

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NENITA QUIZON Y KATIPUNAN, DEFENDANT-APPELLANT.

G.R. No. 68603. June 25, 1986

Ponente: FERIA, J.

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FERIA, J.:

In Criminal Case No. 83-20146 of the Regional Trial Court of Manila, National Capital Region, Branch 55, the appellant Nenita Quizon y Katipunan was charged with violation of Section 4, Article II, in relation to Section 21, Article IV of the Dangerous Drugs Act of 1972, as amended, allegedly committed as follows:

"That on or about August 25, 1983, 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, deliver or give away to another fifteen (15) sticks of cigarette containing marijuana, which is a prohibited drug."

Upon arraignment, appellant pleaded not guilty, and thereafter, trial proceeded and the prosecution as well as the defense presented their respective evidence.

The prosecution presented in evidence, in addition to the testimonies of Pat. Jesus Gesolfon III, Patrolwoman Susan Mendez, P/Lt. Reynaldo Jaylo and P/Sgt. Herminio Siochi, all of the Special Anti-Narcotics Group, Auxiliary Services Bureau, Western Police District, Metropolitan Police Force and Edwin C. Purificando, NBI Forensic Chemist, the extrajudicial confessions of appellant, wherein she admitted the commission of the offense imputed to her.

Testifying in her own behalf, appellant repudiated her extrajudicial confessions, claiming that she was forced to sign them.

The trial court convicted her of the crime charged primarily on the basis of her extrajudicial confessions, and sentenced her "to suffer the penalty of LIFE IMPRISONMENT with the accessory penalties provided by the law and to pay a fine of Twenty Thousand Pesos (P20,000.00), plus the costs."

Appellant' interposed the present appeal, contending that --

"I

"THE LOWER COURT ERRED WHEN DURING THE TRIAL OF THIS CASE IT EXPOSED ITSELF WITH MANIFEST AND CLEAR BIAS AND PREJU-DICE AGAINST THE ACCUSED.

"II

"THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER THE TESTIMONIAL INCONSISTENCIES AND CONTRADICTIONS OF PROSECUTION WITNESSES TO BE MATERIAL.

"III

"THE LOWER COURT ERRED WHEN IT ADMITTED IN EVIDENCE THE MONEY BILLS MARKED EXHIBITS 'H' AND 'H-1'.

"IV

"THE LOWER COURT ERRED WHEN IT ADMITTED IN EVIDENCE THE ALLEGED EXTRA-JUDICIAL CONFESSIONS OF THE ACCUSED.

"V

"THE LOWER COURT ERRED IN FAILING TO APPRECIATE THE CLAIM OF THE DEFENSE THAT THE MARIJUANA AND THE TWO MONEY BILLS ARE PLANTED EVIDENCE.

"VI

"THE LOWER COURT ERRED IN HOLDING NENITA QUIZON GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF SECTION 4, ARTICLE II IN RELATION TO SECTION 21, ARTICLE IV OF THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED."

In his MANIFESTATION IN LIEU OF APPELLEE'S BRIEF, the Solicitor General agrees with appellant and recommends that she be acquitted on the ground that the evidence extant in the record of this case has not established her guilt beyond reasonable doubt. In the said manifestation he summarized the evidence of the prosecution and that of the defense, as follows:

"A. Version of the Prosecution

"On August 25, 1983 at about 7:30 o'clock in the evening, Lt. Alfredo Lazarte, Officer-in-Charge of the Auxiliary Services Bureau, Special Anti-Narcotics Group of the Western Police District, received information that a certain woman and her cohorts were selling marijuana in Almario St., Tondo, Manila. (p. 16, tsn, December 14, 1983)

"Acting on the aforesaid information, Lt. Lazarte dispatched a team of policemen headed by Sgt. Herminio Siochi with the express instruction to entrap a certain Melda, the woman allegedly engaged in the sale of marijuana. (p. 17, tsn, December 14, 1983)

"Thus bidden, the said team of policemen proceeded to Almario St., Tondo, Manila. Patrolman Gesolfon and Patrolwoman Mendez were specifically assigned the task of entrapping the supposed marijuana seller. (p. 17, tsn, December 14, 1983)

"The testimonies, however, of Gesolfon and Mendez as to where the entrapment was made, who did the buying from the appellant, who effected the arrest and when such arrest was effected was made do not jibe with each other. Hence, their narrations on these material points will be separately discussed.

"a. Gesolfon's declaration

"Upon reaching Almario St., Gesolfon, Mendez and informant saw the appellant Nenita Quizon in front of her house and they approached her. Mendez told appellant that she wanted to buy 15 sticks of marijuana cigarettes from her. After receiving the cigarettes from appellant, Mendez handed her two marked bills, one P10-bill and one P5-bill. At this point, Gesolfon said, 'I am a police officer, you are under arrest.' Appellant was then brought to police headquarters for investigation. (pp. 18-26, tsn, December 14, 1983)

"b. Mendez' narrative

"When they reached Almario St., Gesolfon, Mendez and the informant proceeded to the appellant's house. The informant preceded the two in going up the second floor of the appellant's house. The informant told the appellant they wanted to buy marijuana. Appellant brought out 15 sticks of marijuana which she gave to

Gesolfon. Gesolfon handed money to her after receiving the fifteen (15) sticks of marijuana. At this point, Mendez gave a signal to their companions along Almario Street. The latter responded by moving into the house of the appellant. Then, Lt. Jaylo arrested her. (pp. 9-11, 14, 15 & 18, tsn, February 15, 1984)

"The appellant was brought to the police headquarters where she was made to execute a statement (Exh. E and E-1) in which it would appear that she admitted her complicity in the crime imputed her. The following day, she executed another statement (Exh. E-2).

"B. Version of the Defense

"On the night of August 25, 1983, the appellant was inside their house located at 766 R. Almario St., Dagupan, Tondo, Manila, putting a baby to sleep when suddenly three (3) policemen barged into their house. They demanded of her to bring out the marijuana allegedly in her possession but which she denied having any. The policemen then forced her to go with them. One of them whom she recognized as Pat. Gesolfon poked a gun at her. (p. 34, tsn, April 4, 1984)

"At the police precinct, the appellant was brought to a room by Patrolwoman Mendez who stripped off appellant's pants and searched her body for marijuana. Patrolwoman Mendez found nothing from her. Barely one (1) hour thereafter, she (appellant) was forced to execute a statement before Mendez admitting the charge levelled against her. The policemen did this by shouting at her and threatening her that she will rot in jail if she does not give her statement. The policemen did not allow her to read the statement, but instead forced her to sign it without knowing its content. She was afraid and nervous during that time. (pp.4-6, tsn, April 4, 1984)

"The following day, while still under detention, the appellant was again investigated, this time by Pat. Jaylo. The latter forced her to sign a statement, shouting bad words at her like 'Putang Ina mo, pag hindi mo pinirmaan ito' and at the same time pulling his sidearm.

"Corroborating the appellant's testimony, Maricel Uranyeza testified that she was at the appellant's house using the latter's telephone while Nenita (appellant) was putting her nephew to sleep. She saw three (3) persons wearing civilian clothes enter the house. They asked Nenita Quizon where Imelda Quizon's house was. Nenita informed them that Imelda lives in the house. Whereupon, the men insisted that Nenita was Imelda and they forced Nenita to go with them. Seeing this happen, Uranyeza got afraid and ran downstairs where she was confronted by one of the policemen. However, she told him that she did nothing wrong and went to the appellant's house only to use their phone. Hearing this, the police let her go. (pp. 4-5, tsn, March 19, 1984)

"Uranyeza also executed a 'Sinum-paang Salaysay' on September 1983 categorically contradicting the events as narrated by the police officers that led to the arrest of the appellant (Exh. 'I')."

As previously stated, appellant was convicted primarily on the basis of her alleged extra-judicial confessions. Appellant and the Solicitor General contend that the said extra-judicial confessions are inadmissible in evidence because appellant was not fully apprised of her constitutional right to counsel. (Section 20, Article IV of the 1973 Constitution)

We agree. As aptly observed by the Solicitor General -?

"The appellant's extra-judicial confession executed on the night of her arrest (Exhibits 'E' and 'E-1') is prefaced as follows:

"TANONG:

Nais mo bang magbigay ng kusang loob na salaysay at sagutin ng buong katotohanan lahat ng itatanong namin sa iyo na hindi ka namin tinatakot, sinasaktan, o pinangakuan ng anumang pabuya at dapat mong malaman ang lahat ay sasabihin mo dito ay maaring gamitin laban o pabor sa iyo at kanino mang tao sa alin mang hukuman

sa ating bayan at dapat mo ring malaman na sa pagsisiyasat na ito karapatan mong magkaroon ng mananaggol at ang karapatan mo sa ilalim ng Saligang Batas ay maari kang huwag sumagot sa itatanong namin sa iyo kung gusto mo.

'SAGOT:

Opo.

'TANONG:

Samakatuwid, magbigay ka nang malayang salaysay kahit na wala kang mananaggol?

'SAGOT:

Opo.

'(SGD) NENITA K. QUIZON'

"The foregoing indubitably shows that while the appellant was informed of her right to remain silent and to hire a lawyer to assist her, she was not, however, informed that if she could not secure a lawyer, the State will provide her with one, to assist her in the custodial investigation.

"The omission is a fatal defect rendering the extra-judicial confession inadmissible in evidence as ruled by this Honorable Tribunal in *People vs. Pascual, Jr.* (109 SCRA 197, 205).

"Even the subsequent extra-judicial statement executed by the appellant does not unequivocally show a clear and intelligent waiver by the appellant of her constitutional right to counsel, thus:

'02. -T.

Ngayon, nauunawaan mo ang iyong mga karapatan, gusto mo bang magbigay ng isang malaya at kusang loob na salaysay at sagutin ng pawang katotohanan lamang ang lahat ng aking mga itatanong sa iyo?

S.

Opo, magbigay ako ng salaysay.

'03.- T.

Gusto mo bang kumuha ng isang abogado makakatulong sa iyo?

S.

Huwag na ho, alam ko naman ang isasagot ko.'

"As may be gleaned from the foregoing, the appellant was simply asked whether she wanted the services of a lawyer. However, she was not told that if she could not afford to hire one, the State would provide her one to assist her in the investigation.

"This subsequent extra-judicial confession was also rejected by the appellant under oath. The appellant testified that Pat. Jaylo intimidated her into signing the questioned statement by shouting bad words at her and pulling his gun from his waist. This was not rebutted by Pat. Jaylo.

"Considering, therefore, the circumstances under which the appellant's subsequent extra-judicial confession was executed, it stands discredited in the eyes of the law and is a thing that never existed. (*People vs. Urro*, 44 SCRA 473 [1972])."

Only recently, this Court had the occasion to rule that --

"When the Constitution requires a person under investigation 'to be informed' of his rights to remain silent and to counsel, it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. As a rule, therefore, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Article IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands. (See *People vs. Ramos*, 122 SCRA 312; *People vs. Caguioa*, 95 SCRA 2). In other words, the right of a person under interrogation 'to be informed' implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been 'informed' of his rights. Now, since the right 'to be informed' implies comprehension, the degree of explanation required will necessarily vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered. (*People vs. Nicandro*, G.R. No. 59378, February 11, 1986; *People vs. Duhan, et al.*, G.R. No. 65189, May 28, 1986)

Moreover, the ruling in *People vs. Galit* (135 SCRA 465, 472), to the effect that the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel, clearly applies to the case at bar.

The Solicitor General also joins with appellant in assailing the trial court for giving weight and credence to the testimonies of the witnesses for the prosecution which are contradictory and inconsistent on material points, thus casting serious doubts as to the truth of the alleged entrapment.

Again, We agree. As observed by the Solicitor General -?

"x x x. There are several material inconsistencies in the testimonies of the police officers raising serious doubts as to the truth of the supposed entrapment. Significant portions of Pat. Gesolfon's testimony are quoted, as follows:

'COURT

Q.

Who entered the house of Nenita Quizon

A.

Nobody entered the house sir.

Q.

What did P/w Mendez do?

A.

She requested the 15 sticks of marijuana cigarettes in front of the house of Nenita Quizon, sir.

Q.

How did you know that P/w Susan Mendez bought 15 sticks of marijuana, cigarettes from the accused on that occasion?

A.

I was with her, sir.

xxx xxx xxx

Q.

When P/w Susan Mendez gave the P15.00 to Nenita Quizon immediately after Nenita Quizon gave the 15 sticks of marijuana cigarettes what else transpired?

A.

After Nenita Quizon gave the 15 sticks of marijuana to P/w Mendez I say that I am a Police Officer, and I said to her that you are under arrest and we bring Nenita Quizon to the Police Headquarters. x x x.' (pp. 18-19, tsn, December 14, 1983; Emphasis Supplied.)

while relevant portions of P/w Susan Mendez' testimony are reproduced herein-below, to wit:

'xxx xxx xxx.

q.

Were you the one who handed the money to the accused?

a.

Pat. Gesolfon, sir.

q.

And who received the fifteen (15) sticks of marijuana?

a.

Pat. Gesolfon handed the marijuana from the suspect but I was there.

q.

Where is not the money?

a.

It was on the possession of Lt. Jaylo, I gave it to him.

xxx xxx xxx

q.

Where were you?

a.

I was beside him, sir.

q.

What were you doing when the accused handed the marijuana cigarette to Pat. Gesolfon?

a.

I was standing beside Pat. Gesolfon because we have no instruction to arrest her on that actual selling and buying of marijuana.

'court

q.

So you did not arrest the the accused at that moment?

a.

No, Your Honor.

'fiscal de jesus

q.

After that, what did you do?

a.

We went to the place of their house, then we gave a signal, I lighted cigarette and our companions were a little far away from us when I lighted a cigarette, they saw it as our signal, then they went with us.

'court

q.

What particular place did the accused sell marijuana?

a.

Inside their house, Your Honor.

'fiscal de jesus

q.

Was it on the second floor or 1st floor?

a.

It was at the second floor, there was stairs.

q.

You mean you went upstairs together with Pat. Gesolfon to push (sic) as the buyer of the accused?

a.

Yes, sir.

xxx xxx xxx

q.

Who arrested the accused?

a.

Lt. Jaylo, Sgt. Sayo, Pat. Gesolfon and Pat. Pedriz.

q.

Where was accused arrested?

a.

Inside their house, sir.' (pp. 8-13, tsn, February 15, 1984; Emphasis Supplied)

"Several inconsistencies are readily noticeable from the afore-quoted portions of the testimonies of Patrolwoman Mendez. Thus:

"(1) Gesolfon averred that it was P/w Mendez who handed the marked money to the appellant. On the other hand, Mendez stated that it was Gesolfon who gave the said money to the appellant.

"(2) While Pat. Gesolfon declared that the entrapment took place in front of the appellant's house, P/w Mendez testified that it took place on the second floor of the appellant's house.

"(3) Gesolfon testified that he personally arrested the appellant immediately after the feigned buying took place. For her part, Mendez declared that the arrest was made by Pat. Jaylo after receiving a signal coming from her.

"(4) Gesolfon narrated that the 15 sticks of marijuana cigarettes were already with the appellant when they saw her in front of the latter's house. Mendez, on the other hand, stated that the appellant had yet to get the cigarettes from a room on the second floor of the said appellant's house.

"Further inconsistencies are correctly pointed out by the appellant in her brief, to wit:

"1. During his direct examination, Pat. Gesolfon, declared that the appellant gave the marked money only after her investigation at the police headquarters (p. 21, tsn, December 14, 1983, lines 10-11). On the other hand, Patrolwoman Mendez claimed that she immediately retrieved the money from the appellant after handing it to her (p. 18, tsn, February 15, 1984, lines 12-16).

"2. Gesolfon narrated that it was Patrolwoman Mendez who asked the accused: 'Oh, mayroon ba tayo' (p. 25, tsn, December 14, 1984). For her part, Mendez testified that the informant did the asking of marijuana from the appellant (p. 15, tsn, February 15, 1984).

"3. Pat. Gesolfon admitted during his cross-examination that he was armed with a .38 Cal. gun when the alleged entrapment took place (p. 27, tsn, December 14, 1983). When presented as a rebuttal witness, Lt. Jaylo, however, maintained that Gesolfon was unarmed. Rather, it was Patrolwoman Mendez who was armed (p. 12, tsn, April 26, 1984).

"4. The police crime report (Exhibit 'C') does not specifically mention the name of the appellant, Nenita, as one of those furnished by the informant allegedly engaged in selling marijuana, but 'Melda and cohorts'. In her testimony, however, Patrolwoman Mendez declared that 'our informant told us that the marijuana was bought from Melda and Nenita Quizon. (p. 17, tsn, February 14, 1984)

"Indeed, if there was an entrapment actually conducted by Gesolfon and Mendez against the appellant, why would these police officers' testimonies relative thereto differ on material points? This fact sufficiently raises doubt as to the truth of the alleged entrapment which engenders a reasonable degree of doubt as to the appellant's guilt. This is one vital fact of substance which the lower court overlooked, and provides basis for reversal. Thus, as reiterated in *People vs. Pagkaliwagan*, 36 SCRA 113 (1970):

'And while the Court on Appeal would normally not disturb the findings of the trial court on the credibility of witnesses in view of the latter's advantage of observing at first hand their demeanor in giving their testimony, the Court has consistently held that this rule of appreciation of evidence must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt, because the law presumes that a defendant is innocent and this presumption must prevail unless overturned by competent and credible proof.' (Emphasis Supplied.)

"The testimony of defense witness Leticia Limano is, however, revealing, significant portions of which are quoted, to wit:

'atty. dionido

q.

Mrs. Leticia Limano, where were you on the night of August 25, 1983?

a.

I was in our house by our window.

'court

q.

that window where you were, where was it facing?

a.

that is facing at the house of nenita quizon, your Honor.

'atty. dionido

q.

did you notice any unusual incident that happened during that night?

a.

yes, sir.

q.

will you please tell the honorable court what is that?

a.

I was at the window baby sitting when I saw an owner jeep parked in front of the house of nenita quizon, after that three persons went to the house of nenita quizon and one of those police-men hold my husband in the neck.

q.

and what did you do when you saw your husband was being held by the neck?

a.

I went downstairs to stop the policeman in bringing my husband because I informed them that my husband has not committed anything wrong and he is a good husband and ideal one and I also informed them that i am an employee of the NAPOLCOM and i explained to them that i just sent my husband for an errand to get a pale of water as a matter of fact he was just wearing shorts.

'court

q.

by the way, do you know who is that arresting officer?

a.

i only knew one of the three.

Q.

who among them?

A.

capt. siochi. i don't know his full name.

Q.

after talking with this capt., what did you do?

A.

after talking with him he release my husband and i request my husband to get water for me.

'atty. dionido

Q.

then what happened next in your surrounding, if any?

A.

after that I noticed that the three policemen were going downstairs of the house of nenita quizon together with aling juling.

Q.

and you also know apparently how long the duration when the policemen went upstairs and downstairs?

A.

no, sir.

'court

Q.

do you know why the policemen tried to arrest your husband?

A.

I do not know, your honor.

Q.

did you not asked capt. siochi why he was arresting your husband?

A.

yes, your honor.

Q.

what did he tell you?

A.

I was told by capt. siochi he was only asking my husband to point to him who is selling marijuana in our place.' (pp. 13-16, tsn, March 19, 1984; Emphasis Supplied)

"The foregoing was corroborated by pro-secution rebuttal witness, Sgt. Siochi, as follows:

‘x x x

q.

There is another witness for the defense in the person of Leticia Limano who testified that when you arrested Nenita Quizon and before that incident her husband by the name of Willie Limano was arrested because he refused to cooperate with you and said Leticia Limano talked to you that her husband should not be arrested because he has nothing to do in the case you are imputing to Nenita Quizon and that she introduced herself to you as an lady employee of the National Police Commission. what can you say about that?

a.

I remember that incident when I accosted a man before the arrest of nenita Quizon. And the arrest of Nenita Quizon was not made by me but it was made by Policewoman Susan Mendez, and Pat. Gesolfon. I was in the street just around seven to ten meters away when Nenita Quizon was being lead to the jeep.

q.

Did that said woman introduced herself to you when she approached you?

a.

She refuse to give her name first sir.

q.

And after that what happened?

a.

The man struggled to free himself when I told him to hop-in-to the jeep.

q.

So after that?

a.

The woman introduced herself as an lady employee of the NAPOLCOM inasmuch as the identity of the woman being arrested was already established and I gave weigh (way) to free the man. And we have already Nenita Quizon in the jeep sir.

xxx xxx xxx

q.

When you accosted Willie Limano, what was he doing?

witness

a.

He was walking in the street?

q.

Why as police officer you are accosting a man even though he is not making any trouble?

a.

no sir.

q.

What else did you do after accosting Willie Limano around that place?

a.

nothing sir.

q.

So usually you are accosting any persons who are making any trouble in the road as you testified you accosted Willie Limano?

a.

I accosted him but I did not arrested him.' (pp. 7-8, tsn, April 25, 1984, Emphasis Supplied)

"Thus, it may be asked, if the team of policemen assigned to entrap the marijuana seller had fore-knowledge of the identity of the said seller in the person of appel-lant, why would they still ask a stranger, Willie Limano in this case, if the latter know anybody who was selling marijuana within the vicinity of Almario St.?

"Clearly, the evidence on record does not justify a verdict of guilt."

By and large, the prosecution failed in its task of proving the guilt of the appellant beyond reasonable doubt. She is, therefore, entitled to an acquittal.

WHEREFORE, the judgment appealed from should be, as it is hereby REVERSED, and another one entered ACQUITTING the herein appellant of the charge against her.

SO ORDERED.

Fernan, Alampay, and Paras, JJ., concur.

Gutierrez, Jr., J., concurs except as to reference to People vs. Galit which decision he believes should be re-examine.

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