

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO TURLA Y BATI, DEFENDANT-APPELLANT.

G.R. No. 70270. November 11, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. 2945 of the Regional Trial Court of Pampanga, Branch 41, San Fernando, Pampanga, Danilo Turla y Bati was charged with Violation of Rep. Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, allegedly committed as follows:

"That on or about the 24th day of September 1984, in the Municipality of San Fernando, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused DANILO TURLA y BATI, knowing fully well that Marijuana is a prohibited drug, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody dried marijuana flowering tops with leaves with an appropriate weight of one (1) kilogram and to transport the same to San Fernando, Pampanga, without authority to do so." [1]

After hearing the evidence adduced by the parties, the trial court [2] found the accused guilty, as charged, and sentenced him to suffer the penalty of reclusion perpetua, and to pay a fine of P20,000.00 and costs. [3] From this judgment, the accused has appealed to this Court.

The proofs adduced on behalf of the prosecution establish the following facts:

"The evidence shows that on September 23, 1984 at around 3:00 o'clock in the afternoon, Sgt. Venusto Jamisolamin of the 3rd Narcotics Regional Unit, Camp Olivas, San Fernando, Pampanga, received information from an informer that at dawn the following day a drug pusher was going to steal a car at the vicinity of 3rd Street, Balibago, Angeles City.

"On the same date, Sgt. Ruben Bazar, also of the 3rd Regional Narcotics Unit, with the aid of an informer, met the herein accused at the Hongkong Restaurant in Angeles City. In that meeting, Sgt. Bazar, who pretended to be a civilian, proposed to buy from the accused a kilo of marijuana for P1,000.00. It was then agreed that the accused would deliver the marijuana on the following day between 5:00 and 6:00 o'clock in the morning at the Pampanguena Restaurant in San Fernando, Pampanga.

"Acting on the information supplied by his informant, Sgt. Jamisolamin together with Sgts. Daniel M. Guillermo and one Sgt. Nava, left Camp Olivas at around 3:45 in the morning of September 24, 1984 for the purpose of arresting the would be thief. On reaching 3rd Street, Balibago, Angeles City, at around 4:10 in the morning, the three PC sergeants, together with Sgt. Jamisolamin's informer, who was already waiting for them, positioned themselves inconspicuously near the place where the Toyota car was parked. After waiting for about fifteen minutes, a man appeared, proceeded to the car, opened its left door and drove the car away. Sgt. Jamisolamin recognized the man as the same man he had previously arrested for violation of the Dangerous Drugs Act. That man was Danilo Turla, alias Danny Bangus. The PC sergeants attempted to pursue the accused but lost sight of him when their car developed engine trouble. Having failed to apprehend the accused,

the PC soldiers, together with the informer, decided to return to San Fernando, Pampanga to assist Sgt. Bazar in arresting a drug pusher whom the latter would meet at the Pampanguena Restaurant. Upon reaching Barangay Dolores, San Fernando, Pampanga, the informer noticed the red Toyota Corona, which they had earlier pursued, parked at a Shell gasoline station. The PC soldiers, after their attention was called to such fact, immediately drove to the gasoline station to effect an arrest. There, the soldiers confronted the accused as to the ownership of the car and asked him to show his driver's license and the car's registration papers. The accused could not show neither of the documents asked but explained to the soldiers that the car belonged to his sister. The PC soldiers then directed the accused to open the back compartment of the car. At first, the accused hesitated but finally opened it. Inside the trunk, the PC soldiers found a sack. Upon further inspection the sack yielded a plastic bag containing dried marijuana leaves weighing at about one kilo (Exhibit E-1). When asked as to the ownership of the marijuana leaves, the accused declared that he does not know anything of the articles.

"Thereupon, the PC soldiers brought the accused and the car to Camp Olivas. A receipt of the custody of the car, marijuana leaves and other articles found inside the car and/or taken from the accused was prepared by Sgts. Guillermo and Jamisolamin consisting of two pages (Exhibits B and B-1) duly signed and subscribed by them and also by the accused (Exh. B-4). Likewise, a Booking Sheet and Arrest Report was prepared by Sgt. Jamisolamin (Exh. A) which was signed by him (Exh. A-2) and by the accused (Exh. A-1). In addition thereto, Sgts. Guillermo and Jamisolamin executed a joint affidavit in connection with the incident. (Exhs. C, C-1).

"Later, upon follow-up of the case, it was learned the red Toyota car belong to and was stolen from an American serviceman. It was also found out that the key used by the accused on said car was a master key and not the real key. Although the car was subsequently returned to its real owner, the accused was nevertheless charged for carnapping.

"The laboratory examination later conducted on the aforesaid leaves revealed that the same was positively marijuana (Exh. F)."[4]

The accused-appellant denied having agreed to sell marijuana leaves to Sgt. Bazar. He also denied that marijuana leaves were found in the trunk compartment of the car. His version is as follows:

"The accused testified that he knows a person by the name of Sgt. Amizolamin as the latter hired him as a civilian informer in 1982. He again met Sgt. Amizolamin in August 1984 at the Sahara Beer Garden located in Angeles city and the latter requested him to work as a civilian informer but refused because he expects to profit more as a fish dealer. When he refused, Sgt. Amizolamin was slightly mad. On September 24, 1984 at around 4:00 to 5:00 o'clock in the morning after coming from Angeles City, he saw Sgt. Amizolamin while he was buying gasoline at the Shell Gasoline Station at San Fernando. Before he left Angeles City, he went to Sahara Beer Garden at around 10:00 to 11:00 o'clock in the evening and stayed in said Beer Garden until 3:30 o'clock in the morning. While he was in said Beer Garden, a certain person by the name of Jojo Alimurung approached him and offered to sell a Toyota Car for P10,000.00 pesos. After inspecting the car parked outside the Beer house, he paid Jojo Alimurung the amount of P10,000.00 without any receipt issued and in the presence of a certain Winnie. They further agreed to meet the following day, September 24, 1984, to prepare the pertinent papers. Thereafter, he went towards the road going to St. Jude Village, San Fernando, Pampanga but later changed his mind. Instead, he went to the Ifugao Muramu to look for his girlfriend but the latter was not there. He returned to St. Jude Village but the car ran out of gasoline at the Shell Gasoline Station. While the car was being filled with gasoline at around 4:00 to 5:00 o'clock in the morning of September 24, 1984, a Ford Fiera stopped near the car and three persons in uniform alighted from the Ford Fiera. Then two of them approached him and told him that they have a warrant of arrest issued against him. Thereafter they forced him to ride in their Ford Fiera and brought him to Camp Olivas, San Fernando, Pampanga. In Camp Olivas, he noticed Sgt. Venusto Amizolamin. Likewise he saw Pat. Philip Paz and Pat. Carlito Carino and requested said Policemen to talk with the persons who arrested him. Finally, on September 26, 1984 he was able to talk with the arresting officers and the latter told him that he will be released if he will give P5,000.00 but he refused. He was then

called to give his statement but he also refused. The arresting officers then prepared one but he refused to sign so he was brought to the kitchen and blindfolded. In the kitchen, they held his hands and forced him to lie down on the cement floor. Then he felt something wet placed on his face and water was entering his nostril causing him to hardly breath. When he could no longer endure the suffering, he was constrained to sign the statement prepared including the receipt for custody marked as Exh. A, B, B-1 respectively. He further testified that he does not know Sgt. Bazar nor agreed to deliver to him one (1) kilogram of marijuana. He likewise denied the testimonies of Sgts. Jamizolamin and Guillermo that the latter have found one kilogram of marijuana at the back compartment of the car (TSN, pp. 2-26, Jan. 9, 1985. TSN, pp. 2-11 Jan. 10, 1985)."[5]

The trial judge gave no weight to the testimony of the accused as it appeared to him to be unnatural and lacking in candor and plausibility; and it could not overcome the evidence presented by the prosecution.

It is now contended on behalf of the accused-appellant that the evidence of the prosecution is not sufficient to support a finding that he is guilty of the crime charged, since he was not caught in the act of selling marijuana, and his ownership or possession of the marijuana leaves, said to have been found inside the trunk compartment of the car, has not been duly proved. Counsel for the appellant points out that the only incriminating evidence against him is the Receipt for Custody (Exh. B) which contains a list of things, a sack of marijuana leaves included, found inside the car driven by the appellant when he was apprehended by PC soldiers and which bears the signature of the appellant. But, this receipt, according to counsel for the accused-appellant is inadmissible in evidence as the signature of the accused therein was obtained by means of force and intimidation during custodial investigation without the assistance of counsel.

The Court agrees with counsel for the accused-appellant that the Receipt for Custody (Exh. B) is inadmissible in evidence, as it was signed by the accused during custodial investigation without the assistance of counsel of his choice and without having been first informed of his constitutional right to silence and to counsel. The said Receipt is a declaration against interest and a tacit admission of the crime charged, since mere unexplained possession of prohibited drugs is punished by law. The Receipt is in the same category as extra-judicial confessions outlawed by the Constitution.

However, the claim of insufficiency of evidence to support a conviction is not tenable. As the trial court correctly found, "even if the documents, more particularly the Booking and Arrest Report and the Receipt for Custody, are disregarded, there is more than enough evidence to sustain a judgment of conviction. As already stated, the testimonies of the prosecution witnessed proved beyond reasonable doubt the guilt of the accused in the offense charged."[6]

PC Sgt. Venusto Jamisolamin, detailed with the Third Narcotics Regional Unit stationed at Camp Olivas, San Fernando, Pampanga, declared that when they apprehended the accused in the morning of 24 September 1984, they found a big plastic bag containing marijuana leaves in the trunk compartment of the car the accused was driving. His testimony reads, as follows:

"Q.

After you arrested the accused at the Shell gasoline station at Dolores, San Fernando, Pampanga, what else did you do?

A.

I let the suspect open the back compartment of the car, sir.

Q.

Were you actually the one who asked him to open the back compartment of the car?

A.

Yes, sir.

Q.

Did the accused open the back compartment of the car?

A.

Yes, sir.

Q.

Was he easily able to open it?

A.

Yes, sir.

Q.

After the back compartment of the car was opened, what did you find inside the compartment of the car?

A.

We found one big plastic bag containing marijuana leaves, sir.

Q.

Why do you say that the things you found on the big plastic bag is marijuana?

A.

Because I am very familiar with marijuana, sir."^[7]

This statement is corroborated by PC Sgt. Daniel, Guillermo, also of the Narcotics Unit, who was with PC Sgt. Jamisolamin when they apprehended the accused in the early morning of 24 September 1984.^[8]

It is claimed for the defense that the testimonies of the prosecution witnesses are contradictory and conflicting so that they do not deserve credence. It would appear, however, that the contradictory and conflicting statements pointed out by counsel for the accused-appellant refer to minor details which cannot destroy the credibility of witnesses. Again, the issue posed is one of credibility of witnesses which, as this Court has often said, is a matter that is peculiarly within the province of the trial judge, who had first-hand opportunity to watch and observe the demeanor and behavior of witnesses both for the prosecution and the defense, at the time of their testimony. We find no cogent reason to disturb the findings of the trial judge.

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the accused-appellant, Danilo Turla y Bati. **SO ORDERED**.

Melencio-Herrera, (Chairperson), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Original Records, p. 2

[2] Judge Felipe B. Kalalo, presiding

[3] Original Records, p. 50

[4] Appellee's Brief, pp. 3-6

[5] Appellant's Brief, pp. 4-6

[6] Original Record, p. 47

[7] p. 36, tsn of December 18, 1984

[8] pp. 9-11, tsn of December 17, 1984

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