

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO MENDOZA JAVIER Y TORRES, ACCUSED-APPELLANT.

G.R. NO. 77756. March 26, 1990

Ponente: GUTIERREZ JR., J.

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GUTIERREZ JR., J.:

Defendant-appellant Renato Mendoza Javier y Torres was convicted by the Regional Trial Court of Makati, Branch 133, in Criminal Case No. 19359 of violation of Article II, section 4 of Republic Act No. 6425, as amended; otherwise known as the Dangerous Drugs Act of 1972 and was sentenced to suffer the penalty of life imprisonment and a fine of P20,000.00. He now seeks a reversal of the judgment of conviction by the court a quo assigning as errors, to wit:

I

"THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S WITNESSES WHICH WERE TAINTED WITH INCONSISTENCIES AND IMPROBABILITIES.

II

THE COURT A QUO ERRED IN COMPLETELY DISREGARDING THE TESTIMONY OF THE ACCUSED-APPELLANT.

III

THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT CONSIDERING THAT HIS GUILT WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT."
(Appellant's Brief, p. 1; Rollo, p. 41)

Hence, this appeal presents the issue of whether or not the quantum of evidence sufficient to render a judgment of guilt beyond reasonable doubt has been met.

The information filed on September 25, 1985 on the basis of a buy-bust operation conducted by the Narcotics Command (NARCOM) headed by Police Lieutenant Leonardo Lavares reads:

"That on or about the 11th day of September 1985, in the municipality of Las Piñas, 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 dried marijuana fruiting tops, a prohibited drug." (Rollo, p. 6)

The facts for the prosecution are stated by the Solicitor General in his Brief for the Appellee as follows:

"At about 3:00 o'clock in the afternoon of September 11, 1985, the Narcotics Command Unit (NARCOM) of the Philippine Constabulary in Camp Crame, Quezon City, received a report that a certain Ray was selling marijuana to out-of-school youth in Pulang-Lupa, Las Piñas (p. 7, tsn, Jan. 6, 1986).

The NARCOM Commanding Officer, Lt. Manuel Raval, ordered Lt. Lavares to form a team for the 'buy-bust' operation and to arrest the suspect. The team was composed of Lt. Lavares as team leader, Sgt. Aladano buyer-poseur, Sgt. Lagos, Pfc. Labucay and Pulang-Lupa, Las Piñas Brgy. Capt. De La Cruz who was the informant. The team immediately proceeded to Tramo, Pulang-Lupa of Las Piñas. Upon arriving at the designated place, Lt. Lavares gave Sgt. Aladano four 5-peso bills which were previously dusted with ultra-violet powder to use as purchase money (pp. 2-3, tsn, Dec. 2, 1985).

Sgt. Aladano and Brgy. Capt. De La Cruz found appellant at around 4:45 o'clock that afternoon and approached him. De La Cruz, who was appellant's cousin, introduced Sgt. Aladano to appellant. Sgt. Aladano intimated his desire to buy marijuana. For marijuana in two (1) aluminum foils, Sgt. Aladano gave appellant the marked money. Thereafter, appellant left.

After some time, appellant returned. He handed over to Sgt. Aladano something wrapped in a piece of paper. When Sgt. Aladano opened the package, he found the two small packages of marijuana. Immediately, he signaled his companions who were more or less 7 to 10 meters away from them (p. 7, tsn, January 6, 1986).

Appellant tried to escape, but Sgt. Aladano held him by his waist. The team swooped down on appellant. They introduced themselves as members of the NARCOM.

The team brought appellant and the marijuana to their headquarters.

Lt. Tita Advincula, a forensic chemist of the PC-INP Crime Laboratory, examined the contents of the package (Exhibit "H") seized from appellant. She reported that the contents were indeed marijuana.

Appellant himself was examined at the PC Crime Laboratory. In her report (Exh. E), Engr. Isidra de Guzman stated that she found appellant positive of ultra-violet fluorescent powder on both hands, arms and face." (Rollo, pp. 55-58)

On the other hand, the defendant-appellant has a different version of the facts as follows:

"xxx [O]n September 11, 1985 between the hours of five and six in the evening, defendant-appellant was having a snack in a store near their house when all of the sudden, a group of men, introducing themselves as NARCOM agents, arrested him for allegedly selling marijuana fruit tops. After he was handcuffed, he saw a red car with three men on board which suddenly stopped behind him. Two men alighted from the car and approached him. One of them, whom he later identified as Lt. Lavares, placed dried marijuana leaves on his pocket, while a policeman from Las Piñas, a certain Pat. Antonio, demanded money from him in exchange for his release. Since accused-appellant failed to produce any money, he was then brought to Camp Crame in Quezon City.

"At Camp Crame, he was brought to the Office of the NARCOM and led into a room where he was interrogated by an investigator in civilian clothes. Inside said room was a table, on top of which were marijuana leaves wrapped in an empty pack of Philip Morris cigarettes (Exhs. "H" and "H-1"). The said marijuana leaves were not the same one (sic) which was placed on his pocket earlier that day.

"He was then forced to admit ownership of such marijuana leaves and was made to affix his signature on the wrapper. Although very much against his will, he nevertheless reluctantly affixed his signature on said wrapper because he was afraid that more punishment would be inflicted upon his person if he will refuse to do what was told of him. Before he was actually led inside said room, he asked permission from his escorts for him to use the comfort room. While he was then relieving himself, a NARCOM agent in civilian clothes started kicking him. With said NARCOM agent was another man who held his hands and rubbed powder on it. Accused-appellant attempted to wash-off said powder but was prevented from doing so by the two men. It was then after he was maltreated by the NARCOM agent and his companion, when accused-appellant was brought to the room for investigation.

Two days after he was arrested, he was brought before a forensic chemist of the PC-INP Crime Laboratory who examined his hands for possible presence of ultra-violet powder. He narrated to said chemist how said powder got into his hands, but the latter just laughed-off his claim." (Brief for the Accused-Appellant, pp. 5-6)

At the arraignment, a plea of not guilty was entered by the defendant-appellant.

During the trial, the witnesses for the prosecution included Lt. Leonardo Lavares, head of the buy-bust operation, Sgt. Aladano, the poseur-buyer, Chemical Engineer Isidra de Guzman of the PC Crime Laboratory who conducted the physical examination of the defendant-appellant to determine the presence of ultra-violet powder on his person and Lt. Tita Advincula, Forensic Chemist of the PC-INP Crime Laboratory who examined the specimen submitted to her, in connection with this case containing two foils of dried leaves.

The report submitted by Isidra de Guzman shows the following findings:

xxx xxx xxx

"Findings:

Examination conducted under the ultra-violet radiation revealed the following results:

A. Renato Mendoza --- POSITIVE for the presence of a bright yellow ultra-violet, fluorescent powder on both hands, arms and on his face.

B. The above-mentioned money bills --- POSITIVE for the presence of a bright yellow ultra violet fluorescent powder. (Exh. E)" (Rollo, p. 21)

The pertinent portion of the report filed by Lt. Tita Advincula reads:

xxx xxx xxx

"Findings:

Qualitative examination conducted on the above-mentioned specimen gave POSITIVE result to the tests for marijuana, a prohibited drug. (Exh. I)" (Rollo, p. 21)

The witnesses presented by the defense were the defendant-appellant himself and his mother in support of the claim that the former was plainly a victim of an incriminatory machination perpetrated by the members of the alleged buy-bust operation team of Lt. Lavares.

On rebuttal, the prosecution presented Cpl. Antonio B. Antonio to disprove the extortion charges against him by the defendant-appellant who averred that the said police officer demanded money in exchange for the latter's release after his arrest.

On sur-rebuttal, the defendant-appellant's father Eleuterio Javier was called to the witness stand to bolster the claim that Cpl. Antonio was guilty of extortion.

After trial, the defendant-appellant was adjudged guilty beyond reasonable doubt as charged.

In resolving the issue of whether or not the degree of proof required in criminal cases has been met, the credibility of witnesses who appeared in court becomes a foremost matter. On credibility, it is an oft-repeated rule that this Court will not disturb the findings of the trial judge unless he has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case (see *People v. Jose Pirreras*, G.R. No. 63462, November 6, 1989 and *People v. Eduardo Paco y Tamayo*, G.R. No. 76893, February 27, 1989)

The defendant-appellant alleges that the testimonies of the prosecution witnesses are tainted with inconsistencies

and improbabilities, namely: (a) that in Sgt. Aladano's testimony, it took the accused twenty minutes to get the marijuana leaves after the deal to sell them to the poseur-buyer was made while according to Lt. Lavares, almost an hour transpired before the defendant-appellant came back and handed something to Sgt. Aladano; (b) that the buy-bust operation team of Lt. Lavares was planned, executed and successfully carried out within a matter of two hours without any preliminary surveillance on the defendant-appellant; and (c) that if the defendant-appellant was indeed a drug pusher, the fact that he trusted his cousin, Barangay Captain Dela Cruz, the alleged informer as to the poseur-buyer's identity would mean that the latter had acted as "middleman" in previous transactions otherwise the defendant-appellant would not allow the said informer to be involved in his illegal activity.

We find the above allegation devoid of merit. The inconsistencies pointed out by the defendant-appellant are too minor to affect the credibility of the prosecution witnesses who are law enforcers presumed to have regularly performed their duties in the absence of convincing proof to the contrary. (People v. Lamberto Borja y Martinez, G.R. No. 71838, February 26, 1990, citing People v. Patog, 144 SCRA 429 [1986]; People v. Said Sariol y Muhamading, G.R. No. 83809, June 22, 1989 citing People v. Capulong, 160 SCRA 533 [1988]; People v. Boholst, 152 SCRA 263 [1987] citing People v. Gamayon, 121 SCRA 642 [1983]; People v. Campana, 124 SCRA 271 [1983]; People v. Rosas, 149 SCRA 464 [1987]) With respect to the alleged improbabilities, they are grounded on fanciful conjectures and speculations which cannot topple the evidence adduced by the prosecution. Thus, we are constrained to give credence to the witnesses of the prosecution who had proven beyond reasonable doubt every essential element of the crime of which defendant-appellant was charged. After all, "proof beyond reasonable doubt" is defined under Rule 133, section 2 of the Rules of Court as follows:

"xxx Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."

In the instant case, there is clear proof that the defendant-appellant was caught in flagrante delicto, i.e., in the very act of selling and delivering dried marijuana fruiting tops, a prohibited drug under Article I, section 2, subsections (e) and (i) of the Dangerous Drugs Act, as amended by Batas Pambansa Blg. 179. Prosecution witnesses Sgt. Aladano and Lt. Lavares competently narrated the pertinent details attendant to the crime of which the trial court convicted the defendant-appellant who was positively identified as the perpetrator by the said witnesses. Furthermore, corroborative evidence was offered by the prosecution through the testimonies of the chemical engineer and forensic chemist of the PC Crime Laboratory.

The defense of having been framed-up was not satisfactorily proved by convincing evidence. Like alibi, it is a weak defense that is easy to concoct but difficult to prove (See People v. Sergio Nabunat y Asag, G.R. No. 84392, February 7, 1990). It is difficult to believe that the NARCOM agents who did not know the appellant and whom the appellant did not know would suddenly pounce upon a completely unknown and innocent person taking a merienda and not only plant marijuana in his clothes but also forcibly rub ultraviolet powder on his hands while he was relieving himself in the toilet at Camp Crame. During the cross-examination of the defendant-appellant, he made the following declarations:

xxx xxx xxx

"FISCAL:

xxx xxx xxx

Q.

You were present when Sgt. Aladano testified here in Court and pointed to you?

A.

Yes sir.

COURT:

Was he the one who planted the marijuana?

A.

No Your Honor, it was Lt. Lavares.

FISCAL:

Q.

Prior to September 11, 1985, did you know already Sgt. Salvador Aladano?

A.

No sir.

Q.

In the same manner that you do not know also Lt. Lavares prior to September 11, 1985?

A.

Yes sir.

Q.

As a matter of fact, not knowing anyone of them, you did not have any misunderstanding with anyone of them prior to September 11, 1985, is it not?

A.

I do not have sir.

Q.

Who was the one who placed this powder in your hands?

A.

A man, but I think he was not a Narcom agent.

Q.

According to you, Lt. Lavares placed this marijuana in your pocket against you and did you file any case against this Lt. Lavares?

A.

I cannot file any case or complaint because I was handcuffed and they brought me to Camp Crame.

Q.

You did not file any complaint against the man who put this powder which according to you is against your will?

A.

No sir, because I was brought upstairs and I was instructed to wait for my parents.

Q.

Were you not presented by the arresting officers to the investigators in Camp Crame?

A.

I was presented sir.

Q.

They wanted to get your statement but you refused to give any statement?

COURT:

Q.

Why did you refuse to give your statement?

A.

Because I have not committed any offense. I was just taking my snack or 'meryenda'" (Original Records, pp. 123-124)

The extortion theory advanced by defense was not also substantiated as can be gleaned from the evidence on record. During the direct examination of the defendant-appellant's father, the defense failed to lay the basis of the extortion charges, thus:

xxx xxx xxx

"ATTY. GARIN:

xxx xxx xxx

Q.

Pat. Antonio likewise testified he denies the allegations of your son that he was extracting money from you, what can you say about this?

FISCAL:

Objection. No basis because according to the witness, while he admitted he met this Antonio and conversation was pondered on asking why he was arresting his son ---

ATTY. GARIN:

The basis is the testimony of this witness Antonio. Now I am asking to confirm or deny the same.

FISCAL:

But basis should be laid.

ATTY. GARIN:

I will reform the question your Honor.

Q.

This Pat. Antonio testified here in Court denying that he never asked money from you, did you have any conversation regarding that extraction of money?

FISCAL:

The question has no basis.

ATTY. GARIN:

We thought that would be the proper subject of this examination.

FISCAL:

This is a direct testimony of the witness and proper basis should be laid.

COURT:

Sustain. Reform.

ATTY. GARIN:

Q.

Were you able to talk to your son while he was in prison?

A.

No sir.

Q.

Your wife?

A.

I do not know whether my wife was able to talk to my son while in prison.

Q.

On or before the 11th day of September 1985, do you remember this Antonio talking to your wife?

A.

No sir.

ATTY. GARIN:

That will be all for the witness." (Original Records, pp. 130-131)

In the absence of any motive shown on the part of the NARCOM agents to implicate the defendant-appellant and considering the foregoing evidence for the prosecution, we agree with the trial court's assessment that the presumption of innocence in favor of the defendant-appellant has been overcome.

The argument that the Narcotics Command cannot organize a team and send it from Camp Crame to Las Piñas in a period of two hours has no merit. The NARCOM's main function is to stem the traffic in prohibited drugs and catch and prosecute violators of the Dangerous Drugs Act. By the very nature of its work, NARCOM should have agents on duty all the time and ready to rush wherever they are needed. Two hours is not too short for this purpose.

According to the appellant, the fact that he trusted the barangay captain who introduced the buyers to him shows that the captain must have acted as middleman in other drug transactions. Assuming this to be true, we fail to see how it proves that the appellant is innocent. In truth, familiarity and trust do not arise solely from joint participation in illegal acts. Mr. dela Cruz was not only a leading member of the Pulang-lupa community but he was also the appellant's relative. It simply did not occur to the appellant that dela Cruz was against his drug dealing activities to the extent of turning him in to the authorities.

WHEREFORE, premises considered, the judgment appealed from is hereby **AFFIRMED IN TOTO**.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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