

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO RUBIO Y ALCOBENDAS, ACCUSED-APPELLANT.

G.R. No. 66875. June 19, 1986

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In an information filed on July 27, 1981 with the then Court of First Instance of Manila, FELICIANO RUBIO y ALCOBENDAS was accused of violating the Dangerous Drugs Act, as amended, in the following manner:

"That on or about July 24, 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 wilfully and unlawfully sell or offer for sale one (1) small plastic bag containing marijuana leaves to an unidentified confidential informant for a consideration of P20.00 and the said marijuana is a prohibited drug." (Expediente, p. 1.)

The accused pleaded "not guilty" to the charge and after trial he was sentenced as follows:

"WHEREFORE, the Court finds the accused, Feliciano Rubio y Alcobendas, guilty beyond reasonable doubt of the crime as charged and hereby sentences him to serve the penalty of life imprisonment and to pay a fine of P20,000.00 and to pay the costs." (Id., p. 71.)

Rubio filed a notice of appeal which is the reason for this decision.

People's counsel has adopted the narration of facts in the appealed decision as follows:

"x x x it appears that a report from a concerned citizen was received by the police station No. 5, Western Police District, [Metro Manila], to the effect that there was an illegal act being committed by the suspect, by selling marijuana at the billiard hall of the Boulevard Executive Building, Ermita, Manila; that upon receipt of said confidential information, the aforesaid Patrolman Joves and Sgt. Guitan conducted a week long surveillance of the quarry and they were able to ascertain the identity and name of the suspect - alias Tarras - who is the herein accused, Feliciano Rubio y Alcobendas; (pp. 3-4, tsn, Feb. 22, 1982 AM; pp. 3-5, tsn, Jan. 22, 1982 AM; Exhibits "H" and "I".)

"That after one week of surveillance, the aforesaid police officers gave the confidential informant P20.00 in four (4) P5.00 bill denominations (Exhs. D, E, F & G) with which to buy marijuana from the accused at the aforesaid billiard hall; (pp. 5, tsn, Jan. 22, 1982 AM; Exhibits "H" and "I".)

"That on July 24, 1981, at around 11:00 PM, the aforesaid officers, Patrolmen Joves and Federes and Sgt. Guitan were at the aforesaid billiard hall together with the confidential informant and the latter approached the herein accused to buy marijuana, and the accused received the four (4) P5.00 bills, all previously marked by the police officers, and accused gave one (1) small plastic bag of marijuana to the buyer (confidential informant) and after said informant had left the billiard hall, Patrolman Federes apprehended herein accused and frisked him and recovered from his possession four (4) P5.00 bills, which were previously marked, together with two more plastic bags of marijuana leaves from the right side pocket of his (accused's) pants; (pp.

5-6, 12-13, tsn, Jan. 18, 1982 AM; pp. 4-5, tsn, Jan. 22, 1982 PM; Exhibits "H" and "I".)

"That the confidential informant relinquished the small plastic bag of marijuana leaves which he bought and received from the accused and this small plastic bag together with the other two (2) plastic bags of marijuana leaves were submitted to the Forensic Division of the National Bureau of Investigation (NBI) for examination; (pp. 8, 13, 15-16, tsn, Jan. 18, 1982 AM; p. 4, tsn, Jan. 22, 1982 AM; Exhibits "H" and "I"; see also Exhibits "B" and "C".)

"That witness Nieva G. Gamosa, Forensic Chemist of the NBI conducted microscopic and chemical examinations on the specimen (3) small plastic bags containing marijuana leaves with several pieces of rolling papers (Exhs. A, A-1, A-2 and A-3), submitted by Patrolman Federes, and the result of the microscopic examination on the said specimen which gave a positive result for marijuana (Exh. "C"), and that witness Gamosa conducted the three examinations, it being the standard procedure to test the presence of marijuana; (pp. 2-5, tsn, Nov. 4, 1981; Exhibits "B" and "C"; also Exhibits "H" and "I".)

"That the three aforesaid police officers affixed their signatures and/or initials on the four (4) P5.00 bills and took down the serial number of each and that Patrolman Joves was the one who investigated the accused on July 24, 1981, inside the Investigation Room of Police Station No. 5, and after informing the accused about the nature of the charges against him and about his constitutional rights, accused verbally admitted that he sold the one small plastic bag of marijuana leaves but he refused to reduce in writing his verbal admission. (pp. 8-11, 12, tsn, Jan. 28, 1982 AM; Exhibits "H" and "I".)" (Brief, pp. 3-5.)

Upon the other hand, the appellant's version is as follows:

"x x x that on July 24, 1981 at around 10:00 P.M., while he was inside the billiard hall of the Executive Building, Ermita, Manila, being a bystander, and while there, all of a sudden somebody came close to him; that he does not know these persons who approached him who were in civilian clothes and they said they were policemen and told him not to run; that, he asked why he was told not to run and they answered 'we are law enforcements' and further said they were informed that he (accused) is selling marijuana; that he answered he is not and at this time he was being searched and nothing was taken from his possession; that at the time he had no money in his possession and afterwards he was brought to the Police Precinct 5; that at the Police Precinct, he explained to the police but they never paid attention to him; that the three (3) plastic bags of marijuana and the money were not taken from him; that his investigation at the Police Precinct was not reduced in writing; that after his investigation he was brought to the City Jail; that he told the police that he was innocent of the crime for which he was arrested; and that he has not filed any complaint against these police investigators since July 27, 1981." (Expediente, pp. 68-69.)

It should be stated that the above version is based solely on the testimony of the appellant for there was no other witness for the defense.

The appellant claims that the trial court erred in convicting him because the prosecution failed to prove his guilt and in support thereof he advances the following propositions:

1. "There is absolutely nothing to show that the alleged bag of marijuana leaves allegedly turned over by the alleged informer of the Western Police District is the very same bag which defendant-appellant allegedly sold to him." (Brief, p. 7.)
2. The NBI forensic chemist, Nieva Gamosa, was not qualified as an expert witness to testify that the contents of the bag in question are marijuana leaves. (Id., p. 10.)

In support of the first proposition, the appellant points to the fact that the alleged informer was never presented as a witness to prove the fact that the bag he received from the appellant was the very same bag which he delivered to the police.

Rebutting this argument, the Solicitor General states:

"Even if these three plastic bags containing marijuana leaves were not 'authenticated', as appellant insists that they should be, their identification during the trial of this criminal case in the court below was clearly established. The records of this criminal case will show that counsel for the appellant never questioned or opposed the presentation and identification of the aforesaid three plastic bags containing marijuana leaves during the trial on the merits before the lower court. There was no need, therefore, to present the confidential informant for secrecy and security reasons, since the identities of the said plastic bags containing marijuana leaves (Exhibits "A", "A-1", "A-2" and "A-3") were impliedly admitted by the appellant." (Brief, p. 7.)

The first proposition is not impressed with merit.

There can be no doubt that the plastic bag which the appellant delivered to the informer was the very same object which the latter in turn delivered to the police.

We have examined the testimony of Romeo Joves, Salvador Guitan and Proceso Federes of the Drugs Enforcement Unit, Police Station No. 5, Western Police District. They were united in saying that on July 24, 1981 at about 11:00 P.M. they were inside the billiard hall of the Boulevard Executive Building in Ermita, Manila. There they saw, from a distance of about 5 meters, the accused deliver to their informant a plastic bag in exchange for P20.00 in four 5-peso bills which had been previously marked. Immediately thereafter Patrolman Federes apprehended the accused, frisked him and confiscated the marked money together with two more plastic bags similar to the one which had been delivered to the informer. In the light of this testimonial evidence, the identity of the plastic bag mentioned in the information appears to be indubitable. It should be stated in this connection that during the trial of the case the accused never for a moment questioned the identity of the plastic bag which constitutes the corpus delicti.

Anent the second proposition, the appellant states:

"Since Miss Nieva Gamosa was being presented as an expert witness, the prosecution had the burden of proving that she is indeed an expert witness and must prove that she possesses the necessary learning, knowledge, skill and experience to give an opinion as an expert witness. (Carbone v. Warburton, 94 A2d 680, 683; Fully vs. Mahoming Exp. Co., 119 NE2d 831, 833; Dark vs. Fitzer, 149 NW2d 222, 229; International Security Life Insurance Co. vs. Beau-champ, 464 SW2d 679, 681.)

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"The statement of Miss Nieva Gamosa that she is a forensic chemist is not sufficient to establish that she is an expert witness. The prosecution should have proven her learning, knowledge, skill and experience." (Brief, pp. 8-9.)

The People's counsel has, in our opinion, sufficiently rebutted the appellant's proposition in the following words:

"Even at the start of her testimony as a prosecution witness, Miss Nieva Gamosa declared that she is a forensic chemist of the NBI and that some of her duties were to conduct biological, chemical and physical analysis of dangerous drugs (p. 2, tsn, Nov. 4, 1981). Thereafter, the prosecuting fiscal proceeded to ask questions on her having conducted the examinations of the specimen or contents of the three plastic bags containing marijuana leaves forwarded to the NBI (Exhibit "B"), which were confiscated from the appellant by the police officers (Exhibits "A", "A-1", "A-2" and "A-3"), as well as the results of her examinations thereof (Exhibit "C") (pp. 3-4, tsn, id.).

"Counsel for the appellant did not object to the questions propounded by the prosecuting fiscal which elicited answers coming from an expert. Even during the cross-examination of said NBI forensic chemist, counsel for the appellant did not question her competence, qualification, expertise and experience on the subject matter of

marijuana. Instead, counsel for the appellant tried to test the NBI forensic chemist on her knowledge and experience with other elements, but the said witness demonstrated her competence and expertise by stating that only marijuana contains constituent traceable to manibonol (p. 5, *tsn*, *id.*). Appellant is now estopped from raising for the first time on appeal the issue of the competence of said witness as an expert on the subject of marijuana.

"Be that as it may, NBI forensic chemist Gamosa testified competently and reliably on the subject of her examinations of the specimen or contents of the three plastic bags containing marijuana leaves, confiscated from the appellant by the police officers. Thus, on the same day, July 24, 1981, she conducted three examinations on the said specimen, namely: microscopic examination, chemical examination, and chromatographic examination. The first examination is visual through the use of large magnified lens. With her experience in examining marijuana leaves, Miss Gamosa readily identified the specimen as marijuana. The second examination involved the application of a solvent on an extraction of the resin of said specimen, which resulted in the appearance of a purple color therein, which meant it was positive for marijuana. In the case of chromatographic examination, the extraction of the resin was spotted on a thin layer of the chromatographic plate, which was 'run' on a solvent system for about 45 minutes, and then sprayed with allocating senior agent, resulting in the appearance of purple, scarlet and orange colors, which also meant that it was positive for marijuana. Hence, NBI forensic chemist Gamosa submitted her findings, as follows:

'Microscopic, chemical and chromatographic examinations made on the above specimen gave POSITIVE RESULTS for MARIJUANA. (Exhibit "C")'

"An expert is one possessing in regard to a particular object or department of human activity, knowledge not usually acquired by other persons (*U.S. v. Gil*, 13 Phil. 530). Scientific study and training are not always essential to the competency of a witness as an expert. A witness may be competent to testify as an expert although his knowledge was acquired through the medium of practical experience rather than scientific study and research. Generally speaking, any person who by study or experience has acquired particular knowledge or experience may be allowed to give in evidence his opinion upon matters of technical knowledge relating to such business or employment (*Dilag & Co. Inc. v. Merced, et al.*, (CA) 45 O.G. 5536)." (Brief, pp. 9-11.)

The appellant also faults the trial court for "admitting in evidence the alleged oral admission of defendant-appellant." (Brief, p. 10.) He disclaims having made an oral admission to the police and, assuming that he made one, he questions its admissibility on constitutional grounds principally on the basis of the rule in *Miranda*. We have read the trial court's decision very closely and nowhere do we find that it admitted or relied upon the alleged oral admission of the accused in order to find him guilty. The accused was convicted solely on the oral testimony of the prosecution witnesses who were found by the court to be more credible in these words:

"The clear and straight-forward manner with which the aforementioned police officers, as prosecution witnesses, testified on the stand merits the Court's belief in their testimonies giving the same full weight and credit. There is no evidence to show that the three (3) police officers were actuated by evil or bad motive to testify and, as has been held in a case, in the absence of evidence as to an improper or evil motive actuating them to testify in the manner they did strongly tend to sustain the conclusion that no such improper or evil motive existed and so the Court finds their testimonies as being trustworthy and reliable.

"The Court finds that, with the mere denial of the accused, same can not prevail over the probative weight and value of the testimonies of the police officers, as confirmed and supported by the findings of the N.B.I. Forensic Chemist, which testimonies are deserving of belief and merit the Court's full faith and credit." (Expediente, pp. 70-71.)

WHEREFORE, finding no reversible error to have been committed by the court a quo, the appealed decision is hereby affirmed in toto. Costs against the appellant.

SO ORDERED.

Yap, Narvasa, Melencio-Herrera, and Cruz, JJ., concur.

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