

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LESLIE LAGASCA, ACCUSED-APPELLANT.

G.R. No. 73818. February 27, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Convicted by the Regional Trial Court of Dumaguete City, Branch XL, in Criminal Case No. 6649 for Dope Pushing in violation of Section 4, Article II of Republic Act No 6425, as amended ("The Dangerous Drugs Act") and sentenced to life imprisonment and to pay a fine of P20,000 and the costs, accused Leslie LAGASCA appeals for reversal.

The Information against LAGASCA charged:

"That on or about the 27th day of March, 1985, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court the above-named accused, not being then authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver to another person two (2) sticks of cigarettes made of marijuana, a prohibited drug.

Contrary to Sec. 4, Art. II of the Dangerous Drugs Act."[1]

Upon arraignment, LAGASCA pleaded "Not Guilty".

As synthesized by the Solicitor General, the prosecution evidence reads as follows:

"On March 27, 1985, Master/Sgt. Ranulfo T. Villamor, team leader of the Narcotics Command (NARCOM) stationed at Dumaguete City, sent a team of Narcom agents to conduct a buy - bust operation on suspected marijuana pushers along Alfonso Street in Dumaguete City, acting on the report of a surveillance team that marijuana was being peddled along the said street. The team was composed of Pfc. Arthur Alcoran, Pat. Leon Quindo and Sgt. Ruben Laddaran. Sgt. Villamor handed to Pfc. Alcoran a five-peso bill which he initialled and on which he placed two check marks after his initials to be used in the planned operation. (pp. 15-16, T.s.n., October 16, 1985)

Upon reaching the designated place, Patrolman Alcoran spotted a group of boys, numbering about five (5) at the side of Ericson and Handurmanan stores. He approached the group and made a sign conveying that he wanted to smoke. Seeing the group interested, he retrieved the marked five-peso bill from his pocket and gave it to Leslie Lagasca who readily accepted and placed it at his right side pocket. Lagasca then handed two sticks of cigarettes to Patrolman Alcoran. Suspecting the cigarettes contained marijuana, the latter placed them in his pockets and immediately thereafter told Lagasca, 'Narcom agent, please accompany us to the PC Headquarters', holding his left arm and embracing him by the neck. At this juncture, Pat. Quindo and Sgt. Laddaran approached the group. Upon seeing this the other members of Lagasca's group took flight. Thereafter, the Narcom team brought Lagasca to their office where he was bodily searched and later investigated. They found the marked five-peso from the right side pocket of his pants. (pp. 5-7, T.s.n., October 16, 1985)

The aforesaid two sticks of cigarettes were sent to the Philippine Constabulary Crime Laboratory for examination. Mrs. Myrna Areola, forensic analyst thereat, conducted the examination and found the same two (2) sticks of cigarettes positive of marijuana."[2]

The day after the "buy-bust" operation, or on 28 March 1985, Pfc. Alcoran and Pat. Quindo executed a Joint Affidavit before the Assistant City Fiscal (Exhibit "A") describing that operation, the apprehension of LAGASCA, and the confiscation of the marijuana cigarettes from him. On 18 April 1985, the Executive Judge of the Regional Trial Court at Dumaguete City issued a Warrant of Arrest for LAGASCA's apprehension.

For his part, LAGASCA'S defense, as summarized by the Trial Court, reads:

"Accused Leslie Lagasca testifying in his own behalf declared that he was born on Sept. 6, 1967; the Certificate of Live Birth (Exh. 1, pp. 66, Folder of Exhibits) was presented in court and identified by the accused to prove that he was born on Sept. 6, 1967; that in the afternoon of March 27, 1985, he was at the Nieves store in front of Ever theater, Alfonso XIII Street, Dumaguete City, resting after helping his mother who was sewing some clothes; a certain person asked him as to what happened to him and he answered him that: 'I might be attacked with my asthma;' the person told him that he had some medicine for asthma and it was a cigarette made of catyubong and if he wanted some he should follow the person; that he followed the person and was given two cigarettes made of catyubong; that he happened to meet an old man with a long beard and pale who made a sign that he wanted to smoke a cigarette so he gave him one. Since the old man wanted two cigarettes he gave him two cigarettes and in return he gave him money. When he was about to receive the money, the old man grabbed his hand and arrested him; that he was brought to the PC Headquarters and he complained why he was arrested but he was told that he was selling marijuna cigarettes; that he did not know that the cigarettes given to him were marijuana cigarettes; that this is the first time that a case has been filed against him involving marijuana cigarettes."[3]

Evaluating the evidence presented, the Trial Court rejected the defense version, found the prosecution evidence more credible, and rendered a guilty verdict, thus:

"Wherefore, the prosecution having proven the guilt of the accused beyond reasonable doubt, this court hereby finds the accused Leslie Lagasca guilty for violation of Sec. 4, Art. II of R.A. No. 6425, as amended, and hereby sentences the accused Leslie Lagasca to life imprisonment and to pay a fine of twenty thousand (P20,000) pesos and to pay the costs.

So ordered."[4]

LAGASCA's submissions in this appeal follow:

"I

The Court a quo gravely erred in finding the accused-appellant selling marijuana cigarettes to Pfc. Arthur Alcoran.

"II

The Court a quo gravely erred in convicting the accused-appellant guilty of violating Sec. 4 Art. II of the Dangerous Drugs Act of 1972."

We find the errors ascribed belied by the record. Pfc. Arthur Alcoran, the NARCOM agent, who acted as the poseur buyer, categorically and straightforwardly testified that LAGASCA voluntarily sold him the two sticks of marijuana cigarettes for five (P5.00) pesos. Thus:

“Q

What was your purpose in going to Alfonso XIII Street on that afternoon of March 27, 1985?

A

On March 27, 1985 we were instructed by our team leader M/Sgt. Ranulfo T. Villamor, Jr. to conduct a buy-bust operation.

Q

And what do you mean by a buy-bust operation?

A

Buy-bust operation of the Narcom agents, is an operation where Narcom agents will buy some marijuana cigarettes from marijuana pushers.

Q

And who approached the marijuana pushers?

A

I did.

Q

How did you do it?

A

After we were instructed by our team leader when we reached our planned area, I immediately saw a group of boys at the side of Ericson and Handumanan stores.

Q

You said you approached a group, where did you find this group?

A

They were posted at the side of Handumanan Store.

Q

How many were in the group?

A

More or less five.

Q

When you approached the group where was Leslie Lagasca?

A

On the same store.

Q

What did you do then?

A

I acted as buyer. I asked two sticks of marijuana cigarettes.

Q

How did you do it?

A

I made a sign like this. (Witness demonstrating with 2 fingers, the middle and index fingers making a motion of smoking.)

Q

And after you did that, what was the reaction of the group?

A

Feeling that he was convinced I gave him a P5.00 bill as marked money.

Q

To whom did you give the P5.00 bill?

A

To Leslie Lagasca.

Q

Did he get the P5.00 bill?

A

Yes, and he placed it at his right side pocket.

Q

And after receiving the P5.00 bill by the accused, what did you do?

A

When he received the P5.00 bill as marked money, the accused handed to me two sticks of marijuana.[5]

Alcoran's declarations were corroborated by Pat. Quindo, who was with him during the operation, and by Sgt. Villamor, the team leader. We find no reason, from the evidence at hand, to discredit their declarations.

LAGASCA was not instigated nor induced into selling the marijuana cigarettes by Pfc. Alcoran. What the NARCOM agent did was to employ ways and means of entrapping and catching a malefactor in flagrante. Entrapment is no bar to prosecution and conviction. It is not contrary to law.

LAGASCA's denials, aside from being mere negative self-serving evidence, are flawed and do not ring with truth. As aptly reasoned out in the People's Brief:

"First, appellant testified that he only met Orbiso for the first time on the day in question. If this were so, it is inconsistent with ordinary human experience for him to readily accept the sticks of cigarettes from a stranger.

"Second, he declared that he was suffering from asthmatic attacks on the day in question and Orbiso gave him the said cigarettes purportedly containing 'catiobong' as a cure for his ailment. If this were so, he should have kept them for medical use. But he did not. Instead, he sold them to Pfc. Alcoran for five-pesos which is not ordinarily the value of two (2) sticks of plain cigarettes."[6]

The defense allegation that the Trial Court should have considered LAGASCA to have violated instead Section 8, Article II of the Dangerous Drugs Act, punishing Illegal Possession of Prohibited Drugs, requires no extended discussion. The evidence on record sufficiently establishes that LAGASCA gave two sticks of marijuana cigarettes to agent Alcoran for which he was given and received a marked five-peso bill, and fully supports conviction for Drug Pushing in violation of Section 4 of that law.

"Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. — The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. x x x "[7]

LAGASCA's Certificate of Birth (Exhibit "1") shows that he was born on 6 September 1967. He was 17 years, 6 months and 21 days old at the time of the commission of the offense.[8] Ordinarily, he would be entitled to the privileged mitigating circumstance of minority under Article 68 of the Revised Penal Code. However, because Presidential Decree No. 1675, amending Republic Act No. 6425 imposes "life imprisonment to death" for sale of prohibited drugs, he is not entitled to an indeterminate sentence.[9] We can only recommend that executive clemency be extended to him.

WHEREFORE, the judgment appealed from is affirmed, but in view of the privileged mitigating circumstance of minority, we recommend to the President, through the Minister of Justice, that clemency be extended to the accused, Leslie Lagasca, 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 de officio.

SO ORDERED.

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

[1] Rollo, p. 2.

[2] Exhibit "H", p. 62, Folder of Exhibits; Appellee's Brief, pp. 2-4, Rollo, p.160.

[3] T.s.n., December 17, 1985, pp. 3-8.

[4] Original Record, p. 118.

[5] T.s.n., October 16, 1985, pp. 4-6.

[6] Appellee's Brief, p. 13.

[7] P.D. No. 1675, February 17, 1980.

[8] T.s.n., December 17, 1985, p. 3

[9] Section 2, Act No. 4103, as amended; People vs. Beralde, 139 SCRA 426 (1985).

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