

THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ROSALIA FRANCIA Y BARRERA, DEFENDANT-APPELLANT.

G.R. No. 69253. September 30, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

Rosalia B. Francia appeals from the decision of the Regional Trial Court, National Capital Judicial Region, Branch XX, Manila, finding her guilty beyond reasonable doubt of violation of Article 2 (4) in relation to Article 1 (2) (i) of Republic Act No. 6425 as amended by Presidential Decrees Nos. 44 and 1675 known as the Dangerous Drugs Act of 1972, as amended.[1]

The accused was charged in an information dated 19 September 1983 which read:

"The undersigned accused ROSALIA FRANCIA Y BARRERA of a violation of Section 4, Article 2 in relation to Section 2 (i) Article 1 of Republic Act 6425 as amended by Presidential Decree 44 and as further amended by Presidential Decree 1675, committed as follows:

That on or about September 15, 1983, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver, distribute or transport to another any prohibited drug, did then and there wilfully and unlawfully sell and deliver for monetary consideration dried marijuana leaves, which is a prohibited drug.

Contrary to law."

On arraignment, she pleaded not guilty. After trial, the trial court rendered a decision dated 31 July 1984, the dispositive portion of which read:

WHEREFORE, finding Rosalia Francia guilty beyond beyond reasonable doubt of violation of Section 4, Article II in relation to Sec. 2 (i) Article I of R.A. 6425, as amended by P.D. 44 and 1675, she should be, as she is hereby, sentenced to suffer the penalty of life imprisonment; to pay a fine of P30,000.00, and, to pay the costs.

The dried marijuana leaves are hereby confiscated and shall be turned over to the Dangerous Drugs Board, which shall --- dispose of the same in accordance with law.

SO ORDERED.

The accused, in her appeal to this Court, assigns the following as errors:

- "1. The honorable trial court erred in giving weight to the testimonies of the witnesses for the prosecution, mainly: P/Corporal Francisco Urbano, Sgt. Herminio Siochi and others;
2. The honorable trial court erred in disregarding the testimonies of the accused and her witnesses; and
3. The honorable trial court erred [in finding] the accused [guilty] beyond reasonable doubt." [2]

The evidence presented by the prosecution during the trial may be summed up as follows:

In the early morning of 15 September 1983, Police Corporal Urbano was advised by an informant in the Tondo area that a woman by the name of "Sally", a Metro Aide street sweeper assigned along Jose Abad Santos Street, Tondo, Manila, was selling marijuana. Corporal Urbano conveyed this information to Lt. Alfredo Lazarte, Chief of the Anti-Narcotics Group, Western Police District, Manila Police Department, who then dispatched a police team - composed of Sgt. Jose Santoyo as leader of the team, Sgt. Herminio Siochi, Sgt. Salvador Guitan and Sgt. Enrique David - to meet with Corporal Urbano at Jose Abad Santos Street, Tondo, Manila. The policemen set a trap to catch "Sally". The sum of P120.00, in five P20 bills and four P5 bills, which had been supplied by Lt. Lazarte, was given to Corporal Urbano. In turn, Corporal Urbano marked the peso bills and gave them to the informant at Moriones Street, Tondo. The police operatives saw the accused Rosalia Francia, engaged in carrying out her job as Metro Aide street sweeper at the corner of Moriones and Sande Streets. The policemen deployed themselves inconspicuously around the area so that they could observe the expected transaction between the informant and the accused. Rosalia Francia was then standing on top of the concrete island at the middle of the street. She was approached by the informant and the two conversed with each other. The informant gave the accused the marked money and the latter walked towards the North Harbor area. Two of the police operatives - Sgts. David and Guitan - followed her. Thirty minutes later, Rosalia Francia came back with a small yellow plastic bag which she handed over to the informant. Thereupon, Corporal Urbano and Sgt. Santoyo, being closest to the spot where the transaction took place, approached and immediately arrested Rosalia Francia. Corporal Urbano subjected Rosalia Francia to a body search and found P50.00 of the marked money in her right back pants' pocket.

Rosalia Francia was taken to the police headquarters and there subjected to questioning. At the outset, she denied selling marijuana to the informant but later on she admitted having done so. According to the police report, the accused "pointed to one Vena" and another person by the name of "Nanding" of Pacheco Street, Tondo, Manila as her suppliers of marijuana.[3] She expressed fear of reprisal should she formally charge them with selling marijuana.

The yellow plastic bag with its contents was forwarded to the National Bureau of Investigation (NBI) Forensic Laboratory for examination. The examining NBI Chemist Ms. Carolyn Y. Custodio, issued a certification to the effect that the "dried marijuana leaves contained in a yellow plastic bag labelled Rosalia Francia showed positive result for marijuana." [4]

The defense of the accused consisted of a denial that she had sold the dried marijuana leaves to the police informant in the morning of 15 September 1983. She contended that she was "being framed by the police". [5]

She admitted that about 9:30 o'clock in the morning of 15 September 1983, a man in civilian clothes, a companion of Corporal Urbano, had approached her at her place of work and told her that someone had "pointed to [her] --- [as] selling marijuana". She denied receiving any money and leaving her post for about thirty (30) minutes, it being prohibited for Metro Aides to leave their posts. She also denied that P50 in bills of different denominations, were found in her back pocket stating that she had no back pocket but rather a patch sewn unto the seat of her pants. The accused further declared that she saw the yellow plastic bag containing the dried marijuana leaves for the first time during the trial of her case. She pointed to someone by the name of Ramirez as owner of the dried marijuana leaves, claiming that Ramirez had falsely identified her as owner of the plastic bag because he had a grudge against her. This grudge, according to the accused, arose because a nephew of Ramirez, one Mario Ramirez, had become her lover to the consternation and resentment of Mario's parents who tried every means to break up the affair. Rosalia Francia declared that she had eventually broken up her affair with Mario.

The defense also presented Rosemarie Kiskisan, a Metro Aide street sweeper too, who worked with the accused in the same area in the morning of 15 September 1983. Kiskisan said that she was close by Rosalia Francia when the

latter was arrested by the police officers. Kiskisan declared, however, that the accused never left her place of work that morning since this was not allowed by their superiors during their 15-minute coffee break at 10:00 o'clock in the morning. A third defense witness, Mario Trias, Metro Aide Foreman of Rosalia Francia and Rosemarie Kiskisan, similarly declared that the accused could not have left her place of work at 10:00 o'clock in the morning of 15 September 1983. Trias stated that at about 10:30 that morning, he happened to be at the assigned work place of Rosalia Francia and he saw her there at that time.

The accused appellant contends that the trial court erred in giving weight to the testimony of the prosecution witnesses and in disregarding or discounting the testimony of the defence's witnesses. The accused appellant, however, has not indicated precisely where the trial court erred, what it is in the testimony of the prosecution witnesses that should have been disregarded and what it is in the testimony of the defense witnesses that should have been ascribed greater weight. The familiar rule in this jurisdiction on the matter of relative credibility of the witnesses is that "unless there is a showing that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties".[6]

Clearly, the trial court believed the witnesses of the "prosecution rather than those of the defense. The testimony of Corporal Urbano, an eyewitness, was direct and straightforward. There is nothing in the record to suggest that Corporal Urbano or any of the other prosecution witnesses was moved by any motive other than simply the carrying out of their official mission or duties. In *People vs. Patog*,[7] the Court explained that "where there is no evidence, and nothing to indicate the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit".[8] The witnesses for the prosecution moreover have in their favor the presumption that as police officers charged with law enforcement duties, they have regularly performed their duties in the absence of evidence to the contrary.[9]

Two defense witnesses, Mario Trias and Rosemarie Kiskisan, testified that the accused never left her post in the morning when she was apprehended by the police officers. The two witnesses stated that it was against rules and regulations for Rosalia Francia to leave her post during the day. There was, however, no testimony or any other proof to show that it was physically impossible for the accused to have left her place of work. Mario Trias, moreover, who was not physically present at or around the accused's work area the whole morning, was clearly not in a position to testify that the accused never left her area of work even for thirty minutes in the morning of 15 September 1983.

We turn to the argument of the accused that the police informer had "framed" her up because she had been the lover of one Mario Ramirez, a nephew of the informer. Assuming that this claimed love affair had in fact taken place, it appears to this Court as too petty and inadequate a motive to support such a serious act as falsely implicating a person in a violation of the Prohibited Drugs Act which carries with it life imprisonment as a penalty. The claimed illicit affair was over and done with before the entrapment and arrest of the accused took place. Neither are we convinced by the accused's claim that the marijuana was not hers but that of the informer; assuming such claim was correct, the accused was unable to explain away the marked bills found in the back pocket of her pants. The failure of the prosecution to present the informer as a witness does not substantially affect the prosecution's case; the informer's testimony would have been merely corroborative and cumulative. Moreover, the accused appellant claimed that she personally knew the informer and where he resided. It would follow that the defense could have easily required the informer to have been subpoenaed.[10] In fact, however, the

defense never applied for issuance of a subpoena to the informer.

The accused also contends that the information sheet (Exhibit "A") was taken in violation of her constitutional rights because she was not provided with counsel at the time of her investigation. The information sheet contained the following statements:

"Suspect when investigated was apprised of her constitutional rights to Counsel to remain silent and the crime she is being charged. She verbally admitted her guilt and added that the source of marijuana leaves are alias "Rey" and alias "Vena" of Pacheco St., Tondo, Manila." [11]

One notes that the record is bare of any suggestion of any sign of physical injuries upon the body of the accused, and that the accused never complained either to the police authorities or to the court that she had been maltreated or that violence had been exercised upon her. This matter, however, need not detain us, for on the view most favorable to the accused and assuming, for purposes of argument only, that the above-mentioned statement was obtained and presented in violation of her constitutional rights, still there was more than enough independent evidence to show the guilt of the accused appellant beyond reasonable doubt. The eye-witness, Police Corporal Urbano testified directly and positively, giving all the requisite details of the entrapment operation. In the assaying of the value and credibility of evidence, witnesses are weighed and not numbered. [12] The testimony of a single witness if credible and positive and if satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict. [13] Here, the testimony of Corporal Urbano satisfies these standards and induces moral certainty.

WHEREFORE, the decision of the trial court holding Rosalia B. Francia guilty beyond reasonable doubt and sentencing her to life imprisonment, to pay a fine of P30,000.00 and to pay the costs, is hereby AFFIRMED. No pronouncement as to cost.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] This statute was further amended by B.P. Blg. 179, effective 2 March 1982, but not the portions thereof relevant here.

[2] Brief for the Appellant, p. 1.

[3] Decision, Criminal Case No. 83-20842, p. 1.

[4] Id., p. 2.

[5] Id., p. 3.

[6] People vs. Ablaza, 30 SCRA 173 at 176 (1969); People vs. Bernal, 131 SCRA 1 at 7 (1984).

[7] 144 SCRA 429 (1986).

[8] 144 SCRA at 437.

[9] RULE 131 Section 5 (m) Rules of Court; People vs. Gamayon, 121 SCRA 642 (1983).

[10] People vs. Cerelegia, 147 SCRA 538 (1986).

[11] Booking and Information Sheet, p. 44, Record.

[12] People vs. Marasigan, 85 Phil 427 (1950).

[13] People vs. Martinez, 127 SCRA 260 (1984).

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