

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANIEL MANGUSAN Y BUTETE, JULIO TOKWABAN Y SADAKEN AND ANDY TONIS Y DANIO, ACCUSED-APPELLANTS.

G.R. No. 77832. September 14, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellants are before this Court to question the decision of the Regional Trial Court of La Trinidad, Benguet, convicting them of selling marijuana in violation of the Dangerous Drugs Act and sentencing each of them to life imprisonment and a fine of P20,000.00.[1]

The lower court found that the accused were apprehended as a result of a buy-bust operation conducted by a NARCOM team on June 11, 1984, near the Mountain State Agricultural College in Benguet.

The team was composed of five persons, with Patrolwoman Mercedes Garcia acting as the poseur/buyer. The other team members were P/Pfc. Elmer Mariano, P/Cpl. Eduardo Garcia, P/Pfc. Virgilio Visperas, and P/Sgt. Murphy Bugtong. All of them testified for the prosecution.

The evidence of the People showed that, having been previously informed that there was somebody looking for a buyer of marijuana, the team went with the informer in search of the alleged pusher at his residence near the public market in La Trinidad. The informer talked to the prospective seller, who arranged to meet the buyer after lunch. Returning at two o'clock that same afternoon, the team failed to talk to the suspect, but they tried again at 5 p.m. That was when Garcia finally met the first of the accused-appellants, who was introduced to her as Daniel Mangusan.

While the rest of the team followed unobtrusively, Mangusan led Garcia and the informant to a vacant lot near the Benguet General Hospital. The three were joined a few minutes later by Andy Tonis who, after a brief conversation with Mangusan, went to the Capitol Building. The three then proceeded to a waiting shed in front of the Mountain State Agricultural College. When Tonis returned at about 6 p.m., he asked that the sale be made near the Capitol Building, but Garcia refused, insisting that it be made right where they were. Tonis left again and returned after fifteen minutes carrying a plastic bag. He was accompanied by Julio Tokwaban, who was carrying a straw bag. Tokwaban suggested that the sale be made at the vacant lot. After examining the contents of the bag carried by Tokwaban, Garcia agreed and walked with the sellers to the said lot.

On the way, Garcia placed her hand in her pocket - the pre-arranged signal to the other team members that the suspects were carrying marijuana. The other policemen then pounced upon the sellers and after a brief scuffle and chase were able to apprehend them. The two bags were confiscated. The suspects were taken to the Baguio City Police Station for investigation. The plastic bag was found to contain 2.7 kilos, and the straw bag 1 kilo, of what were later subjected to a field test and found to be marijuana leaves.

The above incident was narrated by Garcia and the other team members, who corroborated each other's

testimony.[2] P/Lt. Carlos Figuerroa, a forensic chemist of the PC Crime Laboratory, affirmed the results of the thin layer chromatography and doquenis levine tests he had conducted showing that the specimens taken from the bags Tonis and Tokwaban were carrying were positive for marijuana.[3] The marijuana leaves were produced in court and offered as exhibits.[4]

After the prosecution had rested, Mangusan filed a demurrer to the evidence, which was denied. He was thus deemed to have waived his right to present his defense, conformably to the 1985 Rules of Criminal Procedure.[5] For their part, Tonis and Tokwaban testified that the bags taken from them belonged to one Benny, who had asked them to carry the bags for him. While walking on the road toward Campo Filipino, they were arrested by some men riding in a jeep, but Benny escaped. They claimed they were mauled while under detention. Both denied they had conspired with each other or with Mangusan to commit the crime imputed to them. Tokwaban pleaded the additional circumstance of minority, stressing that he was less than eighteen years old at the time of the alleged offense. No other witnesses were presented by the defense.

In convicting all three accused-appellants, the trial court disbelieved the account of the mysterious Benny as the real owner of the marijuana found in their possession. It held that the facts established showed that the three of them were acting in concert, with Mangusan negotiating the deal with Garcia, then ordering Tonis and, through him, Tokwaban, to get the marijuana.

There is no question that the three accused-appellants performed their respective roles in the consummation of the sale to Garcia, from the moment Mangusan offered to sell the marijuana to her until the time Tonis and Tokwaban, at Mangusan's bidding, produced the marijuana that was to be the subject of the sale. It is obvious that after the informer had approached Mangusan and they agreed to meet later after lunch, Mangusan contacted Tonis and Tokwaban and asked them to make ready the marijuana they were going to sell later that same day to Garcia. A conspiracy existed among them because, to use the language of the law, they came to an agreement concerning the commission of the felony and decided to commit it.

The accused-appellants make much of the fact that no money was presented in evidence as the consideration for the alleged sale and conclude therefrom that no sale in fact took place. The lack of such evidence did not disprove the sale in light of the positive testimony of Garcia that she offered to buy and Mangusan agreed to sell the marijuana and that the sale did actually take place as also testified to by the other prosecution witnesses.

Regarding the alleged inconsistencies in the testimonies of the said witnesses, the Court reiterates the rule that minor disagreements among witnesses do not necessarily reflect on their veracity if their individual narrations are essentially consistent with each other in the important details. The prosecution version of the commission of the crime is believable as a whole, particularly as it is supported by the real evidence of the marijuana confiscated from the accused-appellants. By contrast, their explanation that the marijuana belonged to the mysterious Benny, who merely asked them to carry the bags for him, strains credibility and imagination, more so since Benny seems to have disappeared into thin air and has never been seen again.

It is worth noting that in the course of the trial of this case, Tokwaban withdrew his original plea of not guilty and substituted it with guilty with the assistance of his counsel. On that same date, he filed an application for suspension of sentence and commitment of youthful offender under P.D. 603 as amended. But when it was pointed out by the trial court that his application could not be granted because the crime charged against him was punishable with life imprisonment, he decided to withdraw his guilty plea and to reiterate his original plea of not guilty. This was allowed by the trial court without objection from the prosecution.

It is now suggested in the People's brief that although Tokwaban could not avail himself of a suspension of sentence because of the life imprisonment imposed upon him, he should nevertheless be entitled to a reduction of

that sentence by one degree under the Indeterminate Sentence Law. The reason given is that he was only fifteen years and five months old at the time of the commission of the offense and so could claim the benefits of Articles 68 and 80 of the Revised Penal Code as a youthful offender.

The suggestion is not well-taken. The privileged mitigating circumstance of minority is not available in prosecutions under the Dangerous Drugs Act, which is a special law.

Thus, in *People v. Lagasca*,^[6] where the accused was 17 years, 6 months and 21 days when he committed the crime, we declared as follows:

x x x Ordinarily, he would be entitled to the privileged mitigating circumstance of minority under Article 68 of the Revised Penal Code. However, because Presidential Decree No. 1675, amending Republic Act No. 6425 imposes "life imprisonment to death" for sale of prohibited drugs, he is not entitled to an indeterminate sentence. We can only recommend that executive clemency be extended to him.

And in *People v. Beralde*,^[7] we also said of the accused who was also a minor at the time of the commission of the offense:

x x x He is entitled to the privileged mitigating circumstance of minority under Article 68 of the Revised Penal Code.

However, he cannot be given an indeterminate sentence because section 2 of the Indeterminate Sentence Law provides that said law "shall not apply to persons convicted of offenses punished with death penalty or life imprisonment." Presidential Decree No. 1675 imposes "life imprisonment to death" on sale of prohibited drugs.

We find therefore that the sentence pronounced on each of the accused-appellants, including Tokwaban, was correctly imposed.

Subject only to the Bill of Rights, all efforts should be taken against the spread of drug addiction, which has already taken a heavy toll on the lives and future of our people, especially the youth. The campaign must continue with relentless resolve, that the innocent and the weak may be spared from the misery of this malignant affliction.

WHEREFORE, the appeal is DISMISSED and the challenged decision AFFIRMED, with costs against the accused-appellants.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 45-55; Decision penned by Judge Sulpicio D. Marquez.

[2] TSN, October 12, 1984, pp. 1-16; October 17, 1984, pp. 18-31; November 29, 1984, pp. 32-51; December 6, 1984, pp. 53-70; December 12, 1984, pp. 72-83; May 13, 1985, pp. 106-123.

[3] TSN, February 19, 1985, pp. 84-99.

[4] Rollo, P. 49; Exhs. "A" to "E."

[5] Rule 119, Sec. 15. Demurrer to evidence. - when after the prosecution has rested its case, the accused files a motion to dismiss the case on the ground of insufficiency of evidence, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Under the 1988 amendments to the Rules of Court, Rule 119, Sec. 15 now reads:

Sec. 15. Demurrer to evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. Where the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

[6] 148 SCRA 264.

[7] 139 SCRA 426.

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