

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO CERELEGIA Y CABUGAL @ MULO, DEFENDANT-APPELLANT.

G.R. No. 72353. January 30, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal by ROMULO Cerelegia who was convicted of violating Section 4, Article II of Republic Act No. 6425 (Dangerous Drugs Act of 1972) as amended, for selling dried marijuana leaves. He was sentenced by the Regional Trial Court of Bohol (Tagbilaran City) on September 3, 1985, to reclusion perpetua, to pay a fine of P20,000.00 and the costs, with the recommendation, considering his age of 22 and being a Sophomore college student at the University of Bohol, that he be granted executive clemency after service of part of the penalty.

The Information alleges:

"That, on or about the 10[th] day of October 1984, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the deliberate and criminal intent to gain and without any lawful purpose, did then and there willfully, unlawfully, feloniously and knowingly push, deal in, sell for profit, deliver and give away one (1) matchbox of dried marijuana leaves for and in consideration of the sum of FIFTEEN PESOS (P15.00), Philippine Currency, the accused knowing pretty well that the abovementioned products are the source of prohibited drugs and that he has no authority, permit or license to sell the same, to the damage and prejudice of the Republic of the Philippines."

On arraignment, ROMULO entered a negative plea.

During the trial the prosecution presented the testimonies of Myrna Areola, Forensic Chemist of the PC Crime Laboratory, Regional Unit; M/Sgt. Alejandro Biñan, Pat. Alberto Puangang and T/Sgt. Renato Remetiera, of the PC Narcotics Command (NARCOM) at Bohol. Briefly, they testified to the following:

"Around 9:00 a.m. on October 9, 1984, a civilian informant named Butch Sarmiento went to the City Hall of Tagbilaran City and there revealed to the personnel of the Narcotics Command (NARCOM) Detachment the activities of one Romulo Cerelegia who was selling marijuana at the vicinity of the University of Bohol in that city. The NARCOM personnel to whom the information was given were T/Sgt. Renato Remetiera, the detachment commander, Pat. Alberto Puangang, CIC Teodosio Rosaroso, and M/Sgt. Alejandro Biñan. Immediately, the four NARCOM personnel and their informant devised a plan to entrap Cerelegia (tsn., pp. 9-10, February 19, 1985).

"They marked three (3) five (5) pesos bills by having T/Sgt. Remetiera initial the seals thereon (Exhibit C), at the same time listing the serial numbers thereof. The following day, around 9:45 a.m., three (3) of the NARCOM personnel met Butch Sarmiento, frisked him, and finding that he had no marijuana in his possession, gave him the three (3) marked five (5) peso bills which he would use to buy marijuana from Cerelegia. Proceeding to the vicinity of the University of Bohol, the informant stationed himself at the gate thereof fronting Maria Clara Street, while M/Sgt. Biñan and Pat. Puangang posted themselves across that street at a place known as the Orapa Store. CIC Rosaroso stood watch at the gate of the University of Bohol High

School (tsn., pp. 11-13, February 19, 1985).

"Shortly, Romulo Cerelegia approached Butch Sarmiento and after a brief exchange of words, they crossed Maria Clara Street and proceeded to a small alley beside the Orapa Store. M/Sgt. Binan and Pat. Puagang followed and from a distance of two (2) to three (3) meters, heard Cerelegia utter to Sarmiento: 'Do you have already the money?' The latter replied: 'Yes I have already the money' and pulled out the three (3) marked P5.00 bills. Cerelegia on his part produced a matchbox and handed it over to Sarmiento in exchange for the three (3) marked P5.00 bills. At that point, M/Sgt. Biñan and Pat. Puagang closed in and after announcing themselves as NARCOM agents, apprehended Cerelegia (tsn., pp. 11-12, February 19, 1985).

"M/Sgt. Biñan searched Cerelegia and recovered the three (3) marked P5.00 bills from the right front pocket of his maong pants. He was then brought to the NARCOM headquarters where the contents of the matchbox handed over by him to Sarmiento were subjected to a field test and found to be dried marijuana leaves (tsn., p. 14, February 19, 1986; Exhibit D).

"Subsequently, the said contents were turned over to the PC Crime Laboratory in Cebu City and after tests, were found to be positive for marijuana (tsn., pp. 1-9; February 19, 1985; Exhibit A)."[1]

In his defense, ROMULO, 22 years old, single, and a sophomore college student at the University of Bohol, claimed that he was framed-up by the NARCOM using Butch Sarmiento as intermediary. ROMULO's version was that around 10:30 a.m. of October 10, 1984, after his class, he met Butch standing alone near the University gate. Butch approached him and invited him to go somewhere. He knew Butch to be a civilian informer of the NARCOM since Butch told him so, and they used to see each other at the PC Barracks at Camp Dagohoy, where ROMULO was staying as a protégé of one Major Narzal Ermac.

According to ROMULO, Butch placed an arm around his shoulder and showed him (ROMULO) a matchbox containing dried crumpled leaves, which Butch himself opened. ROMULO did not know what kind of leaves they were. He left Butch near the gate, but after walking a short distance he was held on the neck by a man who identified himself as a PC soldier. Butch ran away and was chased by another person. Butch threw the matchbox and his wallet at the place where ROMULO was held, and these were picked up by the PC officer holding him.

Continuing, ROMULO said that he was brought to the NARCOM Office at Tagbilaran City Hall where he was investigated, but they did not ask him about the matchbox nor the wallet. During the investigation, which lasted for 10 minutes, he was maltreated by the soldiers who pushed his head against the cement wall and hit his head with a book. He was not allowed to contact his parents nor was his request for a lawyer granted. Butch, who arrived later, was taken to a separate room. He (ROMULO) was thereafter brought before the Fiscal for preliminary investigation.

ROMULO's benefactor, Major Narzal Ermac, vouched for the former's good character and testified that he knew ROMULO since the latter's birth. ROMULO, he said, is the youngest son of his tenant and had been living in his house at Camp Dagohoy for six years; that he had been spending for ROMULO's education since high school; that ROMULO neither smokes, nor drinks liquor, nor does he go out with "barkada", and has no criminal record. The documentary evidence likewise discloses that Major Ermac pleaded for compassion for ROMULO with the NARCOM Detachment Commander, Tagbilaran City (Exhibit "G"), but without success.

Also in evidence is a formal communication from ROMULO's lawyer addressed to the City Fiscal requesting that ROMULO be "allowed to plead" to the lesser offense of Illegal Possession of Prohibited Drug, as desired by him (ROMULO). Upon indorsement to the Narcotics Regional Unit, Cebu City, however, the Commanding Officer objected on the ground that the "accused claimed his contraband was pilfered from a legitimate depository and which act doubly aggravate his calling" (Exhibit "F").

This appeal impugns the credibility of prosecution witnesses, and stresses the supposed good moral character of the accused.

Parenthetically, it may be stated that the arresting officers herein, namely, Sgts. Biñan, Rosaroso and Romitera were the same arresting officers of the accused in *People vs. Ale[2]*, who was acquitted by this Court. Unlike in that case, however, the "buy and bust" operation herein was better planned and conducted. The confidential informant was frisked first and found to have no contraband on his person. The 5 peso bills were also marked before they were given to him. The peace officers positioned themselves near enough to keep ROMULO and Butch in sight. They actually saw ROMULO pull out the matchbox from his pocket and hand it to Butch, who, in return gave the marked bills to ROMULO (Exhibits "C", "C-1", "C-2"). Being also within hearing distance, they heard the conversation between the two. Thus, the testimonies of M/Sgt. Alejandro Biñan and Pat. Alberto Puagang are clear and credible eyewitness reports. Following is a portion of M/Sgt. Biñan's testimony:

"Q

And how did you carry out this buy and bust operation?

A

We have utilized confidential informant to act as poseur-buyer and giving him instruction and upon reaching the target area at Corner Maria Clara Street we conduct a search in the person of our confidential informant in order to determine whether he has a marijuana.

Q

What else did you do?

A

After conducting a search we found out that he has no marijuana in his possession we supplied him marked money in three P5.00 bills to be used in buying marijuana dried leaves.

Q

After providing that confidential informant of yours with marked money, what else did you do?

A

I with Pat. Puagang and Rosaroso proceeded to our target area, UB where we posted ourselves at the Orapa store in front of the University of Bohol and the confidential informant also proceeded to the gate of University of Bohol.

Q

After you and your companions have posted yourselves as well as your confidential informant, what transpired next?

A

For a few minutes observation of the activities of our confidential informant we have noticed and observed that a male guy approached our confidential informant who was waiting at the outside of the gate of the University of Bohol.

Q

What else did you observe?

A

They were having conversation and few minutes later they walked across the street and proceeded at Orapa store entering a small alley beside said store.

“Q

After your confidential informant and his male companion entered that alley, what happened next if any?

A

We have observed that ... I have heard that the male companion of our confidential informant asked our confidential informant 'do you have already the money?'

Q

How far were you from your confidential informant and his male companion when you heard this question asked?

A

More or less two meters.

Q

Once again you have said 'we', who was your companion then?

A

My companions was Pat. Puagang at my side during the time and Rosaroso was posting himself across the road at the gate of U.B. high school.

Q

What was the answer of your confidential informant to the question of this male companion?

A

The answer was 'yes, I have already the money' and he pulled out the three P5.00 bills and showed to his male companion.

Q

And what did the male companion of your confidential informant do?

A

The male companion of our confidential informant pulled out a match box believed to be containing marijuana leaves and handed to our confidential informant and in return he received the three P5.00 marked bills.

Q

After observing the exchange of purchase for product what did you do?

A

I have heard a signal to our companion CIC Rosaroso and Puagang and I rushed to their position and identified ourselves as Narcom agents.

Q

Aside from identifying yourselves as Narcom agents, what else did you do?

A

I hold the male companion of our confidential informant and at the same time informed him of his constitutional rights and effect the arrest.

Q

And aside from informing him of his constitutional rights and placing him under arrest, what did you do?

A

I have conducted search and inspection. I have recovered the three five peso bills which was our marked money which he placed in his right front pocket in his maong pants." [3]

Q

In whose possession did you retrieve the match box which allegedly contained marijuana then in the hands of Boots Sarmiento?

A

We got the marijuana inside the match box in the possession of our confidential agent Boots Sarmiento after selling of the marijuana by Romulo Cerelegia.

Q

Let us clarify this Mr. Biñan. So you got the match box which allegedly contained marijuana in the possession of your confidential agent Boots Sarmiento?

A

Yes, sir, after the sale.

Q

And the money from whose possession did you get the money?

A

From Romulo Cerelegia, the seller of the marijuana.

Q

It was you yourself who got the match box which allegedly contained marijuana in the possession of your confidential agent Boots Sarmiento?

"A.

No, sir, I was not the one.

Q.

Who then?

A

Pat. Alberto Puagang, he was the one who commanded to get the match box containing marijuana.

Q

How far were you from Boots Sarmiento when Pat. Puangang retrieved from Sarmiento the match box containing marijuana?

A

Two to three meters away more or less.

Q

What were you doing then at that distance?

A

I held the person of Romulo Cerelegia and apprise him of his constitutional rights and thereafter I asked where the money was and then I ordered Pat. Alberto Puangang to get the marijuana in the possession of Boots Sarmiento and from Boots Sarmiento turned over to Pat. Puangang."[4] Pat. Puangang also described their operation thus:

“Q

How did you carry out your buy and bust operation?

A

Biñan, Rosaroso, our confidential informant and I went to the target area.

Q

And after that what happened next?

A

Before we reached the corner of Maria Clara street and CPG avenue we searched our confidential informant whether he had sticks of marijuana and we found out that he had none and then we gave him 15 pesos at five (5) pesos bills denominations.

Q

Aside from frisking your confidential informant and providing him with three (3) five (5) pesos bills, what else did you and your companions do?

A

We went to the target area and our confidential informant stood by at the UB gate.

Q

Where specifically is that gate situated?

A

Facing Maria Clara Street.

Q

How about you and your companions where were you?

A

Biñan and I were standing at the Orapa store.

Q

How about CIC Rosaroso, where was he?

A

He was standing at the gate of the UB high school.

Q

After you and your companions have posted yourselves what happened next?

A

There was a person who approached our confidential informant?

Q

And what else did you observe?

A

They conversed each other and thereafter they walked towards the Orapa store.

Q

By the way, where is this Orapa store situated?

A

Maria Clara Street in front of U.B.

Q

After your confidential informant and his companion had crossed the street towards the Orapa store, what happened next?

A

They went inside the small alley at the side of the Orapa store.

Q

And after that what happened?

A

We observed our confidential informant and the suspected drug pusher and they talked to each other and we overheard that the suspected drug pusher asking our confidential informant whether he was able to secure the amount of money he needs and our confidential informant said yes I have the money and he gave the money to the suspected drug pusher and in turn the suspected drug pusher gave one match box to our confidential informant.

Q

How far were you in relation to your confidential informant and the suspected drug pusher?

A

Two to three meters more or less.

Q

And after witnessing the payment of the money and the tender of the match box what did you and your companions do if any?

A

Sgt. Biñan gave a signal to Rosaroso and me.

Q

And after that what happened next?

A

Then we approached the two. Biñan held the suspected drug pusher and informed him of his constitutional rights and I approached our confidential informant and he gave me the match box and thereafter I gave it to Biñan."[5]

The arresting officers had no motive, and no motive has been attributed to them by ROMULO, as to why he would be falsely accused of a serious offense. From the attendant circumstances it is apparent that, as PC/NARCOM Officers, they were intent on prosecuting violators of the law. This is specially evident in the circumstance that despite the plea for the quashal of the case by Police Major Narzal Ermac of the PC-INP, formerly assigned as Deputy Police Superintendent of Bohol, M/Sgt. Remetiera of the NARCOM was determined to prosecute the case.[6] P/Major Ermac even testified that he did not readily believe ROMULO's claim that he did not commit the crime "because PC officials to me are not foolish to arrest persons without any violation."[7] M/Sgt. Remetiera also categorically declared that there was no reason to frame-up ROMULO.[8] ROMULO could give no reason either why he should be framed up by the NARCOM with whom he had no misunderstanding whatsoever.[9]

ROMULO's further claim that it was Butch Sarmiento who had framed him up because at one instance he had caught Butch inside the living quarters of Major Ermac and reported the matter to the latter who scolded Butch, is not a sufficient motive, assuming the same really happened, for the latter to incriminate him falsely besides the fact that Major Ermac testified that he did not know Butch Sarmiento and that he just came to know of him when M/Sgt. Remetiera mentioned his name.[10]

ROMULO's declaration that Butch informed him that he (Butch) was a PC informer does not invite credence for if he really did, there would have been no need to report his presence in Major Ermac's quarters. Neither can we lend credence to ROMULO's claim that the matchbox and the wallet were merely thrown in his direction by Butch considering Sgt. Biñan's testimony that he retrieved the marked P5 bills from the right front pocket of ROMULO's "maong" pants, which the defense never rebutted.

That Butch was not presented as a witness is not fatal to the prosecution's evidence, since his testimony would be merely corroborative and cumulative. Besides, if as ROMULO claims he personally knew Butch and where he resided,[11] the defense could have asked that he be subpoenaed, a constitutional right given an accused to have compulsory process to secure the attendance of witnesses in his behalf.[12] In fact, the Trial Court advised the defense counsel to make a formal request with the Clerk of Court for the issuance of a subpoena for Butch[13] but apparently, the defense counsel had second thoughts about it since the record does not show that Butch was subpoenaed, and the defense rested its case without calling Butch to testify.

Now, for the determination of the influence of good character as evidence. It is true that the good moral character of an accused having reference to the moral trait involved in the offense charged may be proven by him.[14] But an accused is not entitled to an acquittal simply because of his previous good moral character and exemplary conduct if the Court believes he is guilty beyond reasonable doubt of the crime charged.[15] The affirmance or reversal of his conviction must be resolved on the basic issue of whether the prosecution had discharged its duty of proving his guilt beyond peradventure of doubt.[16] In the case at bar, evidence of the crime being clear and convincing, evidence of good character will not prevail.[17]

Besides, as stated previously, there is evidence showing that ROMULO himself had "claimed" he had taken the marijuana from a "legitimate depository", hence, the objection of the PC Commander to allowing a reduction of the charge to a lesser offense (Exhibit "F"). The "pilfering" is corroborated by no less than Major Ermac, who, in pleading for compassion on ROMULO's behalf to the NARCOM, mentioned "that the prohibited Indian hemp involved in this case was merely a sample kept inside the room of P/Lt. Dorigo and Lt. Berba" (Exhibit "G"). The "taking" of the marijuana and its subsequent sale for P15.00 immediately shatters the defense of good moral character stressed in seeking ROMULO's acquittal.

The alleged denial of the right to counsel during custodial investigation, underscored by the defense, is not a material issue in this case since no extrajudicial statement was taken from the accused besides the fact that in determining the culpability of the accused the Court a quo relied on the eyewitness testimonies of the apprehending officers and not on any extrajudicial statement.

Like the Trial Court, however, considering that ROMULO is in the prime of his youth and to give him chance to turn a new leaf, with the stigma of an offense a thing of the past, we join it in its recommendation for executive clemency.

WHEREFORE, the judgment of the Trial Court is AFFIRMED, with the recommendation to the President, through the Minister of Justice, that executive clemency be extended to Romulo Cerelegia after he shall have served a term of imprisonment, consistent with the ends of retributive justice and the objectives of the Dangerous Drugs Act. Costs against accused- appellant.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, Feliciano, and Gancayco, JJ., concur.

[1] Brief for the Appellee, pp. 2-5.

[2] G. R. No. 70998, October 14, 1986.

[3] T.s.n., February 19, 1985, pp. 11-13.

[4] T.s.n., March 6, 1985, pp. 7 & 8.

[5] T.s.n., March 25, 1985, pp. 3-5.

[6] T.s.n., May 9, 1985, p. 32; T.s.n., August 12, 1985, p. 14.

[7] T.s.n., May 9, 1985, p. 30.

[8] T.s.n., August 12, 1985, p. 14.

[9] T.s.n., July 11, 1985, p. 27.

[10] T.s.n., May 9, 1985, p. 30.

[11] T.s.n., July 11, 1985, p. 21.

[12] Section 19, Article IV, Constitution.

[13] T.s.n., March 6, 1985, pp. 10 & 11.

[14] Section 46, Rule 130

[15] *Borje vs. Sandiganbayan*, 125 SCRA 763 (1983).

[16] *Ibid.*

[17] *People vs. Madrid*, 88 Phil. 1 (1951).

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