

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIO D. AGAPITO, ACCUSED-APPELLANT.

G.R. No. 73786. October 12, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Before us is an appeal from the decision of the Regional Trial Court of Caloocan City, Branch CXXX finding the accused guilty beyond reasonable doubt of violating Section 4, Article II, of R.A. 6425 (Dangerous Drugs Act), and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of TWENTY THOUSAND PESOS (P20,000.00) and the costs.[1]

Accused-appellant was charged under an information filed on October 6, 1982 which reads:

That on or about the 23rd day of August 1982, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully and feloniously sell and deliver to Efren Vergara, a civilian informer, marijuana flowering tops wrapped in a piece of brown paper, a prohibited drug and knowing the same to be such.[2]

The antecedent facts established on record and as summarized by the Solicitor General are, as follows:

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In the late afternoon of August 23, 1982, police officers Reynaldo Domingo, Ernesto Labucay and Henry Chao, all from the Narcotics Command Unit based at Camp Datuin Sikatuna, Quezon City, conducted a narcotics "buy-bust" operation in Caloocan City. They planned to entrap a certain "Emil" who was a suspected drug pusher in the area of Mabalacat Street and 6th Avenue, Caloocan City. They enlisted the help of an informer named Efren Vergara. Pat. Domingo gave Vergara a 20-peso bill to be used as the purchase money (p. 7, tsn, April 4, 1984).

At about 6:30 that evening, Vergara spotted "Emil", who is appellant, with two companions smoking cigarettes outside a billiard hall along Mabalacat Street. Vergara approached appellant. Pat. Domingo, in civilian clothes, followed him a few meters behind. Pat. Labucay and Chao, also in civilian clothes, stayed farther away but within seeing distance. Vergara asked appellant where he could buy "panggamot". In turn, appellant inquired whether Vergara was an old customer and Vergara replied "yes". Appellant asked how much marijuana Vergara needed. Immediately, Vergara gave appellant the 20-peso bill that came from Pat. Domingo (p. 7, *ibid*).

Appellant took the money and walked into an alley where he disappeared. Within a few minutes he returned and handed Vergara something wrapped with brown paper (Exh. A-2). Thereupon, Pat. Domingo identified himself as a police officer. Appellant and his two companions scampered away. The two disappeared into the feeder roads, while appellant dashed towards his house which was about twenty meters from the billiard hall (p. 9, tsn, July 21, 1984).

The policemen chased appellant and were able to collar him in front of his house. Due to the intervention of appellant's relatives who pushed the policemen and pulled appellant, appellant was able to wrest himself free. He ran inside his house (p. 8, *ibid*).

The policemen enlisted the assistance of the barangay captain, but were nevertheless unsuccessful in arresting appellant.

Pat. Domingo brought the matter wrapped with brown paper confiscated from appellant to the police headquarters where he handed it over to Pat. Chao. Pat. Chao submitted the confiscated matter to the National Bureau of Investigation (NBI) for examination (p. 12, *tsn*, March 12, 1984).

When the confiscated matter was examined by NBI Forensic Chemist Demelen de la Cruz, it was found to contain marijuana (p. 9, *tsn*, January 16, 1984).[3]

On the other hand, the appellant and his mother narrated a different version of what transpired. As stated by the trial court:

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x x x When he took the witness stand on September 6, 1984, the accused Emilio Agapito declared that he was 25 years old. He testified that between 6:30 and 7:00 o'clock in the evening of August 23, 1982 he was beside the "poolan" or billiard hall, about four to five meters away, when something unusual happened. At that moment, according to him, Patrolman Domingo arrived with his companions; that they asked who Emilio Agapito was and when he replied "I am the one", the police asked him to go with them, telling him that he was selling marijuana; that he did not go with them, instead he ran inside his house where the police followed him; that the police mauled him and tried to force him to go with them, but they failed because his parents intervened. He denied selling marijuana to civilian informer Efren Vergara. Asked why the police had filed this case against him, accused explained that because he was mauled by the police and his mother was also hurt, his parents had threatened to charge the police for what they did to him and to his mother.[4]

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In his lone assignment of error, appellant maintains that THE TRIAL COURT ERRED IN REJECTING THE VERSION OF THE DEFENSE FOR THAT OF THE PROSECUTION.[5] Thus, the issue in this case boils down to "credibility" -- on who among witnesses asserting contradictory or different versions should be believed.

After thoroughly reviewing the records of this case, we find ourselves in complete agreement with the findings and conclusions of the trial court.

In a well-written decision, the trial court stated:

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In the case at bar, the accused and her mother did not impress the Court as trustworthy witnesses. Their version of the incident would portray the law enforcers as completely wanting not only in obedience of the law which they are sworn to enforce and uphold but also in elementary conduct and good manners as human beings, let alone as police officers. There was no compelling motive for the police to insist in arresting the accused if the latter had not committed an offense in flagrante within their view and knowledge. Their plan of entrapment was executed with success and their immediate arrest of the offender would have crowned their collective efforts.

After the case was filed and a warrant of arrest issued against the accused, he was nowhere to be found and it took the authorities seven months later to apprehend him. This circumstance alone does not sit well with the claim of

innocence of the accused made by him and his mother. x x x.[6]

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As clearly expressed in his Brief, the underlying premise of all of the appellant's arguments in support of his position is that police officers are dishonest, corrupt, and wicked. In the exact words of the appellant "planting evidence is common practice of the police"; and "police brazenness for distorting the truth" is widely known.[7]

We cannot possibly accept the validity of this premise since our acceptance would mean the sweeping and unjust condemnation of the entire police force, on whom the maintenance of a peaceful and orderly society greatly depends, merely on account of the misdeeds of some misguided policemen or on the "say so" of an accused drug seller and his mother.

In cases involving persons accused of being drug pushers or sellers, almost always the defense is that the accused was framed by the apprehending police officers. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption, that official duty has been regularly performed, exists.

We accept the finding of the trial court on the credibility of the police officers who testified for the prosecution. Thus, we give credence to their narration of the incident because they are law enforcers who are presumed to have regularly performed their duty in the absence of convincing proof to the contrary.[8]

The appellant admits that Patrolman Domingo and his companions approached him and spoke to him. But according to him, their purpose was not to buy marijuana, instead, he was asked to accompany them to the police station as he was being accused of selling marijuana.

It is not difficult to discern why the police did not persist in arresting the accused after the latter ran towards his house and sought the help of his relatives. It was not because, as argued by the appellant, the police had no case against him, rather, the police wanted to avoid the needless spilling of blood on both sides or unnecessary violence, it appearing from the testimony of the appellant's mother that she and her relatives vigorously resisted the arrest of the appellant.

The records of this case would show that in the evening of the same day that the buy-bust operation was conducted, the police involved therein brought the piece of brown paper, the same one which the appellant handed over to the civilian informer, to the National Bureau of Investigation; and the results of the tests confirmed that the said paper contained dried marijuana leaves. The fact remains that the information was filed in due time, and a warrant of arrest was issued against the appellant. If, as argued, the police had no strong case would they persevere in searching for the accused for more or less seven months after the buy-bust operation?

On the contrary, it is the appellant who, by his sudden disappearance from his place of residence soon after the failed attempt by the police to arrest him, acted as though he was really guilty of the crime. He knew that the police, being unsuccessful the first time, would be back to rearrest him. Indeed, flight is inconsistent with innocence.

The appellant claims that the charge was filed against him because of his mother's threat that she would sue the policemen for trespass to dwelling. This reason is too superficial and self-serving to be accorded any consideration. If the declarations of the appellant and his mother that they were mauled by the police officers were indeed truthful, with more reason should they have made good their threat by charging the police with physical injuries, not trespass to dwelling, and the fact that they did not file any charge only proves that they did not really

have a case against the police; that they have been less than truthful; and that they are simply bent on discrediting the testimonies of the policemen.

On the other hand, Pat. Domingo explained why they did not file any case against the resisting relatives. Thus:

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Q : And did you file any case from interfering your police duties?

A : We did not file, sir.

Q : Please tell the Honorable Court why?

A : We were not able to file because in my place they have no criminal act I think because they are the relatives of the accused, sir.[9]

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The appellant moreover argues that if, as alleged by the police, the offense was committed near his house, how is it possible for his mother to know nothing about her son's commission of said offense. The answer has been given by the appellant's mother herself. She testified that she was at home ironing clothes, and from where she was working she could not see the billiard hall, in the vicinity of which the buy-bust operation took place.[10]

Knowing that the positive eyewitness account of Vergara was convincing, the defense sought to discredit him by emphasizing his close relationship with the police, he being a civilian informer. We find Vergara's testimony to be clear, factual, and straightforward. More importantly, his testimony was not rebutted by the defense.

In any case, the testimonies of the three other eyewitnesses to the sale of marijuana by the appellant to Vergara are more than sufficient to establish the guilt of the accused beyond a reasonable doubt.

Pat. Domingo testified that he introduced himself as a police officer immediately after he saw the appellant hand over the marijuana to Vergara.[11]

Similarly, Pat. Labucay testified that he witnessed the delivery by the appellant to Vergara of the brown paper containing the marijuana after the payment of the twenty-peso price.[12]

Pat. Chao, who was with Pat. Labucay, likewise testified that he actually saw the appellant hand over a piece of wrapped paper to Vergara.[13] The contents of this same piece of brown paper were subsequently analyzed by Demelen Renton de la Cruz, an NBI chemist, and, as she testified, the results came out positive for marijuana.[14]

Thus, on the whole, the testimonial and physical evidence for the prosecution is overwhelmingly against the pretended innocence of the accused.

Considering that the accused-appellant does not appear to be a habitual delinquent or recidivist; considering, further, that he is in the prime of his youth and to accord him the opportunity to turn a new leaf, we recommend the granting of executive clemency.

WHEREFORE, the judgment of the trial court is **AFFIRMED**, with the recommendation to the President, through the Secretary of Justice, that executive clemency be extended to Emilio Agapito 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 the appellant.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

- [1] Judge Segundino G. Chua; Decision, 6; Rollo, 16.
- [2] Id., 1, 11.
- [3] Appellee's Brief, 2-4; Rollo, 47-49.
- [4] Decision, 4; Rollo, 14.
- [5] Appellant's Brief, 5; Rollo, 35.
- [6] Decision, 5-6; Rollo, 15-16.
- [7] Appellant's Brief, 10; Rollo, 35.
- [8] People vs. Madarang, No. L-70569, January 7, 1987, 147 SCRA 123.
- [9] T.s.n., session of July 21, 1983, 13.
- [10] T.s.n., session of October 23, 1984, 11.
- [11] T.s.n., session of July 21, 1983, 7.
- [12] T.s.n., session of January 16, 1984, 27.
- [13] T.s.n., session of March 12, 1984, 18.
- [14] T.s.n., session of January 14, 1984, 6.

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