

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BAGANO Y SALI-EN, ACCUSED-APPELLANT.

G.R. No. 77777. February 05, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

Before us on appeal is a decision[*] of the Regional Trial Court of Baguio, Br. IV, in Criminal Case No. 2472-R, convicting the accused/appellant of violation of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act, the decretal portion of which reads:

"WHEREFORE, the court finds the accused, Domingo Bagano y Sali-en, guilty beyond reasonable doubt of the crime charged, and hereby imposes on him the penalty of life imprisonment, as well as a fine of Twenty Thousand Pesos (P20,000.00). The ten (10) kilos of marijuana are ordered forfeited in favor of the government which shall be transmitted to the Dangerous Drugs Board, through NBI Sub-office Baguio, as custodian, for proper disposition.

"SO ORDERED."

The facts, as presented by the Solicitor General, are as follows:

"On August 1, 1985, Atty. Lolito Utitco of the National Bureau of Investigation (NBI) in Baguio City and Steven F. Bostick, a special agent of the U.S. Air Force at Clark Air Base, arranged a "buy-bust" operation against appellant who was a suspected narcotics dealer. The plan was for Bostick to pose as buyer. A civilian informer named Clayton Emateo was to aid Bostick by introducing him to appellant.

"At around 2:45 in the afternoon of the same day, Bostick and Emateo proceeded to the residence of the latter in Baguio City to meet appellant who was there waiting. They were followed by an NBI surveillance team. Upon reaching their destination, Emateo introduced appellant and an unnamed friend to Bostick. Shortly thereafter, negotiations for the purchase of ten (10) kilos of marijuana began between Bostick and appellant, with Emateo acting as interpreter. Bostick and appellant finally agreed on P800.00 as the price per kilo of the marijuana. The group then proceeded to appellant's house at Irisan, Benguet, where he kept the marijuana. They were all the time being trailed by the NBI team. At Irisan, appellant left Bostick and Emateo in the car. He went back to them after about fifteen minutes, carrying a large white nylon sack (Exhibit "B"). Bostick opened the trunk of the car and appellant placed the sack inside. Bostick opened the sack and saw several packages containing marijuana. Bostick told appellant that he will pay for the marijuana after it has been weighed in his hotel. Appellant agreed. On the way back to his hotel in Baguio City, Bostick activated the beeper which signalled the NBI team following them that the transaction had taken place. The NBI team then blocked Bostick's car and arrested appellant and Emateo."

Based on the foregoing, an information for violation of RA 6425, as amended, otherwise known as the Dangerous Drugs Act, was filed against appellant alleging:

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"That on or about the 1st day of August, 1985, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously attempt to sell to another ten (10) kilos, more or less, of dried marijuana leaves, a dangerous drug, for P800.00 per kilo, in violation of the afore-cited provision of law."

Upon arraignment, appellant pleaded not guilty. His earlier motion to admit bail was deferred and later denied. Thereafter, trial on the merits ensued. On August 9, 1986, the trial judge rendered the assailed decision (Rollo, pp. 19-36) sentencing appellant, among others, to reclusion perpetua. Hence, this appeal.

Appellant denies any knowledge anent the ownership and sale of marijuana to Bostick and in support thereof, he declared that:

"(H)e farms at Irisan, Baguio City; on August 1, 1985, at around 3:00 o'clock in the afternoon, he went to the house of Clayton Emateo, located along Bonifacio St., to collect the amount of P4,000.00 which the latter borrowed from him on July 1, 1985; on this latter date Clayton went to him and pleaded for the loan, saying that he needed it to replace the money he took from his wife which he lost in gambling; Clayton was at his residence when he saw him on August 1, 1985; Clayton told him to wait for his visitor from whom he would get the money to pay his debt; the American visitor arrived, and he was introduced to him in English, as Steven; after the introduction, they rode in the car of the American and he was told by Clayton that they were proceeding to Irisan to get the bag which Clayton would give to the American as a gift; Clayton sent him to get the bag because he did not want to get wet; he went to get the bag and placed it in the car of the American; Clayton asked him to ride with them again; while they were maneuvering the car towards Baguio, two cars stopped and one of the passengers (NBI agent) came out, brought out his gun and pointed it at him;" (Decision, p. 11; Rollo, p. 29; Underscoring supplied).

In this appeal appellant contends that the lower court erred:

"1. IN FINDING THAT THE APPELLANT AGREED TO SELL TEN (10) KILOS OF MARIJUANA TO STEVEN BOSTICK WHEN IN FACT, THE APPELLANT HAS NO KNOWLEDGE OR DOES NOT KNOW ANYTHING ABOUT THE ALLEGED MARIJUANA SALE;

"2. IN NOT HOLDING AS HEARSAY THE ALLEGED CONVERSATION BETWEEN BOSTICK AND APPELLANT WHEN IN FACT, CLAYTON EMATEO, THE CIVILIAN INFORMANT WHO INTERPRETED THEIR CONVERSATION WAS NEVER PRESENTED TO TESTIFY;

"3. IN APPRECIATING THE 'BAG' AND NOT SACK AGAINST APPELLANT THAT WHICH CLAYTON OWNED AND DEPOSITED IN THE QUARTER OF THE APPELLANT AT IRISAN THAT 10:00 A.M. OF AUGUST 1, 1985 WHEN IN FACT, EVEN BOSTICK LIKewise REFERRED TO THE SACK AS 'BAG' MANY TIMES IN HIS TESTIMONY;

"4. IN NOT APPRECIATING THE DEFENSE OF THE APPELLANT THAT IT WAS CLAYTON, THE CIVILIAN INFORMER, WHO OWNS THE MARIJUANA IN QUESTION." (Appellant's Brief, pp. 1-2; Rollo, pp. 49-50)

It is the contention of the prosecution that appellant was apprehended as a result of a "buy-bust" operation which was conducted on the strength of an information supplied by a certain Clayton Emateo. It is alleged that according to the informer, appellant would only sell to a foreigner, preferably an American. Immediately, Atty. Utitco, the NBI Chief of Baguio City, sought assistance from the Clark Air Base which in turn sent Steven Bostick for the purpose.

The "buy-bust" operation involved Bostick and Emateo to proceed to the latter's residence and therein meet with the suspect for the purchase of marijuana. Acting as the "poseur" buyer, Bostick testified that he was provided counterfeit money by the NBI which was combined with his own US\$200.00 converted to pesos because

appellant only accepts payment in local currency (TSN, November 7, 1985, p. 16).

Upon arrival at Emateo's residence, Bostick was introduced by Emateo to appellant and a certain Arman Perez. As to how the "buy-bust" transaction was initiated may be gleaned from the following testimony of Bostick:

FISCAL CARBONELL:

"Q:

What was the plan then?

"A:

The plan that I was to go with the informer to the informant's residence and meet with the suspect (suspect) who is supposedly waiting there for us and I was to try and arrange for the purchase of marijuana.

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"Q:

Who started the conversation?

"A:

I started through the informant translating what I was saying to Domingo.

"Q:

What did you say to your informant which was translated to Domingo?

"A:

Due to the prior arrangement or agreement that we had, I told him that I wanted to purchase ten (10) kilos of marijuana.

"Q:

And this statement of yours to the effect that you wanted to buy ten (10) kilos of marijuana, to whom was it directed?

"A:

It was directed to Mr. Domingo.

"Q:

But you said Clayton participated. What was the participation of Clayton?

"A:

He was speaking for me because I wasn't sure Domingo understood what I was saying because of the language.

"Q:

Is it your testimony that your statement was translated into the dialect by Clayton to Domingo?

"A:

Yes, sir.

COURT:

"Q:

What dialect was that? Do you know?

"A:

No, I have no knowledge.

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FISCAL CARBONELL:

"Q:

Now, when your statement was translated by Clayton to Mr. Domingo to the effect that you wanted to purchase marijuana, do you know if Domingo made any answer?

"A:

I was told by the informant that there will be no problem. The ten kilos was ready.

ATTY. WAGANG:

I object to that. That would be hearsay.

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FISCAL CARBONELL:

"Q:

What again was that answer which Domingo said or uttered?

"A:

I was told by Clayton that ten (10) kilos would be no problem.

"Q:

And who said that?

"A:

It was told to me by Clayton because I don't understand the language on which they talked.

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"Q:

Now, who quoted the price?

"A:

I was told it will cost one thousand (P1,000.00) pesos per kilo, which I didn't agree.

COURT:

"Q:

Did they speak in English or in another dialect?

"A:

They spoke in the dialect.

"Q:

So, it was again interpreted to you by Clayton?

"A:

Yes, sir.

(TSN, November 7, 1985, pp. 17-20; Italics supplied)

Evident from the foregoing is the fact that Bostick's testimonies as principal witness for the prosecution, are mere translations and/or interpretations of what the appellant supposedly said in the dialect to and interpreted by informant Emateo. As such, they are pure hearsay.

With the exception of that portion of Bostick's testimony that he saw the accused-appellant carry the sackful of marijuana, Bostick testified not on his personal knowledge regarding the alleged ownership thereof and the appellant's purported offer to sell the same. Bostick never understood the Kankanai dialect spoken by appellant and Emateo and is therefore not qualified to testify against appellant in the imputation of the crime charged. Thus, "where a witness is offered to testify to the statements of another person, spoken in a language not understood by him, but translated for him by an interpreter, such witness is not qualified, because he does not speak from personal knowledge. All that he can know as to the testimony which is in fact given in such a case is from the interpretation thereof which is given by another person." (F. Wharton, Evidence in Criminal Cases 697-698 [11th ed., 1935])

Indeed, a confession cannot be received in evidence by the testimony of a witness who, although present when it was made, learned its purport through an interpreter (US v. Chu Chio, 8 Phil. 269 [1907]).

The impropriety of introducing the testimony of Bostick is plainly evident. What the prosecution should have done was to present Emateo himself to testify on what actually transpired between appellant and Bostick and thereafter be cross-examined. Yet, the court *a quo* chose to ignore appellant's constitutional right to meet the witnesses face to face (Constitution, Art. III, Sec. 14, [2]). In an attempt to circumvent said right, prosecution witness Atty. Utitco reasoned:

FISCAL CARBONELL:

"Q:

Now, Atty. Utitco, is there any possibility for you to bring before this court this Clayton who was your informer?

"A:

I do not think that is possible for the following reasons; First, we do not usually expose our informants in public, second, we do not know where he is staying and third, we do not keep in constant contact with this informer. He only comes to the office when there is work to do. As a matter of fact since this operation was accomplished, I have never seen him again. (TSN, December 4, 1985, p. 10)

Atty. Utitco's revelation that he knew nothing of his supposed informant's background is rather disturbing. Appellant's limb and liberty at stake, Utitco discarded all what a prudent and thinking man would have taken in order to establish the veracity of a story of one virtually unknown to him. Appellant should have been, at the least, placed under surveillance (See *People v. Periodica, Jr., et al.*, G.R. No. 73006, September 29, 1989).

The Court is not unaware of the policy behind non-disclosure of an informant's identity and would generally uphold the exercise of such privilege as the circumstances may warrant. In the instant case, however, said privilege cannot be invoked given the factual setting that led to the incarceration of accused-appellant. For one thing, the identity and even the address of the supposed informant are already known to appellant. More, he was an active participant of the crime charged and is in fact the person whom appellant insists is the owner of the prohibited merchandise. In point of fact, the informer (Emateo) was arrested together with appellant by the NBI team after the latter had blocked Bostick's car. If indeed Emateo is an informer and not the owner of the prohibited drug, why was he arrested? Nonetheless, whatever reason the prosecution may have had in shielding the informant vanished and ceased to exist by the time his identity was made public in the course of the trial by the prosecution witnesses themselves.

As pointed out by the appellant, the informant's failure to take the witness stand to confirm the correctness of his interpretations not only rendered the testimonies of Bostick as hearsay and therefore, inadmissible in evidence, but also deprived appellant of his right to cross-examine him (Appellant's Brief, pp. 11-12; Rollo, pp. 59-60).

"The right of cross-examination 'is a substantial right, the preservation of which is essential to a proper administration of justice, and extends to all matters within the knowledge of the witness, the disclosure of which is material to the controversy.'" (*Crosby v. State*, 82 S.E. 2d 38 [1954]; citing *News Publishing Co. v. Butler*, 22 S.E. 282 [1895]; *Richards v. Harpe*, 155 S.E. 85 [1930])

Emateo's testimony is not merely corroborative and cumulative and hence, maybe dispensed with (*People v. Extra*, 72 SCRA 199 [1976]; *People v. Cerelegia*, 147 SCRA 538 [1987]; *People v. Capulong*, 160 SCRA 533 [1988]; *People v. Asio*, G.R. No. 84960, September 1, 1989), but is direct and material to the defense of appellant who claims innocence of the offense imputed against him and is entitled to have the former take the witness stand (Appellant's Brief, pp. 11-12; Rollo, p. 60; TSN, November 8, 1985, p. 22), considering appellant's disclaimer of ownership of the prohibited drug.

In *People v. Rojo* (G. R. No. 82737, July 5, 1989), the Court, in acquitting the accused-appellant, stamped a note of disapproval on the prosecution's refusal to present the supposed informant whose identity has already been known, to wit:

"Thus, the identity of the informant was known to the appellant all the time and when immediately thereafter the appellant was apprehended and arrested by the police officers and the informant was not similarly taken into custody, the only logical conclusion is that the appellant right then and there found out that he was the victim of an entrapment and that the informant was in collusion with the police authorities.

"There is, therefore, no reason why the prosecution could not and did not present the informant as a prosecution witness. He is the best witness to establish the charge against the appellant who denies the charge" (citing *Pp. v. Ale*, 145 SCRA 50, [1986] where the accused was likewise acquitted). (*Italics supplied*)

In an earlier case of *People v. Caboverde* (160 SCRA 550 [1988]) where the prosecution refused to identify the informer, the Court stated:

"The witnesses for the prosecution refused to divulge the identity of said informer, who could have been a very vital corroborating witness to their testimonies and thus strengthen the position of the prosecution. Prosecution maintained that to expose the identity and to bring this informer to court as witness would pose grave danger to

the life of such informer. What danger did the prosecution fear, when the identity of said informer and his involvement in the entrapment of appellant was already made known to the appellant during the alleged exchange of the marijuana stuff and money." (Italics supplied)

Non-presentation of an informer is a privilege that has its own inherent limitation — that of fairness in the administration of criminal justice. Thus, where the disclosure of an informer's identity is relevant and helpful to the defense of the accused, or is essential to a proper disposition of the case, the privilege must give way (*Wilson v. United States*, 59 F. 2d 390 [1932]).

Trial courts must always bear in mind that the right to meet the accuser and to have him examined is a fundamental right. The constitution (Section 14 [2], Art. III) so mandates and they cannot do otherwise, especially so in instances where the party sought to be presented and examined possesses vital information essential to the defense in vindicating the accused's plea of innocence. Such violation of appellant's fundamental right calls for the reversal of his conviction. Thus:

"Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way. In these situations, the trial court may require disclosure and, if the Government withholds the information, dismiss the action (*Roviano v. United States*, 353 US 53, 1 L. ed 2d 639 [1957]).

In the case at bar, while the identity of the informer is disclosed, nevertheless, the prosecution failed to present him as a witness on the dubious assertion that his whereabouts are unknown. As no subpoena appears to have been issued by the prosecution to the said informer, the presumption that evidence willfully suppressed would be adverse if produced (Section 5 [e], Rule 131) arises.

Emateo's non-production as a witness could have been excused had he merely played the part of a true informer. An informer is one who communicates knowledge of someone having committed or about to commit a crime to the proper authorities who by themselves, acting independently, may obtain the evidence necessary for the prosecution of the offender. On the contrary, he did more than that. He played a substantial part in the act complained of and is in fact claimed by the appellant as the real owner of the subject marijuana.

The case of *Sorrentino v. U.S.* (163 F.2d 627 [1947]), provides the distinction between one who played the part of a mere informer and a decoy. There, the defendant was charged for an illegal sale of opium in favor of a person, the identity of whom the US Government claims to be confidential. Objections as regards questions seeking to ascertain his identity were sustained by the trial court on the ground that it will violate the privilege of withholding the identity of informers. In reversing the trial court, it was held that:

"If the person whom Grady called an informer had been an informer and nothing more, appellant would not have been entitled to have his identity disclosed; but the person whom Grady called an informer was something more. He was the person to whom appellant was said to have sold and dispensed the opium described in the indictment. Information as to this person's identity was therefore material to appellant's defense x x x."

The Solicitor General, however, contends that appellant's disclaimer of having no knowledge about the sale of marijuana is not worthy of credence. According to him, the best proof is the fact that appellant delivered a sackful of marijuana to Bostick and that the sale by appellant of marijuana to Bostick is shown by evidence independent of Clayton Emateo's testimony. (Appellee's Brief, p. 7; Rollo, p. 125).

We disagree. Appellant's denial of the ownership of marijuana and his testimony that he took the sack the contents of which turned out to be marijuana from the place where Emateo previously deposited it because he was only requested by Emateo to do so (TSN, March 20, 1986, pp. 7-8; March 31, 1986, pp. 8 & 14), was never

contradicted by the prosecution. Thus:

"ATTY. WAGANG:

"Q: You made mention of a gift of bag which Clayton will give as a gift to that American; where did this bag come from?

"A: He, Clayton Emateo brought that bag earlier that morning of the same day.

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"Q: And what happened when you reached Irian?

"A: When we reached Irian it was raining.

"Q: And were you able to get that bag left?

"A: Clayton sent me to get the bag because that time it was raining and they did not want to be wet.

"Q: Where did you bring that bag?

"A: I went to get the bag and loaded the bag on the car of that American."

(TSN, pp. 7-8, March 20, 1986)

On cross-examination:

"FISCAL CARBONELL:

"Q:

Is it your testimony that in the morning of August 1, 1985 Clayton Imateo came to your residence driving his taxicab and brought the bag to your residence?

"A: Yes, sir.

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"Q:

Is it your testimony that when Clayton Imateo came (to) your residence at Irisan in the morning of August 1, 1985 he just deposited the bag at your residence without conversing to you?

"A:

He told me that he has no money at that time by(u)t he had to wait for his visitor whom he will give that bag and from whom he will get money to pay me.

(TSN, pp. 8-9, March 31, 1986)

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"Q: Now, immediately after the American parked his vehicle, you alighted from the vehicle, is that correct?

"A: Yes, I was sent by Clayton to go to our quarters to get the bag because it was raining.

"Q:

Now, is it your testimony Mr. Witness that Clayton just sent you to fetch the bag from a place which is about ten minutes walk from the place where the vehicle was parked when in fact he was the one who has a debt of gratitude to you because of the P4,000.00 you lent him?

"A: Yes, sir.

"Q: You, readily acceded to that order for you to go and get the bag from your quarters?

"A:

Yes, because when I saw him (h)e was well-dressed and he was wearing leather shoes." (TSN, pp. 14-15, March 31, 1986; Italics supplied)

The prosecution witnesses' bare assertions, including that of Bostick's, anent appellant's delivery of the sack/bag

of marijuana cannot, by itself, indicate ownership nor even illegal possession as contemplated by law under the circumstances in the absence of any other evidence.

Neither is there any reason for us to believe, as advanced by the Solicitor General, that appellant even acknowledged ownership of the seized marijuana by identifying them and affixing his signature on the back and on each and every parcel inside it (sic) (Appelle's Brief, p. 8; Rollo, p. 126). Appellant testified that he affixed his signature because he was asked and forced to do so (TSN, March 20, 1986, p. 11; March 31, 1986, pp. 18 & 22). Nowhere in the cited testimony of Atty. Aurellado relied upon by the prosecution (Appelle's Brief, p. 8; Rollo, p. 126; TSN, November 8, 1985, pp. 9-15) was there any indication that appellant did acknowledge ownership of the prohibited merchandise.

Appellant's signature appearing on the sack and individual bundles containing marijuana do not signify, much less evidence, guilt for they are mere procedural steps normally undertaken after effecting arrest (People v. Sariol, G.R. No. 83809, June 22, 1989). Furthermore, it appearing that appellant was not informed of his right to counsel at the time he affixed his signature, the same has been obtained in violation of his right as a person under custodial investigation for the commission of an offense and is therefore inadmissible (Constitution, Art. III, Sec. 12 [1], [3]).

And there is the question of money involved. While the prosecution took time to prepare counterfeit money to the extent that Bostick even shelled out his own, the same turned out to be not really necessary it appearing that appellant never even got hold of it, much less saw the same. It defies credulity that in a carefully orchestrated "buy-bust" operation such as in the case at bar, no money changed hands between the alleged buyer and seller. It may then be asked, was there really an attempt to sell on the part of appellant of a merchandise he does not even own?

It is a cardinal rule in this jurisdiction that in order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense. An accused must always be deemed innocent until the contrary is proved beyond reasonable doubt. In the instant case, the prosecution failed to so establish the guilt of herein appellant.

WHEREFORE, the challenged judgment is REVERSED and appellant is hereby ACQUITTED on the ground of reasonable doubt.

SO ORDERED.

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

[*] Penned by Judge Stella Dadivas-Farrales

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