

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MEDEL TANGLIBEN Y BERNARDINO, DEFENDANT-APPELLANT.

G.R. NO. 63630. April 06, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court, Branch 41, Third Judicial Region at San Fernando, Pampanga, Branch 41, finding appellant Medel Tangliben y Bernardino guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act 6425 (Dangerous Drugs Act of 1972 as amended) and sentencing him to life imprisonment, to pay a fine of P20,000 and to pay the costs.

The information filed against the appellant alleged:

"That on or about the 2nd day of March, 1982, in the municipality of San Fernando, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused MEDEL TANGLIBEN y BERNARDINO, knowing fully well that Marijuana is a prohibited drug, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) bag of dried marijuana leaves with an approximate weight of one (1) kilo and to transport (sic) the same to Olongapo City, without authority of law to do so." (At p. 6, Rollo)

The prosecution's evidence upon which the finding of guilt beyond reasonable doubt was based is narrated by the trial court as follows:

"It appears from the evidence presented by the prosecution that in the late evening of March 2, 1982, Patrolmen Silverio Quevedo and Romeo L. Punzalan of the San Fernando Police Station, together with Barangay Tanod Macario Sacdalan, were conducting surveillance mission at the Victory Liner Terminal compound located at Barangay San Nicolas, San Fernando, Pampanga; that the surveillance mission was aimed not only against persons who may commit misdemeanors at the said place but also on persons who may be engaging in the traffic of dangerous drugs based on informations supplied by informers; that it was around 9:30 in the evening that said Patrolmen noticed a person carrying a red traveling bag (Exhibit G) who was acting suspiciously and they confronted him; that the person was requested by Patrolman Quevedo and Punzalan to open the red traveling bag but the person refused, only to accede later on when the patrolmen identified themselves; that found inside the bag were marijuana leaves (Exhibit B) wrapped in plastic wrapper and weighing one kilo, more or less; that the person was asked of his name and the reason why he was at the said place and he gave his name as Medel Tangliben and explained that he was waiting for a ride to Olongapo City to deliver the marijuana leaves; that the accused was taken to the police headquarters at San Fernando, Pampanga, for further investigation; and that Pat. Silverio Quevedo submitted to his Station Commander his Investigator's Report (Exhibit F).

It appears also from the prosecution's evidence that in the following morning or on March 3, 1982, Pat. Silverio Quevedo asked his co-policeman Pat. Roberto Quevedo, who happens to be his brother and who has had special training on narcotics, to conduct a field test on a little portion of the marijuana leaves and to have the remaining portion examined by the PCCL at Camp Olivas, San Fernando, Pampanga; that Pat. Roberto

Quevedo conducted a field test (Exhibit H) on the marijuana leaves and found positive result for marijuana (Exhibit E); that the remaining bigger quantity of the marijuana leaves were taken to the PCCL at Camp Olivas by Pat. Roberto Quevedo that same day of March 3, 1982 (Exhibit A and A-1) and when examined, the same were also found to be marijuana (Exhibit C and C-1)." (At pp. 9-10, Rollo)

Only the accused testified in his defense. His testimony is narrated by the trial court as follows:

"The accused declared that he got married on October 25, 1981 and his wife begot a child on June 10, 1982; that he was formerly employed in the poultry farm of his uncle Alejandro Caluma in Antipolo, Rizal; that he is engaged in the business of selling poultry medicine and feeds, including chicks, and used to conduct his business at Taytay, Rizal; that he goes to Subic at times in connection with his business and whenever he is in Subic, he used to buy C-rations from one Nena Ballon and dispose the same in Manila; that he never left his residence at Antipolo, Rizal, on March 2, 1982; that on March 3, 1982, he went to Subic to collect a balance of P100.00 from a customer thereat and to buy C-rations; that he was able to meet Nena Ballon at 6:00 o'clock in the evening and he stayed in Nena's house up to 8:00 o'clock because he had a drinking spree with Nena's son; that he tried to catch the 8:00 o'clock trip to Manila from Olongapo City but he failed and was able to take the bus only by 9:00 o'clock that evening; that it was a Victory Liner Bus that he rode and because he was tipsy, he did not notice that the bus was only bound for San Fernando Pampanga; that upon alighting at the Victory Liner Compound at San Fernando, Pampanga, he crossed the street to wait for a bus going to Manila; that while thus waiting for a bus, a man whom he came to know later as Pat. Punzalan, approached him and asked him if he has any residence certificate; that when he took out his wallet, Pat. Punzalan got wallet and took all the money inside the wallet amounting to P545.00; that Pat. Punzalan told him that he'll be taken to the municipal building for verification as he may be an NPA member; that at the municipal building, he saw a policeman, identified by him later as Pat. Silverio Quevedo, sleeping but was awakened when he arrived; that Pat. Quevedo took him upstairs and told him to take out everything from his pocket saying that the prisoners inside the jail may get the same from him; that inside his pocket was a fifty-peso bill and Pat. Quevedo took the same, telling him that it shall be returned to him but that it was never returned to him; that he was thereafter placed under detention and somebody told him that he is being charged with possession of marijuana and if he would like to be bailed out, somebody is willing to help him; and, that when he was visited by his wife, he told his wife that Patrolman Silverio Quevedo took away all his money but he told his wife not to complain anymore as it would be useless." (Rollo, pp. 10-11)

Appellant, through counsel de officio Atty. Enrique Chan, raised the lone assignment of error in his appeal:

"THE COURT A-QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT AND FINDING HIM GUILTY OF THE CRIME CHARGED ON INSUFFICIENT AND DOUBTFUL EVIDENCE." (At p. 48, Rollo)

The Solicitor-General likewise filed his brief, basically reiterating the lower court's findings.

However, before this Court had the chance to act on appeal, counsel de officio Atty. Enrique Chan died. Thereafter, this court appointed a new counsel de officio, Atty. Katz Tierra, and pursuant thereto, the Deputy Clerk of Court, in behalf of the Clerk of Court, required the new counsel to file her appellant's brief. The latter complied and, in her brief, raised the following assignment of errors:

I

"THE LOWER COURT ERRED IN ADMITTING AS EVIDENCE THE PACKAGE OF MARIJUANA ALLEGEDLY SEIZED FROM DEFENDANT-APPELLANT AS IT WAS A PRODUCT OF AN UNLAWFUL SEARCH WITHOUT A WARRANT.

II

THE LOWER COURT ERRED IN ADMITTING AS EVIDENCE THE ALLEGED PACKAGE OF MARIJUANA LEAVES AS THE LEAVES SUPPOSEDLY SEIZED FROM ACCUSED WHEN IT WAS NEVER AUTHENTICATED.

III

THE LOWER COURT ERRED IN NOT RULING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF DEFENDANT-APPELLANT." (At p. 92-93, Rollo)

It is contended that the marijuana allegedly seized from the accused was a product of an unlawful search without a warrant and is therefore inadmissible in evidence.

This contention is devoid of merit.

One of the exceptions to the general rule requiring a search warrant is a search incident to a lawful arrest. Thus, Section 12 of Rule 126 of the 1985 Rules on Criminal Procedure provides:

"Section 12. Search incident to a lawful arrest. A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

Meanwhile, Rule 113, Sec. 5(a) provides:

"xxx A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense."

Accused was caught in flagrante, since he was carrying marijuana at the time of his arrest. This case therefore falls squarely within the exception. The warrantless search was incident to a lawful arrest and is consequently valid.

In the case of *People v. Claudio*, 160 SCRA 646, [1988] this Court, confronted with the same issue, held that:

"Appellant Claudio was caught transporting prohibited drugs. Pat. Daniel did not need a warrant to arrest Claudio as the latter was caught in flagrante delicto. The warrantless search being an incident to a lawful arrest is in itself lawful. (*Nolasco v. Pano*, 147 SCRA 509). Therefore, there was no infirmity in the seizure of the 1.1 kilos of marijuana."

We are not unmindful of the decision of this Court in *People v. Aminnudin*, 163 SCRA 402 [1988]. In that case the PC officers had earlier received a tip from an informer that accused-appellant was on board a vessel bound for Iloilo City and was carrying marijuana. Acting on this tip, they waited for him one evening, approached him as he descended from the gangplank, detained him and inspected the bag he was carrying. Said bag contained marijuana leaves. The Court held that the marijuana could not be admitted in evidence since it was seized illegally.

The records show, however, that there were certain facts, not existing in the case before us, which led the Court to declare the seizure as invalid. As stated therein:

"The present case presented no such urgency. From the conflicting declarations of the PC witnesses, it is clear that they had at least two days within which they could have obtained a warrant of arrest and search Aminnudin who was coming to Iloilo on the M/V Wilcon 9. His name was known. The vehicle was identified. The date of its arrival was certain. And from the information they had received, they could have persuaded a judge that there was probable cause, indeed, to justify the issuance of a warrant. Yet they did nothing. No effort was made to comply with the law. The Bill of Rights was ignored altogether because the PC lieutenant who was the head of the arresting team, had determined on his own authority that a 'search warrant was not

necessary”.

In contrast, the case before us presented urgency. Although the trial court’s decision did not mention it, the transcript of stenographic notes reveals that there was an informer who pointed to the accused-appellant as carrying marijuana. (TSN, pp. 52-53) Faced with such on-the-spot information, the police officers had to act quickly. There was not enough time to secure a search warrant. We cannot therefore apply the ruling in *Aminnudin* to the case at bar. To require search warrants during on-the-spot apprehensions of drug pushers, illegal possessors of firearms, jueteng collectors, smugglers of contraband goods, robbers, etc. would make it extremely difficult, if not impossible to contain the crimes with which these persons are associated.

Accused-appellant likewise asserts that the package of marijuana leaves supposedly seized from him was never authenticated and therefore should not have been admitted as evidence. He capitalizes on the fact that the marijuana package brought by Patrolman Roberto Quevedo to the PC Crime Laboratory for examination did not contain a tag bearing the name of the accused. We rule, however, that since Patrolman Quevedo testified that he gave the marijuana package together with a letter-request for examination, and the forensic chemist Marilene Salangad likewise testified that she received the marijuana together with the letter-request and said letter-request bore the name of the accused, then the requirements of proper authentication of evidence were sufficiently complied with. The marijuana package examined by the forensic chemist was satisfactorily identified as the one seized from accused.

Even assuming *arguendo* that the marijuana sent to the PC Crime Laboratory was not properly authenticated, still, we cannot discount the separate field test conducted by witness Roberto Quevedo which yielded positive results for marijuana.

Lastly, the appellant claims that the evidence upon which he was convicted was insufficient and doubtful and that the prosecution failed to prove his guilt.

In attacking the sufficiency of evidence, the appellant avers that the informer should have been presented before the lower court. We discard this argument as a futile attempt to revive an already settled issue. This Court has ruled in several cases that non-presentation of the informer, where his testimony would be merely corroborative or cumulative, is not fatal to the prosecution’s case. (*People v. Asio*, G. R. No. 84960, September 1, 1989; *People v. Viola*, G. R. No. 64262, March 16, 1989; *People v. Capulong*, 160 SCRA 533 [1988]; *People v. Cerelegia*, 147 SCRA 538).

As to doubtfulness of evidence, well-settled is the rule that findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by the appellate court. Since credibility is a matter that is peculiarly within the province of the trial judge, who had first hand opportunity to watch and observe the demeanor and behavior of witnesses both for the prosecution and the defense at the time of their testimony (*People v. Tejada*, G. R. No. 81520, February 21, 1989; *People v. Turla*, 167 SCRA 278), we find no reason to disturb the following findings:

"The testimony of prosecution witnesses Patrolman Silverio Quevedo and Romeo Punzalan are positive and sufficiently clear to show the commission by the accused of the offense herein charged. These prosecution witnesses have no motive to fabricate the facts and to foist a very serious offense against the accused. The knowledge on what these witnesses testified to were (sic) acquired by them in the official performance of their duties and their (sic) being no showing that they are prejudiced against the accused, their testimonies deserve full credit.

The testimonies of the aforementioned patrolmen that what they found in the possession of the accused were marijuana leaves were corroborated by the examination findings conducted by Pat. Roberto Quevedo (Exhibit

H) and by Forensic Chemist Marlene Salangad of the PCCL, with station at Camp Olivas, San Fernando, Pampanga (Exhibits C and C-1). (Rollo, p. 11)

"Moreover, if there is truth in the testimony of the accused to the effect that Pat. Punzalan got all the money from his wallet when he was accosted at the Victory Liner Terminal and was told just to keep quiet, otherwise he will be 'salvaged', why will Pat. Punzalan still bring the accused to the Municipal Building for interrogation and/or verification? Would not Pat. Punzalan be exposing his identity to the accused? This is unnatural. And this is also true on the testimony of the accused that Pat. Silverio Quevedo got his fifty-peso bill and never returned the same to him. If the two policemen really got any money from the accused and that the marijuana leaves do not belong to the accused, why will the two policemen still produce in Court as evidence that expensive-looking traveling red bag (Exhibit G) taken from the accused and which contained the marijuana leaves in question if the instant case is a mere fabrication?

As already stated, all the evidence, oral and documentary, presented by the prosecution in this case were all based on personal knowledge acquired by the prosecution witnesses in the regular performance of their official duties and there is nothing in their testimonies to show that they are bias (sic) or that they have any prejudice against the herein accused. Between the testimonies of these prosecution witnesses and that of the uncorroborated and self-serving testimony of the accused, the former should prevail." (Rollo p.13)

Likewise, the appellant chose to limit his defense to his own testimony. He could have availed himself through compulsory court processes of several witnesses to buttress his defense. Since not one other witness was presented nor was any justification for the non-appearance given, the inadequacy of his lone and uncorroborated testimony remains. It cannot prevail vis-a-vis the positive testimonies given by the prosecution witnesses.

Moreover, the appellant's having jumped bail is akin to flight which, as correctly observed by the lower court, is an added circumstance tending to establish his guilt.

We take exception, however, to the trial court's finding that:

"The dried marijuana leaves found in the possession of the accused weighs one (1) kilo, more or less. The intent to transport the same is clear from the testimony of Pat. Silverio Quevedo who declared, among other things, that when he confronted the accused that night, the latter told him that he (accused) is bringing the marijuana leaves to Olongapo City. Moreover, considering the quantity of the marijuana leaves found in the possession of the accused and the place he was arrested which is at San Fernando, Pampanga, a place where the accused is not residing, it can be said that the intent to transport the marijuana leaves has been clearly established." (Rollo, pp. 13-14)

The alleged extrajudicial confession of the accused which, on the other hand, he categorically denied in court, that he is transporting the marijuana leaves to Olongapo City cannot be relied upon. Even assuming it to be true, the extrajudicial confession cannot be admitted because it does not appear in the records that the accused, during custodial investigation, was apprised of his rights to remain silent and to counsel and to be informed of such rights. In *People v. Duero*, 104 SCRA 379 [1981], the Court pronounced that "inasmuch as the prosecution failed to prove that before Duero made his alleged oral confession he was informed of his rights to remain silent and to have counsel and because there is no proof that he knowingly and intelligently waived those rights, his confession is inadmissible in evidence. This ruling was reiterated in *People v. Tolentino*, 145 SCRA 597 [1986], where the Court added that:

"In effect, the Court not only abrogated the rule on presumption of regularity of official acts relative to admissibility of statements taken during in-custody interrogation but likewise dispelled any doubt as to the full adoption of the *Miranda* doctrine in this jurisdiction. It is now incumbent upon the prosecution to prove during a trial that prior to questioning, the confessant was warned of his constitutionally protected rights."

The trial judge likewise found the marijuana to weigh one kilo, more or less, and from this finding extracted a clear intent to transport the marijuana leaves. It may be pointed out, however, that although the information stated the weight to be approximately one kilo, the forensic chemist who examined the marijuana leaves testified that the marijuana weighed only 600 grams. Such amount is not a considerable quantity as to conclusively confer upon the accused an intent to transport the marijuana leaves.

Nor can it be said that the intent to transport is clearly established from the fact that the accused was arrested at San Fernando, Pampanga, a place which is not his residence. Conviction of a crime with an extremely severe penalty must be based on evidence which is clearer and more convincing than the inferences in this case.

What was therefore proved beyond reasonable doubt is not his intent to transport the marijuana leaves but his actual possession.

The offense committed by the appellant is possession of marijuana under Section 8 of Republic Act No. 6425 (Dangerous Drugs Act of 1972 as amended).

WHEREFORE, the judgment of conviction by the trial court is hereby **AFFIRMED** but **MODIFIED**. The appellant is sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and fine of Six Thousand (P6,000.00) Pesos.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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