

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PUTTHI NATIPRAVAT AND SE-MA SUEBTRAKUL, ACCUSED-APPELLANTS.

G.R. No. 69876. November 13, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal interposed by accused Putthi Natipravat and Se-ma Suebtrakul from the decision of the Regional Trial Court of Manila, Branch 53, finding both of them guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, the Dangerous Drugs Act of 1972, as amended, and sentencing each of them to suffer the penalty of life imprisonment and to pay a fine of P20,000.00.

The information filed against them alleged:

"That on or about March 1, 1983, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver, give away to another, distribute, dispatch in transit, or transport, or act as brokers of any prohibited drugs, did then and there wilfully, unlawfully, jointly and mutually helping and conspiring with each other, sell, deliver, give away to another, distribute, dispatch in transit or transport the following drugs, to wit:

"Fourteen (14) heroin bricks weighing approx. 325 grams.

"Two (2) balloons of heroin powder approx. 270 grams.

"Two (2) heroin bricks approx. weighing 48.6 grams.

which are prohibited drugs."

The appellants pleaded not guilty when arraigned on March 23, 1983. Thereafter, the trial ensued. After the prosecution had rested its case, the appellants, on the ground that the prosecution failed to prove its case against them, abstained from presenting evidence and sub-mitted the case for decision.

The lower court established their guilt beyond reasonable doubt on the basis of the uncontroverted prosecution evidence, as follows:

"The prosecution evidence establishes that sometime in February 27, 1983, the Office of the Narcotics Command (NARCOM for short), Camp Crame, Quezon City, received confidential report or information that two (2) Thai Nationals would be arriving in the Philippines, bringing with them an undetermined amount of heroin. On February 28, 1983, at about 7:00 a.m., Major Persie M. Aldaba, Operation Chief and Commanding Officer of the Special Operation Unit of the NARCOM, assigned and dispatched an intelligence and operation team composed of Aldaba himself, Lt. Emmanuel Manzano, Sgt. Stanley Millares, Sgt. Rolando Ibañez and CTC Glen Logan, to conduct close surveillance on the two (2) Thai Nationals who were reported to be traffickers of heroin, a prohibited drug. As part of the penetrating operation, a NARCOM - poseur-buyer in the person of CTC Glen Logan was able to set a 'buy bust operation' at around 7:00 p.m. on March 1, 1983, in front of the Savory Restaurant located along T. M. Kalaw St., Ermita, Manila. (t.s.n., May 23, 1983, pp. 13-22;

Exh. F)

"Glen Logan testified during the trial held on August 19, 1983, that he was assigned by Major Persie Aldaba on February 28, 1983 to pose as a buyer of heroin with the end in view of entrapping the said two (2) Thai Nationals who were trafficking in heroin; that he was introduced to the two (2) Thai nationals by the coordinating individual, a woman, who contacted them and brought them to him late in the afternoon of February 28, 1983 inside the Savory Restaurant; that he was introduced as an interested buyer of heroin to the two (2) Thai nationals whom he pointed out and identified in open Court to be the two (2) accused herein, Putthi Natipravat and Se-Ma Suebrakul; that, thereafter, he was left alone with the two (2) accused by the coordinating individual; that he told the two (2) accused that he was interested in buying heroin and asked them if they have some for sale; that the two (2) accused agreed to sell heroin to him if he could meet their price of P2,500 per gram; that they were willing to sell five hundred ninety five (595) grams; that he agreed to buy at the price quoted by the two (2) accused; that they agreed to meet in the evening of the following day; that he should be prepared with the money and to meet them in front of the Savory Restaurant at around 7:00 p.m. on March 1, 1983; that on March 1, 1983, at around 7:45 p.m., while he was standing beside a parked Gemini car in front of the Savory Restaurant, the two (2) accused arrived and approached him; that he inquired from them if they had the heroin; that the accused Putthi Natipravat told or indicated to him that the bag he was carrying contained the heroin, and asked Logan if he had the money; that he (Logan) put out and merely showed to Putthi the money inside the attache case where he had stashed poodle money, which means that the money on top were in P100.00 bills, while inside were newspapers cut like money merely to give the impression that they had enough money, even as they did not actually have the necessary amount; that he also requested Putthi Natipravat if he could look into the bag to verify if the heroin was there and Putthi consented; that after verifying the existence of heroin inside the bag, Logan gave the pre-arranged signal to the other members of their team who were strategically deployed or posted in front of Savory Restaurant at a distance of about five (5) meters away from Logan where they may be able to witness the transaction, particularly the delivery of heroin to Logan; that the pre-arranged signal consisted in his scratching his head to show that he was already holding the heroin, while the attache case with money was still with him; that with his (Logan's) pre-arranged signal, Major Aldaba approached them and grabbed the accused Putthi Natipravat, while Sgt. Stanley Millares grabbed the other accused Se-Ma Suebrakul; that he delivered the bag containing the heroin (Exhs. B, B-1 to B-14; C, C-1, C-2, and G) to Major Aldaba; that the two (2) accused were brought to Camp Crame, Quezon City, for further investigation (See also t.s.n., May 23, 1983, pp. 26-35; Exh. F; Testimony of Lt. Emmanuel Manzano, August 29, 1983)

"Sgt. Stanley Millares testified on May 23, 1983 and identified on the witness stand the heroin confiscated from the two (2) accused on March 1, 1983, in front of the Savory Restaurant, as well as his signature in Exhibit C. The articles contained in the bag delivered by the accused Putthi Natipravat were fourteen (14) bricks of heroin weighing approximately 325 grams, and two (2) balloons of heroin powder, approximately weighing 270 grams (t.s.n., May 23, 1983, pp. 31-34).

"The evidence further shows that on that same night at about 11:00 p.m., Lt. Emmanuel O. Manzano and T/Sgt. Rolando M. Ybañez were instructed by their team leader Major Persie M. Aldaba, to proceed with the two (2) accused to Euro-Haus Inn, Boulevard Executive Suites, Roxas Blvd., Ermita, Manila, and to enter the room of the said accused at said hotel where they were temporarily billeted; that upon arrival thereat, together with the two (2) accused, Lt. Manzano and Sgt. Ybañez coordinated with the Hotel Security Officer, Mr. Danilo Arellano and the Hotel security guard Efren Fetalino who accompanied them to Room 4041 occupied by said accused; that before entering said room, they were able to secure a written consent to search, dated March 3, 1983, signed by the accused Natipravat who gave his consent, and by the other accused Suebrakul who signed as a witness, together with Arellano and Fetalino (Exh. L); that said written consent to search authorized the members of the Anti-Narcotics Unit led by Lt. Emmanuel Manzano to conduct a search of said Room 4041, Euro-Haus Inn, Blvd. Executive Suites, Roxas Blvd., Manila; that Lt. Manzano and Sgt. Ybañez conducted a search inside said Room 4041 in the presence of the two (2) accused and the two (2) security

guards, and found two (2) heroin bricks weighing 48.6 grams, concealed inside a blue-gray travelling bag allegedly owned by the accused Se-Ma Suebtrakul; (Exhs. D, D-1, D-1-a, D-1-b, D-2, and D-3); that Lt. Manzano seized the two (2) bricks of heroin (Exhs. D-1 and D-2) and issued the corresponding receipt (Exh. H); that, on the same occasion and date, the accused Natipravat also signed a 'CERTIFICATION RE CONDUCT OF SEARCH' certifying that from 12:30 a.m. to 1:00 a.m. on March 2, 1983, the NARCOM team led by Lt. Manzano conducted a search in their room with his consent and permission; that he (Natipravat) was present at all times and the search was conducted in an orderly manner, and no unnecessary force was employed; that nobody was hurt, and nothing was taken without proper receipt; and that he (Natipravat) has no complaint whatsoever against any member of the NARCOM team which conducted the search (Exhs. J and K); that, there-after, the two (2) accused were taken back, together with the confiscated heroin, to the NARCOM Headquarters, Camp Crame, Quezon City, for further investigation and proper disposition of the case; that all the seized heroin articles were brought to the PC Laboratory, Camp Crame, for examination. (Testimony of Lt. Emmanuel Manzano, August 29, 1983)

"On March 3, 1983, the aforementioned fourteen (14) bricks of heroin weighing approximately 325 grams (Exhs. B-1 to B-14), the two (2) balloons of heroin powder, approximately weighing 270 grams (Exhs. C-1 and C-2), and the two (2) other heroin bricks weighing approximately 48.6 grams (Exhs. D-1 and D-2) were brought to the PC Crime Laboratory, Camp Crame, Quezon City, and were examined by Captain Lolita B. Chambers, Chief Chemist, PC Crime Laboratory, Camp Crame, Quezon City, thru chemical and instrumental methods of analysis, and who found them to be positive for heroin, a prohibited drug. Captain Chambers herself testified that a letter-request, dated March 2, 1983 (Exh. A), was hand-carried personally to their office by Major Persie Aldaba on March 3, 1983, at 2:30 p.m. (t.s.n., *idem.*, pp. 19-21), together with the fourteen (14) bricks of suspected heroin (Exhs. B-1 to B-14), two (2) plastic bags of suspected heroin powder (Exhs. C-1 and C-2) and two (2) other suspected heroin bricks (Exhs. D-1 and D-2), all of which she examined and found to be positive for heroin (*idem.*, pp. 6-19; Exh. E)."

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The appellants raised the following assignments of errors in this appeal:

I

THE RECORD SHOWS THAT DEFENDANT SE-MA SUEBTRAKUL WAS A MERE PASSIVE ONLOOKER IN THE ALLEGED SALE OF HEROIN UNDER THE REPEATED RULINGS OF THIS SUPREME COURT, IT FOLLOWS THAT SE-MA SUEBTRAKUL SHOULD BE ACQUITTED.

II

THE RECORD SHOWS THAT MAJOR PERSIE ALDABA CONFISCATED A BAG/BAGS ALLEGEDLY CONTAINING HEROIN ALLEGEDLY AGAIN IN THE POSSESSION OF PUTTHI NATIPRAVAT. THE RECORD LIKEWISE SHOWS THAT CAPT. CHAMBERS OF THE CIS LABORATORY RECEIVED CERTAIN PACKAGES FROM MAJOR ALDABA WHICH SHE FOUND UPON ANALYSIS TO BE HEROIN. THERE IS HOWEVER, NO EVIDENCE IN RECORD TO SHOW THAT THE PACKAGES THAT CAPT. CHAMBERS RECEIVED FROM MAJOR ALDABA WERE THE ONES THAT MAJOR ALDABA TOOK FROM PUTTHI NATIPRAVAT. THE LOWER COURT MERELY ASSUMED THAT THE PACKAGES TAKEN BY MAJOR ALDABA FROM PUTTHI NATIPRAVAT WERE THE SAME PACKAGES THAT HE DELIVERED TO CAPT. CHAMBERS AND ON THE BASIS OF THIS UNWARRANTED ASSUMPTION PROCEEDED TO CONVICT PUTTHI NATIPRAVAT. WE SUBMIT THAT THERE IS NOTHING IN THE LAW THAT AUTHORIZED THE TRIAL COURT TO MAKE AN ASSUMPTION OF THIS NATURE. THE CHAIN OF EVIDENCE BEING INCOMPLETE PUTTHI NATIPRAVAT SHOULD LIKEWISE BE ACQUITTED

III

EVEN ASSUMING FOR THE SAKE OF ARGUMENT ONLY THAT THERE IS SUFFICIENT EVIDENCE

TO CONVICT SE-MA SUEBTRAKUL AND PUTTHI NATIPRAVAT OF THE CRIME OF SELLING PROHIBITED DRUGS NEVERTHELESS THE TRIAL COURT ERRED IN SO CONVICTING THEM SINCE THE RECORD SHOWS THAT THE CONS-TABULARY AGENTS WHO APPREHENDED THE ACCUSED ON THE ALLEGED GROUND THAT THE ACCUSED ATTEMPTED TO SELL PROHIBITED DRUGS TO THEM FIRST EXERTED EVERY EFFORT TO CAUSE THE ACCUSED TO SELL THEM THESE PROHIBITED DRUGS AND THIS IS A FACT WHICH THE TRIAL COURT TOOK NOTE OF IN ITS DECISION. UNDER THE REPEATED DOCTRINES OF THIS SUPREME COURT, IT FOLLOWS THAT THE ACCUSED HAVING BEEN INDUCED TO COMMIT THE ALLEGED CRIME BY THE AGENTS OF THE LAW THE CASE AGAINST THEM SHOULD BE DISMISSED.

IV

THE RECORD SHOWS THAT THE CONSTABULARY AGENTS WHO APPREHENDED THE ACCUSED ADMITTED THAT THEY HAD DISREGARDED THE CONSTITUTIONAL RIGHTS OF THE ACCUSED. IT FOLLOWS THAT THE CASE AGAINST THE ACCUSED SHOULD BE DISMISSED.

We have carefully reviewed the records of the case and we are convinced that the unlawful distribution of heroin by the appellants was committed as narrated by the prosecution witnesses. It is a well-settled rule that the trial court findings relative to the credibility of the testimony of the witnesses as well as of the witnesses themselves are entitled to high respect, and, therefore, are generally sustained by the appellate court (*People v. Rosario*, 134 SCRA 496). The appellants have failed to give any convincing reasons why we should depart from the steadfast rule.

The lower court, after observing the demeanor and conduct of the prosecution witnesses, was convinced that "they were testifying truthfully on the substantial matters testified to by them."

The un rebutted testimonies of the prosecution witnesses who were subjected to cross-examination prove the validity of the charges against the appellants. The evidence is sufficient to establish guilt beyond reasonable doubt. (See *People v. Lucas*, 125 SCRA 813)

Moreover, credence should be given to the narration of the incident by the prosecution witnesses especially as they are police officers who are presumed to have performed their duties in a regular manner in the absence of any evidence to the contrary. (*People v. Gamayon*, 121 SCRA 642; and *People v. Patog*, G.R. No. 69620, September 24, 1986)

Appellant Suebtrakul contends that he was a mere passive onlooker in the drug sale considering that Officer Logan as poseur-buyer talked to Natipravat only during the negotiations and it was Natipravat alone who was holding the red bag containing the heroin during the actual delivery.

This contention is without merit. We agree with the lower court's findings that conspiracy has been clearly established.

The presence of Suebtrakul during the negotiations and actual delivery indicates a common purpose with Natipravat to sell 595 grams of heroin. He could not have been an innocent bystander in the heroin deal transacted by his fellow Thai, a deal that involved a sizeable amount of money amounting to P1,487,500.00.

For conspiracy to exist, the evidence need not establish the actual agreement which shows the pre-conceived plan, motive, interest or purpose in the commission of the crime. It is enough that it is shown that their concerted efforts were performed with closeness and coordination indicating their common purpose to sell prohibited drugs. (See *People v. Tala*, 141 SCRA 240)

It is understandable that CTC Logan talked only to Natipravat because Suebtrakul did not speak English, only Thai. This fact, however, does not exculpate him as his coming to the Philippines with his friend and his

pre-sence all throughout the transaction until the actual delivery showed his coordination with Natipravat.

Appellants allege that there is no showing that the package delivered to CTC Logan was the same package analyzed at Camp Crame.

They contend that there were three different ver-sions as to who brought the confiscated heroin for analysis.

The first version appears in the testimony of Sgt. Millares (t.s.n., June 1, 1983, pp. 55-59) to the effect that Lt. Ybañez was ordered to bring the confiscated packages to the laboratory for examination and that Lt. Ybañez obeyed this order. The second version is from CTC Logan who testified that he and Major Aldaba brought the said packages to Camp Crame. Later on, Logan testified that he did not accompany the packages to the laboratory for he was assigned another job, which accounted for the third version.

The Solicitor General has reconciled these alleged discrepancies. He stated that:

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"The above testimonies may be reconciled viewed as follows: Aldaba was with Logan in bringing the heroin to Camp Crame. However, after reaching the laboratory, Logan left Aldaba for another assignment. Meanwhile, Aldaba instructed Ybañez who was already in Camp Crame to bring the substance for examination. Ybañez complied although Aldaba could have been with him to the laboratory."

This Court has repeatedly held that inconsisten-cies and contradictions referring to collateral matters do not destroy the credibility of witnesses. On the contrary, they indicate that the witnesses were not previously rehearsed. (People v. Abigan, G.R. No. 69674, September 15, 1986)

On the specific issue of whether the case involved entrapment or instigation, the appellants contend that the latter method was employed citing the portion in the decision stating that "he (Logan) told the two (2) accused that he was interested in buying heroin and asked them if they have some for sale x x".

As aptly stated by the Solicitor General:

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"[T]he mere fact that the authorities deceived appellants into believing that they were buyers of heroin does not exculpate the latter from liability for selling the prohibited drugs. The police can legitimately feign solicitation to catch criminals who habitually engage in the commission of the offense. x x x."

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. On the other hand, 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 prosecution and conviction, while in instigation, the defendant would have to be acquitted (People v. Patog, supra; People v. Beralde, 139 SCRA 426; U.S. v. Phelps, 16 Phil. 440; People v. Abella, 46 Phil. 857; People v. Lucas, supra; and People v. Nillos, 127 SCRA 207)

In the case at bar, CTC Logan did not perform any act which in any way induced or influenced the herein appellants to sell heroin. The heroin was obviously for sale. When Logan first met the appellants, they readily quoted their price per gram and set the actual delivery the very next day. If there was inducement on the part of CTC Logan, the appellants could not have readily produced such a big amount of heroin the following day.

Lastly, the appellants question the alleged disregard of the constitutional rights of the accused particularly the failure to explain the meaning of their rights and of a search warrant and the failure to furnish an interpreter.

In the case of People v. Nicandro (141 SCRA 289), we stated that:

"When the Constitution requires a person under investigation 'to be informed' of his right 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 v. Ramos*, 122 SCRA 312; *People v. 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."

Admittedly, as Putthi Natipravat was not fluent in English and Suebtrakul only understood Thai, they could not have fully comprehended the recitation of their constitutional rights. However, a lack of full comprehension is not sufficient to dismiss the charges or acquit the accused. There was no questioning by law enforcers designed to elicit statements, whether inculpatory or exculpatory. The judgment of conviction was not based on any extrajudicial statement given by the accused.

In the same light that the appellants' failure to fully comprehend the implication of their consent to have their room searched is not a ground for dismissal, the alleged lack of full comprehension results only in the exclusion of the evidence taken from the hotel room.

Guilt is still established by proof beyond reasonable doubt independent of the questioned search and disregarding the additional heroin of 48.6 grams confiscated from the appellants' hotel room.

The appellants allege that their constitutional rights were violated as shown by the testimony of Lt. Emmanuel Manzano that he could not explain fully the constitutional rights of the accused because Thailand has no Constitution. The answer of Manzano was not only irrelevant and beside the point but also indicates an unfortunate lack of respect by law enforcers of the meaning and extent of the protection guaranteed by Sections 3 and 20 of the Bill of Rights. However, the alleged violation refers to the subsequent search conducted at the Euro-Haus Inn in Roxas Boulevard, Manila which yielded additional bricks of heroin found in Suebtrakul's travelling bag. As earlier stated, the appellants were convicted on the basis of the earlier sale of heroin in front of the Savory Restaurant, not the presence of more heroin in their hotel room.

The accused-appellants expressly waived their right to present evidence. First, they stated that their defense would be based on their being subjected to lie detector tests by the National Bureau of Investigation to prove the truth of their defense. The motion for lie detector tests was granted. The appellants abandoned this defense. They formally submitted their case on the ground that "there is no need for the defense to present evidence since the prosecution has failed to prove its case". The appellants cannot now complain in the face of prosecution evidence clearly and sufficiently warranting their conviction.

WHEREFORE, the judgment appealed from is AFFIRMED.

SO ORDERED.

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

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