

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAMBERTO BORJA Y MARTINEZ, DEFENDANT-APPELLANT.

G.R. No. 71838. February 26, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

A Decision of the Regional Trial Court, National Capital Judicial Region, Branch 41, Manila, dated 12 July 1985, convicting the accused Lamberto Borja y Martinez of the crime of violation of Article II, Section 4 of Republic Act No. 6425 known as the Dangerous Drugs Act of 1972, is before us on appeal.

The information dated 3 June 1988, against the accused reads as follows:

"INFORMATION

The undersigned accuses LAMBERTO BORJA Y MARTINEZ of a violation of Sec. 4. Article II, in relation to section 21 (b) of Article IV, Rep. Act No. 6425, as amended by PD 1675, committed as follows:

That on or about June 26, 1984; in the City of Manila, Philippines, the said accused, without being authorized by law to sell, administer, deliver, distribute, transport, or give away any prohibited drugs, did then and there wilfully and unlawfully sell, deliver and transport five (5) sticks of marijuana cigarettes for ten pesos to Pat. Estamo who acted as poseur-buyer, well knowing that the same is a prohibited drug.

CONTRARY TO LAW."

Upon arraignment on 27 August 1984, the accused, assisted by counsel de oficio, pleaded not guilty.

After trial, the trial court rendered a decision dated 12 July 1985, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered finding the accused LAMBERTO BORJA Y MARTINEZ guilty beyond reasonable doubt of the violation of Section 4, Art. II, in relation to Section 21 (b) of Art. IV, R.A. No. 6425, as amended by P.D. 1675 and hereby sentences the said accused to suffer the penalty of reclusion perpetua and to pay a fine of twenty thousand pesos (20,000). Costs against the accused.

The Branch Clerk of this Court is hereby directed to turn over Exhibits 'C-2' to 'C-56' to the Dangerous Drugs Board for disposition in accordance with law.

SO ORDERED."

The present appeal assign the following as errors allegedly committed by the trial court:

"First Assignment of Error

The trial court erred in failing to consider that accused-appellant was induced to commit the crime solely upon instigation of police patrolman poseur-buyer Bernardo Estamo.

Second Assignment of Error

The lower court erred in not holding that the prosecution had failed to prove the guilt of the accused-appellant beyond reasonable doubt."^[1]

The evidence for the prosecution consisted principally of the testimonies of Sergeant Enrique David, Patrolman Bernardo Estamo and of Forensic Chemist Demelen De la Cruz as well as the real evidence consisting of the five (5) sticks of marijuana cigarettes given by the accused before his arrest and the two 5-peso bills representing the marked money used to purchase the marijuana cigarettes.

The testimonies of Sgt. David and Pat. Estamo, both members of the Drugs Enforcement Section of the Western Police District, may be summarized as follows:

At about 3:30 P.M. on 26 June 1984, Lt. Agapito Linga, officer-in-charge of said section, received a telephone call from the Chairman of Barangay 527, Zone 52, Sampaloc, Manila, Tomas Holgado. The latter advised Lt. Linga that one "Totong" was selling marijuana cigarettes in their barangay. Lt. Linga sent Sgt. David, Pat. Estamo, Pat. Honorio Cruz and Pat. Mario Lizaret to confer with Holgado at the Barangay hall. There, they were met by Holgado, who introduced them to a confidential informant (whose identity does not appear in the record), who knew "Totong" personally. During the conference, David decided to apprehend "Totong" through a "buy-bust" operation and Estamo was designated the poseur-buyer. The policemen and the informant then proceeded to the residence of "Totong" located at No. 857 Jaime St. "Totong" was found standing in front of his house. Estamo and the informant approached him while the other policemen positioned themselves some eight (8) to ten (10) meters away from "Totong." The informant and "Totong" greeted each other; after Estamo was introduced, he asked "Totong" to sell him ten pesos' worth of marijuana. "Totong" silently took the marked money, went back into his house, returned and handed over to Estamo five (5) sticks of marijuana cigarettes wrapped in a piece of paper. Estamo then took off his hat and lighted an ordinary cigarette. This was the pre-arranged signal signifying to the other policemen that the purchase had been completed. They closed-in on Estamo's group, identifying themselves as policemen, and arrested "Totong." Estamo gave the marijuana cigarettes to David. The marked money was recovered from the person of "Totong." The team then carried out a consented search of "Totong's" house, conducted in the presence of Barangay Chairman Holgado and Barangay Tanod Ruperto Cruz, where they found and confiscated an additional fifty-five (55) sticks of marijuana cigarettes. The team then brought "Totong" to their police station for proper investigation. There, "Totong" identified himself as the accused Lamberto Borja y Martinez.^[2]

Demelen De la Cruz, Forensic Chemist of the National Bureau of Investigation, testified that she had received and examined sixty (60) sticks of marijuana cigarettes (Exhibit "C") seized from the accused. She stated that microscopic, chemical and chromatographic tests conducted on the same yielded positive results for marijuana and she submitted a Chemistry Report (Exhibit "B") setting forth the results of her laboratory examination.^[3]

The accused had a different version of the events of 26 June 1984. In his testimony, the accused said that at about 4:00 P.M. on that day, he was at home with his two small children. He then went downstairs to turn the fish he was sun-drying. While there, he was suddenly grabbed by a policeman and brought back upstairs, where four (4) other policemen were waiting. He did not know these policemen personally. They ordered him to bring out marijuana they claimed he possessed and, when he refused, he was beaten up. The policemen then took out sixty (60) sticks of marijuana cigarettes from their bag whose wrappings were reluctantly signed by the accused because he could no longer bear the pain of further beating. One of the policemen then took out a 2-peso bill and two marked 5-peso bills. The 2-peso bill was given to his crying children while he was forced to sign the 5-peso bills. He was likewise forced to sign a document entitled "Consent to Search" (Exhibit "F"). Afterwards, Holgado and Cruz were summoned to his house by the policemen. Holgado merely countersigned Exhibit "F" and deferred

to the policemen with regard to the plight of the accused.[4]

The accused's version of the facts was corroborated by the testimony of Estrella Borja, a sister of the accused.

Another defense witness, Cecilia Casingal, also a sister of the accused, testified that Barangay Chairman Holgado harbored a grudge against the accused because the latter had voted for a candidate different from that endorsed by Holgado during the last local government elections. In rebuttal, prosecution witness Holgado denied Cecilia Casingal's story. Holgado stated that he had been aware from some time that accused and his sister had been smoking marijuana; and that he had warned them that should the police apprehend them, they could not expect any help from their Barangay Chairman.[5]

The alleged maltreatment of the accused is contradicted by the positive testimony of the arresting officers regarding the circumstances of his arrest. The trial court, having had the opportunity to observe the demeanor of the prosecution witnesses and of the accused and his witnesses on the witness stand, and to listen to their respective testimonies, gave more credence to the statements of the arresting officers, Sgt. David and Pat. Estamo. It noted that these policemen had no known motive or reason to impute falsely a serious and unfounded charge against the accused and that the testimonies of the same carry with them the presumption of regularity in the performance of official functions.[6] In addition, the Court notes that the accused had stated that he had not personally known Pat. Estamo Prior to the "buy-bust" operation, which statement supports the trial court's conclusion that the arresting officers did not have an evil motive to harass and falsely implicate the accused.[7]

The trial court found the credibility of the defense witnesses, including the accused, to be doubtful, their testimony being laced with allegations of conduct which on the part of normal people appeared implausible. Thus, the trial court wondered why neither the accused nor his sister reported the alleged maltreatment by the arresting police to independent authorities.[8] They did not ask for physical examination or treatment of the accused after he was placed in detention.[9]

The defense allegation that Holgado had a motive — resentment over the accused's failure to vote for a local political candidate endorsed by Holgado — to cause the instigation of the accused to commit a crime is, even assuming it were true, simply too tenuous and taken alone would not be sufficient to support the implicit suggestion that the arresting officers had willingly colluded with the former. We note that those officers were not subject to the authority of Holgado.

We note further that the only noteworthy discrepancy in the testimony of the two (2) arresting officers relates to their statements on who, as between them, had actually recovered the marked money from the person of the accused. Each claimed to have done so.[10] The trial court, without elaborating, found that it was Sgt. David who had recovered the money.[11] We hold, as in *People v. Macuto*,^[12] that this discrepancy does not materially affect the prosecution's case:

"By itself, how the marked money was recovered is of no great significance for us in establishing the guilt of the appellant. What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices.

xxx xxx xxx."

The accused pleads instigation as a defense. He contends that the prosecution failed to establish that he had voluntarily accepted the marked money as consideration for selling marijuana.[13]

The testimony of Pat. Estamo, the poseur-buyer, was clear and straightforward and demonstrated that the accused needed no instigation or prodding to commit a crime he would not otherwise have committed. The record shows that the accused had a ready supply of marijuana for sale and disposition to anyone willing to pay the price asked

for the prohibited material. Thus, it appears that the crime of illegal possession of prohibited drugs had already been committed by the accused when the policemen resolved to entrap him into revealing such possession and selling of the prohibited drug. The acts of the arresting officers here constituted entrapment, a process or operation not prohibited by the Revised Penal Code.[14]

In respect of the defense contention that a marijuana seller would not normally sell his stock to a person unknown to him, this Court said in *People v. Tejada*: [15]

"x x x what matters is not an existing familiarity between the buyer and seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves.

xxx xxx xxx."

The accused claimed that the prosecution failed to establish that the marked bills [16] were marked prior to and not after the "buy-bust" operation. This claim is simply erroneous. The marking of the bills prior to the operation was adequately proven by the testimony of the two arresting officers, which testimony had not been shaken on cross-examination.[17]

Finally, the accused assails Exhibit "B" and complains that Forensic Chemist De la Cruz did not set out either in her Report (Exhibit "B") nor in her testimony before the trial court the facts upon which her conclusion — "positive results for marijuana" — were based. Hence, the accused argues, the truth or falsity of her conclusion cannot be verified by the defense for it had no idea how she had arrived at her inculpatory conclusion. The accused appears to be looking for the detailed operating procedures which comprise the microscopic, chemical and chromatographic tests carried out on the suspected marijuana material. In his brief, he said:

"xxx xxx xxx

50. Said report does not state the facts upon which the alleged 'positive results for marijuana' are based.

51. The report does not state how the alleged microscopic examination was conducted, how much material of the cigarettes was subjected to said examination, under what power of magnification was the material subjected, and what was seen under microscopic magnification Without these steps and the results of the magnification being reported, how can one believe that the microscopic examination gave positive results for marijuana.

52. The alleged chemical examination is likewise suspect. How much of the material was subjected to chemical analysis? Was the tobacco fresh or dried? What was its color? How was the analysis made? How much material from the cigarette was placed if any in a test tube? What reagents and how much of them were used? What was the reaction obtained?

53. Moreover, how was the chromatographic examination made? What type of chromatography was resorted to? What reagents were used? What results were obtained?

54. The report of the Chemist (Exhibit 'B') is silent on all these questions. The report states only a conclusion, and whether the conclusion is correct or not cannot be verified.

55. Of course, the said forensic chemist testified regarding her report but the oral testimony did not shed any light on the questions asked above. x x x." [18]

The accused's argument is not persuasive. There is no rule of evidence which requires a forensic chemistry report to set down the micro-details which the defense is apparently demanding. Such details are appropriately matters for cross-examination of the person presented as the forensic chemist who had performed the tests, especially where the defense may have doubts as to the technical competence of the witness presented. In the case at bar, the

defense has not asserted that Forensic Chemist De la Cruz was not technically competent to carry out or that she had not actually carried out, microscopic, chemical and chromatographic examination of the suspected sticks of marijuana. In fact, the defense did ask De la Cruz about the "standard procedure in which the NBI conducts its examination of drugs submitted for laboratory tests. Will you please tell the Honorable Court?"[19] The trial court asked her to do so "step by step." [20] Witness De la Cruz started to do so. She was promptly sidetracked by defense counsel who was at that time far more interested in the bureaucratic procedure by which the suspected marijuana cigarettes actually reached Forensic Chemist De la Cruz.[21] If she did not go to specific, detailed operating procedures in her cross-examination, it was up to the defense to compel her to do so by appropriate questioning if the defense really thought those detailed scientific procedures material and important for its case. The defense did not do so; indeed, the defense did not give her a chance to do so. Finally, and in any event, NBI Forensic Chemist De la Cruz also has in her favor the presumption that she had regularly performed her official duty, which was to carry out those tests in accordance with standard, accepted procedures.

We conclude that the trial court did not commit any error in finding the accused guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425.

WHEREFORE, the Decision of the trial court convicting the accused and sentencing him to suffer reclusion perpetua and to pay a fine of P20,000.00, plus costs, is AFFIRMED.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

Fernan, C.J., (Chairman), no part; related to a member of law firm representing accused-appellant.

[1] Appellant's Brief, p. 1.

[2] TSN, 5 February 1985, p. 4; TSN, 8 November 1984, p. 3; TSN, 5 February 1985, p. 4; TSN, 8 November 1984, p. 14; TSN, 5 February 1985, pp. 10-11; Id., p. 5; TSN, 8 November 1984, p. 14; Id., p. 15; TSN, 5 February 1985, p. 4; Id., p. 5; Id., p. 11; TSN, 8 November 1984, p. 15; TSN, 5 February 1985, p. 12; Id., p. 5; Id., p. 8; TSN, 8 November 1984, pp. 15-16; TSN, 5 February 1985, p. 13; TSN, 8 November 1984, p. 21; and Affidavit of Arresting Officers, p. 72, Record.

[3] TSN, 6 November 1984, pp. 5-6.

[4] TSN, 25 February 1985, pp. 1-5; Id., p. 11; TSN, 12 March 1985, p. 4; and TSN, 25 February 1985, pp. 6-7.

[5] TSN, 1 April 1985 p. 4; and TSN, 8 May 1985, p. 5.

[6] *People v. Patog*, 144 SCRA 429 at 437 (1986).

[7] Appellant's Brief, p. 25.

[8] Decision, p. 5; Rollo, p. 16.

[9] TSN, 25 February 1985, p. 16.

[10] TSN, 8 November 1984, p. 18; and TSN, 5 February 1985, p. 6.

[11] Decision, p. 3; Rollo, p. 14.

[12] G.R. No. 80112, promulgated 25 August 1989, slip. op., p. 5.

[13] Appellant's Brief, pp. 21-22.

[14] People v. Sanchez, G.R. No. 77588, promulgated 12 May 1989, slip op., pp. 8-9.

[15] G.R. No. 81520, 21 February 1989, slip op., p. 7.

[16] Exhibits "E-2" and "E-3."

[17] TSN, 8 November 1984, p. 17; and TSN, 5 February 1985, p. 13.

[18] Brief for Accused-Appellant, pp. 32-33.

[19] TSN, 6 November 1984, p. 8.

[20] Ibid.

[21] TSN, 6 November 1984, pp. 8-11.

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