

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO PACO Y TAMAYO, DEFENDANT-APPELLANT.

G.R. No. 76893. February 27, 1989

Ponente: CORTES, J.

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CORTES, J.:

Appellant Eduardo Paco in the Court of First Instance of Rizal in Pasig, Metro Manila, was charged with the crime of selling prohibited drugs as defined in Sec. 4 of Rep. Act No. 6425, as amended, entitled "The Dangerous Drugs Act of 1972." The information filed on August 2, 1982 reads:

That on or about the 25th day of July, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, without having been authorized by law, did then and there wilfully and feloniously sell and deliver to another person three (3) aluminum foils of dried marijuana fruiting tops having a total weight of three (3) grams. [RTC Decision, p. 1; Rollo, p. 20.]

On arraignment, appellant entered a plea of not guilty. His subsequent motion to withdraw his plea of not guilty to the offense charged and to change it to that of guilty to the lesser offense of possession of prohibited drugs defined in Sec. 8 of the same law was denied upon opposition by the fiscal. The case was transferred to the Regional Trial Court of Makati, Branch XL (40) which, after trial, entered a judgment of conviction. The dispositive portion reads:

WHEREFORE, the Court finds accused, Eduardo Paco y Tamayo guilty beyond reasonable doubt of the crime charged in the information, and hereby imposes upon him the prescribed penalty of life imprisonment and a fine of P20,000.00. He is also ordered to pay the costs. [RTC Decision, p. 10; Rollo, P. 29.]

The appellant assails his conviction on the following grounds:

I

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN ADMITTING THE PESO BILLS AND THE FOILS OF MARIJUANA ADDUCED IN EVIDENCE BY THE PROSECUTION.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

The prosecution's evidence may be summarized as follows:

After receiving information that there was rampant selling of Marijuana in the Guadalupe, Makati area, Sgt. Recto Dacayanan, a resident therein, made a surveillance and found out that the appellant, also a resident of the area, was involved in the illegal trade [TSN, September 8, 1983, pp. 3-4.] To verify his information, Sgt. Dacayanan conducted a test-buy operation on the appellant on July 25, 1982 at around ten o'clock in the morning. Posing as a

buyer, Sgt. Dacayanan approached the appellant and told him in Tagalog, "Kung puede akong maka score ng damo." [TSN, October, 20, 1983, p. 14.] The appellant told him to wait, and after going to a nearby house located at 1107-C Bataan St., Guadalupe, Makati, returned with one foil of marijuana leaves. After paying P10.00 to the appellant, Sgt. Dacayanan left with the tacit understanding of another transaction in the future. Sgt. Dacayanan proceeded to report the test-buy operation to TSgt. Pedro H. Guevarra of the 3rd Mobile Patrol Company, Southern Sector Command and Reaction Strike Force Batallion, PC Metrocom Fort Bonifacio, Makati [TSN, August 30, 1983, p. 3; October 20, 1983, p. 7] who formed a team to conduct a buy-bust operation with himself as teamleader, SSgt. Artemio Petil, Sgt. Rolando Feraer, CIS Leoncio Cudiamat, CIC Nestor Lasala and Sgt. Dacayanan who was to act as poseurs-buyer. At around 5:00 p.m. of the same day, the team spotted the appellant near a basketball court at Bataan St., Guadalupe, Makati. While the other members of the team positioned themselves in strategic places keeping their distance from the appellant, Sgt. Dacayanan approached him and offered to buy P20.00 worth of dried marijuana leaves. After the exchange of two foils of marijuana leaves (Exh. "G") and the money, composed of one P10.00 bill (Exh. "A") and two P5.00 bills (Exhs. "B" and "C") earlier marked by the law enforcers, Sgt. Dacayanan signalled his companions indicating that the transaction had been made [TSN, October 20, 1983, p. 9] and then identified himself to the appellant as a Metrocom officer [TSN, October 20, 1983, p. 18.] Appellant tried to escape by running away but Sgt. Dacayanan fired two warning shots and together with his companions succeeded in apprehending him [TSN, October 20, 1983, P. 17.] The marked bills were recovered from the pocket of the appellant [TSN, August 30, 1983, p. 15.]

Upon chemical analysis conducted by the forensic chemist of the PC Crime Laboratory at Camp Crame, the first foil of suspected marijuana fruiting tops acquired by Sgt. Dacayanan during the morning test-buy operation as well as the two other foils sold by the appellant to Sgt. Dacayanan in the afternoon buy-bust operation were found "positive for marijuana" [TSN, September 22, 1983, P. 10; Exh. "I".]

In his defense, the appellant denied having sold marijuana to anybody. He disowned the three (3) foils of marijuana leaves (Exh. "G") as well as the marked bills (Exhs. "A", "B" and "C".) He testified that on July 25, 1982, at around 5:18 p.m., while playing basketball with his friends, a man whom he later recognized as Recto Dacayanan, came from behind him and shouted "Eduardo, do not run." Frightened, he ran but stopped when Sgt. Dacayanan identified himself as a member of the Metrocom. Whereupon, he was searched by Sgt. Dacayanan and some other persons who took P9.00 from his wallet [TSN, May 30, 1985, PP. 4-5.] He also testified that before he was searched, he saw Sgt. Dacayanan holding two foils of marijuana leaves [TSN, May 30, 1985, P. 9.] When later brought to Fort Bonifacio, he was forced to admit the fact that he sold marijuana leaves to Sgt. Dacayanan but he refused [TSN, May 30, 1985, pp. 8-9.]

The first issue raised by the appellant is the admissibility of the marked peso bills and the three foils of marijuana leaves.

Appellant claims that the court a quo erred in admitting the peso bills and the foils of marijuana introduced by the prosecution, alleging that these were products of a warrantless search made after an equally warrantless arrest.

Appellant's contention is devoid of merit.

A distinction should first be made in the manner by which the policemen acquired possession of the three foils of marijuana leaves on the one hand, and the marked peso bills on the other. The first foil of marijuana leaves obtained by Sgt. Dacayanan when he conducted the test-buy operation in the morning was voluntarily given by the appellant since no arrest or search was made at that time [TSN, May 30, 1985, p. 1.] The other foils of marijuana leaves subject matter of the afternoon buy-bust operation were obtained by the police prior to the arrest and search [TSN, October 30, 1983, p. 9.] Hence, only the marked peso bills were seized by the police as a result

of the search made on the appellant. The admissibility of these marked peso bills hinges on the legality of the arrest and search on the person of the appellant.

Appellant questions the validity of both arrest and search on the ground that neither was authorized by a warrant. However, the warrantless arrest made by the law enforcers was valid since it falls under the provisions of Rule 113, Sec. 5 (a) of the Rules of Court which provides:

Sec. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

* * *

Having caught the appellant in flagrante as a result of the buy-bust operation, the policemen were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest. And since appellant's arrest was lawful, it follows that the search made incidental to the arrest was also valid [Rule 126, Sec. 12; *Alvero v. Dizon*, 76 Phil. 637 (1946); *People v. Claudio*, G.R. No. 72564, April 15, 1988.]

The second issue raised by appellant is whether or not his guilt has been proved beyond reasonable doubt. A resolution of this issue hinges on the credibility of witnesses.

The trial court's judgment of conviction relied heavily on the testimony of Sgt. Dacayanan, to whom, as poseur-buyer, the illegal drug was sold. He testified that when the police team located the appellant, he approached the latter and offered to buy P20.00 worth of marijuana, whereupon, appellant took out two foils of marijuana leaves from one of the pockets of his pants and handed them to Sgt. Dacayanan. He stated that after paying appellant with the marked peso bills, he signalled the other members of the police team to move in and at the same time introduced himself as a policeman to appellant. At this point appellant fled but the policemen succeeded in apprehending him [TSN, October 20, 1983, p. 9.]

The Court, after a careful perusal of the record finds the testimony of Sgt. Dacayanan regarding the buy-bust operation which resulted in the apprehension of appellant to be direct, lucid, forthright and, being totally untainted by contradictions in any of the material points, deserves credence.

Moreover, his testimony was corroborated by Sgts. Angara and Guevarra. Although neither saw the actual exchange because of their relative positions, they nevertheless positively identified appellant as the person who was in a huddle with Sgt. Dacayanan at the scene of the operation, and from whom the marked peso bills were recovered. [TSN, August 30, 1983, pp. 11-13; August 16, 1984, pp. 10-12.]

Against the positive identification of appellant as the seller of marijuana leaves, the mere denials of appellant cannot prevail [*People v. de Jesus*, G.R. Nos. 71942-43, November 13, 1986, 145 SCRA 521; *People v. Khan*, G.R. No. 71863, May 23, 1988] especially where an attempt to flee was made by him. Well-settled is the rule that flight is inconsistent with the claim of innocence [*People v. Agapito*, G. R. No. 73786, October 12, 1987, 154 SCRA 694; *People v. Dimatulac*, G. R. No. 72400, January 5, 1988)

However, appellant impugns the credibility of the prosecution witnesses upon theory that the entire incident was a frame-up planned by Sgt. Dacayanan. Appellant, in trying to establish ill motive on the part of Sgt. Dacayanan, testified that the latter had played mahjong with him every Sunday for six months prior to the incident and had gotten mad at appellant on those occasions when he had lost [TSN, June 25, 1985, pp. 7-8.]

This allegation was however, contradicted by the only other defense witness Edmundo Eguisquiza. He testified

that although he was in the constant company of the appellant on those occasions when the latter played mahjong, he never saw Sgt. Dacayanan play mahjong with appellant [TSN, November 26, 1985, pp. 4-7.]

Furthermore, in the counter-affidavit the appellant submitted to the fiscal and which he offered in evidence as Exh. "I" he referred to Sgt. Dacayanan only as "isang taong nakakasa ang baril" (a person whose gun was cocked). In the same affidavit, appellant explained his flight by saying that "sa aking kabiglaan ay napatakbo ako dahil hindi ko kilala ang mga taong iyon na naka-civilian" (startled, I ran away because I did not know those persons in civilian clothes). If indeed it were true appellant and Dacayanan had been playing the mahjong together for at least six months and that the latter had gotten mad at the former on those occasions when he had lost, the appellant should have been able to identify Sgt. Dacayanan in the statement taken after his arrest. The excuse that appellant was still confused at the time of the execution of the affidavit is untenable as the same was subscribed and sworn to by him on July 28, 1982 or three days after his arrest.

Ill motive imputed to the prosecution witness because of the facility by which the accused can fabricate the same [People v. Madarang, G.R. No. 70569, January 7, 1987, 147 SCRA 123], must be proved by clear and sufficient evidence. Here, the appellant failed to convince the Court that Sgt. Dacayanan was motivated by his desire to avenge his losses to appellant in mahjong. In the absence of convincing evidence that the principal prosecution witness acted because of improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit [People v. Campana, G. R. No. L-37325, August 30, 1983, 124 SCRA 271; People v. Patid, G.R. No. 69620, September 24, 1986, 144 SCRA 429; People v. De Jesus, supra.] This is especially true in this case since Sgt. Dacayanan, as well as the two other prosecution witnesses are law enforcers who are presumed by law to have regularly performed their duty in the absence of proof to the contrary [Rule 131, Sec. 5 (m), Rules of Court; People v. De Jesus, supra; People v. Madarang, supra; People v. Claudio, supra; People v. Khan, supra.]

Appellant next argues that it is improbable for a drug pusher to ply his illegal trade in a public place like a basketball court.

This contention is without merit.

Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall [People v. Rubio, G.R. No. 66875, June 19, 1986, 142 SCRA 329; People v. Sarmiento, G.R. No. 72141, January 12, 1987, 147 SCRA 252], in front of a store [People v. Khan, supra; along a street at 1:45 p.m. [People v. Toledo, G.R. No. 67609, November 22, 1985, 140 SCRA 259], and in front of a house [People v. Policarpio, G. R. No. 69844, February 23, 1988.]

Finally, in attempting to discredit the prosecution witnesses' credibility, appellant points to the failure of the arresting team to secure a search warrant for and raid the house at 1107-C Bataan St., Guadalupe, Makati, where Sgt. Dacayanan saw appellant secure the foil of marijuana leaves which the former bought during the morning test-buy operation. Appellant finds it irregular for the policemen to be contented with "arresting and charging a small-time alleged pusher when the arresting team have [sic] ample time to catch a bigtime source of marijuana" [Petition, p. 6; Rollo, p. 70.]

First of all, appellant assumes that a substantial amount of marijuana is stored in the house. This is not borne out by the records and is at best a mere conjecture. Secondly, neither Sgt. Dacayanan nor the other members of the

arresting team had any basis for securing a warrant to search the house. As testified to by Sgt. Dacayanan [TSN, August 30, 1983, p. 3] and corroborated by TSgt. Guevarra [TSN, October 20, 1983, p. 7] upon the completion of the test-buy operation in the morning, the former reported the matter to the latter who immediately dispatched a team to conduct a buy-bust operation on the appellant, which was conducted in the afternoon of the same day. Having no sufficient knowledge regarding the possible storage of marijuana in the aforementioned house, the policemen were in no position to apply for a search warrant. And having already gained the confidence of the appellant because of the successful transaction in the morning, there was nothing irregular in apprehending him at the soonest possible time to prevent the further commission of the crime.

In fine, after a careful examination of the records the Court finds no substantial reason to depart from established rule that the Supreme Court regards respect and will generally not disturb the findings of the trial court on the credibility of witnesses, unless certain facts of substance and value have plainly been overlooked which if considered, might affect the result of the case [People v. De Jesus, *supra*; People v. Capulong, *supra*.]

The evidence presented by the prosecution, upon which the trial court based its judgment of conviction, is overwhelmingly against the pretended innocence of the appellant and has proved to a moral certainty the latter's guilt of the crime of selling prohibited drugs.

WHEREFORE, in view of the foregoing, the decision appealed from is AFFIRMED.

SO ORDERED.

Fernan, C. J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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