

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO PATOG Y PARAAN AND ARNOLFO OLSIM Y BUSTILLO, DEFENDANTS-APPELLANTS.

G.R. No. 69620. September 24, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Baguio City, Branch V finding appellants ARNOLFO OLSIM and ALFREDO PATOG guilty beyond reasonable doubt of the crime of attempted sale of marijuana and sentencing each of them to suffer the penalty of life imprisonment, to pay a fine of P20,000.00 and to pay costs according to their proportionate shares.

The amended information filed against the appellants alleged:

xxx xxx xxx

"That on or about the 28th day of March, 1984, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Alfredo Patog, Arnolfo Olsim and James Balisong), conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously attempt to sell one (1) kilo of marijuana dried leaves at P1,000.00 to an undercover agent without authority of law to do so, in violation of the aforecited Section (Section 21, Article IV in relation to Section 4, Article II of Republic Act No. 6425)."

The prosecution's evidence upon which the lower court based its finding of guilt beyond reasonable doubt is summarized by the said court as follows:

"Sgt. Glenn Logan and Sgt. Pacifico Mugar, both members of the PC Narcotics Command, Regional Unit I, testified that on March 28, 1984, they, together with CIC Charlie Duatin, were constituted by their superior officer into a team to entrap suspected marijuana pushers at the vicinity of Carantes Street, Baguio City. Logan was to pose as a buyer of the stuff while Mugar and Duatin were to back him up.

"The three thus proceeded to the designated place in the company of a civilian informer. There, the informer introduced Logan to a certain Boyet, who, by then, had already been reputed to be a broker in the sale of the prohibited drugs. Boyet's full name is Arnolfo Olsim. Logan asked Olsim if the latter had some marijuana for sale. Olsim replied in the affirmative and quoted the price at P1,000.00 a kilo. Olsim further informed Logan that he (Olsim) would first get a sample from the owner for Logan to see. That was about 1:30 o'clock in the afternoon.

"At about 2:30, Olsim returned and handed to Logan a stalk of dried marijuana flowering top wrapped in tin foil (Exhibit "F"). After examining the sample, Logan ordered a kilo of the stuff. Olsim wanted the payment to be advanced but Logan suggested that the owner be brought to him and he would pay only after delivery shall have been effected.

"Olsim once more left and went back at about 5:20 on board a Cimarron passenger vehicle with two

companions who turned out to be Alfredo Patog and James Balisong. Balisong was driving the vehicle and Patog was seated beside him, while Olsim was at the backseat. They parked beside the Baguio Park Hotel and invited Logan to join them in the vehicle. Olsim introduced Patog and Balisong as the owners of the marijuana. Thereupon, Logan asked for the marijuana. Patog pulled out a white plastic shopping bag (Exhibit "E-1") from his seat and handed it to Logan while Balisong demanded the payment. Instead however of paying, Logan signalled Mugar and Duatin and they apprehended the three - Patog, Balisong and Olsim.

"The contents (Exhibit "E") of the bag were later on examined at the PC Crime Laboratory in Camp Dangwa (Exhibit "D") and they were determined by Forensic Chemist Carlos Figueroa to be a 0.9 kilo of dried marijuana flowering tops (Exhibit "C")."

The lower court rendered its decision against Arnolfo Olsim and Alfredo Patog only, as James Balisong remained at large.

The appellant Patog raised the following assignment of errors in this appeal:

I

THE TRIAL COURT ERRED IN APPRECIATING THAT BOTH ACCUSED OLSIM AND PATOG ARE PARTICIPANTS IN A CONSPIRACY TO SELL MARIJUANA TO SGT. LOGAN.

II

THE TRIAL COURT ERRED IN NOT APPRECIATING THE UNDISPUTED FACT THAT ACCUSED ALFREDO PATOG REALLY LOANED P300.00 TO BALISONG; SO MUCH SO, THAT PATOG READILY CONSENTED TO MEET BALISONG SOMEWHERE IN ORDER THAT HE COULD RECEIVE PAYMENT OF WHAT HE LOANED TO HIM.

III

THE TRIAL COURT ERRED IN CONVICTING ACCUSED ALFREDO PATOG WHEN THERE WAS NO EVIDENCE WHATSOEVER TO PROVE THAT HE DID SELL OR DISPATCH IN TRANSIT ANY MARIJUANA TO THE SUPPOSED BUYER.

IV

THAT THE INCULPATORY FACTS IN THIS CASE ARE NOT CLEAR-CUT AND ARE SUBJECT OF DIFFERENT INTERPRETATIONS, ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF ACCUSED PATOG AND THE OTHER CONSISTENT WITH HIS GUILT, AND THEREFORE THE EVIDENCE DOES NOT FULFILL THE TEST OF MORAL CERTAINTY AND IS NOT SUFFICIENT TO SUPPORT CONVICTION.

Appellant Olsim raised is assignment of errors in his behalf:

I

THE TRIAL COURT ERRED IN ITS APPRECIATION OF THE EVIDENCE OF THE PROSECUTION AND THAT OF THE DEFENSE.

II

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF THE APPELLANT OLSIM HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT DESPITE THE FACT THAT WITHOUT THE INDUCEMENT HEREIN APPELLANT WOULD NOT HAVE BEEN INVOLVED IN THE CRIME CHARGED.

Both appellants question the failure of the trial court to appreciate their respective defenses.

The lower court held:

"The Court has found no cogent reason to doubt the narration of the prosecution of what had happened. It has all the earmarks of sincerity to the truth. It bears no exaggeration or fabrication.

"On the other hand, the versions of Olsim and Patog are far from credible. x x x"

Olsim denies his role in the transaction between Balisong and Sgt. Logan as described by the prosecution witnesses. He gives the following narration to support his contention that his involvement in the deal was due to the instigation of Sgt. Logan:

xxx xxx xxx

"x x x [A]t the time of the incident he was waiting for his mother at Carantes Street, Baguio City. He was not selling any 'stuff' (marijuana). Neither was he offering something for sale to somebody nor was he in possession of any prohibited drugs.

"While waiting, an unidentified student approached Olsim. It was about 1:30 o'clock in the afternoon. The student asked him if he knows somebody selling the 'stuff'. Olsim told the student that he does not know of anyone. But the latter begged of him to look for one. Then, the student invited Olsim to see the former's cousin at the Baguio Park Hotel. The student's cousin turned out to be Sgt. Logan whom Olsim did not know to be a peace officer. Sgt. Logan too asked Olsim to look for a seller of marijuana. He wanted to buy a kilo of marijuana at P1,000.00. Because of the insistence of Sgt. Logan, appellant Olsim made efforts to look for a seller. He found one named James Balisong. And at about 5:30 o'clock in the afternoon of same date appellant Olsim brought James Balisong accompanied by Alfredo Patog to Logan on board a cimarron (sic) car at Tomas Claudio Street, just beside the Baguio Park Hotel. Alfredo Patog, upon instruction from James Balisong, got the plastic bag containing marijuana from the back seat of the car and handed it to Logan. James Balisong asked Logan to hand over the P1,000.00. Instead, Logan gave the pre-arranged signal to the back-up team and arrested the suspects. Logan did not give the amount that the accused were asking. x x x."

Patog denies any involvement in the deal alleging that he was completely unaware of the transaction. He alleges that:

x x x x x x x x

"x x x On March 28, 1984, at about 2:00 P.M. he was at home resting; that after sometime, James Balisong whose Ford Fiera vehicle he used to ride came to his house to borrow P300.00 and he loaned him the said amount after asking him what purpose will he use the money and Balisong said: 'Don't ask me that because I am going to pay you a little later.' He got the money from his wife and Balisong told Patog he shall see him at the Empire Cinema but Balisong was not there but he waited for him up to 5:15 that same afternoon (TSN, pp. 2-4) hearing of September 10, 1984).

"When Balisong arrived Patog asked him about his money and Balisong told him to ride in the vehicle because they are going to Baguio Park Hotel to meet a friend and he rode with him; that upon arrival at said place, he saw Balisong talking with two persons whose names he does not know; that while Balisong was inside the jeep the two persons were outside beside him; that they talked for about 10 minutes and Balisong told him to get a plastic bag and he got one and gave it to the person with whom Balisong was talking; that after handing the bag to said person, Balisong asked for the P1,000.00; then Patog told Balisong: 'Let's go because I'm going somewhere,' but the person with whom Balisong was conversing with held him. (TSN, pp. 4-6, infra). When he was held, Patog protested by saying: 'What I have done?'; that he was told. He (Patog) made a big mistake. Thereafter, they were brought to the NARCOM at the City Camp, Baguio; and the PC officers were urging him to admit but he did not admit anything. (TSN, pp. 6-7, infra)."

The issues raised are factual. They center on what actually transpired. The trial court's appreciation of the

evidence of the prosecution and that of the defense focusses on the credibility of the witnesses. When the issue is one of credibility of witnesses, we have always accorded the highest degree of respect to the findings of the trial court (*People v. Jones*, 137 SCRA 166; *People v. Egas*, 137 SCRA 188; *People v. Rosario*, 134 SCRA 496), unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the same (*People v. Alcid*, 135 SCRA 280). The case at bar is no exception to the rule.

Moreover, as held in *People v. Gamayon* (121 SCRA 642), we give credence to the narration of the incident by the prosecution witnesses, especially as they happen to be police officers who are presumed to have performed their duties in a regular manner in the absence of evidence to the contrary.

Logan, Mugar and Duatin were members of the PC Narcotics Command who were constituted into a team precisely to operate against marijuana pushers in the area where the crime was committed. There is nothing in the records to suggest that they were motivated by any reason other than to accomplish their mission. Where there is no evidence, and nothing to indicate that 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 (*People v. Campana*, 124 SCRA 271).

On the specific issue of whether the case involved entrapment or instigation, appellant Olsim contends that he did the act not out of his own volition but upon the instigation of Sgt. Logan. Accordingly, he alleges that he should be exempt from criminal liability. The contention is without merit.

In an entrapment, ways and means are resorted to for the purpose of trapping and capturing the law breakers in the execution of their criminal plan; whereas, in instigation, the instigator practically induces the would-be defendant into the commission of the offense, and himself becomes a co-principal. Entrapment is no bar to the prosecution and conviction; in instigation, the defendant would have to be acquitted (*People v. Valmores*, 122 SCRA 922).

Olsim, in the early part of his testimony, denied knowing anyone who sells marijuana. Yet when asked to look for one, he was able to find a seller on the very same day. Furthermore, we agree with the lower court that Balisong would not have readily admitted to Olsim that he (Balisong) had marijuana available for sale if Balisong did not know and trust him very well. As a matter of fact, Olsim alias "Boyot" was reputed to be a broker in the sale of prohibited drugs. He was approached because of his reputation.

Therefore, we sustain the trial court's finding that Olsim's pose that he was instigated, first by the unidentified student and then by Sgt. Logan is without factual and legal basis. The mode of detection and arrest resorted to was entrapment which is perfectly legal.

With respect to Patog, his alibi that he was with Balisong at the time of the incident to collect a P300.00 debt which he loaned earlier that same day is not credible. Not only his manner of testifying but the attendant circumstances made his testimony unbelievable to the trial court. Patog himself admits that he and his wife were jobless save for the fact that his wife buys and sells bananas. The trial court found it hard to believe that Patog would readily part with P300.00, a considerable sum for him at the time, to someone who is not even a relative and whom he knows only because he (Patog) usually rides in his Ford Fiera. We also agree with the lower court that it is unthinkable that Balisong the borrower, would unnecessarily burden Patog with the inconvenience of following the former to the city proper later the same day for the repayment of the loan instead of Balisong going back in his vehicle to pay. Then, it is also strange that upon seeing Patog at the designated place, Balisong would ask him to ride at the backseat of the vehicle when it would have been more natural for them to sit beside each other in front, they being the only persons on board and whose only purpose was to effect payment of a debt.

Evidence must not only proceed from the mouth of a credible witness but it must be credible in itself such as the

common experience and observation of mankind can approve as probable under the circumstances (*Salonga v. Paño*, 134 SCRA 438).

The question that then presents itself is whether the appellants conspired to sell marijuana to Sgt. Logan.

This issue is important in ascertaining the proper penalty to mete out. The pertinent provisions of Republic Act No. 6425 (The Dangerous Drug Act of 1972) to the instant case are:

"Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from 20 thousand to thirty thousand pesos, shall be imposed upon any person, who, unless, authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any such transactions. x x x. (As amended by P.D. No. 1675, February 17, 1980).

"Sec. 21. Attempt and Conspiracy. -The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:

xxx xxx xxx

"b) Sale, administration, delivery, distribution and transportation of dangerous drugs;"

xxx xxx xxx

It is a well-settled rule that conspiracy does not have to be proved by direct evidence but may be decided from the mode and manner in which the offense was committed (*People v. Villanueva*, 128 SCRA 488; and *People v. Balane*, 123 SCRA 614).

It is not denied by the appellants Olsim and Patog that they were with Balisong at the time of the attempted sale of marijuana. It was Olsim who acted as middleman between Sgt. Logan and Balisong and it was Patog who gave the plastic bag containing the marijuana to Sgt. Logan. Patog denies knowing the contents of the bag. Even assuming we lend credence to Patog's testimony that he sat at the back of the Fiera, there was no reason for Balisong to ask him (Patog) to give the plastic bag which was under the front seat if he was just an innocent passenger, when Balisong could have easily gotten the bag himself.

Conspiracy is, therefore, established as there is evidence of intentional participation in the transaction with a view to the furtherance of the common design and purpose (*Gomez v. Intermediate Appellate Court*, 135 SCRA 620). The entire concatenation of events from the time Logan asked for marijuana to buy, up to the arrest of the accused sustains the finding of conspiracy.

WHEREFORE, the guilt of the appellants Olsim and Patog having been established beyond reasonable doubt, the appealed judgment is hereby AFFIRMED.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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