

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO CLAVO, JR., ACCUSED-APPELLANT.

G.R. No. 76132. September 26, 1988

Ponente: PARAS, J.

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PARAS, J.:

Fernando Clavo, Jr. appeals from the Decision of the Regional Trial Court of Manila, Branch XVIII in Criminal Case No. 84-30346, the dispositive portion of which is as follows:

“WHEREFORE, the accused Fernando Clavo, Jr. y Baldosa is hereby declared guilty beyond reasonable doubt of having violated Sec. 4, Article II of Republic Act 6425, as amended in relation to Sec. 2(1), Art. I thereof by selling dried marijuana flowering tops. He is accordingly sentenced to life imprisonment and to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

“The two tea bags containing marijuana flowering tops presented as evidence in this case are hereby ordered sent to the Dangerous Drugs Board for its proper destruction and disposition.

"SO ORDERED."

(p. 4, Decision; p. 65, Rollo)

on the following assignments of error:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE EVIDENCE FOR THE PROSECUTION AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE; AND

II

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME AS CHARGED IN THE INFORMATION. (Brief for the Accused-Appellant, p. 54, Rollo)

The facts established by the prosecution are summarized in the People's Brief, to wit:

“About a month prior to September 25, 1984 Patrolmen Wilfredo S. Ortega, Florentino Angelo, Jr., and Noel Viscarra, all members of the Western Police District (WPD), Manila assigned to the Drug Enforcement Section, conducted a surveillance in the vicinity of the house located at No. 1344 G. Tuazon, Sampaloc, Manila, regarding the illegal sale of marijuana (p. 2, TSN, December 5, 1984). As a result of this surveillance, they came to know that the suppliers of marijuana along G. Tuazon, Sampaloc, Manila, were a certain Alex, appellant Fernando Clavo, Jr., and one whose name they did not know (p. 4, TSN, December 5, 1984).

"On September 25, 1984 at around 12:30 p.m., they conducted a buy bust operation (P. 4, TSN, December 21, 1984). As planned, Patrolman Ortega would pose as buyer of marijuana and on signal of Patrolman Ortega, Patrolmen Angelo, Jr. and Viscarra would frisk and apprehend appellant. On that particular date and time, Patrolman Ortega pretended to be a student carrying notebooks. He had a long mustache and wore faded

maong (p. 3, TSN, December 5, 1984). He was standing in front of house No. 1344, Tuazon St., Sampaloc, Manila and was convincing appellant to sell to him marijuana. Patrolman Ortega gave to appellant two (2) ten-peso bills, which were previously marked with initials by Patrolmen Ortega and Viscarra. Appellant left and went across the street. After about three or four minutes, appellant came back, and handed two tea bags of marijuana to Patrolman Ortega. Upon signal of Patrolman Ortega, appellant was accosted and apprehended by Patrolmen Angelo, Jr. and Viscarra. Patrolman Ortega helped in the apprehension of appellant (p. 6, TSN, December 5, 1984). The marked two ten-peso bills were confiscated from appellant by Patrolman Angelo, Jr. (P. 13, TSN, December 21, 1984).

“After appellant was apprehended he was brought to the police station for investigation. Appellant was investigated by Patrolman Viscarra. Appellant verbally admitted that he handed marijuana to Patrolman Ortega who posed as a buyer. Patrolman Viscarra asked appellant where the marijuana came from. Appellant replied that it came from a certain place in Forbes known as “Lungga”. Patrolman Viscarra prepared the Crime Report and the Booking and Information Sheet of appellant (pp. 18-21, TSN, December 21, 1984).

“On September 25, 1984 about 2:30 p.m. Leonora Vallado, a Supervising Forensic Chemist of the National Bureau of Investigation received from Patrolman Viscarra dried pieces of marijuana or dried marijuana flowering tops contained in a sealed plastic bag with rolling papers with marking together with an official letter-request (p. 4, TSN, November 26, 1984). She subjected the specimen to microscopic and chemical examination and she found that the flowering tops are positive for marijuana (p. 5, TSN, November 26, 1984; Exh. “B”). She also conducted a chromatographic examination and found the specimen positive for marijuana (p. 6, TSN, November 26, 1984; Exh. “C”).” (pp. 2-5, Brief for the Appellee; pp. 78-81, Rollo)

Consequently, Fernando Clavo, Jr. was charged with the serious crime of drug pushing as defined and penalized under Sec. 4, Art. II in relation to Section 2 (1) of Article I of Republic Act No. 6425, as amended, otherwise known as Dangerous Drugs Act of 1972, in an Information which reads:

“That on or about September 25, 1984 in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there willfully and unlawfully sell or offer for sale dried marijuana flowering tops and rolling papers contained in two (2) sealed teabags, which is a prohibited drug.” (p. 1, Brief for the Appellee; p. 77, Rollo)

Appellant pleaded not guilty when arraigned. But as against the foregoing evidence of the prosecution, appellant had only his own uncorroborated testimony denying the damaging testimonies of the three (3) policemen. He claimed that he was only resting inside an abandoned vehicle beside a junk shop after he had sold and delivered empty bottles to his buyer and capitalist, when one of the policeman in plain clothes approached him and asked him if he knew a certain Alex.

According to appellant, he told the man that he knew Alex. Then he was asked by the man to accompany him to Alex. He, however, refused because he was tired. Instead, he just pointed to the man the house of Alex which was at No. 1317 G. Tuazon. The man then left.

A short while later this man returned with two other men and they arrested him and brought him to their jeep parked some distance away. There he saw Pat. Angelo and Viscarra seated inside the owner-type jeep. He was then brought to the Police headquarters where he was further investigated.

When he was asked what could be the reason why these three policemen would be falsely implicating him as a pusher he said that it was because he had refused to help them arrest Alex. He disclosed that five days after his arrest the police authorities succeeded in arresting Alex and he has been charged accordingly.

The appellant also gave as a possible reason why the policemen arrested him the fact that he had tattoos. When he explained to them that these tattoos had been acquired by him during his incarceration at Sablayan Penal Colony

and showed to them his parole papers, the policemen still insisted on arresting him and later charging him as a pusher (p. 64, Rollo).

In its now assailed Decision the trial court ruled:

“The resolution of this case hinges principally on a question of credibility. This Court finds no sufficient reason to discredit the testimonies of the three policemen who arrested the accused immediately after he sold to one of them the two tea bags containing marijuana. This Court is not convinced by the claim of the accused that the reason why he was implicated by these policemen is simply because he refused to help them arrest Alex and because he had tattoos.” (Decision, pp. 3-4, Rollo, pp. 64-65).

We affirm the conviction. The findings of the trial court are in accord with law and substantiated by the evidence and therefore deserve to be upheld.

Prosecution witness Patrolman Wilfredo S. Ortega testified:

Q. Pat. Ortega, you said that you are a policeman. In what city are you connected with as a policeman?

A. I am connected with the Drug Enforcement Section of the Western Police District.

Q. And since when have you been with the Drug Enforcement Section of the Western Police District?

A. I have been in the Drug Enforcement Section since October 10, 1983.

Q. Up to the present?

A.

Yes, sir.

Q. On September 25, 1984 at about 12:30 o'clock in the afternoon, do you remember where you were?

A. Yes, sir.

Q. Where were you?

A. I was in front of house No. 1344 Tuazon Street.

Q. What were you doing at Tuazon in front of 1344? What were you doing there?

A. I was standing, convincing the suspect who is engaged in the illegal sale of prohibited drug of marijuana.

Q. Who is the person you were convincing?

A. Fernando Clavo, sir.

Q. Will you please point to this Fernando Clavo, Jr. if he is in the courtroom?

A. He is there.

(Witness pointed to Fernando Clavo, Jr.).

Q. How did you come to meet Fernando Clavo at G. Tuazon in front of house No. 1344?

A.

We had been conducting a surveillance for about one month before and that's why we know that he is engaged in the illegal sale of marijuana.

FISCAL

Q. How did you come to see him on that particular date and time?

A.

Because first of all when we conducted a surveillance we were following up an information for more than one month before the apprehension of the suspect. I knew his face but I did not know his exact name before.

Q. You said that you were convincing him to sell to you marijuana; what was his answer to you?

A. When I convinced him to sell marijuana to me I handed to him two P10.00 bills and he told me he would come back.

Q. Did he come back?

A. Yes, sir.

Q. What did he do when he came back?

A. He handed to me two T bags of suspected marijuana.

Q.

I am showing to you 2 T bags of marijuana. Will you please examine the same and inform this Honorable Court what relation these two T bags of marijuana have to the ones handed to you by the accused which have been marked as Exhibit 1?

A. This is the marijuana handed to me by the suspect.

Q. What did you do after these two T bags of marijuana were given to you by the accused?

A.

When he handed to me these two T bags of marijuana, I left him to my companions Pat. Noel Viscarra and Florentino Angelo and I accosted him and helped them in the apprehension of the suspect.

Q. Where was he brought?

A. To the office.

Q. For what?

A. For investigation.

Q. What about the two P10.00 bills where are these now?

A. They are now in the possession of the officer in the case, the investigator, Pat. Viscarra.

Q.

How were you able to convince the accused to sell these two T bags of marijuana?

A.

When we conducted the surveillance we have known that he sells marijuana to anyone as long as he has the money. That is why I convinced him. I posed myself as a student; I had notebooks and I wore faded maong. That is why maybe he was confident and I had a long mustache.

FISCAL

Q. How did you know it will cost P20.00 for the two T bags?

A. One T-bag costs P10.00, sir, because he told me every T bag costs P10.00.

Q. And what did you do with these two T bags of marijuana?

A.

When we apprehended the suspect, we brought them to our office and left them at the office and it was the investigator who made the request for the laboratory test of the suspected marijuana.

(pp. 2-4, TSN, December 5, 1987; pp. 9-12, Brief for the Appellee; pp. 85-88, Rollo).

The aforesaid testimony of Patrolman Ortega has established the manner the "buy bust" operation, which resulted in the apprehension of appellant as pusher of marijuana, was implemented. Patrolman Ortega's testimony was corroborated on material points by the testimonies of Patrolmen Angelo and Viscarra. The testimonies of these prosecution witnesses have clearly established appellant's culpability. It has not been shown that they had any improper motive to testify falsely against appellant. They testified as they did merely in compliance with their duty as enforcers of the law (*People v. Eslabon*, 145 SCRA 396). As stated in *People v. Patog*, (G.R. No. 69620, September 24, 1986):

"Where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit." See also *People v. Campana*, 124 SCRA 271, *People v. de Jesus*, 145 SCRA 521).

On the other hand, the defense offered by appellant is clearly concocted and deserves no credence.

WHEREFORE, the decision appealed from being in accord with law and the evidence, the same is hereby **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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