

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAUREANO FERNANDO Y CARANE, ACCUSED-APPELLANT.

G.R. No. 66947. October 24, 1986

Ponente: MELENCIO-HERRERA J.

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MELENCIO-HERRERA J.:

Convicted by the Regional Trial Court of Quezon City, Branch XC, in Criminal Case No. Q-20261, for Dope Pushing, in violation of Section 4, Article II of Republic Act No. 6425, as amended by Batas Pambansa Blg. 179, (the "Dangerous Drugs Act"), and sentenced to life imprisonment and to pay a fine of P20,000.00, accused Laureano Fernando y Carane appeals for reversal.

The Information against the Accused charged:

"That on or about the 16th day of May 1982, in Quezon City, Philippines, the above-named accused, without any authority of law, did then and there, wilfully, unlawfully and feloniously sell and deliver forty (40) sticks of marijuana cigarettes to Victoriano Mangrobang a poseur-buyer, in violation of said law." [1]

As synthesized by the Solicitor General, the prosecution evidence reads:

"On May 16, 1982, Pat. Ernesto Labucay, a member of the Quezon City Police Force assigned to the Anti-Narcotics Unit was directed by his Commanding Officer, Major Alfredo Param to conduct operations against users and pushers of narcotics at San Francisco del Monte, Quezon City, (p. 2, tsn, Oct. 13, 1982). Dispatched with Pat. Ernesto Labucay was Victoriano Mangrobang, a confidential informer.

At about one o'clock of that same day, May 16, 1982, Pat. Ernesto Labucay together with Victoriano Mangrobang proceeded to the target area at West Riverside, Quezon City (p. 2, tsn, Oct. 13, 1982). Pat. Labucay instructed Mangrobang to conduct a 'test buy' from someone known as Juan Mariano. He handed to Mangrobang a P100.00 bill with serial No. DM 134970 to purchase 50 grams of marijuana (p. 2, tsn, Oct. 13, 1982). Pat. Labucay and Mangrobang agreed to a prearranged signal. They agreed that once there is a transaction, Mangrobang shall touch his hair on his head (p. 3, tsn, Oct. 13, 1982).

Patrolman Ernesto Labucay posted himself at the place near the house of the accused, Laureano Fernando, which is located at 59 Apollo Street, West Riverside, San Francisco del Monte (pp. 3, 6, tsn, Oct. 13, 1982). Victoriano Mangrobang went to the house of the accused. After a while Mangrobang and the accused went out of the house and they talked together. Thereafter the accused went inside the house and came out. The accused handed something to Victoriano Mangrobang (p. 3, tsn, Oct. 13, 1982). As per their pre-arrangement, Victoriano Mangrobang touched the top of his head and forthwith Pat. Labucay approached them. After identifying himself as a police officer, Pat. Labucay confiscated from Mangrobang the thing wrapped in paper given by the accused which turned out to contain forty (40) cigarette sticks of marijuana (p. 3, tsn, Oct. 13, 1982). Pat. Labucay placed the accused under arrest and brought him to their headquarters for investigation (pp. 3, 4, tsn, Oct. 13, 1982).

The accused refused to give any statement to the police (p. 2, tsn, Dec. 8, 1982). Pat. Benedicto Chua, an investigator in the Anti-Narcotics Unit interviewed Victoriano Mangrobang on May 16, 1982 who gave his

statement, Exhibit F in front of Major Param (pp. 2, 5, tsn, Dec. 8, 1982). He also investigated Pat. Ernesto Labucay who gave a written statement. With the statements of Pat. Labucay and informer Victoriano Mangrobang as basis, Pat. Benedicto Chua prepared the letter referral to the Fiscal's Office.

On May 20, 1982, Assistant Fiscal Gregorio Dayrit to whom the case was referred conducted an inquest (p. 7, tsn, Dec. 8, 1982). He examined the statement, Exhibit F, of Victoriano Mangrobang. He asked Victoriano Mangrobang on how and from whom did he purchase the marijuana and he pointed to the accused Laureano Fernando seated beside him as the person from whom he bought the 40 sticks of marijuana. Mangrobang confirmed to Fiscal Dayrit what appears in his statement, Exhibit F (p. 7, tsn, Dec. 8, 1982). Mangrobang signed his signature again on Exhibit F before Fiscal Dayrit (pp. 7-8, tsn, Dec. 8, 1982).

The 40 sticks of marijuana were turned over to the Philippine Constabulary Laboratory Examination to determine the presence of marijuana. The result of the examination shows that each of the 40 sticks was positive for marijuana (Exh. A-2, p. 1, Folder of Exhibits)."[2]

The written statement of the confidential informer, Victoriano MANGROBANG (Exhibit "F"), 20 years old, single, relied on heavily by the prosecution, reads in part as follows:

"06 T:

Isalaysay mo nga ang buong pangyayari?

S:

Isinama po ako nila ni Pat E. Labucay sa kanilang operation sa Del Monte Ave., Quezon City dahil may alam akong isang marihuana pusher. Binigyan po ako ng isang daang peso na papil na may serial #DN137940 para ibili ng marihuana. Matapos pong maip plano ni Pat. E. Labucay ang aking gagawin ay tumuloy na ako sa lugar ng nasabing pusher at sila ay pumuesto sa di kalayuan na natatanaw ang aking galaw, na nakausap ko si Marciano na noon ay nasa loob ng kanilang tindahan na bibili ako ng kalahating guhit ng marihuana ngunit wala daw siyang stock kundi apat na pung stick ng sigarilyong marihuana.

"07 T:

Binili mo ba ang apatnapung (40) stick ng marihuana?

S:

Opo, pinabayaran po sa akin sa halagang P40.00, kaya inabot ko sa kanya ang isang daang piso at pagkatapos ay umalis siya sandali, nang bumalik siya inabot sa akin ang apatnapung stick ng marihuana at ang sukling P60.00. Sa aktong ito ay suminyas ako kay Pat. E. Labucay at kaagad ay hinuli nila si Marciano."[3]

During the trial, however, to the surprise of the prosecution, and despite threats of a possible charge for perjury since he was testifying under oath, MANGROBANG denied having given any statement to the police and refused to confirm the contents of Exhibit "F". He maintained that he was merely made to sign a prepared statement when he was drunk and that when Pat. Labucay had instructed him to buy "damo" or marijuana and gave him a P100.00 bill for the purpose, he was also drunk. What is more, he categorically stated and reiterated that he did not buy the marijuana sticks in question from the Accused but from one "Boy Oxo" who was then at the Accused's place and to whom he paid the marked P100.00 bill handed to him by Pat. Labucay.[4] According to him, therefore, Pat. Labucay had arrested the wrong person.[5] And, when made to identify the Accused in open Court, he did so because he knew the man but emphasized that it was not the latter who had sold to him the marijuana cigarettes.[6]

To rebut MANGROBANG's damaging testimony, the Inquest Fiscal, who was also the Prosecuting Fiscal, took the witness chair and, propounding questions to himself, testified that he conducted the inquest in the evening of May 20, 1982 at his residence; present then were Pat. Labucay, Pat. Chua, their informant MANGROBANG, and the Accused. He examined MANGROBANG's statement, asked questions of the latter, and when he asked MANGROBANG from whom he had purchased the marijuana, MANGROBANG pointed to the Accused who was seated beside him (MANGROBANG) at the time, MANGROBANG allegedly confirmed his statement and affixed his signature again in the Fiscal's presence.[7] And finally, that MANGROBANG never mentioned the name of "Boy Oxo" during the inquest.

Another fact disclosed during the trial to impeach MANGROBANG's adverse testimony was that he was then confined in the same jail as the Accused as an "user" of marijuana and would, therefore, be sympathetic to the Accused, although MANGROBANG maintained that they were detained in different cells.

For his part, the Accused, 33 years, married, a taxi driver, testified that between 12:00 noon and 1:00 in the afternoon of May 16, 1982 while he was peacefully fixing the fence at the back of his house at 59 West Riverside, San Francisco del Monte, Quezon City, two men unknown to him rushed towards his direction. They were being chased by three policemen, one of them being Pat. Labucay, MANGROBANG, whom he did not know at the time, was also with them. These policemen arrested said unknown persons and also placed him under arrest after he told them that he did not know those individuals. And because said policemen had guns and told him that he can give his explanation at the precinct, he did not resist and allowed himself to be brought to the precinct. Thereat, one of the policemen showed him a plastic bag the contents of which he was not aware of. He was charged to be the owner thereof said to contain the prohibited drug in question, and MANGROBANG pointed to him as having sold him (MANGROBANG) the marijuana sticks. He denied the charge and maintained "I don't know anything about that." He claimed that he has no vice in life except to watch movies and to take care of children. Further, that he has never been arrested for having sold or used any dangerous drug in the past and that he is a good citizen of his barangay.[8] In support thereof, he presented in evidence a Certification from their Barangay Captain that he "ha(d) not been involved in any crime or offense with our barangay." [9]

Evaluating the conflicting evidence, the Trial Court found MANGROBANG's turn-about quite understandable having been himself jailed as a marijuana user and it being natural that he would have wanted to help a co-detainee. The Court a quo also discredited the Accused's version and found that there was "enough evidence to sustain the conviction of the Accused in that he was seen delivering to MANGROBANG 40 sticks of cigarettes, definitely found by chemists of PCCL Laboratories to be positive for marijuana." It thus meted out conviction in a judgment, the dispositive portion of which reads:

"From the evidence adduced, the Court finds Laureano Fernando y Carane, GUILTY under Sec. 4, Art. II of Republic Act 6425, as amended by Batas Pambansa No. 179 and is sentenced to life imprisonment and to pay a fine of TWENTY THOUSAND PESOS (P20,000.00) with subsidiary imprisonment in case of insolvency and costs.

The Branch Clerk of Court is ordered to bring and surrender the forty (40) cigarettes like sticks of marijuana to the Dangerous Drug Board for disposition.

SO ORDERED." [10]

After a careful scrutiny of the evidence, however, we find that the guilt of the Accused has not been proven to a moral certainty.

Without MANGROBANG's identification, the conclusion of the Trial Court that the Accused was seen delivering something to MANGROBANG wrapped in a paper, which turned out to be marijuana, is not supported by the

evidence. The testimony of Pat. Labucay to that effect was overturned by MANGROBANG, the very person to whom it was allegedly delivered. Significant is the fact that in the course of Pat. Labucay's testimony, he was not made to identify the Accused. It was MANGROBANG who identified the Accused in open Court but who insisted that it was not from the latter that he had bought the marijuana sticks.

It could have helped the cause of the prosecution if the marijuana sticks were recovered from the Accused himself but they were not. A body search on his person by Pat. Labucay neither yielded the marked money used to purchase the marijuana sticks as testified to by Pat. Labucay. There is thus an hiatus to the evidence fatal to a finding of guilt.

The explanation that MANGROBANG turned hostile only because of his subsequent detention and his desire to help a co-detainee is a mere conjecture and is insufficient to overturn MANGROBANG's unwavering testimony that the wrong person was arrested as it was not from the latter that he had bought the marijuana sticks.

True, MANGROBANG admitted having signed the statement attributed to him (Exhibit "F") but alleged that it was a prepared statement. This is likely as it dovetails closely with the declarations of the arresting officer, Pat. Labucay. It is to be noted also that the name mentioned therein is not that of the Accused but that of "Marciano." Exhibit "F" is thus unreliable evidence in the face of the Accused's denials.

The disputable presumption that official duties have been regularly performed must yield to the constitutional presumption of innocence of an accused.

En passant, it may be stated that the common modus operandi of narcotic agents of utilizing poseur-buyers does not always commend itself as the most reliable way to go after violators of the Dangerous Drugs Act as it is susceptible to mistake as well as to harassment, extortion, and abuse.

We hark back to the fundamental precept that the prosecution carries the burden of proof to establish the guilt of the accused beyond reasonable doubt. It is not incumbent upon an accused to disprove his guilt. In this case, without the testimony of the poseur-buyer, MANGROBANG, there is no convincing evidence pointing to the Accused as having feloniously sold and delivered to MANGROBANG the 40 sticks of marijuana cigarettes.

WHEREFORE, for lack of proof of his guilt beyond reasonable doubt, the accused Laureano Fernando y Carane is hereby acquitted of the crime charged. Costs de officio.

SO ORDERED.

Yap (Chairman), Narvasa, Cruz, and Feliciano, JJ., concur.

[1] Rollo, p. 3.

[2] Appellee's Brief, pp. 2-4, Rollo, p. 104.

[3] Exhibit "F", Folder of Exhibits.

[4] T.s.n., November 22, 1982, pp. 8-11.

[5] *ibid.*, p. 8.

[6] *ibid.*, p. 12.

[7] Exhibit "F-2", Folder of Exhibits.

[8] T.s.n., May 11, 1983, pp. 2-8.

[9] Exhibit "2", Folder of Exhibits.

[10] Original Records, pp. 77-78.

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