

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONORIO CONSUELO Y PORTUGAL, DEFENDANT-APPELLANT.

G.R. NO. 77755. April 18, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

In an information, docketed as Criminal Case No. 17859 of the Regional Trial Court at Makati, Metro Manila, Honorio Consuelo y Portugal was charged with Violation of Sec. 4 of Republic Act No. 6425, as amended, committed as follows:

"That on or about the 16th day of July, 1985, in the Municipality of Las Pinas, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously sell and/or deliver marijuana leaves with seeds, a prohibited drug." [1]

When arraigned, the accused, assisted by counsel, entered a plea of "not guilty" of the commission of the crime.[2] He was tried and found guilty, as charged, and sentenced to suffer the penalty of life imprisonment and to pay a fine of P20,000.00, with costs against him. The marijuana leaves and seeds were confiscated and forfeited in favor of the Government and ordered turned over to the Dangerous Drugs Board for proper disposal.[3]

The accused is now before the Court seeking reversal of the judgment.

The evidence for the prosecution may be summarized as follows:

At about 8:50 o'clock in the morning of 16 July 1985, the PC NARCOM unit based in Camp Crame, Quezon City received a tip from one of its confidential informants that one "Totoy" was selling and distributing marijuana somewhere in St. Joseph Subdivision, Las Pinas, Metro-Manila. A team, composed of Sgts. Kitane, Pulumbarit, Abulencia, and Talunas, and P/Cpl. Magno, was immediately sent to the place to conduct a "buy-bust" operation and arrest the offender. Sgt. Kitane was designated head of the team and Sgt. Abulencia, as the "poseur-buyer." Sgt. Abulencia was given two (2) ten-peso bills, with Serial Nos. YC738718 and YC410751, dusted with ultra violet powder.[4]

The NARCOM team arrived at the St. Joseph Subdivision at about an hour later. The informant and Sgt. Abulencia, who was to pose as the buyer, then went to the house of the appellant along Paradero St., while the other members of the team took up strategic positions nearby. After Sgt. Abulencia was introduced to the appellant, he told the latter that he wanted to buy marijuana. The appellant asked how much, and when Sgt. Abulencia replied that he wanted to buy P20.00 worth of marijuana, the appellant left and went inside the house. Upon his return, he handed to Sgt. Abulencia two (2) "rolls of empty pack of marlboro." [5] Sgt. Abulencia, in turn, gave the appellant the marked ten-peso bills. Sgt. Abulencia examined the "rolls of empty pack of marlboro" and upon finding that they contained marijuana leaves, Sgt. Abulencia gave the pre-arranged signal to his companions by scratching his head. Upon seeing the signal, the other members of the team went to them (Sgt. Abulencia and appellant) and placed the appellant under arrest. The appellant was searched and the team recovered the marked money which the appellant was still clutching in his left hand, as well as four (4) "hand

rolled marijuana leaves" from his pocket.[6] After a search of the premises, the agents also found a plastic bag[7] containing marijuana leaves.[8]

The appellant and the money used in the "buy-bust" operation were brought to the PC Crime Laboratory and after examination, it was found that ultra violet fluorescent powder was present in the hands of the appellant and on the money bills.[9]

The plastic bag, the "rolls of empty pack of marlboro" and the hand-rolled marijuana leaves were also sent to the crime laboratory and after examination, they were found to contain marijuana leaves and seeds.[10]

The appellant denied that he was a drug pusher or the owner of the marijuana leaves, subject-matter of this case. His defense is that he was framed up. According to him, he was a tricycle driver and was boarding in the house of Alberto Ignacio located at St. Joseph Subdivision, Almanza, Las Pinas, Metro-Manila. On 16 July 1985, he left the house at about 4:00 o'clock in the morning to ply his route and returned at about 10:00 o'clock in order to eat. While he was in the house, four (4) persons came looking for Alberto Ignacio, a notorious drug pusher, in order to arrest him. But the said Alberto Ignacio was not in the house as he had left earlier, after receiving a tip that he would be arrested that morning. When the arresting officers could not find Alberto Ignacio, they arrested him (accused) instead. He was handcuffed and the ten-peso bills were placed in his hands. The police officers also asked him where the marijuana leaves were kept but he answered them that he did not know and even told them that they could search the house, if they so pleased. After a while, the police officers returned with a plastic bag said to contain marijuana leaves. He was made to sign a receipt[11] for the marijuana leaves, allegedly seized from him, which receipt he signed because he was afraid that he would be harmed if he refused to do so. Thereafter, he was brought to the PC headquarters for further interrogation, but he did not sign any statement.[12]

In support of his appeal, the accused-appellant, through counsel, contends that the evidence presented by the prosecution is not sufficient to prove his guilt beyond reasonable doubt, for the reasons that the testimony of Sgt. Abulencia, the "poseur-buyer", on how the marijuana leaves were handed to him in exchange for the marked ten-peso bills is not corroborated; that the testimony of Sgt. Pulumbarit, which is supposed to corroborate the testimony of Sgt. Abulencia, is vague and contradicts the testimony of Sgt. Abulencia on some points; and that the prosecution failed to prove that the person named "Totoy" who was reported by the confidential informant to the NARCOM and the accused-appellant are one and the same person.

The appellant further contends that it is very difficult to believe that an alleged drug pusher would readily sell a prohibited drug to a total stranger, or for the appellant to have brought an extra four (4) hand-rolled marijuana leaves to the buyer when only two (2) were sufficient, or to have surrendered the same to the arresting officers since he was handcuffed immediately upon his arrest.

We find no merit in the appeal. While the testimony of Sgt. Abulencia as to what transpired between him and the appellant from the time he was introduced to the appellant until he made the pre-arranged signal to his companions, may not have been corroborated, the rule is that "the testimony of a single witness if credible and positive and if it satisfies the court as to the guilt of the accused beyond reasonable doubt is sufficient to convict." [13] In the instant case, We find Sgt. Abulencia's narration of the sequence of events to be natural, probable and with the earmarks of the truth. His lone testimony, therefore, is sufficient to support a conviction.

The appellant claims that the confidential informant should have been presented to corroborate the testimony of Sgt. Abulencia, or at least, his identity should have been disclosed so that he could be called upon to testify. The appellant argues that this non-disclosure of identity leads one to no other conclusion than that the said informer is a fictitious person.

The established rule, however, is that the matter of who are the witnesses to be presented by the prosecution is addressed to the sound discretion of the fiscal or prosecutor handling the case.[14] The prosecutor had good reasons not to present the informer or identify him in court. The authorities obviously wanted to preserve his cover so that he could continue with his invaluable service. Besides, as the appellant himself admitted, his (informer's) testimony would only be corroborative.

The appellant also enumerates certain alleged defects or discrepancies in the testimony of Sgt. Pulumbarit, a member of the team. We find, however, that these defects or discrepancies, if they be so, refer to minor details which cannot destroy the credibility of said witness.

The appellant further contends that the prosecution failed to prove that the person named "Totoy" who was reported as selling marijuana in Las Pinas and the appellant are one and the same person.

The contention is untenable, Sgt. Pulumbarit and Sgt. Abulencia, members of the NARCOM team, both declared that upon their arrival at the St. Joseph Subdivision in Las Pinas, their informer pointed to them the house where "Totoy" was selling marijuana. Then, Sgt. Abulencia and the informer went to the said house where they found the appellant.[15] Sgt. Abulencia testified that the "Totoy" who sold him marijuana is the appellant. His testimony reads:

"Q

By the way, can you point to that Alias Otoy if he is in Court?

A

Yes, Sir, he is there. (Witness is pointing to a male person and when asked answered that he is Honorio Consuelo y Portugal.)"[16]

At any rate, whether or not the appellant is the "Totoy" reported by the informer to be selling marijuana is not essential. What matters is that the appellant was caught in the act of selling a prohibited drug.

Lastly, the appellant contends that it is very difficult to believe that an alleged pusher, like the appellant, would readily sell a prohibited drug to a total stranger.

This argument was raised in the case of *People vs. Borja*,[17] where the Court, citing *People vs. Tejada*,[18] said that "what matters is not an existing familiarity between the buyer and seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves."

On the whole, we find that the trial court did not commit any error in finding the accused-appellant guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, as amended. We cannot give credence to the defense of the appellant that he was "framed" or that he was apprehended because the NARCOM agents could not find Alberto Ignacio, the alleged real object of their hunt, in view of the positive testimony of Sgt. Abulencia, who had no motive whatsoever to testify falsely against the accused, that the appellant had sold marijuana to him during the "buy bust" operation conducted by the NARCOM team on 16 July 1985.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in all its parts. With costs against the appellant.

SO ORDERED.

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

- [1] Original Record, p. 1
- [2] Id., p. 10
- [3] Id. p. 145
- [4] tsn of December 18, 1985, pp. 2-3: See also Exhibits J and J-1
- [5] Exhibits D-1 and D-2
- [6] Exhibit D-4
- [7] Exhibit D
- [8] tsn of March 5, 1986, pp. 10-11
- [9] tsn of April 2, 1986, p. 3; also Exhibit L
- [10] tsn of March 5, 1986, p. 8; also Exhibit F
- [11] Exhibit B
- [12] tsn of June 2, 1986, pp. 2-3
- [13] People vs. Javier, G.R. No. 70997, February 28, 1990
- [14] People vs. Nabunat, G.R. No. 84392, February 7, 1990
- [15] tsn of December 18, 1985, p. 3; tsn of March 5, 1986, p. 10
- [16] tsn of March 5, 1986, p. 10
- [17] G.R. No. 71838. February 26, 1990
- [18] G.R. No. 81520. February 21, 1989

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