

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. ROGELIO ALE Y CAMPESENIO, DEFENDANT-APPELLANT.

G.R. No. 70998. October 14, 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 Bohol, Branch III in Tagbilaran City, finding appellant ROGELIO ALE Y CAMPESENIO guilty beyond reasonable doubt of violating Sec. 4, Rep. Act 6425 (Dangerous Drugs Act of 1972 as amended) and sentencing him to suffer the penalty of reclusion perpetua and to pay fine of P20,000.00.

The information filed against the appellant alleged:

"That, on or about the 6th day of August, 1984, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there will fully, unlawfully, feloniously and knowingly, without any legal purpose, sell, transfer, deliver and give away four (4) marijuana sticks to PC confidential informant for and in consideration of the sum of Ten Pesos (P10.00), Philippine Currency, without having been licensed nor authorized by law.

"Acts committed contrary to the provisions of section 4 of Republic Act No. 6425 (Dangerous Drugs Act), as amended."

The judgment that guilt was established beyond reasonable doubt was justified by the lower court as follows:

"xxx It had been proven by witnesses Alejandro Biñan and Teodosio Rosaroso that they were informed of the presence of a drug pusher in the K of C recreation center at about 11:00 o'clock in the morning of August 6, 1984 and because of the said information Sgt. Biñan, Sgt. Rosaroso and Sgt. Romitera and their confidential informant had a short briefing after which they supplied their confidential informant with two pieces of five peso bills marked money to buy the marijuana from the suspected drug pusher. It had been proven by the aforementioned witnesses that when they arrived at the recreation center they posted themselves and observed the workings of their confidential informer as well as the drug pusher who is the accused in this case. After a short conversation between their confidential informer and the accused inside the K of C recreation center the accused left the recreation center and proceeded to a group of houses along Gallares St., and few minutes thereafter accused reappeared and handed four sticks of marijuana cigarettes to their informer. The informer gave the marked money of two five peso bills which were marked as Exhibits A and B and the initials of Allan Binan on Exhibit A was marked as Exhibit A-1 and the initial on Exhibit B was marked as Exhibit B-1. After Biñan and Rosaroso saw the handing of the four sticks of marijuana cigarettes to their confidential informer and the payment of the confidential informer to the pusher, they immediately approached the two persons and identified themselves to be PC soldiers and then and there arrested the suspected pusher who is now the accused in this case and immediately confiscated the marked money from the accused Rogelio Ale and the four sticks of marijuana cigarettes from the confidential informer. It has been proven by the prosecution that the four sticks of marijuana cigarettes after being examined by Myrna Areola, Forensic Chemist of the PC Crime Laboratory of Cebu City, was found out to be positive to be (sic) marijuana. The four sticks of marijuana

cigarettes which were confiscated from the confidential informer at the time of the arrest of accused were marked as Exhibits D, D-1, D-2 and D-3 which were also identified by Myrna Areola to be the four sticks of marijuana cigarette samples which were taken for examination. These four sticks of marijuana which were exhibited and identified in court by her were also identified by Rosaroso and Biñan. Myrna Areola submitted a chemistry report marked Exhibit C which states the report of her examination on the four sticks of marijuana cigarettes."

Appellant Ale raised the following assignment of errors in this appeal:

FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PROSECUTION (PLAINTIFF-APPELLEE) MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT BECAUSE:

A) PROSECUTION WITNESSES CIC TEODOSIO ROSAROSO AND SGT. ALEJANDRO BIÑAN ARE ALL BIASED AND INTERESTED WITNESSES, AND THAT CIC ROSAROSO HAVING ENGENDERED AN ILL-FEELING OF REVENGE AGAINST ACCUSED-APPELLANT, THEIR TESTIMONIES THEREFORE ARE TAINTED WITH SOME MENDACIOUS CHARACTER;

B) CONTRARY TO THE TESTIMONIES OF ALL DEFENSE WITNESSES, TESTIMONIES OF PROSECUTION WITNESSES CIC TEODOSIO ROSAROSO AND SGT. ALEJANDRO BIÑAN ARE NOT CLEAR, POSITIVE, CONVINCING AND STRAIGHTFORWARD; IF AT ALL, THEY ARE FRAUGHT WITH CONTRADICTIONS AND INCONSISTENCIES WHICH ONLY TEND TO OBSCURE THE WITNESS' OATH AND THUS CANNOT AND COULD NEVER PASS THE LITMUS TEST OF "PROOF OF GUILT BEYOND REASONABLE DOUBT";

"C) THE ALLEGED CONFIDENTIAL AGENT, WHO ACCORDINGLY ACTED AS POSEUR-BUYER FOR THE PURCHASE OF THE FOUR (4) STICKS OF MARIJUANA CIGARETTES AND FROM WHOM THESE STICKS OF MARIJUANA WERE CONFISCATED (EXH. "D", "D-1", "D-2" AND "D-3"), WAS NEVER IDENTIFIED NOR PRESENTED TO THE WITNESS' STAND INSPITE OF THE INSISTENCE OF ACCUSED-APPELLANT THAT HE BE SO IDENTIFIED AND PRESENTED: HIS NON-IDENTIFICATION AND NON-PRESENTATION ARE THEREFORE SUBJECT TO THE PRESUMPTION THAT IF EVER SO IDENTIFIED AND PRESENTED HIS TESTIMONY WOULD ONLY BE ADVERSE TO THE PROSECUTION'S CAUSE;

D) THAT EVEN THE ALLEGED CONCERNED CITIZEN WHO ACCORDINGLY REPORTED THE DRUG PUSHING-ACTIVITY HAS NEVER BEEN IDENTIFIED, MUCH LESS PRESENTED TO THE WITNESS' STAND, INSPITE OF THE INSISTENCE OF ACCUSED-APPELLANT THAT HE BE SO IDENTIFIED AND PRESENTED; HIS NON-IDENTIFICATION AND NON-PRESENTATION ARE ALSO SUBJECT TO THE PRESUMPTION THAT IF EVER SO IDENTIFIED AND PRESENTED HIS TESTIMONY WOULD ONLY BE ADVERSE TO THE PROSECUTION'S CAUSE;

E) THAT ALLEGED CONFIDENTIAL AGENT/INFORMANT WAS ALSO NEVER IDENTIFIED AND PRESENTED AS A PROSECUTION WITNESS, INSPITE OF THE INSISTENCE OF ACCUSED-APPELLANT THAT HE BE SO IDENTIFIED AND PRESENTED FOR CONFRONTATION, WHEN THE PRELIMINARY INVESTIGATION WAS CONDUCTED IN THIS CASE; HIS NON-IDENTIFICATION AND NON-PRESENTATION THEREFORE AMOUNTS TO ACCUSED-APPELLANT'S TOTAL DENIAL OF DUE PROCESS;

F) CONSIDERING THAT SAID CONFIDENTIAL AGENT/INFORMANT HAS NEVER BEEN IDENTIFIED AND PRESENTED TO THE WITNESS' STAND, ALREADY FULLY EXPLAINED ABOVE, ABSOLUTELY NO PROOF OR EVIDENCE WHATSOEVER HAS EVER BEEN ADDUCED THAT THE ALLEGED FOUR STICKS OF MARIJUANA CIGARETTES, AS ACCORDINGLY SOLD AND

DELIVERED TO SAME CONFIDENTIAL STICKS OF CIGARETTES THUS CONFISCATED (EXH. "D-1", "D-2" AND "D-3") FROM SAID CONFIDENTIAL AGENT/INFORMANT:

SECOND ASSIGNMENT OF ERROR

THAT THE LOWER COURT ERRED IN NOT HOLDING THAT EXHIBITS "A", "A-1", "B" and "B-1" (TWO FIVE-PESO BILLS), WHICH WERE ILLEGALLY AND UNLAWFULLY SEIZED FROM THE POCKETS OF ACCUSED-APPELLANT BY SGT. BINAN, ARE, IN TRUTH AND IN FACT, OWNED BY ACCUSED-APPELLANT HIMSELF, AND THAT THE CORRESPONDING INITIALS THEREOF BY SAID SGT. BIÑAN WERE SO MADE ONLY AFTER SUCH ILLEGAL SEIZURE;

THIRD ASSIGNMENT OF ERROR

THAT THE LOWER COURT ERRED IN NOT HOLDING THAT SINCE ARRESTING-CONFISCATING OFFICERS ROSAROSO AND BIÑAN WERE THEN NOT ARMED WITH ANY SEARCH WARRANT NOR ANY WARRANT OF ARREST, IT FOLLOWS SUIT THAT THE ARREST OF ACCUSED-APPELLANT AND THE CONSEQUENT SEIZURES/CONFISCATION OF EXHIBITS "A", "A-1", "B", "B-1", "D", "D-1", "D-2" AND "D-3" (TWO FIVE PESO BILLS AND ALLEGED FOUR STICKS OF MARIJUANA CIGARETTES) ARE DOUBLY ILLEGAL AND UNLAWFUL AND AS SUCH, THESE EXHIBITS ARE THEREFORE ABSOLUTELY NOT ADMISSIBLE IN EVIDENCE;

FOURTH ASSIGNMENT OF ERROR

THAT THE LOWER COURT ERRED IN NOT HOLDING THAT THE TESTIMONIES OF SAME PROSECUTION WITNESSES ROSAROSO AND BIÑAN, GRANTING WITHOUT ADMITTING THEM TO BE TRUE, WOULD ONLY EXEMPT ACCUSED-APPELLANT FROM ANY CRIMINAL LIABILITY FOR THEY, TOGETHER WITH THEIR ALLEGED CONFIDENTIAL AGENT/INFORMANT WHO ACTED AS A PRIVATE DETECTIVE, HAD INSTIGATED ACCUSED-APPELLANT TO COMMIT THE CRIME AS CHARGED.

A careful review of the records shows some misapprehensions of facts, findings actually grounded not on what transpired but conjectures about what transpired, and other discrepancies which constrain us to grant this appeal and acquit the accused-appellant.

The rule that findings of fact of the trial court are conclusive or binding upon this Court is subject to certain exceptions, as when: (1) the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; and (5) the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and the appellee. (*Gomez v. Intermediate Appellate Court*, 135 SCRA 620; *Republic v. Court of Appeals*, 132 SCRA 514; *Carolina Industries Inc. v. CMS Stock Brokerage, Inc.* 97 SCRA 734).

The drug menace which now assumes epidemic proportions all over the world has not spared the Philippines. The enormous profits of the illicit trade have not only increased the rapidly multiplying number of addicts whose lives have been destroyed but have also spawned a syndicated network of ruthless and cunning operators. The drug traffic unceasingly tries to corrupt law enforcers, prosecutors, judges, and local officials alike.

Judges trying narcotics cases are often placed in a non-enviable predicament. The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant. Courts should not hamper, in any way, the dedicated although sometimes puny efforts to stem the giant menace. Courts should not unwittingly tie down the hands of narcotic agents whose work is already difficult and dangerous enough without legal and procedural obstacles to successful prosecutions.

At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

The prosecution evidence in this case leaves much to be desired.

Sgt. Biñan testified that he and Sgt. Rosaroso observed the alleged sale of the marijuana cigarettes between the appellant and the poseur-buyer from a distance of some ten to fifteen meters (tsn, p. 14, November 6, 1984). At that distance, Sgt. Rosaroso testified that they could see the appellant and poseur-buyer very well. (tsn. p. 5, Dec. 11, 1984). However, Rosaroso testified on two occasions that their knowledge of the alleged consummation of the sale came only from a hand-signal from the poseur-buyer. What transpired between the alleged buyer and seller, how the sticks of marijuana changed hands, and whether or not the four sticks introduced in court were actually the sticks supposedly purchased at that time is unknown. The cigarettes were taken from the hands of the poseur-buyer and not from the appellant. How they came into his hands was not seen by the witnesses who testified in court.

On the first occasion, Rosaroso testified as follows:

Q.

So that when you told the Honorable Court that your suspect, accused Rogelio Ale, delivered to your informant the alleged four (4) marijuana sticks of cigarettes that is only your opinion and presumption because you never heard their conversation?

A.

I knew that is a marijuana cigarette sticks which were delivered to our informant because of the signal given to us by our informant.

(Tsn, December 11, 1984, p. 13)

On the second occasion, he testified:

Q.

Will you please tell us again what prompted you and Sgt. Biñan to outright arrest the person of the accused?

A.

Because we saw personally the accused when he got the money from our informant and he delivered the marijuana cigarettes that is why we arrested him.

Q.

Considering that you are at a distance of 15 meters where the accused was allegedly at that time, are we made to understand from you that when you mentioned about the alleged delivery of the marijuana cigarettes that was your only belief and presumption?

A.

We saw it personally.

Q.

Are we made to understand from you that with that distance you can already identify as to whether or not those were marijuana cigarettes?

A.

Yes, sir because our informant gave us the signal that the selling was already consummated. (Underscoring Supplied).

Q.

And because of that signal you and Sgt. Binan immediately arrested the accused and the informant?

A.

Yes, sir. (Tsn, January 15, 1985, p. 16).

If the sale of prohibited drugs was actually seen by Sgt. Biñan and Sgt. Rosaroso, there would have been no need for them to wait for a signal from the poseur-buyer to indicate that the transaction had been completed, before closing in and arresting the appellant. (See *People v. Nicandro*, 141 SCRA 289).

The lower court invoked the disputable presumption that an official duty has been regularly performed (Sec. 5, par. (m), Rule 131, Rules of Court) in reference to the arrest made by Sgt. Rosaroso and Sgt. Biñan.

We note, however that the police informant was not presented as a witness, prompting the appellant to invoke with reason another disputable presumption that evidence willfully suppressed would be adverse if produced (Rule 131, Sec. 5 (e)) (See *People v. Nicandro*, supra). As a matter of fact, the presumption that official duty is regularly performed cannot, by itself, prevail against the constitutional presumption of innocence accorded an accused person.

Rosaroso contradicted Biñan's testimony with regards to the police informant. Their testimonies are conflicting.

Sgt. Biñan testified:

Q.

And August 6, 1984 was the only instance wherein that informer according to you revealed an information regarding drug pushing?

A.

We have received the information before that operation on August 6, 1984.

Q.

Now, you mentioned about a briefing. That briefing was conducted by you, Rosaroso and Remitira alone?

A.

Yes, sir.

Q.

Where was your informant?

A.

The informant was already in our office after we have received such information.

Q.

And you did not say anything to the informant despite the alleged briefing?

A.

We gave instruction to our informant.

Q.

Particularly what?

A.

That is already confidential.

Q.

In other words, you cannot tell the Court specifically what instruction did you give to your informant in connection with the alleged arrest of the accused?

A.

We have given some other instruction that he will act as poseur-buyer and he will buy four sticks of marijuana sticks using the five peso bills to the suspected pusher.

(Tsn, November 6, 1984, p. 12).

On the other hand, Sgt. Rosaroso testified:

Q.

The question is: If ever your informer very well knew the person and identity of the suspect before he related to you about his act of drug pushing?

A.

The one that we used as a pusher buyer was a different person to that who gave the information to us.

Q.

Are we to understand from you that the alleged concerned citizen and your informant are not the same and different persons?

A.

Yes, sir.

Q.

But the first prosecution witness Sgt. Biñan testified that it was the same informer who related to him and to you about the alleged illegal drug pushing done by the accused?

A.

No, sir, it was a different person, sir. The one who gave information to us was a different person to that person who acted as pusher buyer.

Q.

In other words, Sgt. Biñan rather you will not agree with the statement of Sgt. Biñan to that effect that it was the same informer who was used by you and Sgt. Biñan to act as pusher buyer?

A.

I will not agree because I know that they were different persons.

(Tsn, December 11, 1984, pp. 11-12).

The presence and identity of the poseur-buyer is vital to the case as his very existence is being disputed by the accused-appellant who denies having sold marijuana cigarettes to anyone.

This Court cannot give full credit to the testimonies of the prosecution witnesses marked as they are with contradictions and tainted with inaccuracies.

Biñan testified that they were able to tell that the four cigarettes were marijuana cigarettes because according to him, the rolling of ordinary cigarettes are different from those of marijuana cigarettes (tsn, November 13, 1984, p. 10).

It is however, incredible to believe that they could discern the type of rolling done on those cigarettes from the distance where they were observing the alleged sale of more or less 10 to 15 meters.

Furthermore, Rosaroso's testimony was marked with contradictions as follows:

Q.

So that this particular informant after having been informed by that alleged concerned citizen that there was a drug pushing at Gallares Street, of course you and your detachment commander including Sgt. Biñan instructed him to act as a poseur-buyer?

A.

Yes, sir.

Q.

And this informant readily agree?

A.

Yes, sir.

Q.

And because the informant agreed to act as poseur buyer your command allegedly delivered to him the alleged marked five peso bills already marked Exhibits A, A-1, B, B-2?

A.

Yes, sir.

Q.

And after your informant received these two marked five peso bills you and your office further instructed the informant that in Gallares Street where there is an alleged drug pusher you should instigate the drug pusher that you should buy marijuana sticks?

A.

Yes, we instructed him to come with us and further instructed him if any person who would approach him to sell you should buy that cigarettes.

Q.

Considering that the concerned citizen relayed information to your office that there was drug pusher who allegedly turned out later to be the accused selling marijuana cigarettes in Gallares Street and that this information was in turn relayed to your alleged informant, my question is - when your alleged informant saw for the first time the accused Rogelio Ale he knew already the person of Rogelio Ale?

A.

He told us that he recognized. He only identified the face but he did not know his name.

(Tsn, January 15, 1985, p. 12).

Prior to his giving the above statements, Rosaroso had already testified that the informer did not personally know the suspect at the time of the alleged sale. (Tsn, December 11, 1984, p. 11).

It is hard to believe then that appellant Ale would readily sell marijuana cigarettes to a buyer he does not know. (See *People v. Patog*, G.R. No. 69620, September 24, 1986).

In the light of the shaky nature of the prosecution evidence, the testimonies of the defense witnesses deserve careful scrutiny.

Isidro Nuez and Marcos Cambangay testified that they were playing billiards when accused Ale arrived. The appellant is a pinboy, billiard keeper, and collector of fees at the recreation center in Tagbilaran of the Knights of Columbus. While Cambangay and Ale were conversing, Sgts. Biñan and Rosaroso who had been in the hall earlier suddenly arrested Ale, dragged him outside the recreation hall and Biñan dipped his hands into the pockets of the accused while Rosaroso kept him immobilized.

The testimony of Biñan that the two five peso bills were pre-initialed or marked at Camp Dagohoy for later use as marked money in the buy-bust operations was contradicted by Nuez and Cambangay who stated that the two bills were initialed after Ale had been arrested and that the marking of the bills was done on top of the billiard table where they were playing. (Tsn, February 6, 1985, pages 48 and 54).

Biñan testified that it was the accused who pulled out the marked money out of his own pockets. (Tsn, November 6, 1984, p. 15).

However, both defense witnesses, Isidro Nuez and Marcos Cambangay testified that the search was made by Biñan while Rosaroso held the arms of the accused. (Tsn, February 6, 1985, pp. 42-43; 62).

According to appellant Ale, the reason why he was arrested was because there was a time in July, 1984 that Rosaroso together with other military men played billiards at the K of C recreation center where he worked, and when Ale asked Rosaroso to pay for the billiard game, the latter told him "You have no respect to (sic) a military man" and that Rosaroso further threatened that there will be a time he would make a revenge.

This testimony, while uncorroborated, was not contradicted by the prosecution. There must have been some degree of familiarity between the appellant and the two prosecution witnesses as the former during his testimony referred to them as "Allan" Biñan and "Teddy" Rosaroso. (Tsn, March 4, 1985, pp. 68 and 70).

If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. (People v. Parayno, 24 SCRA 3; U.S. Maaño, 2 Phil. 718; People v. Pacana, 47 Phil. 48)

As stated in the case of People v. Alcaraz (G.R. No. 66509, April 25, 1985):

"xxx The Constitution and the law are clear that in case of reasonable doubt, the accused must be acquitted. Our jurisprudence is built around the concept that it is preferable for the guilty to remain unpunished than for an innocent person to suffer a long prison term unjustly."

All considered, we hold that the guilt of appellant Ale has not been established beyond reasonable doubt.

WHEREFORE, the appealed decision is reversed and set aside, and the appellant is hereby ACQUITTED on grounds of reasonable doubt.

SO ORDERED.

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

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