

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO BERALDE, ACCUSED-APPELLANT.*G.R. No. 68482. October 23, 1985*

Ponente: AQUINO, J.

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Edgardo Beralde appealed from the decision of the Regional Trial Court of Manila, convicting him of a violation of section 4 of the Dangerous Drugs Law, Republic Act No. 6425, as amended by Presidential Decrees Nos. 44 and 1675, and sentencing him to a penalty of life imprisonment and to pay a fine of P20,000. The two aluminum foils of marijuana leaves (Exh. C) were declared forfeited and ordered to be delivered to the Dangerous Drugs Board for immediate disposal.

Beralde admits the sale of marijuana leaves. His story is that at around three o'clock in the afternoon of September 22, 1981 while he was at the junk shop of Paulina Estrada in Anak Bayan Street, Paco, Manila, he was approached by his friend Dodo and a lady companion. They requested him to accompany them to buy marijuana.

Because of their persistent request, he assented. He brought them to a person named Eboy who was standing near a store on the adjoining Dart Street. Dodo gave P20 to Eboy who in turn delivered to Dodo two aluminum foils of marijuana. Dodo invited Beralde for a snack on San Andres Street near Anak Bayan Street. While taking the snack, three policemen approached him and asked him to accompany them to Eboy's place.

When they did not find Eboy, he was taken to the police headquarters and charged with illegal possession of marijuana. He said that he never touched the P20.

The version of the prosecution is that the police had received information that Beralde was a marijuana peddler. On September 22, 1981, Patrolwoman Lolita Opeñano and a male informant approached accused Beralde, alias Egay, at the corner of Anak Bayan and San Andres Streets, Paco, Manila. The informant introduced Opeñano to Egay as his girl friend. She asked Egay if he had marijuana for sale. Egay replied in the affirmative.

He asked for twenty pesos from Opeñano and said that he would get the stuff from his friend. Egay left. After the lapse of about ten minutes, he reappeared and handed to Opeñano two aluminum foils of dried marijuana leaves (Exh. C). At that juncture, Egay was arrested by the peace officers who were nearby watching the proceeding.

They asked him where he got the money. He said that it was given to him by a certain Eboy who lived in Dart Street, adjoining Anak Bayan Street. Evidently, Eboy had gone into hiding because the police could not find him.

As is usual in criminal cases, the issue turns on the credibility of witnesses. The defense contends that Beralde's guilt was not proven beyond reasonable doubt. It is asserted that the case is one of instigation and not entrapment (U. S. vs. Phelps, 16 Phil. 440; People vs. Abella and Bacalla, 46 Phil. 857).

Judge Herminio C. Mariano observed that the prosecution's version is more credible. Beralde or Egay was arrested because he was the one who received the P20 and delivered the marijuana leaves.

We hold that this is a case of entrapment, which is legal, not instigation (People vs. Valmores, G.R. No. 58635, June 24, 1983, 122 SCRA 922; People vs. Lucas, G.R. No. 60744, November 25, 1983, 125 SCRA 813; See People vs. Nillos, G.R. No. 66161, January 30, 1984, 127 SCRA 207). Beralde's guilt was proven to a moral certainty.

The booking and information sheet (Exh. E) shows that Beralde was born on September 1, 1964. He was 17 years old at the time he committed the offense. He is entitled to the privileged mitigating circumstance of minority under article 68 of the Revised Penal Code.

However, he cannot be given an indeterminate sentence because section 2 of the Indeterminate Sentence Law provides that said law "shall not apply to persons convicted of offenses punished with death penalty or life imprisonment". Presidential Decree No. 1675 imposes "life imprisonment to death" on sale of prohibited drugs.

WHEREFORE, the trial court's judgment is affirmed, but in view of the privileged mitigating circumstance of minority, we recommend to the Chief Executive, through the Minister of Justice, that clemency be extended to Beralde after he had served a term of imprisonment consistent with the ends of retributive justice and the objectives of the Dangerous Drugs Law. Costs de officio.

SO ORDERED.

Abad Santos, Escolin, Cuevas, and Alampay, JJ., concur.

Concepcion, Jr., J., on leave.

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