

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELERINO VIOLA Y ARLENTE, ACCUSED-APPELLANT.

G.R. No. 64262. March 16, 1989

Ponente: PARAS, J.

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PARAS, J.:

On appeal from a conviction imposing life imprisonment for violation of Section 15, Article III of R.A. 6425 as amended by P.D. No. 44 (The Dangerous Drugs Act of 1972), accused Celerino Viola y Arlente submits the following:

ASSIGNMENTS OF ERROR

I

THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONY OF THE APPELLANT AND IN CONSIDERING THE EVIDENCE OF THE PROSECUTION DESPITE THE EXISTENCE OF EVIDENCE TO THE CONTRARY.

II

THE TRIAL COURT ERRED IN FINDING THE APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

III

THE DECISION OF THE TRIAL COURT IS CONTRARY TO EXISTING LAW AND APPLICABLE JURISPRUDENCE. (Rollo, p. 75)

The theory of the prosecution can be gathered from the documentary exhibits and testimonies of its witnesses, 2nd Lt. Miguel Marcelo, Sgt. Abelardo Lasam both of the Philippine Constabulary (PC), CANU, Camp Crame, Quezon City and Lt. Nelly Cariaga of the Philippine Constabulary Crime Laboratory, to wit:

In the morning of October 5, 1981, the office of the PC, CANU received information about the presence of a drug pusher at Pedro Gil in the City of Manila. Lt. Marcelo and Sgt. Lasam who responded to the report, proceeded to the place relayed to them and posted themselves at a gasoline station near Arellano High School (p. 6-7, t.s.n. Dec. 1, 1981). At about 12:30 P.M., accused herein Celerino Viola y Arlente, approached their confidential informant, whose name was not disclosed for security reasons, wherein the latter gave the accused a marked P50.00 bill. This transaction was witnessed by the two officers at a distance of about five (5) meters. Thereafter the accused left to secure the prohibited drug without being followed by the two (2) officers. Accused returned after 30 minutes and in the process of giving nine (9) Mogadon tablets to the confidential informant, the two CANU officers introduced themselves to the accused (pp. 7-8, Ibid.) and inquired from him where he secured them (p. 12. Ibid.). The accused led them to a certain place to see a certain Jojo as the alleged supplier of the

Mogadon tablets. However, said Jojo was nowhere to be found in said place (p. 13 Ibid.).

Accused, who was taken to Camp Crame for further investigation, admitted his guilt in a written unsubscribed statement after being informed of his constitutional rights. The nine (9) tablets of Mogadon were submitted to the laboratory for analysis. In her testimony later in court, Lt. Nelly Cariaga of the Philippine Constabulary Crime Laboratory testified that the nine (9) tablets of Mogadon marked 'Roche' wrapped in aluminum foil (Exh. C), which were the same nine (9) tablets of Mogadon submitted for examination showed a positive result that they were Mogadon tablets (Exhibit B).

On the other hand, defense gave the following version:

On October 5, 1981 at about 11:30 o'clock in the morning, the accused was inside the premises of Arellano University, F.G. Calderon High School, located at Pedro Gil Street, Sta. Ana, Manila, where he is a student. Then Eddie Chua, a student of Mapua Institute called him and invited him to a nearby restaurant - the Egg Bitter Restaurant for a softdrink. While thereat they saw "Boy Toothpick" and Joel Garcia. "Boy Toothpick" is a student but he does not know of what school while Joel Garcia is also a student of Arellano University. "Boy Toothpick" and Joel Garcia joined them (accused and Eddie Chua) and when they had finished their drinks, the CANU agents, Sgt. Lasam and Lt. Marcelo, arrived. The accused was then handed fifty pesos (P50.00) consisting of two (2) P20.00 bills and one (1) P10.00 bill by "Boy Toothpick" and was told to buy Mogadon. The accused refused as Eddie Chua and "Boy Toothpick" did not want to accompany him. However the CANU agents assured and told the accused they would follow him so that they could apprehend the seller. The accused then took a tricycle to buy the Mogadon tablets in Makati. He did not see anybody following him but nevertheless bought the Mogadon tablets for fear of being mauled by the group. When he returned with the Mogadon tablets which cost P49.50 and while on his way to the restaurant, the CANU agents immediately arrested him. He gave the change of P0.50 to "Boy Toothpick". He was then brought to Camp Crame where he was detained. He was made to sign a blank paper at about midnight of the same date. He signed the same because he was promised to be freed if he signs it. The person who investigated him is not one of the CANU agents. That at the time of his arrest, he was merely 19 years old. (Brief for the Appellant, pp. 3 & 4).

The trial court after giving more weight to the evidence for the prosecution rendered a decision*, the dispositive portion of which reads:

"WHEREFORE, in view of of the foregoing, the Court finds the accused guilty beyond reasonable doubt of having violated Sec. 15 of Article III of RA 6425 as amended by PD No. 44 and as further amended by PD No. 1683**, otherwise known as 'The Dangerous Drug Act of 1972', and consequently he is hereby sentenced to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

"SO ORDERED." (p. 46, Rollo)

Hence the accused interposed the present appeal.

The appeal is not worthy of consideration.

The determination of the issues on appeal raised by appellant hinges on the credibility of the witnesses. The defense maintains that appellant was instigated and not entrapped by the Philippine Constabulary, CANU and to substantiate such claim, accused himself was presented as the only witness for the defense. The trial court, obviously gave more weight to the evidence for the prosecution in convicting the accused.

Accused himself testified that it was agreed that he will be followed by the CANU agents or officers in buying the Mogadon in order to determine the person who is selling the Mogadon tablets and to apprehend him (Appellant's brief, p. 8) but at the same time admitted that he did not see the CANU agents following him and yet he claimed

that despite this, he still bought the drugs out of sheer fear that they might maul him. Such testimony fails to convince Us of witness' credibility.

It is clear from the established facts that appellant was caught committing the crime charged. He was the one who delivered the Mogadon tablets to the confidential informant. He was the one who supplied the name of a non-existent "Jojo" as the source of the prohibited drug. There is no dispute that appellant received P50.00 and handed nine (9) Mogadon tablets. The testimony of Lt. Marcelo that appellant left for thirty (30) minutes is not at all in conflict with the testimony of Sgt. Lasam that appellant returned after more or less one (1) hour. And even if it were, the inconsistency is immaterial.

Appellant has failed miserably to show any reason or improper motive why the witnesses for the prosecution would implicate him. The fact that the confidential informant was not presented as a witness does not affect the findings or the lower court since his additional testimony would merely be corroborative to the testimonies of Lt. Marcelo and Sgt. Lasam, whose testimonies were found by the trial court to be worthy of credit. All these taken into consideration, We are satisfied that the trial court has not overlooked, misunderstood or misapplied some fact or circumstance of weight and substance as would affect the result of the case.

WHEREFORE, the assailed decision is hereby AFFIRMED in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Hermenio C. Mariano

** Took effect March 14, 1980.

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