized evidence was positive for marijuana resin (or hashish), a prohibited drug.

The defense has an entirely different account of what supposedly transpired on the evening of July 8, 1997.

Through the testimonies of the two accused who both categorically denied having sold marijuana hashish on the evening in question, the defense belabored to establish that at about six o'clock in the early evening of July 8, 1997, Misericordia was conversing with neighbors along Don Pepe Street when a car stopped. Among those on board the car were men, two of whom Misericordia later learned were SPO4 Jamisolamin and SPO2 Antonio. The two approached Misericordia and the neighbors she was conversing with and allegedly asked if they knew a man named Peralta. Misericordia answered in the affirmative, got into the car on request of SPO4 Jamisolamin and SPO2 Antonio and, after going around, showed them the house of Peralta where she pointed Lopez out. The two police officers picked up Lopez, made him crouch inside the car and thereafter drove around the streets of the neighborhood until about nine o'clock that same evening when the two of them i.e., Misericordia and Lopez, were brought to the police station in Kamuning, thereat booked and detained and brought out for inquest days later.

In a decision^[4] dated August 10, 2004, the trial court found both accused GUILTY as charged and sentenced them accordingly, to wit:

WHEREFORE, in view of the foregoing, this Court finds both accused Enrique Lopez y Diodor and Bienvenida Misericordia y Reytas guilty beyond reasonable doubt for violation of Section 4, Article II in relation to Section 2(e) 1, F and I of R.A. 6425 as amended by Batas Pambansa Blg. 179 in selling 51.98 grams of marijuana resin and are hereby sentenced to suffer the penalty of reclusion perpetua there being no mitigating or aggravating circumstance present. The prohibited drug seized from the accused is hereby forfeited in favor of the government, to be disposed in accordance with law.

SO ORDERED.

Therefrom, both accused went on appeal to the CA in CA-G.R. CR No. 00411. As stated at the outset hereof, the CA, in its decision[5] of October 12, 2005, finding no basis for reversal, affirmed that of the trial court, thus:

WHEREFORE, the appeal is DENIED and the appealed Decision is AFFIRMED.

SO ORDERED.

Hence, appellants' present recourse raising the sole issue of whether or not the two courts below gravely erred in finding them guilty beyond reasonable doubt for violation of Section 4, Article II in relation to Section 2(e)1, F and I of R.A. No. 6425, as amended by BP Blg. 179.

We DENY.

Appellants' main arguments rest on their two submissions, namely:

- 1) Lack of credibility of the testimonies of prosecution's witnesses; and
- 2) Failure of the prosecution to present the police confidential informant.

It is appellants' posture that the immediate sale to SPO4 Jamisolamin of an enormous amount of marijuana hashish on the evening of July 8, 1997, even as they met Jamisolamin only that evening, is not in conformity with knowledge, nor consistent with the experience of mankind, hence incredible and unworthy of belief.[6] On this score, they invoke the ruling in *People v. Pagaura*,[7] where the Court stated inter alia:

The testimonies of the prosecution witnesses not only appear to be improbable but also incredible. We find it rather foolish that one who peddles illegal drugs would boldly and unashamedly present his wares to total strangers, lest he be caught in flagrante when, as has been demonstrated in similar cases, such nefarious deals are carried on with utmost secrecy or whispers to avoid detection.

Pagaura, however, stems from an entirely different factual milieu. There, the accused approached the police-witnesses who were then in civilian clothes requesting the latter's assistance in securing a boat ticket at the wharf. Pagaura allegedly insisted on their help since he was afraid of the inspection due to his black bag containing a kilo of marijuana. To convince the men, Pagaura allegedly opened his bag right then and there to show them the marijuana.

It is not difficult to understand why the Court in *Pagaura* dismissed such a tall tale of the prosecution. For it is indeed hard to believe that a person carrying a known prohibited substance would approach complete strangers to display his wares on the pretext that he was eliciting help from those absolute strangers.

In the present case, the testimonies of the prosecution witnesses do not suffer from the same inherent incredibility, as in *Pagaura*. SPO4 Jamisolamin was accompanied by the informant who was familiar with the appellants. Furthermore, the night prior to the actual buy-bust operation, the informant and Jamisolamin had met with the appellants, successfully concluded a test-buy and agreed to meet again the following night for the sale of a larger quantity. A case more in point would be *People v. Chua*: [8]

xxx In a string of cases we have held that it is not uncommon for drug dealers to sell their commodities to total strangers heedless of time or place. Besides, the law does not prescribe as an element of the crime that the vendor and vendee be familiar with each other. What matters in a drug related case is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the same and delivery of the prohibited drugs. xxx.

xxx xxx xxx

xxx [D]rug pushers do not confine their trade to known customers; complete strangers are accommodated provided they have the money to pay. Moreover, why a dealer would trust a buyer, which is to say the motive behind a drug deal, is not an essential element of drug-related offense.

It is appellants' next submission that the prosecution should have presented the confidential informant as a witness, failing in which a hiatus exists in the prosecution's evidence. To back up their submission, appellants cite *People v. Bagano*[9] and *People v. Rojo*.[10] Sadly, however, the cases relied upon do not again factually sit squarely with the case at hand.

In general, the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative. In a case involving the sale of illegal drugs, what should be proven beyond reasonable doubt is the fact of the sale itself. Hence, like the non-presentation of the marked money used in buying the contraband, the non-presentation of the informer would not necessarily create a hiatus in the prosecution's evidence.[11]

For sure, unlike the instant case, *Bagano* and *Rojo* arose from a set of circumstances which provide exceptions to the foregoing general rule. In the two cases invoked by appellants, the testimony of the informant would not be merely corroborative and cumulative, but was direct and material to the defense of the accused. Hence, it was absolutely necessary that the accused in those cases were offered the chance to cross-examine the informants. In both *Bagano* and *Rojo*, the testimony of the witnesses presented by the prosecution in lieu of the informants suffered from the defect of being merely hearsay as only the confidential informant was in a position to testify from personal knowledge as to the actual sale.

In *Bagano*, the testimonies of the prosecution's principal witness were mere translations and/or interpretations of what the accused supposedly said in the dialect to and interpreted by the informant. As such, the informant's testimony was pure hearsay. Not only that. In *Bagano*, the informant's testimony was particularly crucial due to the accused's claim in that case that the prohibited drug belonged to the informant himself. The Court went on to say in *Bagano*:

Emateo's non-production as a witness could have been excused had he merely played the part of a true informer. An informer is one who communicates knowledge of someone having committed or about to commit a crime to the proper authorities who by themselves, acting independently, may obtain evidence necessary for the prosecution of the offender. On the contrary, he did more than that. He played a substantial part in the act complained of and is in fact claimed by the appellant as the real owner of the subject marijuana.

The case of *Sorrentino v. U.S.* (163 F. 2d 627 [1947]), provides the distinction between one who played the part of a mere informer and a decoy. There, the defendant was charged for an illegal sale of opium in favor of a person, the identity of whom the US government claims to be confidential. Objections as regards questions seeking to ascertain his identity were sustained by the trial court on the ground that it will violate the privilege of withholding the identity of informers. In reversing the trial court, it was held that:

"If the person whom Grady called an informer had been an informer and nothing more, appellant would not have been entitled to have his identity disclosed; but the person whom Grady called an informer was something more. He was the person to whom appellant was said to have sold and dispensed the opium described in the indictment. Information as to this person's identity was therefore material to appellant's defense xxx."

The particular factual backdrop in *Rojo* likewise provided for the indispensability of the confidential informant as a crucial witness:

The theory of the prosecution is that the informant acted as buyer in the entrapment proceedings. However, the

alleged informant was never presented as a witness. His identity was never revealed because it was supposed to be confidential information.

The evidence of the prosecution on the matter of the participation of the informant as alleged buyer in the entrapment proceedings is contradictory. xxx.

xxx xxx xxx

Obviously, there is a fatal flaw in the prosecution's evidence on how the alleged entrapment proceedings took place. The so-called informant was never presented as a witness and he was never identified. His having acted as buyer in the alleged entrapment proceedings was not established as a fact by evidence beyond reasonable doubt because of the contradictory evidence as to who really posed as buyer. There is now even a doubt as to whether or not the entrapment proceedings ever took place at all.

xxx xxx xxx

These are the facts as found by the trial court which show that none of the prosecution witnesses actually saw the appellant deliver the alleged bag of flowering tops of marijuana which was allegedly sold to the informant. It also indicates that they did not see the informant pay the alleged consideration of the sale with a 10-peso bill. They just assumed that the transaction was consummated upon a signal from the informant. There is, therefore, no direct evidence, much less conclusive proof, to establish the alleged unlawful sale of marijuana being pinned on appellant.

On the other hand, the present case does not confront us with a situation where it can be said that the informant's testimony is indispensable such that a conviction would be baseless without it. Here, it was SPO4 Jamisolamin, whose testimony was duly adduced, that acted as poseur-buyer. He testified as to his own personal knowledge of the sale that had taken place. The informant's testimony, then, would have been merely corroborative and cumulative because the fact of sale of the prohibited drug was already established by the direct testimony of SPO4 Jamisolamin who actively took part in the transaction. If the prosecution has several eyewitnesses, as in the instant case, it need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature.[12]

We have, in numerous cases, made clear the policy of the Court, founded on reason and experience, to sustain the factual findings of the trial court in criminal cases. We give full credence to the appreciation of testimonial evidence by the trial court especially if what is at issue is the credibility of the witnesses. The oft-repeated principle is that where the credibility of a witness is an issue, great respect is accorded to the trial court's evaluation thereof. This is as it should be. For, in the nature of things, the trial court is in the best position to assess issues of credibility because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination.[13]

Besides, credence is given to prosecution witnesses who are police officers for they enjoy the presumption of having performed their duties in a regular manner, unless, of course, there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties,[14] none of which exists in this case.

There is absolutely no evidence to show that the members of the buy-bust team who were presented as witnesses were motivated by any reason other than their official duty. If indeed there was a frame-up, the officers must have known appellants prior to the incident.[15] However, appellant Lopez himself admitted neither knowing these police officers nor having any kind of history with them.

Absent proof of any intent on the part of the police officers to falsely impute commission of a crime against

appellants, the presumption of regularity in the performance of official duty stands. Appellants' self-serving claim of a frame-up must simply collapse.

WHEREFORE, the instant petition is DENIED and the assailed decision of the CA, affirmatory of that of the trial court, is AFFIRMED.

Costs against appellants.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Roberto A. Barrios (now deceased), with Associate Justices Mario L. Guarina III and Arturo G. Tayag, concurring; Rollo, pp. 2-9.

[2] CA Rollo, pp. 63-78.

[3] Id. at 6.

[4] Supra note 2.

[5] Supra note 1.

[6] People v. San Juan, G.R. No. 130969, February 29, 2000, 326 SCRA 786.

[7] G.R. No. 95352, January 28, 1997, 267 SCRA 17.

[8] G.R. No. 133789, August 23, 2001, 363 SCRA 562.

[9] G.R. No. 77777, February 5, 1990, 181 SCRA 747.

[10] G.R. No. 82737, July 5, 1989, 175 SCRA 119.

[11] People v. Salazar, G.R. No. 98060, January 27, 1997, 266 SCRA 607.

[12] People v. Mamalayan, G.R. No. 115282, October 16, 1997, 280 SCRA 748.

[13] VHT Realty Corp. v. Court of Appeals, G.R. No. 126780, February 17, 2005, 451 SCRA 638.

[14] People v. Dulay, G.R. No. 150624, February 24, 2004, 423 SCRA 652.

[15] People v. Saludes, G.R. No. 144157, June 10, 2003, 403 SCRA 590.

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