

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONIE CABOVERDE Y ACAS, ACCUSED-APPELLANT.

G.R. No. 66646. April 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

Accused-appellant pleaded not guilty to the crime charged in an information for Pushing of Prohibited Drugs per Sec. 4, Republic Act No. 6425, as amended by Presidential Decree No. 44 allegedly committed as follows:

"That in the morning on or about the 28th day of August, 1983, or thereabouts, at Dipolog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RONIE CABOVERDE y ACAS, with intent to sell, deliver, and distribute prohibited drugs to interested buyers, did then and there, willfully, unlawfully and feloniously sell and caused to be sold Two Hundred (200) grams of dried leaves of Indian Hemp, otherwise known as 'Marijuana' without being previously authorized by law to do the same, and in violation of the Dangerous Drugs Act of 1972, as amended by Presidential Decree No. 44." (p. 17, Rollo)

During the trial, the prosecution presented witnesses Police Maj. Ruperto E. Encabo of Dipolog City, Police Pat. Cecilio de la Cerna, National Bureau of Investigation Regional Chemist Cesar C. Cagalawan and fireman Venustiano R. Garcia, whose testimonies tend to establish the following:

A Special Operations Group was organized by Maj. Encabo to track down drug pushers in Dipolog City. Among the members were Fireman Venustiano Garcia and Pat. Cecilio de la Cerna. Maj. Encabo was informed that a certain alias "Ronie" was the source of marijuana being distributed in Dipolog. Maj. Encabo gave a certain police informer, whose identity was not revealed, authority to buy marijuana from said person known as "Ronie". Said test purchase was accomplished successfully so that another plan was hatched up by Maj. Encabo and his undercover agents Fireman Venustiano Garcia and Pat. Cecilio de la Cerna to entrap said drug pusher, at that time known only to them as "Ronie". On August 27, 1983, he gave P300.00 (in three P100.00- bills and accordingly marked) to Fireman Garcia who would pose as a buyer. Pat. Cecilio de la Cerna's role was to support Fireman Garcia in case the drug pusher would resist.

On August 28, 1983 at about 7:00 o'clock in the morning Fireman Garcia was guided by the police informer to Padre Ramon Street in Dipolog to meet "Ronie" to buy the marijuana stuff. When they reached Padre Ramon St., appellant Ronie Caboverde y Acas was already there standing near the house of a certain Acas. They approached appellant and without any exchange of words, Fireman Garcia gave appellant the money and in turn appellant delivered to the former the marijuana stuff which was wrapped first in tin foil and then in paper and taken from the back of the appellant. Immediately after said transaction, appellant was arrested by Fireman Garcia, identifying himself before the appellant. While in the house of Maj. Encabo, appellant gave the information that a son of a wealthy Chinese in his town was the drug supplier who procured his supply of the drug from a certain Eric Fernandez.

Right after the arrest of the appellant, Maj. Encabo took samples of the confiscated marijuana, placed them in two

match boxes and sent them to the NBI for laboratory analysis and examination. Mr. Cesar Cagalawan, NBI Regional Chemist, who conducted the microscopic, chemical and chromatographic examinations of the specimens, stated in his formal report that the specimens were marijuana.

Refuting the version of the prosecution, appellant presented his own testimony as corroborated by his witnesses Roland Zambrano, Rosario Acas-Maligro, Erlinda Acas La-id and Bernardo Franco.

Appellant who was 22 years old at that time testified that as an employee in the rice mill of his aunt situated in Barangay Taga, Katipunan, Zamboanga del Norte, he only comes to Dipolog, which is 8 kilometers away, every Saturday in the early evening and only goes back to work in the morning of the following Monday. He testified that in the morning of August 28, 1983 he was bound for the Catholic Church to hear Sunday mass, and he was wearing a T-shirt tucked inside his denim pants. After he had gone out from the house of his aunt, Rosario Acas-Maligro, where he had been staying, he stood for a while at the right side of Padre Ramon St., to see if there was any friend to walk with him in going to the church. He saw his cousin, Roland Zambrano, accompanied by a man whom he did not know, walking towards him from the road junction at Gen. Luna and Padre Ramon streets. Roland Zambrano introduced Fireman Garcia as "Bong" Garcia, a policeman, to appellant and informed the latter that Garcia wanted to talk to him about something. Thereafter, Garcia walked with the appellant in the direction going to the church while Roland Zambrano went home to take his breakfast. When they were already alone, Fireman Garcia inquired from the appellant about his whereabouts the preceding night. Appellant informed Garcia that he was in the house of his aunt viewing television. To a question of Garcia regarding appellant's knowledge of drug pushers in Dipolog City, the latter answered in the negative as he just arrived in Dipolog City recently. Appellant also denied Fireman Garcia's accusation that he sold marijuana the preceding evening. Garcia prevailed upon the appellant to accompany him to the house of Maj. Encabo to continue their conversation there. They reached the place which is situated at Barangay Dicastillas, Dipolog City, by riding in a motorcab. Appellant was introduced to Maj. Encabo who took out from a cabinet a package containing dried leaves wrapped in silver foil and shown to the appellant. Again, appellant denied the accusation this time of Maj. Encabo, that he (appellant) sells marijuana coming from a certain Eric Fernandez. From the house of Encabo the appellant was taken to the Police Station and later detained at the City Jail.

After due trial, the court found the accused Ronie Caboverde y Acas, guilty of the crime charged beyond reasonable doubt, sentencing him to life imprisonment and payment of a fine in the amount of P20,000.00, and the costs of the proceedings.[**]

In his appeal to Us, Appellant submits the following:

ASSIGNMENT OF ERRORS

- The Court a quo erred in holding that the stuff of dried twigs and leaves consists of Indian Hemp or marijuana;
- Assuming that said stuff consists of marijuana, but the court a quo erred in admitting the same as evidence of guilt against appellant due to serious constitutional infirmities;
- The court a quo erred in giving full faith and credence to the evidence adduced by the prosecution despite its inherent incredibility;
- The court a quo erred in not giving exculpatory weight to the evidence of the defense.

The appealed issues hinge on the question of credibility of the witnesses and their testimonies. The trial court's findings on credibility are generally not disturbed on appeal except where they overlooked certain facts of

substance and value that if considered, would affect the result of the case.

The prosecution admits that the drug pusher was only known to them as a certain alias "Ronie" and that such identity was only made known to them thru their police informer which they refused to name for security reasons. Admittedly, the meeting on August 28, 1983, was the first time between appellant and Fireman Garcia. Such was not a pre-arranged meeting as the appellant was not informed of this meeting. Only Garcia and his informer made arrangements between themselves as to where, when and how Garcia would meet the alleged drug pusher (TSN, Galanido, November 17, 1983, p. 10). Garcia testified that the selling of marijuana stuff by appellant and the paying for such stuff by Garcia were witnessed by the informer.

Where was the marijuana stuff? Witness Garcia declared bluntly that while he and his alleged informer were approaching the appellant, who was already standing near the corner of Padre Ramon Street upon their arrival, the latter was not holding anything. Allegedly without saying anything, witness Garcia handed appellant the money in the amount of P300.00 and in turn appellant similarly without uttering any word and without counting the money, simply took from his book, and delivered the marijuana stuff wrapped in tin foil and brown paper to the witness. Witness Garcia received the stuff without asking what was the content of the package and without even opening the package to verify its content. The version of the prosecution is inherently doubtful. It is certainly unbelievable for this kind of transaction to materialize without any exchange of words between the parties involved considering that there was no prearranged agreement as to the details of the meeting between Garcia and appellant. As already mentioned earlier, there is no evidence on record that either Garcia or his informer arranged previously for a meeting with the appellant on that day for the purpose of "buying" marijuana stuff from appellant. Moreover, the prosecution witnesses admitted that they knew the drug pusher only by the name "Ronie" as per information of their informer. There is no certainty from the evidence that this "Ronie" refers to appellant. None of the three witnesses knew appellant before August 28, 1983. The name "Ronie" is shared by a number of persons. In fact, another person in Dipolog City also carried the name "Ronie" Acas. He is a relative of appellant (TSN, Hamoy, December 2, 1983, p. 67).

Witness Garcia also admits that there were passersby while the alleged transaction was taking place (TSN, Galanido, November 17, 1983, p. 29). This version portrays an unbelievable situation wherein a person, who was allegedly engaged in drug pushing, carried out his illegal trade openly under risk of being caught by agents of the law, and accordingly being subjected to punishment imposed by the law.

We reject the evidence of the prosecution that an alleged informer was present during the transaction as it is unworthy of belief. The witnesses for the prosecution refused to divulge the identity of said informer, who could have been a very vital corroborating witness to their testimonies and thus strengthen the position of the prosecution. Prosecution maintained that to expose the identity and to bring this informer to court as witness would pose a grave danger to the life of such informer. What danger did the prosecution fear, when the identity of said informer and his involvement in the entrapment of appellant was already made known to the appellant during the alleged exchange of marijuana stuff and money. Furthermore, Garcia testified that while the appellant, the informer and he, were on board the motorcab, the appellant did not express any kind of misgivings to the informer nor blame him for the incident (TSN, Galanido, November 17, 1983, p. 17). This is very unnatural and not in accord with the ordinary conduct or reaction of mankind under said circumstances. Such inconsistencies and incredibilities only serve to weaken the posture taken by the prosecution.

In this connection, a witness for the defense, Roland Zambrano testified that he was asked by Fireman Garcia to introduce him to appellant (who is his cousin) on the morning of August 28, 1983. He had known Garcia even before said date, since they were friends. On that morning of August 28, 1983, Venustiano Garcia, whose nickname is Bong, went to the house of Roland Zambrano situated at Gen. Luna Street, Dipolog City, just in front

of the Provincial Capitol Building. Venustiano Garcia's purpose was to inquire if the latter knew the appellant and where he was residing. Roland Zambrano had agreed to accompany Garcia and to introduce him to appellant. When they turned left to Padre Ramon Street upon arriving at the road crossing at Gen. Luna Street, they coincidentally saw the appellant standing at the side of Padre Ramon Street. The two were agreed that while they were approaching until the time they were face to face with the appellant, the latter was not holding any package (TSN, Galanido, November 17, 1983, p. 14; TSN, Hamoy, December 1, 1983, p. 54). Roland Zambrano introduced Fireman "Bong" Garcia, as a policeman, to appellant and informed him that Garcia wanted to talk to him (appellant) about something. Thereafter, Garcia walked with appellant in the direction going to the church while Roland Zambrano testified that he did not witness any transaction or exchange of anything between said Garcia and appellant, nor was anything taken from the possession of the appellant. He did not also see Patrolman Cecilio de la Cerna in that meeting nor in the premises thereof.

Likewise, there is no showing that the stuff certified to as marijuana by the NBI Regional Chemist was the stuff taken from appellant assuming that witness Garcia really received something from appellant. Appellant denied making any extrajudicial confession or admission of guilt to any police officer alleging that during the custodial investigation, he was not assisted by counsel nor advised of his right to counsel and of his other constitutional rights.

Again, a reading of the testimonies of the witnesses for the prosecution shows irreconcilable and unexplained contradictions of such magnitude as to cast doubt on the guilt of appellant.

Maj. Encabo insists that from the place of alleged entrapment at Padre Ramon Street, Dipolog City, both Pat. de la Cerna and Fireman Garcia brought or took appellant directly to his (Encabo's) house at Estaka, Dipolog City, turning over to him the appellant, the marijuana stuff, and the sum of P300.00. (TSN, Hamoy, November 8, 1983, pp. 5; 22-23). After the investigation of appellant in Encabo's house, he was taken by them to the Police Station (Ibid., p. 5).

Conversely, Pat. de la Cerna and Fireman Garcia maintain that from the place of arrest at Padre Ramon Street, the appellant was taken by them directly to the police Station and not to the house of Maj. Encabo (Ibid, pp. 44-46, 49; TSN Galanido, November 17, 1983, pp. 15-18; 22). Garcia further testified that when he and the appellant arrived at the Police Station, he turned over the appellant and the marijuana stuff to the Desk Sergeant since Maj. Encabo was not there yet. Garcia had to go to the house of Encabo to fetch him and appellant was left behind at the Police Station. The amount of P300.00 - marked money was turned over to Encabo inside the Police Station. Garcia declared that the P300 marked money was recovered from appellant at the Police Station. Maj. Encabo on the other hand declared that he recovered the balance of P100 from appellant at the Station since he was already able to retrieve P200 earlier at his house (Hamoy, November 8, 1983, p. 21).

From this it can be gathered that the version of the prosecution does not suffice to overcome the constitutional presumption of innocence of the appellant. Conviction must come only after it survives the test of reason. Mere suspicion of guilt should not sway judgment. There is need therefore for the most careful scrutiny of the evidence of the State, both oral and documentary, independently of whatever defense is offered by the accused. Every evidence favoring his innocence must be duly considered. There is that absolute necessity of considering pertinent facts in clarifying contradictions and in filling up loopholes, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished.

Premises considered, appellant's guilt not having been proved beyond reasonable doubt, this Court hereby ACQUITS Ronie Caboverde y Acas of the crime charged.

SO ORDERED.

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

[**] Penned by Judge Simplicio M. Apalisok

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