

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER NILLOS Y PALSARIO, ACCUSED-APPELLANT.

G.R. No. 66161. January 30, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Accused-appellant Elmer Nillos was found guilty beyond reasonable doubt of violating Section 4, Article Two of Republic Act No. 6425 as amended and was sentenced by the Court of First Instance of Negros Occidental to imprisonment of twelve (12) years and one (1) day of reclusion temporal as minimum to reclusion perpetua as maximum, to pay a fine of P20,000.00 and to shoulder the costs.

Nillos appealed the decision to the Court of Appeals. In a decision dated November 18, 1983, the Intermediate Appellate Court affirmed the findings of the trial court but corrected the penalty imposed on the appellant. Noting that the penalty under Section 4 of the Dangerous Drugs Act of 1972 as amended by P.D. No. 1675 is life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00, the Intermediate Appellate Court modified the penalty and raised it to life imprisonment.

Pursuant to the rule enunciated in *People v. Daniel* (86 SCRA 511), the Intermediate Appellate Court transmitted the case to us for review as a matter within our exclusive appellate jurisdiction.

We have carefully reviewed the entire records of this appeal. We find correct the factual findings and conclusions of law embodied in the decision penned by Justice Emilio A. Gancayco and concurred in by Justices Isidro C. Borromeo and Lorna S. Lombos-Dela Fuente. We, therefore, adopt the said decision in toto and append it as an integral part of this decision.

The appellate decision found without basis the contention of the appellant that his sworn statement before the Constabulary Anti-Narcotics Unit or CANU was secured through force. We note that even if this extrajudicial confession is completely disregarded, there is more than enough evidence to sustain a judgment of conviction. The testimonies of prosecution witnesses Camilo L. Gonzales, Domingo S. Bolivar, Vicente Palacios, Enrique Garcia, Generoso Dangca, and Luena Layador proved beyond reasonable doubt the accused-appellant's guilt of the offense charged.

The accused-appellant himself admits that he was carrying 37 match boxes of dried marijuana leaves although he claims that he was bringing them to the CANU informer for analysis and not selling them to him. This uncorroborated story was correctly found incredible.

WHEREFORE, we affirm the judgment of conviction imposed upon Elmer Nillos and sentence him to suffer the penalty of reclusion perpetua and to pay a fine of P20,000.00 and costs. The 37 match boxes of marijuana leaves shall be disposed of in accordance with law.

SO ORDERED.

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

ANNEX"A" REPUBLIC OF THE PHILIPPINES INTERMEDIATE APPELLATE COURT MANILA First Criminal Cases Division. [AC-G.R. CR No. 25554 November 18, 1983]

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ELMER NILLOS Y PALSARIO, accused-appellant

DECISION**GANCAYCO, J.:**

In an information that was filed in the Court of First Instance of Negros Occidental, Elmer Nillos y Palsario and Leon Peña y Cartel were charged for violation of Sec. 4, Art. II, Republic Act 6425, as amended by PD 1675 otherwise known as the Dangerous Drugs Act of 1972, allegedly committed in this manner:

"That during the period from May 21, to May 22, 1980, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually aiding one another, with the accused Leon Peña on May 21, 1980 wilfully, unlawfully and feloniously delivering to and supplying the accused. Elmer Nillos with 37 match boxes of dried marijuana leaves known as '-Indian Hemp' for Elmer Nillos to sell, and Elmer Nillos on May 22, 1980. did, then and there, give away to one Iking" a poseur-buyer of the Constabulary Anti-Narcotics Unit (CANU) the aforesaid 37 match boxes of dried marijuana leaves, which is a prohibited drug and which all the above-named accused are not lawfully authorized to process, sell, deliver or give away, in violation of the aforementioned law."

After arraignment and trial on the merits, a decision was rendered on May 4, 1982 convicting the accused Elmer Nillos of the offense charged and acquitting the co-accused Leon Peña. to wit.

"PREMISES CONSIDERED, the court finds Elmer Nillos guilty beyond reasonable doubt of the offense as charged. The law provides that "The penalty of life imprisonment to death and a fine ranging from twenty to thirty thousand 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 procurer of any such transactions . . .' There being no aggravating or mitigating circumstances and applying the provisions of the Indeterminate Sentence Law, the Court sentences Elmer Nillos to an imprisonment of Twelve (12) years and One (1) day of reclusion temporal as minimum to reclusion perpetua as maximum, to pay a fine of P20,000.00 and to pay the costs. The 37 match boxes of marijuana leaves are ordered confiscated in favor of the government to be disposed of in accordance with law.

On grounds of reasonable doubt, Leon Peña is hereby acquitted "

Not satisfied therewith, the accused Elmer Nillos now interposed this appeal alleging that the trial court committed the following lone assignment of error:

"THE TRIAL COURT ERRED IN CONVICTING APPELLANT AND IMPOSING A PENALTY OF 12 YEARS AND 1 DAY OF RECLUSION TEMPORAL AS MINIMUM TO RECLUSION PERPETUA AS MAXIMUM AND TO PAY A FINE OF P20,000.00 (3 AND COSTS"

The facts of this case as related in the appealed decision is (sic) substantially borne by the records:

'it appears that sometime on May 22; 1980 at around 11:30 A.M.. at the Plaza Mart Building, Bacolod City, Elmer

Nillos was apprehended by Sgt. Camilo Gonzalcs of the Philippine Constabulary Anti-Narcotics Unit (CANU) while in the act of selling 37 match boxes containing Marijuana leaves to Enrique Garcia, an informer of the CANU. This was made possible because of the information given by Ennque Garcia himself, to Sgt. Camilo Gonzales on May 22, 1980, at 8:00 A.M. When Enrique Garcia went to the office of the CANU at Room 201, Golden Heritage Building, San Juan St., Bacolod City and (sic) told Sgt. Gonzales that marijuana will be delivered by Nillos to Garcia on that same morning between 10:00 and 11:00 A.M. at the Plaza Mart Building. Because of that information, Enrique Garcia was briefed by and told what to do by Sgt. Gonzales. The latter organized a team composed of Sgt. Bolivar, Sgt. Palacios, and two civilian agents with Sgt. Gonzales as the team leader. They posted themselves at strategic positions at the escalator. A person who was later identified as Elmer Nillos arrived and asked the security guard for a certain Iking (Enrique Garcia) and he was told to proceed to the second floor. They saw Nillos handing a small paper bag to Enrique Garcia and immediately they apprehended Nillos and got the paper bag from him. When it was opened, it was found to contain 37 matchboxes of dried marijuana leaves (Exh. 1 to 1-38). They brought Nillos to their office for investigation and Nillos told them that he got the marijuana from his co-accused Leon Peña. And after being informed of his constitutional rights, he gave a written statement (Exh. A) implicating Leon Peña as the person from whom he got the marijuana leaves which statement was sworn on the same day May 22, before Assistant City Fiscal Ricardo Tornilla. Because of the information given by Nillos that the price of marijuana will be paid to Leon Peña on May 23, 1980 at around 11:00 A.M. at the Plaza Mart Building, Sgt. Gonzales, together with Sgt. Bolivar and Nillos went to the Plaza where payment will be made. Leon Peña arrived and he approached Nillos. Sgt. Gonzalcs allowed them to talk for about three minutes and they apprehended Leon Peria and brought him to their office for investigation. After having been appraised of his constitutional rights, he made a statement in writing (Exh B also marked Exhibit 3; Exh B-3 is the English translation) on May 26, 1980 which was sworn before Assistant City Fiscal Ricardo Tornilla, who asked him whether he gave his statement voluntarily, to which he answered in the affirmative. In that statement, he admitted to the investigators ownership of these 37 match boxes of marijuana leaves at the same time telling the investigators that the seedlings of these marijuana leaves were given to him by Elmer Nillos last December for planting.

As it is the standard operating procedure for evidence in this kind of cases to be forwarded first to the Regional Command in Iloilo and then for that Command to send the evidence to the Crime Laboratory at Camp Crame for chemical examination, Sgt. Gonzales first conducted a local field test of the same and he found out that there is a quantitative part of TCH (Tetrachylenol) which is a positive sign of marijuana. After a chemical examination of 11 random samples of the 37 match boxes were conducted by Lt. Luena Lavador, Forensic Chemist of the Integrated National Police assigned to Camp Crame, Quezon City, who is a chemist by profession, the findings of Sgt Gonzalcs was confirmed as shown by the Chemistry report dated July 1, 1980 (Exh J). The evidence for the prosecution further shows that all safeguards were adopted in order to ensure that the 37 match boxes (Exh. 1) as well as its contents will not be tampered with by having the same hand-carried by Patrolman Vicente Palacios to Iloilo and who personally delivered it to Maj. Generoso Dangca, Chief of the PC Crime Laboratory Regional Command VI, Camp Delgado, Iloilo, who in turn forwarded it to the PC Crime Laboratory in Camp Crame, Quezon City on June 19, 1980 (Exh H). It was there that the random samples of these 37 match boxes were chemically examined by Lieut. Luena Lavador and was found positive for marijuana (Exh. J)."

We find no merit in this appeal.

The theory of the appellant is that the marijuana leaves that was (sic) found in his possession was (sic) intended to be submitted by him for analysis and not for sale as he was allegedly commissioned by the Anti-Communist League of the Philippines to survey the source of marijuana in the province of Negros Occidental. He alleged that it was one Espiridion Pajes who asked him to conduct this surveillance in a plantation in Murcia.

This uncorroborated story of the appellant is obviously incredible. Although all opportunity was given him to produce his witness Espiridion Pajes to corroborate his version, the appellant failed to produce said witness. His complaint that he was not given the opportunity to present his defense has been aptly refuted in the People's brief as follows:

"In his testimony, appellant claimed that he was a government informer, commissioned by the Anti-Communist League of the Philippines to survey the sources of marijuana in Negros Occidental and report to the person in charge of the organization, Espiridion Pajes (p. 3, Appellant's Brief) So that his testimony would be believed, it was therefore necessary for appellant to present Pajes. Thus, appellant asked that Pajes be subpoenaed. Appellants request was granted, but Pajes could not be located. Appellant asked for more time to look for Pajes and he was given time But after giving appellant several opportunities, the trial court became exasperated with the continuous postponements, with Pajes as ploy. The trial court finally told appellant that if he could not produce Pajes on the next hearing scheduled on February 15, 1982, he would have to rest his case. Appellant agreed. On February 15, 1982, appellant did not present Pajes but rested his case instead. Then on March 12, 1982, he filed a motion seeking leave of court to present corroborative evidence, asking at the same time for the issuance of a subpoena to Pajes. The court easily saw through the scheme to further delay the case and denied the motion. It is this denial which appellant advances as deprivation of his right to present his witness."

By the same token the court a quo in refusing to believe the version of the appellant made the following observations:

"The evidence for the accused consists solely of their testimonies as well as documentary evidence For Nillos, his documentary evidence consist of Exhibit 1 to Exhibit 3, purportedly showing that he was given an assignment by a certain Mr. Espiridion Pajes to conduct surveillance of marijuana plantations somewhere in Murcia, Negros Occidental, while that of Peña were marked as Exhibit T - Peña {also marked as Exhibit D) Exhibit 2 - Pena, (also marked as Exhibit E) together with its submarkings. And Exhibit 3 - Peña (also marked as Exhibit B).

Nillos claims that on May 22, 1980, he was carrying the envelopes containing marijuana leaves for analysis, to be given to a person whom he does not know yet. So he sought the help of Iking or Enrique Garcia because he knows Iking to be an informer of the Constabulary Anti-Narcotics Unit. That is why on the day he was apprehended, he was handling the envelope to Iking Garcia but before that, he reported to Espiridion Pajes whom he knows to be a government intelligence agent, sometime in the first week of 1980, about the presence of a marijuana plantation in Murcia, Negros Occidental. He was told by Pajes to continue the surveillance of the plantation and that if he could secure marijuana leaves he should have it analyzed When he arrived at the second floor of the Plaza Mart, he met Pat. Vicente Palacios and together they went to the CANU office at San Juan-Luzuriaga. Palacios conferred with Sgt Gonzales and after twenty minutes they called for him. When he entered the room, he saw the package he was carrying already opened and the contents placed on the desk. Sgt. Gonzales informed him that those are marijuana leaves and Sgt. Bolivar inquired about his name, age, and other personal circumstances and asked him where he got these. Then Sgt Bolivar typed something and he was made to sign it (Exh. A) He did so because according to him, he was told that it was merely routinary, when he read the contents, he was surprised because there arc things therein which he did not tell them. But he was told to just cooperate with them as they will make him a witness He admitted during his testimony that Exhibit 1 is the same package containing the 37 match boxes containing marijuana leaves Explaining why he signed Exhibit D, another statement (also marked as Exh 1-Peña) which Nillos also signed on May 27, 1980, after Leon Peña was arrested, wherein Nillos admitted that he was the one who gave the marijuana seeds to Leon Pcria for planting, he stated that he did so because he was slapped in the face and that if he refused to do so, he would be made to dive on the floor." He also signed a "RECEIPT FOR PROPERTY SEIZED" dated May 22, 1980 (Exh. F) showing that the 37 match boxes of marijuana were taken

from him. He presented in court a xerox copy of a letter allegedly written by a certain Mr. Espiridion dated May 25, 1980 (Exh. 1-Nillos) addressed to "Hon Col. Arturo Licup", (sic) purportedly showing that on May 20, 1980, the accused Elmer Nillos informed him that a certain Mr. Peña is the one planting and owner of the plantation somewhere in Murcia. Ncgros Occidental..." (sic) and another xerox copy of a supposedly confidential information dated May 24, 1980 (Exh. 2-Nillos) addressed to "The Chief, D1, AACLUP, Manila' made by the same Pajes, pointing to Leon Peña containing the summary of the alleged offense which is not legible and upon very close scrutiny shows that the type written imprints are in the reverse order and another letter of Pajes dated September 17, 1980 (Exh. 3-Nillos) addressed to Brig. Gen. Hamilton Dimaya purportedly exculpating Elmer Nillos from the offense charged.

From the foregoing claim of Nillos, it is very apparent that his purportedly exhibits 1, 2 and 3, Nillos, which are not even carbon : copies but merely xerox copy where he made obviously as an afterthought. The evidence will show that Elmer Nillos was apprehended on May 22, 1980. The very first of the letter (Exh. 1-Nillos) is dated May 21, 1980, the second (Exh. 2-Nillos) is dated May 24, 1980, and the third (Exh : 3-Nillos. is dated September 17, 1980), clearly showing that these letters were made after his apprehension. These alleged letters were not even presented to the CANU agents when he was investigated His claim that he was carrying the sealed envelope supposedly containing marijuana leaves 'for analysis by a legally authorized person whom I do not know yet' using his own words, is by itself highly unnatural and incredible. No reason whatsoever was given by him when the CANU agents instead of commending him apprehended him. Nor was there any reason why Iking or Enrique Garcia who is supposed to be a friend of his would testify for the prosecution. There is no showing whatsoever that the CANU agents or Iking Garcia harbor a grudge against him. His claim that he reported the matter of marijuana plantation to Espiridion Pajes sometime in the first week of May, 1980 is also incredible, considering that he could have gone directly to Pajes for help in analyzing the leaves instead of seeking the help of Garcia so that the leaves could be analyzed "by a legally authorized person whom I do not know yet.' It is altogether surprising why in spite of the letters of this Espiridion Pajes to Col. Licup and Gen. Dimaya, no action whatsoever has taken by the two regarding the report of said government intelligence agent. The record will show that this Espiridion Pajes was promised to be presented by Nillos time and again, thus prompting the court to issue an order dated March 24, 1982 making known its observations to the effect that the 'Urgent Motion For Leave to Present Corroborative Evidence' dated March 12, 1980 of Atty. Hector Velez, counsel for the accused is obviously dilatory in nature as the records will show that it was really the failure of Atty. Velez to present Espiridion Pajes to the hearing of January 8, 1982 and February 15, 1982 that make him waive further presentation of that witness and accordingly rested his case. At any rate, as already stated by this Court, even if said Espiridion Pajes is presented to testify' on Exhs. 1, 2, and 3-Nillos, the Court will hardly afford his testimony any weight as the same is patently incredible and unbelievable.

Of course, the appellant reiterates his claim that his extrajudicial confession. (Exh. A) was secured thru force or intimidation. It is interesting to note that while in one breath, he said that his captors maltreated him, yet in another breath, he alleged that only one of the informers did so without identifying him (p. 5, Appellant's brief) Nor did he complain of the alleged force or intimidation inflicted on him when he was brought before Fiscal Tomilla before whom he swore to the truth of the same. Indeed, it does not appear that he even filed a complaint thereafter for such force or intimidation against the person allegedly responsible.

Moreover, his confession is replete with details that could have been furnished only by the appellant himself. During his examination in Court, he admitted that the many details contained therein were true (Tsn, Jan. 8, 1982, pp. 22-24)

A sign of voluntariness of confession is where an extrajudicial statement contains details which only he was in a

position to know and matters which the investigator included because it (sic) is exculpatory (People vs. Paras, 56 SCRA 248).

Under Section 4 of Republic Act 6425 as amended by PD 1675 which became effective on February 17, 1980, the penalty for the sale, delivery or giving away to another of a prohibited drug is life imprisonment to death and fine ranging from P20,000.00 to P30,000.00. The correct penalty therefore that should be imposed on the appellant is life imprisonment. Obviously, this case is not within the appellate jurisdiction of this Court.

WHEREFORE, except as to modification of the penalty above-stated, the decision appealed from is hereby **AFFIRMED** in all other respects with costs against accused-appellant. Let the records of this case be transmitted to the Honorable Supreme Court for review as a matter within its exclusive appellate jurisdiction.

SO ORDERED.

Borromeo and Lombos-de la Fuente, JJ., concur.

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