

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MACARIO DIAMSAY Y PAGBA, ACCUSED-APPELLANT.

G.R. No. 67289. October 05, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

We ACQUIT the appellant, the accused in the Regional Trial Court of Manila's[1] Criminal Case No. 83-15268, a prosecution for violation of the Dangerous Drugs Act.

The records indicate a variance of facts between the prosecution and defense. We quote:

On February 16, 1983, when duly arraigned with the assistance of his de officio counsel, the accused entered the plea of not guilty. Then the trial proceeded accordingly. To prove the guilt of the accused, the prosecution presented the following witnesses:

- 1) PC/Sgt. Bonifacio Lustado of the PC/INP Narcotics Command, Camp Crame;
- 2) Pfc. Reynaldo Santos, of the Western Police District; assigned to the Narcotics Command;
- 3) CIC Victor Ibarra, of the Narcotics Command;
- 4) Pfc. Wenceslao Leaño, Jr., of the Western Police District, assigned to the Narcotics Command; and
- 5) P/Lt. Lina C. Castillo, Forensic Chemist of the PC Crime Laboratory, Camp Crame.

Taken together, their testimonies run as follows:

At about 9:00 o'clock in the evening of February 3, 1983, having received a few moments before from a police informer that a certain MAR was selling marijuana cigarettes in the immediate vicinity of Mayhaligue St., corner Rizal Avenue, Sta. Cruz, Manila, a PC-INP Anti-Narcotics Team headed by Sgt. Lustado, with Sgt. Enrico Bautista, CIC Ibarra, Pfc. Santos and two others as members, all in civilian clothes, together with the informer, proceeded forthwith in a civilian jeep to Mayhaligue St., corner Rizal Avenue to conduct a surveillance and apprehend the person who shortly before was reported to be selling marijuana cigarettes somewhere in that vicinity. As earlier arranged and planned by their Officer in Command, Capt. Carlos Dacanay, C1C Ibarra was assigned the task of posing as a buyer of marijuana cigarettes and the others to close in and apprehend the seller of marijuana cigarettes upon signal of C1C Ibarra by lighting a cigarette. For buying marijuana cigarettes from their quarry, Capt. Dacanay gave C1C Ibarra the sum of P40.00 in two (2) P20.00 marked bills.

As soon as they arrived at the immediate vicinity of Mayhaligue Street corner Rizal Avenue, the team stopped at Erlinda's Canteen along Mayhaligue St., and with the covert assist of the informer, C1C Ibarra was able to contact MAR who turned out to be the herein accused himself. Ibarra pretending to be a marijuana user, thereupon told MAR that he urgently needed marijuana cigarettes and was interested in buying some. When MAR agreed, Ibarra handed to MAR the P40.00 which was earlier given to him by Capt. Dacanay. As soon as he got the P40.00, MAR asked Ibarra to wait for a few moments as he was going to get marijuana cigarettes

from his supplier. After a few moments MAR returned to where Ibarra was waiting for him. Immediately upon his return, MAR handed a small bundle wrapped in a piece of newspaper and whereupon Ibarra opened the bundle which contained twenty (20) sticks of marijuana cigarettes. Upon seeing the twenty sticks of marijuana cigarettes Ibarra gave the signal to his co-members of the team by lighting a cigarette, and thereupon Pfc. Santos who was nearest to Ibarra closed in, forthwith followed by the other members of the team, to corner and arrest MAR. Upon sensing that he was going to be arrested for selling marijuana cigarettes, MAR tried to grab the marijuana cigarettes wrapped in a piece of a newspaper from Ibarra but Ibarra was able to hold on to some of the marijuana cigarettes while the rest fell down to the ground, but which were shortly thereafter retrieved by the team. Unable to recover the marijuana cigarettes, MAR whereupon tried to escape the dragnet formed by the team but was caught and then arrested. When MAR was searched and interrogated by some members of the team, the P40.00 was nowhere to be found in his person, and MAR pointed to a certain Freddie of Anacleto Street as the source of the marijuana cigarettes to whom he gave the P40.00. Immediately thereafter, some members of the team exerted efforts to find and arrest Freddie, the marijuana cigarette supplier of MAR, and to recover the marked money, but their efforts were in vain.

MAR, who is the herein accused, was then brought by the team to the Quiricada Police Station where the team had its headquarters. The following morning, the twenty sticks of marijuana cigarettes (Exhibits "B", "B-1" to "B-19") were submitted for laboratory examination to the PC Crime Laboratory, Camp Crame, and the cigarettes, when subjected to qualitative examination by P/Lt. Lina C. Castillo, were found to be positive for marijuana, as shown by Chemistry Report, Exhibit "C". The accused was then turned over for investigation to the Narcotics Command Headquarters at Camp Crame, Quezon City, where, after having been duly informed of his constitutional rights, he gave his extra-judicial statement, Exhibit "E", to Pfc. Leaño. In the course of the taking of his statement, he also agreed to mark with his own initial each stick of the marijuana cigarettes. This extra-judicial statement of the accused in Pilipino, which language he knows very well, reads as follows:

"PAHIWATIG: Ikaw ginoong Macario Diamsay y Pagba ay kasalukuyang nasasailalim sa isang pagsisiyasat dahil sa kasalanang pagbebenta ng marijuana, ngunit bago kita tanungin ay nais kong malaman mo ang lahat ng iyong mga karapatan ayon sa ating bagong Saligang Batas gaya ng mga sumusunod:

1. Ikaw ay may karapatang manatiling tahimik o huwag sumagot sa lahat ng aking itatanong sa iyo.
2. Karapatan mo rin ang kumuha ng isang abogado na sarili mong pili upang tumulong sa iyo sa pagsisiyasat na ito at kung hindi mo kayang kumuha ng isa ay bibigyan ka namin ng isa na walang bayad.
3. Na ang lahat ng sasabihin mo rito ay maaaring gamitin pabor o laban sa iyo sa alin mang hukuman dito sa ating Bansa.

TAGASIYASAT: Ngayong nalaman mo ang lahat ng iyong mga karapatan ayon sa ating Saligang Batas at ito ay iyong maunawaang lubos, ikaw ba ay nakahanda pa ring magbigay ng salaysay kahit wala kang abogado sa kasalukuyan na ikaw ay hindi ko tinakot, sinaktan o pinangakuan ng ano mang bagay na makaluluwag sa iyo sa usaping ito?

SINISIYASAT: Opo, magbibigay po ako ng salaysay kahit wala akong abogado dahil totoo lang pong lahat ang aking sasabihin dito.

(SGD) Macario P. Diamsay

01. T: Kung ganoon maari bang sabihin mong muli sa akin ang iyong buong pangalan at ibat-ibang bagay na nauukol sa iyong pagkatao?

S: Ako si Macario Diamsay y Pagba, 19 taong gulang, binata, nag-aaral sa PCCR, tubong Nueva Ecija at kasalukuyang naninirahan sa 1217 Rizal Ave., Sta. Cruz, Manila.

02. T: Ikaw ba ay marunong bumasa at sumulat sa wikang Pilipino?

S: Marunong po.

03. T: Sabihin mo nga sa aking kung bakit ka naririto ngayong at nagbibigay sa akin ng isang malayang salaysay?

S: Dahil nahuli po akong nagbigay ng mga sigarilyong marijuana.

04. T: Ilan bang stick ng marijuana ang sinasabi mong iyong ibinigay at kanino mo ito ibinigay?

S: Dalawampung sticks po at hindi ko po ito kilala.

05. T: Magkano naman ang hiningi mong pera kapalit ng dalawampung stick (20) ng marijuana?

S: Kuwarenta (P40.00) pesos po.

06. T: Kailan, saan at anong oras ka naman nahuli?

S: Noong ika-3 ng Febrero 1983, sa Mayhaligue St., Sta. Cruz, Manila.

07. T: Kanino mo ba kinukuha ang mga marijuana na iyong ibinebenta sa halagang P40.00 pesos?

S: Kilala ko lang po siya sa tawag FERDIE na nakatira sa Mayhaligue St., Sta. Cruz, Manila.

08. T: Ano ba ang itsura nitong si @ FERDIE na sinasabi mong kinukunan mo ng marijuana?

S: Mahaba po ang kanyang bunok, may bigote, mga 5'5" ang taas, bungi ang kanyang apat na ipin sa harap at kayumanggi ang kanyang kulay.

09. T: Ikaw ba ay madalas kumuha sa kanya ng marijuana?

S: Isang beses lang po.

10. T: Ano ba ang iyong pakinabang sa pagkuha mo sa kanya ng marijuana?

S: Sa halagang P40.00 pesos po ay kumikita ako ng limang piso P5.00.

11. T: Ikaw ba ay dati na nasangkot sa ganitong usapin?

S: Hindi po, first time lang po ito.

12. T: Pansamantala ay wala na akong itatanong sa iyo, mayroon ka bang nais idagdag o bawasin sa mga sinabi mo sa akin?

S: Wala na po.

13. T: Matapos mong mabasa ang nilalaman ng salaysay mong ito at ito ay iyong maunawaang lubos, ikaw ba ay nakahandang lagdaan ito bilang patotoo sa lahat ng sinabi mo rito?

S: Opo."

Testifying in his own defense, the accused repudiated his extra-judicial confession, claiming he was coerced by the police into signing it with the repeated use of physical violence upon his person. Thus, he denied in so many words that he is the one who sold the 20 sticks of marijuana cigarettes to CIC Ibarra and pointed to one Freddie as the culprit. He declared that he is a first year college student in criminology. At around 9:15 P.M. on February 3, 1983, he was walking along Mayhaligue Street on his way home from his classes when he was met by Mentoy, a student-friend of his for more than a month. Whereupon Mentoy introduced to him a person whose name is Ibarra and asked him to accompany Ibarra to a certain Freddie because Ibarra wanted to buy marijuana cigarettes. As he did not know then Freddie, he asked Mentoy to describe the person of Freddie, and where he could find Freddie. Mentoy then described to him Freddie's person and told him Freddie could be

found at nearby Anacleto Street. Forthwith he proceeded to Anacleto Street, while Ibarra waited for his return at Erlinda's Restaurant. Finding Freddie, he hurriedly accompanied him to the restaurant and here with no other else around he heard and saw Ibarra buying 20 sticks of marijuana cigarettes from Freddie. When Ibarra handed P40.00 to Freddie, the latter thereupon delivered to the former something wrapped in a piece of paper which upon being unwrapped at once by Ibarra, contained 20 sticks of marijuana cigarettes. Upon seeing the marijuana cigarettes, Ibarra collared Freddie to arrest him, but Freddie resisted and struggled to free himself from the hold of Ibarra and at the same time to recover the wrapped marijuana cigarettes. While the two were struggling with each other, the marijuana cigarettes fell and were scattered on the ground. Momentarily Freddie was able to free himself from Ibarra's hold and to run away. Thereupon, Ibarra ran after Freddie through the streets. Then he lost sight of Ibarra chasing Freddie. Some twenty minutes later, Ibarra returned to the restaurant, and finding him still in the restaurant, Ibarra invited him to the Quiricada Police Station on the pretext that he would give his statement regarding the incident.

At the police station, he was interrogated and grilled by Sgt. Lustado and at about 2:30 A.M. he was brought to Camp Crame where after some interrogation by Sgt. Leaño and just after being awakened, he was coerced by the officer with the use of repeated violence and intimidation into signing some papers which turned out to be the extra-judicial statement, Exhibit "E", but which he was not allowed to read nor was ever read or explained to him before and after he was compelled to sign it.[2]

The trial court disposed of the case as follows:

WHEREFORE, the Court finds the accused, MACARIO DIAMSAY y PAGBA, guilty beyond reasonable doubt of a violation of Section 4, Article II in relation to Section 2 (i), Article I, of the Dangerous Drugs Act, as amended, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, with the accessory penalties provided by law, and to pay a fine of Twenty Thousand (P20,000.00) Pesos.[3]

It is manifest that, in so disposing, the trial court relied alone on the accused-appellant's alleged extrajudicial confession thus:

As heretofore adverted to, the main thrust of accused's strategy is to undermine the probative force of his extra-judicial confession, thereby to render at naught the rest of the People's evidence. This Court finds his defense unpersuasive.

The presumption of law favors the spontaneity and voluntariness of a statement given by the defendant in a criminal case. This, herein accused has not been able to overcome. The entire record convincingly indicates that his extra-judicial confession was given voluntarily and that it reflected the truth. He admitted in his testimony that he had not submitted himself to medical and physical examination, much less requested such medical examination. The circumstance that he had been under detention is no impediment to such examination, since he has an elder half-brother who had been visiting him in jail as soon as he was detained. This brother of his, Urbano Isidro is his name, was the one supporting him in college. If as he claims he was maltreated, he could not have missed communicating such maltreatment to his brother at the first opportunity and instituting or initiating formal charges of whatever nature against those who allegedly maltreated him. For another thing, the Court well noted that herein accused exhibited lack of spontaneity in his testimony, showing lack of sincerity in putting up his defense. And more, his extra-judicial statement is strongly corroborated by the collective testimony of C1C Ibarra, Pfc. Santos, Sgt. Lustado and Pfc. Leaño.[4]

The applicable rule, with respect to extrajudicial admissions, is Rule 133, section 3 thus:

Sec. Extrajudicial confession, not sufficient ground for conviction. -- An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti.[5]

So also has it been held:

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7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means--by telephone if possible--or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.[6]

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On account alone of the fact that the accused-appellant was not, at the time he allegedly waived his right against self-incrimination, assisted by counsel, the alleged confession is invalidated.

In the absence thereof, the Court strikes out the accused's police station statement in question.

The rule, however, is not without exception. Where there is independent evidence, apart from the accused's uncounseled confession, that the accused is truly guilty, the latter nevertheless faces a conviction.[7] The question that surfaces is, does evidence of this character exist to warrant, nonetheless, the return a guilty verdict?

The version of the prosecution is that the arrest of the accused-appellant was the result of a successful "buy-bust" operation. The accused-appellant insists, on the other hand, that he had been a victim of instigation, and as such, he is allegedly innocent.

Obviously, it is the prosecution's word against the accused's, and vice versa.

Under the Constitution, "the accused shall be presumed innocent until the contrary is proved." [8] It is a strong presumption that may be overthrown only by evidence of guilt "beyond reasonable doubt." [9] In close cases, like the one at bar, the Court is predisposed to decide for the accused and against the prosecution.

The parties seem agreed that the "Indian hemp" in question came from a certain "Freddie" whom the accused-appellant accused as his source, but who, according to the authorities, was nowhere to be found. Whether or not Freddie is real or fictitious, the fact is that the police's case consists of plain accusations and say-so's by C1C Victor Ibarra. Aside from that, there exists no hard evidence to justify conviction. What we have are self-serving claims of the law enforcers.

All told, the Court is not minded to accept them as pieces of evidence in the nature of proofs beyond reasonable doubt. Acquittal, therefore, is in order.

The Court must not be misunderstood as "sending back to the streets" drug traffickers, dope fiends, and other undesirable elements to prey on the youth and stalk the unwary. The Court is concerned, too, about the increasing incidence of drug abuse in the country, a fact that has not only set back our efforts to build a nation, more so, threatened our very future -- the youth. And while cannabis is not, technically, a "drug" (like a narcotic), we take judicial notice of the fact that new studies are being made, and old findings being rewritten, as to whether or not marijuana, like other drugs (especially narcotics and other mood-altering chemicals or substances) has addictive properties that bring about withdrawal pains to users deprived of it.

Whatever is the verdict of the scientific community, the Court is constrained by legal duty to apply the law, provided, it is applicable. We hold that no cause for it has been made out here.

WHEREFORE, the accused-appellant is ACQUITTED. The sticks of marijuana, twenty in number, is surrendered to the National Bureau of Investigation and/or the Narcotics Command, Philippine Constabulary, for disposition and destruction.

SO ORDERED.

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

[1] Hon. Daniel Macaraeg, presiding (RTC Br. LV, Manila).

[2] Rollo, 5-10.

[3] Id., 10.

[4] Id.

[5] RULES OF COURT, Rule 133, sec. 3 (rev. 1989).

[6] People v. Decierdo, No. L-46956, May 27, 1987, 149 SCRA 496.

[7] Supra.

[8] CONST., supra, art. II, sec. 14, par. (2)

[9] RULES OF COURT, supra, art. 133, sec. 2.

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