

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELSO JANDAYAN Y INOJALES, ACCUSED-APPELLANT.*G.R. No. 74871. February 27, 1989*

Ponente: MELENCIO-HERRERA, J.

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This is an appeal from the judgment of the Regional Trial Court, Branch III, Tagbilaran, Bohol,[*] condemning accused-appellant, Celso Jandayan y Inojales, to reclusion perpetua and to pay a fine of P20,000.00 for violation of Section 4 of the Dangerous Drugs Law (RA 6425), which penalizes drug-pushing.

The antecedents to accused-appellant's apprehension follow: Shortly before noon on 26 March 1985 three (3) NARCOM agents, T/Sgt. Renato Remetiera, Sgt. Alejandro Binan, and CIC Teddy Rosaroso, with a lady poseur (whose identity was withheld by the prosecution for security reasons) planned a "buy-bust" operation against accused-appellant who, after surveillance, was already suspected of engaging in the sale of marijuana. After Sgt. Binan had marked some bills, namely, three (3) P20.00 bills, one (1) P10.00 bill, and six (6) P5.00 bills, provided by the City Mayor of Tagbilaran, they were handed to the lady poseur for buying marijuana from accused-appellant. The group then proceeded to the latter's boarding house at 15 G. Borja St., Tagbilaran, Bohol. The three policeman positioned themselves around the area, with Remetiera posting himself seven (7) to eight (8) meters directly from accused-appellant's house; Sgt. Binan, beside the door; and Pat. Pungang, in a pedicab parked six (6) to seven (7) meters from the house. Apparently the poseur buyer and accused-appellant had an understanding before then because when the former went to the door of the boarding house, she was already met by the accused. After a short conversation, the lady poseur handed the marked money to accused-appellant after which the latter went inside his room and came back with a small package wrapped in newspaper. After the package was unwrapped, which was the pre-arranged signal, the three (3) policemen emerged, identified themselves as NARCOM agents and arrested the accused-appellant. Sgt. Binan recovered the marked money from the accused while Pat. Puangang recovered the package which was wrapped from the poseur buyer. Accused-appellant was then taken to the NARCOM office in the pedicab used by Pat. Puangang.

Sgt. Binan conducted a field test using a Narcotic Identification System and found the contents of the package positive for marijuana. This was confirmed by further tests conducted by the Forensic Chemist of the PC-INP Crime Laboratory in Cebu City.

The day after, or on 27 March 1985, the three policemen executed a Joint Affidavit describing their operation and the steps they had taken in apprehending accused-appellant (Exhibit "1").

In an Information dated 3 March 1985 accused-appellant was charged with having "wilfully, unlawfully, feloniously and knowingly, without any legal purpose sell, deliver, give away or distribute one (1) cellophane bag of marijuana leaves, weighing approximately thirty two (32) grams, without having been licensed or authorized by law, contrary to the provisions of Sec. 4, Art. II of RA 6425 as amended by PD Nos. 44, 1675, 1683, 1708 and BP Bilang 179."

For his part, accused-appellant stoutly denied that he had sold marijuana to any woman and maintained that he was just framed-up. His version is that when Sgt. Binan and his companions raided and searched his room, they found no marijuana; instead they found his wallet with P350.00 on the table which Sgt. Remetiera said constituted the "proceeds of marijuana"; Remetiera then went out of the room and came back with a package which he "got from the girl" (t.s.n., October 7, 1985, p. 50); that the bills were not taken from him from his house but from the NARCOM office; that in said office he was just told that the P100.00 was the one paid to him by the woman who bought the marijuanas; that the police got from him in addition P20.00 for gasoline of the pedicab (t.s.n., October 17, 1985, p. 114); that Binan and Remetiera did not tell him that the bills were marked and that he himself could not identify his own money; and, finally, that neither was he shown the markings on the bills at the NARCOM office.

After trial, the lower Court disbelieved the denials by accused-appellant, found no substantial inconsistencies between the testimonies of Sgts. Remetiera and Binan in open Court and their Joint Affidavit, and penalized accused-appellant as follows:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered finding accused Celso Jandayan y Inojales GUILTY beyond reasonable doubt of Violation of Section 4, R.A. 6425 as amended otherwise known as Dangerous Drugs Act of 1972 committed under the circumstances described in the aforequoted Information and as penalized under Sec. 4 of Art. 2 of R.A. 6425 as amended by PD 44 and BP 179, the Court hereby sentences accused Celso Jandayan y Inojales to suffer the penalty of imprisonment of Reclusion Perpetua and to pay the fine of P20,000.00 and to pay the cost of these proceedings.

"The marijuana which is packed and marked Exhibit A is ordered confiscated in favor of the government. The marked money marked Exhibit C, C-1 to C-9 is ordered returned to the City Mayor of Tagbilaran, Jose Ma. Rocha.

"The accused Celso-Jandayan y Inojales is not a drug dependent, barely 26 years old, and still single and a college student and in view of these attendant circumstances this Court hereby recommends the granting of executive clemency to him after service of part of the penalty imposed upon him by this Court.

SO ORDERED." (p. 138, Original Record)

In this appeal, the Trial Court is faulted with the following errors:

"1. The lower court ERRED in not dismissing the Information on a demurrer to the evidence which pointed out the impossibility of three (3) persons testifying exactly to the same thing about a given incident, but with neither one of them being able - as was the case with the three (3) joint affiants - to point out which part of the affidavit was known to him of his personal knowledge and which were personally known to the other affiants, and instead compelled the accused to present still his own evidence;

"2. The lower court erred in considering that the evidence for the prosecution established the guilt of the accused beyond reasonable doubt." (pp. 4-5, Brief for the Accused-Appellant)

We make short shrift of the first error assigned. Accused-appellant's claim that it was impossible for the three affiants to give identical statements touching on the same matter and thus, the lower court committed an error when it denied his demurrer to evidence, is without basis. The three affiants, Sgts. Remetiera, Binan and Puagang, constituted the team which planned and implemented to a successful conclusion the "buy-bust" operation. It was but natural, therefore, for their declarations/testimonies to be identical.

And as the Solicitor General states, it is pointless for accused-appellant to argue on the incorrectness of the denial of his demurrer to the evidence. In fact, under Section 15, Rule 119 of the 1985 Rules on Criminal Procedure, when accused-appellant filed his demurrer to the evidence he is deemed to have waived his right to present

evidence and to have submitted the case for judgment on the basis as the evidence for the prosecution. Nonetheless, he was still allowed by the Trial Court to present his evidence and what is now for review before this Court is not only the evidence for the prosecution but also that of the defense.

The second assigned error is neither persuasive. The testimony of the three policemen who took the witness stand suffice to establish the essential elements of the crime charged. The fact that the lady poseur was not presented as a witness at the trial does not work against the prosecution (*People vs. Abedes*, 146 SCRA 132 [1986]) nor invalidate the judgment of conviction. Her testimony, at best, would have been merely corroborative.

That the bills were, in fact, marked appears on their face. The markings appear as initials of Sgt. Binan in the center of the circular seal of the Central Bank. As Sgt. Binan clarified, he made the markings almost "invisible" in order to avert suspicion (t.s.n., August 16, 1985, p. 6). It may be that during the testimony of Sgt. Remetiera, the Trial Judge had remarked that the markings could not be seen. That was understandable, however, as Sgt. Remetiera had nothing to do with said markings and was not in a position to identify the same. In the Decision, however, the Trial Judge declared the existence of the markings. The absence of a file list of the serial numbers of the marked money would neither disprove that the bills were marked. A listing was made by the policemen (Exhibit "F") and while said list was admittedly not submitted to the Investigating Fiscal, the marked bills themselves were turned over to the latter during the investigation and were subsequently presented in evidence. Besides, act accused-appellant himself had testified, he saw Sgt. Binan "opening the logbook and after scanning the pages thereof he entered thereon the serial numbers of the money" (t.s.n., October 7, 1985, p. 52). The insinuation of the defense, therefore, that the markings were spurious is pure conjecture, without any solid basis.

Appellant's claim that he was not actually engaged in the selling of marijuana is bereft of any credibility in the face of the undisputed fact that before the arrest he had been the subject of undercover police surveillance due to suspected drug trafficking. A NARCOM agent, CIC Teodosio Rosarosa, also a prosecution witness, had succeeded in befriending accused-appellant before the incident so much so that he told the agent that he was merely "keeping", not "selling" marijuana. Rosarosa was even able to advise accused-appellant to stop doing so, which he promised to, but apparently did not (t.s.n., August 30, 1985, p. 106). Moreover, if accused-appellant were really innocent, there would have been no reason for him to deny, at the time of his apprehension, that he was "Celso". As it was, his identity was confirmed only at the NARCOM office.

All told, like the Trial Judge, we find the testimonies of the prosecution witnesses, who are police officers and who are presumed to have regularly performed their duties, credible, no convincing contrary evidence having been presented.

WHEREFORE, the judgment appealed from is hereby AFFIRMED. Considering, however that accused-appellant is not a drug dependent, is 26 years of age, single, and a college student, the Court reiterates the recommendation given by the lower Court that he be granted executive clemency after service of part of the penalty imposed upon him, consistent with the objective of the Dangerous Drugs Act and in order to give him a chance to reform himself outside the confines of prison gates.

Costs against accused-appellant, Celso Jandayan y Inojales.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Judge Andrew S. Namocatcat, presiding.

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