

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO BROQUEZA Y STA. ANA, DEFENDANT-APPELLANT.

G.R. No. 62467. October 31, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Reynaldo Broqueza y Sta. Ana was convicted by the then Circuit Criminal Court of Manila in Criminal Case No. CCC-VI-182(81) for violation of Section 4, Article II, in relation to Section 2(i), Article 1 of Republic Act No. 6425, as amended by Presidential Decree No. 1675, and sentenced "to suffer the penalty of life imprisonment, and to pay a fine of P20,000.00, with subsidiary imprisonment in case of insolvency, plus the costs. The five sticks of marijuana cigarettes are hereby confiscated in favor of the government and the Clerk of Court is directed to turn over the same to the Dangerous Drugs Board for proper disposal without delay." (p. 7, Rollo)

The prosecution's version of the facts as stated in the People's brief are as follows:

"About 2:00 P.M. on November 25, 1981, the Constabulary Anti-Narcotics Unit (CANU) detachment in Sta. Cruz, Manila, made up of elements of the Western Police District, received information from a confidential informant that one alias Rey was pushing marijuana on Milagros Street, Sta. Cruz, Manila. Acting on the information, Capt. Sergio Ortega organized a team to apprehend alias Rey. The team was made up of Capt. Ortega as team leader, policewoman Lolita Opeñano, and policemen Eustiquio Saunar, Degollado, and Salvador. Whereupon, the team proceeded to Milagros Street, Sta. Cruz, Manila, to carry out its mission (tsn., pp. 7-17, May 19, 1982).

"Once in the vicinity of Milagros Street at about 2:30 p.m. policewoman Opeñano and the confidential informant were instructed to walk along Milagros Street while the other members of the team kept themselves away at distances of from five (5) to ten (10) meters. As Opeñano and the informant made their way along the street, a male person who turned out to be appellant and who knew the informant, approached the duo and inquired if they were interested in buying marijuana. Opeñano said yes and appellant having agreed to sell five (5) sticks of marijuana for P10.00, she gave him a marked P10.00 bill. Appellant, saying he would give the money to one Connie, placed it in his pocket and left Opeñano and the informant (tsn., pp. 17-18, May 13, 1982).

"Appellant returned in about five (5) minutes and handed to Opeñano five (5) sticks of marijuana cigarettes. At that juncture, the other members of the CANU team closed in and appellant was accordingly apprehended. He was then taken to the CANU detachment in Sta. Cruz, Manila, where he wrote on the mari-juana sticks his signature and the date it was affixed (tsn., pp. 18--19, May 13, 1982, Exhibits C-1 to C-5).

"Subsequently, he was taken to the CANU Headquarters in Camp Crame, Quezon City, where he gave a statement substantially affirming the facts herein related as the cause of his apprehension (Exhibits D to D-2; Rec., 31).

"That very day, the five (5) cigarettes sold by appellant were examined in the PC Laboratory in Camp Crame and found to be positive for marijuana (tsn., pp. 3-6, May 13, 1982; Exhibit A, Rec., p. 28)." (pp. 3-4,

Appellee's brief)

On November 27, 1981, Rey, whose full name is Reynaldo Broqueza y Sta. Ana was charged with violation of Section 4, Article II, in relation to Section 2(i) of Republic Act No. 6425, as amended, in an information which reads:

"That on or about November 25, 1981, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there willfully and unlawfully sell or offer for sale to another five (5) sticks of marijuana cigarettes, which is a prohibited drug." (p. 1, Record)

In his defense, accused Reynaldo Broqueza testified that about 2:30 in the afternoon of November 25, 1981 while he was gathering wood and scrap iron, a man approached and asked him where "Connie" was. He pointed to where Connie resides and inquired of the man why he was looking for Connie. The man requested him to deliver a ten-peso bill to Connie without telling him what the money was for. He obliged and went to the place of Connie who, after receiving the money, gave him something wrapped with a piece of bond paper and instructed him to deliver it to the man. Thereafter, he was placed under arrest by the policemen whom he had never seen before.

Finding the accused Reynaldo Broqueza guilty of the crime of "pushing" marijuana, a prohibited drug, the trial court said:

"1. Exhibit D, which appears to be an extra-judicial confession of the accused, is not questioned. It contains details which could not have been known to the investigator who took the statement. For instance, it is only he who could have known the existence of 'Connie', the alleged source of the marijuana cigarettes.

"2. The claim that he was asked to deliver P10.00 to 'Connie' after pointing to the residence of the latter is hardly believable. He claims that he was engaged in gathering scrap iron. Why would he consent to deliver P10.00 to 'Connie' when he has already pointed to 'Connie's' residence and the man who inquired already knew the place?

"3. Even granting for the sake of argument that he was not the owner of the marijuana as the defense would want to make it appear, yet, he is covered under the definition of 'pusher' under Sec. 2(m), Art. II, R.A. No. 6425, which provides as follows:

'Pusher' refers to any person who sells, administers, delivers or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports any dangerous drug or who acts as a broker in any of such transactions, in violation of this Act.

"In fine, the Court is fully convinced that the prosecution has established beyond peradventure of doubt that the accused has delivered without authority from the law, and for purposes of a sale, five sticks of handrolled marijuana cigarettes, which are prohibited drugs, to P/Woman Opeñano and for which he must be punished in accordance with law." (pp. 6-7, Rollo)

Not satisfied with the finding of guilt, Broqueza appealed to Us, claiming that the trial court committed (1) grave and reversible error in rendering decision based mainly on the weakness of the evidence for the defense; (2) an error in giving undue credence to the highly incredible evidence for the prosecution; and, (3) grave error in finding the accused-appellant guilty as charged and in not acquitting him even on the ground of at least reasonable doubt.

Our review of the records and of the testimonies of the prosecution witnesses fails to leave that degree of moral certainty sufficient to overcome reasonable doubt favoring appellant's innocence and to let the mind rest easy upon the certainty his guilt. When the evidence is inconsistent with human experience the same cannot be

considered a sufficient basis upon which to rest a judgment of conviction.

When the Constabulary Anti-Narcotics Unit (CANU) detachment was informed that a certain "Rey," was a pusher of marijuana cigarettes, a team was immediately organized and it proceeded to the place at Milagros Street, Sta. Cruz, Manila, without first conducting a surveillance therein. Policewoman Lolita Opeñano and the informant walked along the street until they were allegedly met by herein appellant who asked if they wanted to buy marijuana cigarettes. The policewoman answered in the affirmative and upon being informed that five (5) sticks would cost P10.00 she immediately gave him the marked ten-peso bill. Appellant allegedly placed the money inside his pocket and left, saying he would get marijuana cigarettes from one "Connie." Considering that CANU members are supposed to be experts in apprehending persons selling and/or smokers of marijuana, it is perplexing why not one of them followed appellant so that they could apprehend also the supplier thereof. Appellant was back in five minutes with the five (5) sticks of marijuana cigarettes and upon delivery thereof to the policewoman, the members of the team closed in and arrested him. Now, why did they immediately bring appellant to the office for investigation, instead of ordering him to bring them to the place where he got the marijuana so that they could arrest its supplier?

While it is true that upon laboratory examination of the five (5) sticks of cigarettes they were found to be positive for marijuana, why did the team or any member thereof not recover the marked ten-peso bill which was handed to the appellant? Further, why was appellant not examined regarding the presence of fluorescent powder if he really did receive the marked money? When the team left for Milagros Street to meet the pusher, they did not know that he would sell five (5) sticks of cigarettes only and that they would cost ten pesos. How come that they were ready with the marked ten-peso bill?

Anent the alleged extra-judicial confession (Exhibit "D"), given by appellant Reynaldo Broqueza during the custodial police interrogation, the constitutional provision (Section 20, Article IV) was not followed. Said provision of the constitution states: "no person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence." In his alleged confession (Exhibit "D"), the following appears:

"PASUBALI: Ikaw REYNALDO BROQUEZA Y STA ANA, ay sinisiyasat ka tungkol sa pagbibili mo ng marijuana sa isang CANU-Agent nagpangap na buyer. Ito ay labag sa batas. Bago ang lahat ay nais kung ipabatid na muli sa iyo ang iyong mga karapatan sa ilalim ng Ating Bagong Saligang Batas gaya ng mga sumusunod:

1. Ikaw ay may karapatan na mana-himik o huwag magbigay ng salaysay sa inbestigasyon na ito.
2. Ikaw ay may karapatan na kumuha ng sarili mong abogado at kung wala ay ikaw ay bibigyan namin ng isang walang bayad.
3. Dapat mo rin malaman na ang lahat ng sasabihin mo dito ay maaaring gamitin laban sa iyo o sa kanino man tao sa lahat ng hukuman dito sa ating bansa at ang salaysay mong ito ay kusang loob mong ibinigay at hindi ka pinilit, tinakot, o sinaktan para magbigay ka nitong salaysay na ito.

Matapos mong mabasa at mabatid ito mga karapatan mo ikaw ba ay kusang loob na magbibigay ng isang salaysay at sasagot ng buong katotohanan lamang sa lahat ng itatanong sa iyo sa inbestigasyon na ito?

"SAGOT: Opo, magsasabi lamang po ako ng pawang katutuhanan lamang."

In the case of *People vs. Caguioa*, 95 SCRA 2, the Court, speaking through Chief Justice Enrique M. Fernando,

held that:

“x x x Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does not make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of those rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.”

Tested by such clear and unequivocal standard, the alleged waiver of the appellant in the case at bar falls far short. Exhibit "D" is clearly inadmissible considering that to the three questions, appellant gave the brief answer "Opo, magsasabi lamang po ako ng pawang katotohanan lamang." That was all. There was no clear reply that he was waiving the right to counsel. We cannot therefore say that accused-appellant fully understood the legal significance of what were asked of him; more so, considering his short answer to the three kilometric questions.

By and large, the circumstances surrounding the case manifestly preclude a finding of appellant's guilt beyond reasonable doubt.

ACCORDINGLY, the judgment dated September 17, 1982 of the trial court is REVERSED, and the accused-appellant Reynaldo Broqueza y Sta. Ana is hereby ACQUITTED. However the five (5) sticks of marijuana cigarettes should be turned over immediately to the Dangerous Drugs Board for proper disposal.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

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