

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROMEO DANSICO Y MONAY A.K.A. "LAMYAK"; AND AUGUSTO CUADRA Y ENRIQUEZ, APPELLANTS.

G.R. No. 178060. February 23, 2011

Ponente: BRION, J.

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BRION, J.:

We review in this Rule 45 petition the decision[1] of the Court of Appeals[2] (CA) in CA-G.R. CR-H.C. No. 00645. The CA decision affirmed the decision[3] of the Regional Trial Court (RTC), Branch 30, San Jose, Camarines Sur, in Criminal Case No. T-1910, finding appellants Romeo Dansico y Monay a.k.a. "Lamyak" and Augusto Cuadra y Enriquez guilty beyond reasonable doubt of illegal sale of marijuana under Section 4, Article II of Republic Act (R.A.) No. 6425, as amended.

The Information and Plea

The appellants were charged under the following Information dated September 8, 1998:

That sometime on September 7, 1998 at about 4:30 o'clock [sic] in the afternoon, at Brgy. May-Anao, Tigaon, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another to attain a common purpose did then and there willfully, unlawfully and feloniously without authority of law sell, deliver one (1) pc. Marijuana bricks wrapped in newspaper with approximate size of 1 ½ x 8 x 10 inches weighing approximately NINE HUNDRED (900) grams for and in consideration of FIVE THOUSAND PESOS (P5,000.00) to the prejudice of the Government.

ACTS CONTRARY TO LAW.[4]

With the assistance of their counsel, the appellants pleaded not guilty to the charge. In the pre-trial, the appellants admitted their identities and the existence of the booking sheet and the arrest report against them. Trial on the merits thereafter ensued.

The Prosecution's Case

The prosecution established its case by presenting the testimonies of three (3) witnesses[5] and the supporting documentary evidence.[6] The prosecution's account showed that the appellants were caught and arrested for selling marijuana during a buy-bust operation.

The prosecution's evidence shows that on the basis of reports that the appellants were engaged in peddling marijuana, the members of the Camarines Narcotics Provincial (NARGROUP) Office, Naga City (headed by P/Insp. Dennis Vargas) organized a buy-bust operation against the appellants. The buy-bust team was assisted by an unidentified confidential informant and four (4) civilian volunteers. The confidential informant and Willie Paz, a civilian volunteer, were designated to act as poseur-buyers. P/Insp. Vargas gave Paz P5,000.00 as buy-bust money.[7]

On September 7, 1998, the buy-bust team went to May-Anao, Tigaon where they briefed the local Tigaon Police at their station of the impending buy-bust operation. The buy-bust team afterwards proceeded to the nipa hut owned by appellant Dansico. Paz and the confidential informant met with the appellants; the confidential informant informed the appellants that Paz wanted to buy P5,000.00 worth of marijuana. Paz handed the buy-bust money to the appellants who left in a motorcycle to get the marijuana.[8]

After three hours, more or less, the appellants returned with a brick, allegedly marijuana, wrapped in a newspaper. Appellant Dansico took the brick from appellant Cuadra and gave it to Paz. At this point, Paz gave the pre-arranged signal for P/Insp. Vargas and the buy-bust team to approach. The team immediately apprehended appellant Dansico, while appellant Cuadra resisted by throwing stones at and grappling with P/Insp. Vargas. Paz turned the seized marijuana to P/Insp. Vargas and the group proceeded to the Tigaon Police Station.[9]

The arrest of the appellants, the recovery of the suspected marijuana and the confiscation of the appellants' motorcycle were entered in the police blotter of the Tigaon Police Station. Afterwards, the buy-bust team (with the appellants in tow and with the confiscated items) proceeded to the NARGROUP Office where P/Insp. Vargas prepared a booking sheet and the arrest report. The confiscated brick of marijuana was placed inside a plastic bag and marked "07 September 1998 WPD" to indicate the date of the buy-bust. The plastic bag was initialed by P/Insp. Vargas and Paz.[10] P/Insp. Vargas also conducted an initial field test which confirmed the confiscated item to be marijuana. Afterwards, P/Insp. Vargas submitted the confiscated marijuana to the Crime Laboratory for further laboratory examination.[11] As borne by the mark stamped on the request of P/Insp. Vargas, the submitted marijuana was received by the receiving clerk of the Crime Laboratory and was given control no. 1774-98 D-10498.[12] The confiscated marijuana was turned over by the receiving clerk to P/Sr. Insp. Ma. Julieta Razonable[13] who then conducted the laboratory tests which subsequently confirmed that the submitted specimen was marijuana.[14] P/Sr. Insp. Razonable reduced her findings to writing under Chemistry Report No. D-104-98. After the examination, P/Sr. Insp. Razonable placed the marijuana inside a plastic bag and sealed it with tape.[15] In court, P/Sr. Insp. Razonable presented the marijuana by unsealing the plastic bag. She identified the marijuana by the markings she previously made.[16]

The Case for the Defense

The defense denied the charges and countered that the appellants were victims of frame-up and police extortion. The defense presented six (6) witnesses[17] (including the two appellants) and the documentary evidence. Appellant Dansico admitted that the marijuana presented in court was the same marijuana shown to him at the Tigaon Police Station.

According to the defense, appellant Dansico had a farm where appellant Cuadra worked. In the afternoon of September 7, 1998, appellant Cuadra was on his way back to the farm when he was accosted by P/Insp. Vargas who poked a gun at him. Appellant Cuadra attempted to flee and even shouted for help but P/Insp. Vargas struck him on the head with his gun.

SPO4 Paterno Boncodin, a local Tigaon policeman, was presented to corroborate the appellants' story. SPO4 Boncodin claimed that he saw P/Insp. Vargas and appellant Cuadra grappling with each other. He was then informed by the confidential informant that appellant Cuadra was being arrested for the illegal sale of marijuana. SPO4 Boncodin claimed that after appellant Cuadra was subdued and taken to the police station, P/Insp. Vargas returned to appellant Dansico's farm and arrested appellant Dansico. Thereafter, the appellants were charged with selling marijuana.

In its decision, the RTC found the appellants guilty of illegal sale of marijuana and sentenced them to suffer the penalty of reclusion perpetua with the corresponding accessory penalties. The RTC also ordered them (a) to pay a

fine in the amount of Five Hundred Thousand Pesos (P500,000.00); (b) to return or reimburse Five Thousand Pesos (P5,000.00) representing the unrecovered buy-bust money; and (c) to pay the costs.[18]

The CA, on appeal, affirmed the RTC decision. The CA sustained the convictions of the appellants, finding the prosecution's version more credible in the absence of any improper motive established against the prosecution witnesses. The CA also relied on the presumption of regularity that attended the conduct of the buy-bust operation which led to the arrest of the appellants.

The Issue

In their Brief,[19] the appellants seek their acquittal based on the following arguments. First, the two (2) elements of the crime - the sale and delivery of the marijuana, and the knowledge of the sale of marijuana - were not established in evidence. Second, the evidence failed to establish the existence of the buy-bust operation; for the first time on appeal, the appellants argue that they were instigated into selling marijuana. The other arguments relate to the disregard by the lower courts of the defenses of denial and frame-up, and the claim of police extortion raised by the appellants.

The Office of the Solicitor General[20] (OSG) contends that the evidence sufficiently established the sale and delivery of marijuana by the appellants during the buy-bust operation conducted by the team of P/Insp. Vargas. That an actual buy-bust operation took place was even testified to by defense witness SPO1 Roberto Caña and supported by the police blotter. The OSG also contends that the appellants' defenses of frame-up and extortion were not properly substantiated. On the instigation claim, the OSG stresses that this claim was only raised for the first on appeal. By this argument, the appellants in fact actually admitted having sold and delivered marijuana to the team of P/Insp. Vargas.

The Court's Ruling

We find no reversible error committed by the RTC and the CA in appreciating the presented evidence and, therefore, deny the petition for lack of merit.

First, to convict an accused of illegal sale of marijuana, the prosecution must establish these essential elements: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment.[21]

All these elements were duly proven during the trial. The fact that an actual buy-bust operation took place involving the appellants is supported not only by the testimonies of Paz (as the poseur-buyer) and P/Insp. Vargas, but also by the presented documentary evidence consisting of (a) the photocopy of the serial numbers of the marked money used in the buy-bust operation,[22] (b) the Tigaon Police Station police blotter showing the arrest of the appellants on September 7, 1998 and the cause of their arrest by the group of P/Insp. Vargas,[23] (c) the booking sheet and arrest report against the appellants prepared by P/Insp. Vargas,[24] and (d) the Joint Affidavit of Arrest executed by P/Insp. Vargas and Eduardo Buenavente, another civilian volunteer.[25]

Second, the testimonies of Paz and P/Insp. Vargas on the buy-bust operation and the identities of the appellants as the sellers of the marijuana were positive and straightforward; they were consistent with one another with respect to the events that transpired before, during, and after the buy-bust operation that led to the appellants' arrest. We consider, too, the testimonies of Paz and P/Insp. Vargas to be in accord with the physical evidence showing in detail the process undertaken by P/Insp. Vargas and the police officers immediately after the appellants' arrest and the confiscation of the marijuana. We also take into account that no improper motive was ever successfully established showing why the buy-bust team would falsely accuse the appellants.

Third, the defenses of denial, frame-up, and police extortion only become weighty when inconsistencies and improbabilities cast doubt on the credibility of the prosecution evidence. We do not see these inconsistencies and improbabilities in the presented evidence. Besides, the failure of the appellants to file appropriate criminal and administrative cases against the concerned police officers in light of their allegations highly indicates that the appellants' claims are mere concocted afterthoughts.

Fourth, the records show that the defenses of denial, frame-up, and police extortion were even contradicted by the appellants' own conduct during the appeal to the CA. By raising instigation as a defense, the appellants effectively admitted that they sold marijuana; they only now question the circumstances of the sale, with the claim that they were led into it by the police.

Fifth, the evidence on record belies that the appellants were instigated to sell marijuana. Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him.[26] On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker.[27] Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer.[28] In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes.[29] In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction. [30]

To determine whether there is instigation or entrapment, we held in *People v. Doria*[31] that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:

[I]n buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[32]

In the present case, Paz testified to his initial contact with the confidential informant, on one hand, and with the appellants, on the other. Acting as the poseur-buyer, Paz asked the appellants if they had P5,000.00 worth of marijuana which the appellants told him was equivalent to one (1) kilo. Paz and the appellants initially haggled over the price before the appellants left to get the marijuana after receiving payment. The appellants were immediately arrested by the group of P/Insp. Vargas after the marijuana was handed to Paz.

The appellants' conversation with Paz best illustrates that they were not at all instigated to sell marijuana, but were, in fact, engaged in the business of selling marijuana. In his testimony, Paz testified:

Q: Now, after the brief introduction and your purpose was mentioned to the accused, tell us what happened if any?

A: Lamyak [appellant Dansico] asked from me the money and I asked him how much.

Q: And what was the response of the accused if any?

A: As of now the ranning [sic] price for one (1) kilo is P5,000.00.[33]

During cross-examination, Paz also related:

Q: But you will agree with me that Lamyak said he does not have marijuana in that safehouse, is that correct?

A: Yes, sir.

x x x

Q: All he said is that he has no marijuana?

A: He said that he has no marijuana in that place and that he will get.[34]

In addition to this testimony, appellant Dansico admitted that his brother-in-law sells marijuana in Naga City. All these circumstances, collectively considered, fully support the conclusion that the appellants, by their own volition, sold marijuana to Paz.[35]

The Penalty

The guilt of the appellants for selling marijuana having been proven beyond reasonable doubt, the appellants are liable to suffer the penalty provided under Section 4, Article II, in connection with Section 20 of R.A. No. 6425, as amended, which provides:

Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million [pesos] shall be imposed upon any person who, unless authorized by law shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as broker in any of such transactions.

x x x

Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x

5. 750 grams or more of Indian hemp or marijuana[.]

P/Sr. Insp. Razonable testified that the quantity of marijuana taken from the appellants weighed 878.80 grams. Accordingly, we affirm the ruling of the RTC and the CA imposing the penalty of reclusion perpetua and a fine of P500,000.00, as these are the penalties provided for by law. In lieu of merely ordering the return of the P5,000.00 buy-bust money, the appellants are ordered to pay P5,000.00 as reimbursement for the unrecovered buy-bust money.

WHEREFORE, premises considered, we hereby DENY the appeal of appellants Romeo Dansico y Monay a.k.a. "Lamyak" and Augusto Cuadra y Enriquez. The decision dated February 27, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00645, finding Romeo Dansico y Monay a.k.a. "Lamyak" and Augusto Cuadra y Enriquez guilty beyond reasonable doubt of illegal sale of marijuana under Section 4, Article II of Republic Act No. 6425, as amended, is AFFIRMED with the MODIFICATION that the appellants are ordered to pay P5,000.00 as reimbursement for the unrecovered buy-bust money.

SO ORDERED.

Carpio Morales, J., on wellness leave.

Bersamin, [***]Abad, Villarama, Jr., and Sereno, JJ., concur.

[**]Brion, Acting Chairperson.

[**] Designated Acting Chairperson of the Third Division effective February 16, 2011, per Special Order No. 925 dated January 24, 2011.

[***] Additional Member per Special Order No. 926 dated January 24, 2011.

[1] Dated February 27, 2007; rollo, pp. 3-22.

[2] Penned by CA Associate Justice Japar B. Dimaampao, with the concurrence of CA Associate Justices Portia Aliño-Hormachuelos and Mario L. Guariña III.

[3] Dated June 26, 2001; CA rollo, pp. 26-40.

[4] CA rollo, p. 8.

[5] They are (1) P/Insp. Dennis A. Vargas, (2) Willie Paz, and (3) P/Sr. Insp. Ma. Julieta Razonable.

[6] It consists of the following: (1) Request for Laboratory Examination (Exh. A with submarking); (2) Chemistry Report No. D-104-98 (Exh. B, with submarkings); (3) report and sketch (Exh. C, with submarkings); (4) the plastic bag with the subject marijuana with a mark Julieta G. Razonable (Exh. E, with submarkings); (5) the letter-request of P/Insp. Dennis Vargas to the Crime Laboratory (Exh. F, with submarking, and Exh. G, with submarkings); (6) the photocopy of the Police Blotter Entry and the Memo (Exh. H, with submarking, to Exh. I, with submarking); (7) the Booking Sheet for Augusto Cuadra and Romeo Dansico (Exh. J, with submarking, and Exh. K, with submarking); (8) the respective pictures of Augusto Cuadra and Romeo Dansico (Exh. L, with submarkings, to Exh. M, with submarkings); (9) the picture of the motorcycle (Exh. N, with submarkings); (10) the Certificate of Initial Field Test (Exh. O, with submarkings); (11) the Joint Affidavit of Arrest (Exh. P, with submarkings); and (12) the Medical Certificate issued to P/Insp. Dennis Vargas.

[7] CA Decision, *supra* note 1, at 4-5.

[8] *Id.* at 5-6.

[9] TSN, July 28, 1999, p. 8.

[10] TSN, October 13, 1999, p. 3.

[11] TSN, July 28, 1999, p. 15; and TSN, May 5, 1999, p. 7.

[12] Records, p. 180.

[13] TSN, May 5, 1999, p. 22.

[14] *Id.* at 7.

[15] *Id.* at 5.

[16] TSN, May 5, 1999, pp. 5 and 6.

[17] The other three witnesses were SPO3 Edgar Latam, SPO1 Roberto Caña and Elena Sora.

- [18] Rollo, p. 7.
- [19] CA rollo, pp. 59-70.
- [20] Id. at 98-121.
- [21] *People v. Tion*, G.R. No. 172092, December 16, 2009, 608 SCRA 299.
- [22] Records, p. 235.
- [23] Id. at 234.
- [24] Id. at 14-15.
- [25] Id. at 6-8.
- [26] See *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741.
- [27] Id. at 748.
- [28] Ibid.
- [29] Ibid.
- [30] Id. at 748-749.
- [31] G.R. No. 125299, January 22, 1999, 301 SCRA 668.
- [32] Id. at 698-699.
- [33] TSN, February 16, 1999, p. 11.
- [34] TSN, March 29, 1999, p. 13.
- [35] TSN, November 24, 2000, p. 12.

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