

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO BOHOLST Y AMADORE, ACCUSED--APPELLANT.

G.R. No. 73008. July 23, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Manila, Branch 8, finding accused-appellant Rodolfo Boholst y Amadore guilty beyond reasonable doubt of the crime of violating Sec. 4, Art. II in relation to Sec. 21(b), Art. IV, R.A. 6425, as amended by P.D. No. 1675 and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency.

Upon arraignment on January 28, 1985, the accused-appellant pleaded not guilty. Trial ensued. Not satisfied with the decision of the trial court, the appellant interposes this appeal.

The information filed against the appellant alleged the following:

"That on or about December 13, 1984, in the City of Manila, Philippines, the said accused, not being authorized to sell, deliver, give away to another or distribute any prohibited drug, did then and there wilfully and unlawfully sell, deliver and give away to a police undercover agent poseur-buyer two (2) tea bags containing dried marijuana leaves and two (2) sticks of marijuana cigarettes, which is a prohibited drug.

"Contrary to law." (p. 9, Rollo)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt was summarized by said court as follows:

FRANCISCA M. FRANCISCO, 32 years old Forensic Chemist, National Bureau of Investigation, subjected to chemical examinations the 'flowering-tops' brought and submitted by Pat. Gaudencio Corbilla on December 22, 1984 the result of which is positive (Exh. A-1) for marijuana (tsn., April 15, 1985); accordingly, she issued a certification on her findings (Exh. A); the specimens submitted are inside the envelope (Exh. B) and in small packets therein (Exh. B1 & B2) are dried 'flowering tops of marijuana.' SGT. ENRIQUE C. DAVID, 51 years old police Officer-In-Charge, Drug Enforcement Unit, Station 4, Sampaloc, Manila, after having received several reports and denunciations from Barangay Officials and residents of Gov. Forbes St., Sampaloc, on prohibited drug trafficking thereat, he headed a team to arrest person/persons involved composed of Pfc. Martin Orolfo, Jr., Pat. Dennis Corbilla, Pat. Fidel Geronimo and Pat. Bernardo Estamo; and as planned by him he instructed Pfc. Corbilla dressed in the manner of a Metro Aide in uniform and with the use of a P20.00-bill with markings to proceed to the hang-out of the 'drug-pushing' activities and once there to pretend to be a buyer; on their part each of them took strategic positions in order to have a clear view of the person engaged in the trading of prohibited drugs; at about 7:30 p.m. that evening on 3 Dec., 1984, after Pat. Corbilla as 'poseur-buyer' consummated (13-14 tsn., 23 April, 1985) the deal with

the suspect, he lighted a cigarette — the pre-arranged signal to close in, the team members did so and apprehended the accused; the twenty- peso bill paid for the marijuana was recovered from the right-pants

pocket (4-7 tsn., 23 April, 1985) including another two (2) sticks of marijuana cigarettes; they next made a 'follow-up search' for the suppliers (source) known as Herman and Marilou, but failed; hence they returned to their station headquarters and thereat had accused investigated, while the seized prohibited drug was sent to the National Bureau of Investigation for examination, the result of said examination turning to be 'positive' per certification (Exh. A); ON CROSS EXAMINATION; witness disclosed that the instant operation that led to the apprehension of accused started in November 1984 and within that span of time since it begun, they have already apprehended, six (6) others, — four (4) of them as pushers and now charged in court with one already sentenced to life imprisonment and that the other two (2) pushers even made a 'shoot-out' with them (8-9 tsn., *ibid*); PAT MARTIN OROLFO, JR., 30 years old, was one of those involved in the operation headed by Sgt. David, in the evening of December 13, 1984, held at Gov. Forbes St., against suspected drug-traffickers; that evening there was a 'surveillance and buy-bust operation' concerning the pushers known as Marilou, Henry and one Bogart at Lungga, Gov. Forbes St., Sampaloc, a place where they made previous arrest; this place called 'Lungga' is located on the right side of Gov. Forbes St. if one is heading for Espana St., (or Geronimo St.) known to the police in 'police parlance' as the area where drug-traffickers and criminal elements abound; the accused is the runner of Marilou and Henry in the drug-pushing activities (4 tsn., May 20, 1985); confirming the narration of Sgt. David on the operation, they had accused apprehended in the act of selling marijuana to the poseur-buyer, Pal. Corbilla; the two (2) small plastic bags of marijuana leaves with rolling papers and two (2) cigarettes of marijuana plus the 20-peso bill (Exh. E, E-1, E-4); used in the operation (7 tsn., *ibid*.); they brought Rodolfo Boholst alias Bogart to their precinct for further investigation; on the right upper corner number of Exh. E, inside the figure zero is written 'M.O. Jr.' written by witness before the operation was undertaken in order to identify said bill used in buying the marijuana in the event that the accused have other bills in his possession, while the alphabets 'R.B.A.' were written by the accused on the upper left corner of Exh. E after his apprehension to show that said peso-bill was recovered from him after the deal (10 tsn., *ibid*.); at the precinct, the accused was subjected to routine questioning and next they prepared the Booking Sheet and Arrest Report (Exh. F) reflecting therein under Marks and Scars: 'Tattoo mark with initial MKW (names of his friends and meaning makaw; 13 tsn., May 20, 1985) at the upper right portion of the forehead' and a member of the dreaded Sputnik Gang found on the right thigh when he was told to strip himself naked; Exh. F was based on actual facts; next he prepared the Crime Report (Exh. H); the reason why accused was ordered to disrobe was to find out if he has still prohibited drugs concealed in his body (15 tsn., *ibid*.) and while naked there were tattoos on his legs and back as seen in the pictures taken by witness (Exhs. G, G-1); ON CROSS-EXAMINATION, the seized articles from accused were itemized in Exh. C and before it was signed by accused (Exh. C-1), it was first explained to him in Tagalog (2 tsn., Aug., 1985); he took pictures of accused naked showing his tattoo--marks signifying that he is a notorious person and as a member of the Sigue-Sigue Sputnik; as required, witness made a sketch indicating their respective positions immediately prior to apprehending the accused (Exh. 2)." (p. 19, Rollo).

Appellant assigns the following errors:

I

THE COURT A QUO ERRED IN FINDING APPELLANT GUILTY AS CHARGED FOR WANT OF SUFFICIENT EVIDENCE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO ERRED IN ADMITTING THE DOCUMENTS SIGNED BY THE APPELLANT SHOWING HIS ADMISSIONS IN EXHIBITS 'C', 'C-1', 'E-2' and 'F-2' CONSIDERING THAT THE SAME WERE OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT AS LAID DOWN BY JURISPRUDENCE (p. 68, Rollo).

In the first assigned error, the appellant claims there was insufficient evidence to prove his guilt beyond reasonable doubt. Firstly, he questions the fact that the poseur-buyer was not presented as witness.

The matter of presentation of witnesses by the prosecution is not for the accused or the trial court to control. Discretion belongs to the city/provincial fiscal as to how the prosecution should present its case. He has the right to choose whom he should present as witnesses. (*People v. Campana*, 124 SCRA 271). Moreover, if the defense believes that there are other witnesses who could have exculpated the accused, it should have called for them even by compulsory process (*ibid.*). The eyewitnesses presented by the prosecution sufficiently establish the facts which form the basis of the court's judgment.

The defense likewise strives to establish the appellant's innocence by claiming that drug-trafficking could not possibly be done on a busy street as Gov. Forbes and Espana inasmuch as activities such as these are done clandestinely (tsn., April 23, 1985, p. 11).

This contention is negated by the fact that there were at least six previous arrests (tsn., *ibid.*, pp. 15-16) made in the place in a little over one month's time. The place called "Lungga" on Gov. Forbes St., is known to police as the area where drug traffickers and criminal elements abound. More important, the appellant has been positively pinpointed and identified while committing the crime (tsn., pp. 13-14, *ibid.*). He was caught in *flagrante delicto*. As established in earlier rulings, credence should be given to the narration of an incident by prosecution witnesses who are police officers and presumed to have performed their duties in a regular manner in the absence of evidence to the contrary (*People v. Gamayon*, 121 SCRA 642; *People v. Campana*, 124 SCRA 271; *People v. Rosas*, G.R. No. 72782, April 30, 1987).

There is nothing in the records to indicate that the witnesses for the prosecution were actuated by improper motives. Their testimonies should therefore be entitled to full faith and credit.

Contrary to what the appellant claims, there is no variance in the evidence presented by the prosecution. The two (2) tea bags of "dried marijuana leaves" and the "flowering tops" of marijuana both refer to Exhibit "A" which was certified by the NBI Forensic Chemist as marijuana, a prohibited drug under R.A. 6425.

As seen from the facts in the records, the defense has failed to present facts or arguments that would justify the reversal of the trial court's findings of appellant's guilt beyond reasonable doubt.

The second assignment of error centers on the court's admission of documents, which, according to the defense, were obtained in violation of the appellant's constitutional right. The same were allegedly obtained through force, coercion, and intimidation, and that the accused was without a counsel when he signed the statements.

Appellant's claim of maltreatment is untenable. The records show that he never requested for a medical examination or treatment of his alleged injuries (tsn., pp. 62-65, Sept. 30, 1985). He never mentioned this alleged manhandling to anyone, not even to his own mother (tsn., p. 64, *ibid.*). There is no confession or extrajudicial statement involved in this case. The accused-appellant did not give any statement against his own interests.

The appellant's contention that the prosecution's evidence is inadmissible due to the absence of a counsel is immaterial since the documents referred to are not confessions or extrajudicial statements. They are receipts for property seized (Exh. C) with the specimen signature of the accused, the marked P.20.00 bill with conforme of the accused (Exh. E); and a signature on the Booking and Arrest Sheet (Exh. F). The receipt and specimen signature are intended to show that the items were indeed taken from the accused. The procedure is mandatory on the part of apprehending and seizing police officers (*People v. Rosas*, G.R. No. 72782, April 30, 1987). But even if the accused refused to sign the receipt, the marked bill, or the booking and arrest sheet, the court can still evaluate the testimony of the apprehending officers to arrive at the facts of the case. The conviction is not based on the appellant's signatures.

All things considered, there is more than enough evidence to sustain a judgment of conviction. The positive

evidence against the accused is strengthened and his self-serving assertions of innocence are weakened in the face of notoriety as shown by tattoo marks of the Sigue-Sigue Sputnik Gang on his body (Exh. "F", tsn., p. 37, May 20, 1985; Exhs. "G", "G-1") and his previous conviction of frustrated murder, robbery, hold-up and violation of R.A. 6425 as drug pusher (p. 21, Rollo, tsn., pp. 68-72, September 3, 1985). In the drug pusher case, he was detained at Welfareville but he escaped according to his own testimony. As stated by the Solicitor General, the appellant has shown no remorse over his past acts when he committed this crime.

In view of the foregoing facts and the serious implications of his crime on society, we hold that the guilt of accused-appellant Boholst has been established beyond reasonable doubt and the proper penalty under the law has been imposed.

WHEREFORE, the appealed judgment is hereby AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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