

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO ESTEVAN Y EUGENIO, ACCUSED-APPELLANT.

G.R. No. 69676. June 04, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Edgardo Estevan y Eugenio was charged in the Court of First Instance of Rizal, Branch VIII at Pasig, Metro Manila in Criminal Case No. 42051 with a violation of Section 4, Article II of Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act of 1972," as amended by Presidential Decree No. 1675, in an information of the following tenor:

"That on or about the 2nd day of July, 1981, in the Municipality of Mandaluyong, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another two (2) plastic bags of dried Marijuana stalks (flowering tops), a prohibited drug, in violation of the above-cited law, as amended.

"Contrary to law." [1]

At the arraignment, appellant, assisted by his counsel de oficio, pleaded not guilty.[2] Forthwith, trial on the merits ensued.

The People's version of this case, which is sustained by the evidence and is not seriously disputed, is presented as follows:

"At about 10:00 o'clock in the morning of July 2, 1981, the Philippine Constabulary Anti-Narcotics Unit (CANU) at Camp Crame, Quezon City, received confidential information that traffic in prohibited drugs was rampant in the Daang Bakal area in Mandaluyong, Metro Manila, and two persons, namely, accused Edgardo Estevan y Eugenio alias 'Tikboy' and one alias 'Boy Japon' were the traffickers. Acting thereon, a team of CANU agents was immediately sent to the place, arriving thereat at about 11:15 o'clock in the morning of the same day. One of the agents, Sgt. Cesar V. Garcia, posed as a buyer. After a while the poseur came upon the accused Edgardo Estevan alias Tikboy along Daang Bakal Street. The poseur immediately ordered P250.00 worth of marijuana from the accused, at the same time handing to the latter the amount of P250.00. After receiving the P250.00, the accused left the poseur and walked toward a waiting shed along Daang Bakal St. about 30 meters away and there talked to a person known only as Boy Japon who was alone at the waiting shed. The accused then gave the P250.00 to Boy Japon and the latter in turn handed to the accused two (2) plastic bags of dried marijuana. The accused returned to the poseur and delivered to him the two plastic bags. After getting the two plastic bags and upon ascertaining them to contain marijuana (Exh. 'C' & 'C-1'), the poseur arrested the accused. And, to assure the apprehension of Boy Japon, the poseur fired a shot to alert his companions. Boy Japon, however, scampered and eluded arrest. Thereupon, the CANU agents brought the accused and the two plastic bags of marijuana to Camp Crame (tsn, October 6, 1981, pp. 3-4, 7-11, 12-13; October 21, 1981, pp. 3-4).

"The two plastic bags and contents were referred to the PC Crime Laboratory for examination. The laboratory tests confirmed the contents of the two plastic bags as marijuana (tsn, October 6, 1983, pp. 2-3, 4-5; Exhs. 'A', 'B', 'C', 'C-1', 'C-2', 'C-3' and 'D')." [3]

After appellant was apprehended, he was brought to Camp Crame where he allegedly executed a sworn written statement, presented in evidence as Exhibit "E," to the effect that he was caught by members of the CANU while selling two (2) plastics bags of marijuana for P250.00 on July 2, 1981 at Daang Bakal Street, Mandaluyong, Metro Manila.

In its decision dated July 20, 1982, [4] the trial court, after finding appellant guilty beyond reasonable doubt of the crime imputed to him, sentenced him to twelve (12) years and one (1) day of imprisonment and to pay a fine of P12,000.00 with subsidiary imprisonment in case of insolvency and to pay the costs. It also ordered that, subject to rules and regulations, the period of preventive imprisonment which started July 2, 1981 shall be credited to appellant. The marijuana was ordered burned.

Not satisfied therewith, herein appellant took his case to the former Intermediate Appellate Court, faulting the court below with the following errors, to wit:

1. That the trial court erred in not finding the accused to have been instigated to commit a crime or otherwise asked to purchase marijuana so as to entrap the drug pusher who succeeded in eluding the law agents.
2. That the trial court erred in not finding the investigating officer to have violated the constitutional rights of the accused.
3. That the trial court erred in not having acquitted the accused based on reasonable doubt. [5]

The Intermediate Appellate Court, after discussing the evidence and the law involved, affirmed the decision of the trial court but modified the penalty by imposing the penalty of life imprisonment and ordering herein appellant to pay a fine of P20,000.00. [6] By reason of the penalty thus imposed, the Intermediate Appellate Court did not enter judgment but certified the case to us pursuant to Section 12 (now Section 13), Rule 124 of the Rules of Court.

It was held by said appellate court that what transpired in this case is entrapment and not instigation. It adopted the trial court's findings that the extrajudicial confession signed by appellant adheres in all material aspects to his testimony in court. It also observed that appellant did not find any difficulty in getting the marijuana, which goes to show that the appellant himself was engaged in illegal trafficking of prohibited drugs.

The Intermediate Appellate Court further ruled that appellant signed the sworn statement, Exhibit "E," after he was informed of his constitutional rights and that he validly waived his right to be assisted by a lawyer. The Solicitor General avers that the ruling in *Morales vs. Enrile, et al.* [7] to the effect that the waiver of the right to counsel shall not be valid unless made with the assistance of counsel, has no retroactive effect and is thus not applicable to the case at bar inasmuch as the extrajudicial confession of appellant was taken way back on July 2, 1981 when the prevailing rule did not require the assistance of counsel for the validity of the waiver. It was submitted, nonetheless, that even if the extrajudicial confession is expunged, there is more than enough evidence to convict appellant.

On the other hand, appellant contends that his extrajudicial confession taken by the police operatives should be rejected because he was not informed of his constitutional rights; that his extrajudicial confession was not read to him nor was he given the opportunity to read it before he was asked to affix his signature; that he was threatened and forced to sign it; and that his mother who does not know how to read and write, signed as witness thereto without his presence. [8] He insists that he was instigated to commit a crime when he was utilized by the CANU operatives to entrap a certain Boy Japon who is a suspected drug dealer and that when the latter eluded arrest, he

was instead arrested and charged as a drug pusher.

We first deal with the admissibility of the sworn written statement allegedly containing the extrajudicial confession of appellant.

The rule is firmly settled that a confession is presumed to be voluntary until the contrary is proved and the burden of proof is upon the person who gave the confession.[9] Appellant made the bare assertion that he was threatened and forced to execute an extrajudicial confession. He admitted, however, having signed it.[10] His mother apparently appears to be a witness to such confession.

We cannot reject the extrajudicial confession on this ground. Appellant failed to substantiate his claim that he was threatened and forced into executing the confession. His nonchalant and indifferent attitude in not proving his assertion erodes the reliability of his claim.

However, a careful examination of the extrajudicial confession indicates that while appellant waived his right to counsel, such waiver is not valid. Nothing appears from the records that appellant was assisted by counsel when he allegedly made the waiver.

This Court has clearly set the rule that 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 this requirement, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.[11] Thus, even if the confession of the accused speaks the truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.[12]

As earlier noted, the Solicitor General stresses the fact that since the extrajudicial confession in this case was executed prior to the promulgation of *Morales vs. Enrile, et al.* in 1983, ante., it should be declared admissible even if the waiver was not made with the assistance of counsel.

In *People vs. Eglipa*,[13] the trial court convicted the accused therein on the basis of two separate extrajudicial confessions made on April 17, 1982 and on September 10, 1982. While the trial court noted that the extrajudicial confessions were taken without the presence of counsel, nevertheless it admitted these confessions in view of the fact that they were made before April 26, 1983, the date *Morales vs. Enrile, et al.* was promulgated. We rejected the confessions and declared them inadmissible.

In the fairly recent cases of *Aballe vs. People, et al.*,[14] and *People vs. Manlapaz, et al.*,[15] we discarded the extrajudicial confessions therein it appearing that the waiver of counsel was not made with the assistance of counsel as mandated by Section 20, Article IV of the 1973 Constitution.

There is still another reason why we reject the extrajudicial confession of appellant. A cursory reading of said extrajudicial confession readily discloses that the statements therein purporting to show compliance with the constitutional requisites for confessions made during a custodial investigation fall short of the acceptable norms. The supposed cautionary explanations read:

"PASUBALI: Ginoong Edgardo Estevan y Eugenio ay nasa ilalim ng isang pagsisiyasat sa kasalanang paglabag sa batas gaya ng pagbebenta ng bawal na gamot, Marijuana (Violation of Section 4, Article II of RA 6425 otherwise known as 'The Dangerous Drugs Act of 1972', as amended), ngunit bago kita tanungin ay nais kung ipaliwanag sa iyo ang iyong mga karapatan alinsunod sa ating Bagong Saligang Batas gaya ng mga sumusunod:

‘Na ikaw ay may karapatan na manahimik o huwag sumagot sa ano mang itatanong sa iyo.’

‘Na ikaw ay may karapatan na kumuha ng iyong sariling pili na manananggol upang sumubaybay sa iyo sa

pagsisiyasat na ito at kung hindi mo naman kaya ang humirang ng isa, ang tanggapang ito ang bahalang humirang ng isa para sa iyo'.

"Na ano man ang sasabihin mo rito sa pagsisiyasat na ito ay maaring gamiting ebidensiya laban o pabor sa iyo sa alin mang hukuman dito sa ating bansa'.

"TAGASIYASAT: Naunawaan at naintindihan mo bang lahat ang iyong mga karapatan na ipinaliwanag at ipinabatid ko sa iyo?

"SINISIYASAT: OPO.

"TANONG: Matapos mong maunawaan at maintin-dihan lahat ang iyong karapatan alinsunod sa ating Bagong Saligang Batas na ipinaliwanag at ipinabatid ko sa iyo, ikaw ba ay nakahanda pang magbigay ng isang malaya at kusang loob na salaysay kahit na walang abogado sa ngayon?

"SAGOT: OPO." [16]

Time and again, we have emphasized that such long questions followed by monosyllabic answers do not satisfy the requirements of the law that the accused be informed of his constitutional rights under the Constitution and our laws. Instead, there should be several short and clear questions and every right explained in simple words in a dialect or language known to the person under interrogation.[17] When such an investigation conducted upon the accused does not conform to the requirements set forth in the aforecited case of *People vs. Galit*, the extrajudicial confession taken therein is inadmissible.

We now come to the defense of appellant that he was instigated to commit a crime. In entrapment, ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan; in instigation, the instigator practically induces the would-be accused into the commission of the offense and the former himself becomes a co-principal.[18]

The usual defense of being "framed-up" invoked by drug pushers, as in this case, does not impress us. In order that the defense of having been set up or framed by the authorities may prosper, the evidence adduced must be clear and convincing. Like alibi, it is a weak defense that is easy to concoct and is difficult to prove.[19] Law enforcers are presumed to have performed their duties regularly in the absence of proof negating the same. Contrariwise, herein appellant failed to show any ill motive on the part of the prosecution witnesses to falsely impute such a serious charge against him, a consideration debilitating of his defense as we have ruled in previous cases.[20]

An analysis of the testimony of appellant reveals his admission of the following facts: that he knew Boy Japon and the place where the latter can be found;[21] that Boy Japon is his acquaintance whom he used to see;[22] and that he handed the money to Boy Japon in exchange for the marijuana after which he delivered the same to the CANU operative.[23]

In *People vs. Asio*,[24] which likewise involved the same offense with which appellant is charged in the present case, we made the following observation which can as aptly be stated in the case at bar:

"The existence beforehand of such unlawful trade is evident from the fact that the accused-appellant had a ready supply of marijuana to meet the buyer's demand. He might not have it right at the time the initial transaction took place but he was readily able to produce the desired quantity. In fact, it took him only a few minutes to produce the marijuana. If it were really true that he was induced into looking for marijuana, it would have taken him a considerable length of time to look for a source. The fact that he returned shortly after the transaction shows that he already had contacts from whom he could readily get the marijuana. This is clearly not a case where an innocent person is induced to commit a crime. This is simply a trap to catch the

criminal."

The extrajudicial confession signed by appellant on July 2, 1981 substantially interlocks with his testimony in court. Thus, even if said confession were completely disregarded, as we have done, there would still be more than enough evidence to sustain appellant's conviction. The judgment of conviction we are asked to review is not solely based on the disputed extrajudicial confession.[25]

WHEREFORE, the judgment of the former Intermediate Appellate Court is hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, 11.

[2] Original record, 7.

[3] Brief for Appellee, AC-G.R. CR No. 00469, 1-3; Rollo, 33.

[4] Per Judge Serafin E. Camilon.

[5] Brief for Appellant, AC-G.R. No. 00469, 1; Rollo, 30.

[6] Rollo, 43.

[7] 121 SCRA 538 (1983).

[8] TSN, Feb. 10, 1982, 6.

[9] People vs. Talla, et al., G.R. No. L-44414, Jan. 18, 1990, citing People vs. De la Cruz, 115 SCRA 184 (1982).

[10] TSN, Mar. 15, 1982, 4.

[11] People vs. Hernandez, et al., 162 SCRA 422 (1988); People vs. Nolasco, 163 SCRA 623 (1988).

[12] People vs. Newman, et al., 163 SCRA 496 (1988); People vs. Repe, et al., G.R. No. 64935, July 19, 1989.

[13] G.R. No. 78852, June 5, 1989.

[14] G.R. No. 64086, Mar. 15, 1990.

[15] G.R. No. 80179, Mar. 19, 1990.

[16] Exhibit E, Envelope of Exhibits, 4.

[17] People vs. Galit, 135 SCRA 465 (1985); People vs. Flores, 165 SCRA 71 (1988); People vs. Olapani, et al., G.R. No. 69122, Nov. 16, 1989.

[18] People vs. Valmores, et al., 122 SCRA 922 (1983); People vs. Lapatha, et al., 167 SCRA 159 (1988); People vs. Asio, G.R. No. 84960, Sept. 1, 1989.

[19] People vs. Nabunat, G.R. No. 84392, Feb. 7, 1990.

[20] People vs. Paco, G.R. No. 76893, Feb. 27, 1989; People vs. Napat-a, G.R. No. 84951, Nov. 14, 1989; People vs. Borja, G.R. No. 71838, Feb. 26, 1990.

[21] TSN, Feb. 10, 1982, 3.

[22] TSN, Mar. 15, 1982, 2-3.

[23] TSN, Feb. 10, 1982, 5.

[24] G.R. No. 84960, Sept. 1, 1989, ante.

[25] People vs. Layuso, G.R. No. 69210, July 5, 1989; People vs. Periodica, Jr., G.R. No. 73006, Sept. 29, 1989.

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