

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO CAPONPON Y MARZO, ACCUSED-APPELLANT.*G.R. No. 71145. November 21, 1991*

Ponente: FERNAN, C.J.

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This is an appeal of Arsenio Caponpon y Marzo from the decision of the Regional Trial Court, Branch 27 of Manila, in Criminal Case No. 61820, finding him guilty of peddling prohibited drugs in violation of Section 4, Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act, and sentencing him to suffer the penalty of life imprisonment, and to pay a fine of P20,000.00 and costs.[1]

Caponpon's conviction was based on the testimonies of three prosecution witnesses, namely, Patrolman Ramon Joves and Corporal Salvador Guitan of Police Station No. 5, Western Police District, and National Bureau of Investigation forensic chemist Rolando Vitug, as well as the several exhibits presented in evidence including the appellant's extrajudicial confession, the marked P10.00 bill, the seized marijuana and the chemistry report.[2]

The testimonies of Cpl. Guitan and Pat. Joves provided the details of the buy-bust operation. A week before May 22, 1981, Cpl. Guitan received information from a police informant that accused-appellant Caponpon and a certain Alfredo Legazpi, alias Boy Loleng, were selling marijuana at an alley along Leveriza Street in Malate, Manila. Accordingly, Cpl. Guitan placed the two under surveillance for about three to four days and the reported drug pushing was confirmed.[3]

On May 22, 1981, at about 9:15 in the evening, a police team composed of Cpl. Guitan, Cpl. Jacinto Luna, Pat. Jose Federes and Pat. Romeo Joves went to Leveriza Street to entrap and apprehend the suspected drug pushers. Guitan fetched the informant, a boy of about twelve to thirteen years old, whom he had earlier recruited to act as their poseur-buyer. The boy lived a few blocks away.[4]

At about 9:30 p.m., the police informant turned pseudo-buyer approached appellant Caponpon to buy marijuana with a marked P10.00 bill. At that time, Caponpon was standing alone in front of his house at 620 Interior 26, Leveriza St., Malate, Manila. Meanwhile, the members of the police team positioned themselves at a vantage point in front of a store, about five to ten meters away from where Caponpon stood. They saw the informant give the marked money to Caponpon, after which the latter handed over to the buyer one (1) small plastic packet. The young informant touched his hair at the back of his head to signal that the sale had been completed. Immediately, the arresting team swooped down on Caponpon. The plastic packet was turned over by the poseur-buyer to Pat. Joves while the P10.00 bill marked by four (4) dots at the four (4) corners was retrieved by Cpl. Guitan from the right front pocket of Caponpon's pants. Caponpon then accompanied the police officers to the house which he shared with Legazpi and surrendered nine (9) other packets containing suspected marijuana leaves hidden behind the staircase.[5]

Caponpon was taken to the Western Police District Station No. 5 at United Nations Avenue for interrogation. Appellant subsequently executed a sworn statement admitting that he sold marijuana to the poseur-buyer.[6]

The ten (10) plastic packets recovered from Caponpon were brought to the NBI forensic laboratory that same evening at 10:15 for chemical analysis. They were found positive for marijuana.

Caponpon, a 25-year old painter, denied complicity. Instead, he implicated Legazpi as the marijuana pusher. Caponpon testified that on the night in question, he and Legazpi were conversing with Efren Gomondoy and Boy Atang in front of his house (Caponpon). Suddenly, four policemen appeared at the scene and placed him and Legazpi under arrest. They were both frisked. The marijuana and the marked money were found in the possession of Legazpi while nothing was found in appellant's person. Legazpi attempted to escape but he was overtaken. Together they were brought to the police precinct.[7]

Caponpon recounted that at the police station, he was mauled to force him to admit the charges against him. Alone and frightened, he signed a prepared statement.[8] Caponpon further declared that Cpl. Guitan tried to extort P2,000.00 from him for his release but he refused. Caponpon disclosed that no charges were filed against Legazpi because according to Legazpi himself, he paid P2,000.00 for his freedom.[9]

Efren Gomondoy, a tourist bus driver and barangay officer, corroborated Caponpon's testimony. Gomondoy stressed that at the time of arrest, appellant was clean. Gomondoy was certain about this because Caponpon was about to borrow money from him. Later, when he saw Caponpon at the precinct, the latter showed him the contusion (pasa) he sustained from the beatings he received from the police. As a barangay officer, Gomondoy tried to intercede for the appellant but the authorities simply ignored him.[10]

In the instant appeal, Caponpon contends that the trial court erred in admitting his extrajudicial confession since this was extracted from him through duress, and in believing the self-serving declarations of police officers Guitan and Joves. Caponpon also avers that he was denied his constitutional right to confront the unnamed police informer who was the only one who could credibly testify on the imputed sale of marijuana.

The incontrovertible fact alone that the confession was made during custodial investigation in the absence of counsel renders that particular piece of evidence totally inadmissible and the lower court gravely erred in not disregarding the same.[11]

With the extrajudicial confession excluded, the conviction of Caponpon is dependent on the credibility of Pat. Joves and Cpl. Guitan.

The track record of Pat. Joves has not been exactly exemplary. As noted by the defense counsel, Joves figured prominently in two cases decided by the Court in which he displayed a rather cavalier attitude towards the custodial rights of the accused, who were eventually exonerated by the High Court on reasonable doubt.[12]

Joves' actuations particularly in the Duhan case, as detailed by the Solicitor General, cast a serious doubt on his truthfulness.

"The credible evidence shows that the four policemen indiscriminately rounded up appellants at two separate place at the corner of Jorge Bocobo and Remedios Street in Malate, Manila on the evening of June 29, 1982 pursuant to a police saturation drive, and forced them to ride in their private vehicle to the police headquarters, informing them that they were being rounded-up for verification purposes. In fact, no searches on their persons were made by the policemen upon their apprehension at the suspected area.

"True to form and practice, however, on their way to the police precinct that evening, the police manhandled and beat appellants Recla and Reyes inside the vehicle. One policeman inserted a stick of marijuana cigarette inside the back pocket of appellant Duhan. When appellant Duhan took out his handkerchief, the marijuana cigarette fell, and another policeman picked it up and this time inserted it in the wallet of appellant Reyes. When appellant Reyes protested, he was boxed by the policeman.

"Upon their arrival at the police station that same evening, the policemen made body searches on the appellants. All the three appellants were brought inside the comfort room of the police station, one after the other, where they were subjected to maltreatment and forced to admit the possession of two foils of marijuana leaves and two marijuana cigarettes. The policemen found no drugs on the persons of the appellants, except P25.00 from appellant Duhan for buying stork candies for sale on the streets, Duhan being a street vendor. Pat. Joves poked a gun at appellant Duhan's back and then forcibly took the latter's personal money. x x x .

"xxx xxx xxx .

"Worse still, when the policemen were processing her son's papers, one policeman approached her, demanding P100.00 so that her son could be released. She could not raise the money at that time because her employer was out of town. She returned the following day with the money, but she could not find Pat. Joves or Pfc. Bautista to whom she would give the money because of her belief that they were the only ones who could release her son. x x x ."[13]

As for Cpl. Guitan, his statements in court were often at variance with those of Pat. Joves. This is rather strange considering that the two drug enforcers were supposed to be speaking of the same buy-bust operation. Cpl. Guitan stated that the packet of marijuana was immediately turned over to him by the informant "without saying a word." [14] But according to Pat. Joves, the illegal drug was surrendered by the informant to him. [15] The same is true with regard to the P10.00 marked bill, with both officers claiming to have personally seized or confiscated the same from the accused. [16]

Moreover, the Court is unconvinced that the two police officers really witnessed the claimed sale of marijuana. For while they readily admitted not having heard what was being said between Caponpon and the buyer, it is also probable that they did not see the actual exchange. Cpl. Guitan, for one, had to physically distance himself from the accused because the latter knew him personally. So if the sale was made in plain view as the apprehending officers averred, then it was completely unnecessary for the poseur-buyer to touch his hair in order to signal that the illegal transaction had been consummated and the authorities could then proceed with the arrest of the drug peddler.

Indeed, the case for the prosecution is markedly weak, made even more so with the non-presentation of the police informant as a witness. As correctly asseverated by the defense counsel, the informant was the only one in a position to speak convincingly about the purported sale.

In view of the foregoing, the Court must disregard the conviction of Caponpon because the prosecution has failed to establish his culpability beyond reasonable doubt. It is axiomatic that the prosecution must rely on its own strength and not on the weakness of the defense to justify a verdict of guilt.

WHEREFORE, the appealed decision in Criminal Case No. 61820 is REVERSED and SET ASIDE. Accused-appellant Arsenio Caponpon is hereby ACQUITTED on reasonable doubt.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Original Record, p. 166.

[2] Exhs. A, D, E, E-1 to E-11, G and G-2.

[3] TSN, December 16, 1981, pp. 109-110.

[4] Ibid.

[5] TSN, July 17, 1981, pp. 4, 8-9, 12-15.

[6] Exh. A.

[7] TSN, July 26, 1982, pp. 193-194; August 2, 1982, pp. 206-207; October 1, 1982, p. 248.

[8] Exh. A.

[9] TSN, August 8, 1982, pp. 210-211; October 1, 1982, p. 251.

[10] TSN, October 18, 1982, pp. 279 and 281; December 1, 1982, pp. 297-298.

[11] People vs. Diamsay, G. R. No. 67289, October 5, 1989, 178 SCRA 321; People vs. Decierdo, No. L-46956, May 27, 1987, 149 SCRA 496.

[12] People vs. Nicandro, G. R. No. 59378, February 11, 1986, 141 SCRA 289; People vs. Duhan, G. R. No. 65189, May 28, 1986, 142 SCRA 100.

[13] At pp. 104-106; Emphasis ours.

[14] TSN, June 11, 1982, p. 131.

[15] TSN, July 17, 1981, p. 9.

[16] TSN, December 16, 1981, p. 110.

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