

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHN GUIAGUI Y KOTENG, DEFENDANT-APPELLANT.*G.R. NO. 78527. April 25, 1990*

Ponente: PADILLA, J.

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This is an appeal interposed by the accused John Guiagui y Koteng from the judgment* rendered in Criminal Case No. Q-42795 of the Regional Trial Court of Quezon City, finding him guilty of violation of Section 4, Article II of Republic Act No. 6425, as amended, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P30,000.00, with costs.

The record of the case shows that on 4 November 1985, the PC Narcotics Command (NARCOM, for short), based in Camp Crame, Quezon City, was told by one of its confidential informants that he (informer) was to meet that afternoon at the Uniwide Sales Center in Cubao, Quezon City, one Johnny, a notorious drug pusher from Baguio City who was in Manila looking for a buyer of marijuana. M/Sgt. Arsenio Carlos of the NARCOM unit was instructed by his superiors to take appropriate action on the matter and to conduct an “intel-ligence build-up.” M/Sgt. Carlos agreed to pose as a buyer of marijuana and went with the informer to the designated place to meet Johnny. They proceeded to the restaurant at the second floor of the store and occupied a table. Soon thereafter, Sgt. Carlos was introduced to Johnny as a buyer of marijuana. Sgt. Carlos talked with Johnny in Ilocano. He told Johnny that he needed three (3) kilos of marijuana. After he and Johnny had agreed on the price, P1,500.00 per kilo, Johnny promised to come back with the marijuana the following Saturday, 9 November 1985. Johnny told Sgt. Carlos to wait for him at the back exit of the store.[1]

On 9 November 1985, M/Sgt. Carlos and a back-up team headed by P/Lt. Casimiro Llanes went to the Uniwide Sales Center at about 6:00 o’clock in the evening. M/Sgt. Carlos went directly to his meeting place with Johnny, while the back-up team took up strategic positions nearby. Not long thereafter, M/Sgt. Carlos saw Johnny coming towards him. Johnny was carrying a travelling bag. He approached Johnny and asked him if the latter had brought his order (of marijuana) and Johnny pointed at the travelling bag. M/Sgt. Carlos opened the bag and examined its contents. Finding the contents to be marijuana, he gave the pre-arranged signal to the back-up team by scratching his head. Soon thereafter, P/Lt. Llanes and his men arrived and placed Johnny under arrest. A receipt for the bag and its contents,[2] was then prepared and duly signed by M/Sgt. Carlos and the appellant John Guiagui.[3]

The articles were sent to the PC Crime Laboratory and after examination, P/Lt. Nelly Carriaga attested that the contents of the bag were marijuana fruiting tops.[4]

The accused, John Guiagui, however, while admitting that he was arrested by NARCOM agents on 9 November 1985, denied that the bag and its contents belonged to him. He also denied that he was arrested in the manner testified to by witnesses for the prosecution. According to him, he and an acquaintance, named Vic, were drinking in the restaurant at the second floor of the Uniwide Sales Center in Cubao, Quezon City at about 6:00 o’clock in the evening of 9 November 1985, when M/Sgt. Carlos and P/Lt. Llanes suddenly arrived and placed handcuffs on

their hands. They were then brought out of the store and loaded in a car. Vic, however, was separated from him and probably released, while adhesive tape (plaster) was placed over his eyes. After about thirty (30) minutes, the car stopped and more plaster was placed over his eyes. His shirt and pants were then removed and he was maltreated when he could not tell them the persons who deal in marijuana. Water was poured over him and he was repeatedly electrocuted.

After two (2) hours of intensive grilling, he was asked if he could pay them P5,000.00 and when he told them that he had no money, he was maltreated again. After a while, he was brought to Camp Crame where his blindfold was removed. The following morning, he was brought to a room where he was made to sign a receipt. He was also told to point to a thing on the table and a picture was taken of him.[5]

Renan Liselo, a security guard at the Uniwide Sales Center at Cubao, Quezon City, testified for the accused. He declared that he was posted at the Fast Food section of the store at about 5:00 o'clock in the afternoon of 9 November 1985 when he saw two (2) persons, one of whom is the appellant herein, being handcuffed. He was only three (3) meters away from them and he was about to approach them when he noticed that the men who placed the handcuffs had guns. He further stated that he noticed earlier that the appellant and his companion were not carrying anything except a jacket. He also stated that it was the policy of the store not to allow any person or customer to bring bags or packages inside the store.[6]

Counsel for the appellant, in this appeal, contends that the accused was induced into committing the crime by NARCOM M/Sgt. Arsenio Carlos and urges the reversal of the judgment. In support thereof, he quotes a portion of the testimony of M/Sgt. Arsenio Carlos of the NARCOM, to wit:

“A

. . . he is an Ilocano so we talked in Ilocano because I am also Ilocano, telling him that I needed three kilos of marijuana.

Q

After you intimated this alias Johnny your intention of buying three kilos of marijuana, what did he tell you?

A

He told me that he will be back at the Saturday of that week and he will deliver to me the three kilos of marijuana. I will just wait for him at the back exit of the Uniwide Sales.” (tsn of February 3, 1986, p. 5)

There is no merit in the appeal. We find that entrapment, and not instigation, prevailed in this case.

“In entrapment, ways and means are resorted to for the purpose of trapping and capturing the law breakers in the execution of their criminal plan. On the other hand, in instigation, the instigator practically induces the would-be defendant into the commission of the offense, and himself becomes a co-principal. Entrapment is no bar to prosecution and conviction, while in instigation, the defendant would have to be acquitted.”[7]

There was entrapment in this case, because it would appear that the accused was already engaged in the illicit trade of marijuana and all that the NARCOM agents did was to catch him in the act. He was not induced to sell marijuana to the NARCOM agents. M/Sgt. Arsenio Carlos categorically denied that he prodded the accused to sell him marijuana. His testimony reads, as follows:

“Q

And after you were introduced, you asked the accused and prodded him to get some marijuana and give it to you, correct?

A

No, sir.

Q

What did you do then after meeting the accused?

A

He asked the confidential informant if I am also a buyer and the confidential informant told him yes and then and there, I ordered 3 kilos.”[8]

The testimony of M/Sgt. Carlos, relied upon by the appellant, that he “needed three (3) kilos of marijuana” cannot also be considered as proof that he had induced the appellant to commit the offense. As we see it, the state-ment was but a quantification of the amount of marijuana that Sgt. Carlos desired to buy from the accused.

Neither could the appellant’s testimony about Vic be considered as proof that the NARCOM agents had induced him to commit the offense since there is no proof that the said Vic was a NARCOM agent. Besides, the appellant testified that the said Vic merely told him to look for somebody from whom he could buy marijuana. His testimony reads, as follows:

“Q

You said there were about two meetings in October. What did this Vic talk about in the second meeting in October, if you can recall?

A

He convinced me to look for somebody from whom he could buy marijuana.

Q

And what did you say to him?

A

I thought of not answering his request but he bragged of his wealth and showed to me his bank account so I decided to tell him that I know of people if I could look for them.”[9]

If there was any inducement in this case, the inducement did not come from the NARCOM agents, but from the appellant’s own greed and cupidity. He wanted to live the life-style of the rich who have plenty of ready cash and fat bank accounts.

The trial court correctly found the accused, John Guiagui y Koteng, guilty of the crime with which he is charged. The witnesses for the prosecution who actively took part in the “buy-bust” operation, M/Sgt. Arsenio Carlos and P/Lt. Casimiro Llanes, are police officers who are presumed to have performed their duties in the regular manner,

and there is nothing in the record which would suggest any reason that would motivate them to testify falsely against the said accused. Besides, as the trial court found, their testimonies were straightforward, credible and bore all the earmarks of truth. However, for accuracy, the designation of the penalty imposed upon the accused should be changed from reclusion perpetua, as ordered by the trial court, to life imprisonment, the latter being the penalty specifically provided for by law.[10]

WHEREFORE, with the modification that the accused appellant is sentenced to life imprisonment, the judgment appealed from is hereby AFFIRMED in all other respects, with costs.

SO ORDERED.

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

* Penned by Judge Bernardo P. Abesamis, Branch 85, Quezon City

[1] tsn of February 3, 1986, pp. 3-5, 9; tsn of March 17, 1986, pp. 3-4

[2] Exhibit F

[3] tsn of February 3, 1986, pp. 7-9

[4] Exhibit E; tsn of March 17, 1986, pp. 21-22

[5] tsn of June 11, 1986, pp. 4-18

[6] tsn of July 30, 1986, pp. 2-4

[7] People vs. Lapatha, G.R. Nos. 63074-75, November 9, 1988, 167 SCRA 159 citing People vs. Natipravat, G.R. No. 69876, November 13, 1986, 145 SCRA 483

[8] tsn of March 17, 1986, p. 3

[9] tsn of June 11, 1986, p. 6

[10] Sec. 4, Art. II, Republic Act No. 6425, as amended

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