

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO SANTIAGO Y PASCUAL, ACCUSED-APPELLANT.

G.R. No. 71100. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

Accused-appellant was charged with violation of Sec. 4, Art. 11, of Republic Act no. 6425 (The Dangerous Drugs Act), as amended by P.D. 1675. The information, insofar as it is material and relevant, reads:

"That on or about the 26[th] day of January, 1982, 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 dried Marijuana flowering tops, a prohibited drug, in violation of the above-cited law, as amended.

"Contrary to law."

(p. 2, Appellant's Brief)

After trial, the appellant was convicted as charged and sentenced to reclusion perpetua (plus the payment of a fine) in a decision dated February 25, 1985 the decretal portion of which reads as follows:

"WHEREFORE, the accused is convicted of the crime charged, and is sentenced to reclusion perpetua, to pay a fine of P20,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.SO ORDERED."

Hence, this appeal with the following assigned errors:

I

The trial court erred in its appreciation of the prosecution evidence.

II

The trial court erred in not giving credence to the defense evidence.

III

The trial court erred in convicting accused?appellant, the prosecution evidence being insufficient to support a conviction." (pp. 3-4, Appellee's Brief)

The prosecution evidence, as summarized by the trial court, and by the Solicitor-General states:

The prosecution evidence shows that in line with its anti-narcotics campaign, the Mandaluyong Police Station formed a team composed of Sgt. Coronel, Patrolmen Ricamara, Rolando Cruz, Cristino Magliad and Genen Payloma. The team was ordered to go after a notorious drug pusher in Mandaluyong known as Boy Flint. At about 1:30 P.M. on January 26, 1982 the members of the team talked to Eduardo Lim and asked him if he

could help point out Boy Flint to them. Eduardo agreed and received from the policemen, the sum of P200.00 in bills which, as agreed upon, he was going to use in buying marijuana from Boy Flint. Before giving the money to Eduardo, the policemen had the two P100.00 bills xeroxed (Exhibits "E" and "E-1") (tsn., pp. 2-4, August 13, 1982; tsn., pp. 2-4, February 21, 1983).

Somewhere at the corner of A. Bonifacio Street and Shaw Blvd. at Mandaluyong, the team members posted themselves separately at different places. At this juncture, Eduardo approached and talked to a man who turned out to be the accused Donilo Santiago. Eduardo gave to the accused the P200.00 bills given to him by the policemen. After receiving the money, the accused went inside the compound where Boy Flint was allegedly staying. Five minutes later, the accused returned and handed to Eduardo dried marijuana leaves wrapped in a newspaper. Immediately then, Patrolmen Ortiz and Ricamara approached and tried to arrest the accused who was able to ran away. But before the accused could enter the compound of Boy Flint, the policemen were able to apprehend him near the gate of the compound. Right then and there, the policemen searched the body of the accused and found some marijuana leaves and two mogadon tablets hidden inside the sock of the accused. The policemen did not recover any money, however (tsn., pp. 2-3, September 3, 1982; tsn., pp. 4-6, September 21, 1983).

At the police headquarter, the accused was investigated by Pot. del Caro who took down the statements of Eduardo (Exhibit "A"), Pot. Ricamara and Ortiz (Exhibits "B" and "C") and of the accused (Exhibit "D"). The suspected marijuana leaves were forwarded to the P.C. Crime Laboratory where they were examined (tsn., pp. 6-12, July 9, 1982). According to Forensic Chemist Liza Madeja, the specimen ware marijuana leaves and mogadon tablets, all prohibited drugs." (tsn., pp. 8-9, February 21, 1983) (pp. 2-3, Appellee's Brief)

Upon the other hand, it is the position of the appellant that he is not a drug pusher at all, that it was not he who had promised to get any marijuana for Lim, that Lim never handed any money to him, much less the two P100.00 bills used as bail money for the purchase of the prohibited drug; that what actually happened insofar as he is concerned is the following: he was in a store on A. Bonifacio Street, Mandaluyong, when Lim approached him and asked if he knew where a certain "Boy Flint" could be contacted, that while he did not know of the existence of a "Boy Flint", he knew of a certain "Boy", that he pointed out to him the building where said "Boy" was staying, that Lim went towards the building, that he then saw Lim conversing with someone from "Boy" 's household, that Lim gave the P200.00 to the person with whom he was talking, that the recipient then went inside the building, and a few minutes later, he (the recipient) came out and handed to Lim something which appeared to be covered, that shortly thereafter policemen entered the store, chased his friends out of the place, but he remained standing for he recognized one of the policemen as a former classmate of his, that he was then asked by the police to accompany them to police headquarters so that he could act as a "witness", that while there he was shown a piece of paper which he was compelled to sign, so that he could be released, that he then asked permission to call his house, and one of his lawyer friends, but this was refused; that in his desire to get away as soon as possible, he was not able to read anymore the contents of the piece of paper (the paper turned out to be an affidavit admitting his participation in the sale of the prohibited drug).

After a study of the case, We have come to the conclusion that there is reasonable doubt as to the guilt of the appellant.

Be it borne in mind that appellant was not actually the object of the drug-busting operation. The police authorities had for their intended quarry a certain "Boy Flint", ostensibly known in the vicinity as an inveterate drug pusher and there is certainly no dispute that appellant is not "Boy Flint" nor has he ever been known by such name. Then again consider the fact that appellant had no prior record as a drug pusher, nor had he ever been previously suspected to be one and the further fact that he stood his ground (in the store) when the policemen rushed in — while all his companions scampered away. A nagging question continues to trouble Us: why did the police deny

appellant the benefit of calling up by phone one of his lawyer friends; and why did they ask him to sign an affidavit which is virtually an extrajudicial confession without first informing him of his constitutional rights and without the attendance of counsel? In fine, the charging of appellant appears to have been brought about by the police authorities to "save face" in their failure to apprehend "Boy Flint". It is true that a drug pusher is a vicious bane of our drug — deadened society, but first We must make sure that the person We convict is indeed one.

WHEREFORE, on reasonable doubt, appellant is hereby ACQUITTED of the crime charged.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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