

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT CAMARAO Y LAOYAN AND MARLENE MARIANO Y NGAOSI, ACCUSED-APPELLANTS.

G.R. No. 78681. August 20, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Accused-appellants Robert Camarao y Laoyan and Marlene Mariano y Ngaosi, along with Rodrigo Paragas, Jr. y Gacad, were charged with having violated the Dangerous Drugs Act in an information dated 5 November 1985 which read as follows:

"The undersigned accuses Robert Camarao y Laoyan, Rodrigo Paragas, Jr. y Gacad and Marlene Mariano y Ngaosi for violation of Sec. 21(b) Article IV in relation to Sec. 4, Article II of RA 6425, as amended, committed as follows:

That on or about the 21st day of October, 1985, in the city of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously attempt to sell to another two (2) kilos, more or less of dried marijuana leaves, a dangerous drug, for P700.00 per kilo, in violation of the afore-cited provision of law.

Contrary to law."[1]

At arraignment, the three (3) pleaded not guilty.

The facts according to the prosecution were summarized by the trial court in the following manner:

“x x x x x x x x

x x x in the afternoon of October 20, 1985, a confidential informer reported that a certain Marlene and companions were selling marijuana and if the informer [found] a buyer, a deal could be effected the following morning on Bonifacio Street, Baguio City, in front of the Saint Louis University (SLU). Hence, Capt. Emmanuel Manzano, then the commanding officer of the local NARCOM unit, planned an entrapment operation where A2C Cartel will pose as the buyer of contraband while Capt. Manzano himself, Sgt. Fider, Sgt. Rodolfo Mendea, Sgt. Domingo Pejoro and a certain Capt. Roberto Reyes (would) constitute the back-up team. A pre-arranged signal was agreed upon.

The operatives, together with their civilian informer, proceeded to the designated place in the morning of October 21 at about 5:00 o'clock, in separate vehicles. A2C Cartel and the informer rode in a car driven by Cartel and parked in front of the Marosan Bakery on Bonifacio Street, while Sgt. Fider and Sgt. Mendez rode in the car of Capt. Manzano. Sgt. Fider and Sgt. Mendez deployed themselves at the guardhouse of the University pretending to be security guards as they were in blue uniforms. Capt. Manzano stayed inside his car where it pulled up also on Bonifacio Street. Capt. Reyes, on the other hand, drove his own vehicle together with Sgt. Pejoro, and parked further away at the rotunda going to New Lucban.

(Eventually), Marlene, whose surname turned out to be Mariano, arrived with two male companions who turned out to be Robert Camarao and Rodrigo Paragas, Jr. The confidential informer introduced A2C Cartel as a marijuana buyer to the three. Cartel asked for the price and Camarao quoted P700.00 per kilo. Cartel agreed and ordered two kilos of the stuff. Then Camarao and Paragas excused themselves to get the goods while Marlene stayed behind and talked with the civilian informer.

Shortly afterwards, Camarao and Paragas returned with Camarao carrying a white straw bag which he handed to Cartel. Cartel examined the contents and found two transparent plastic bags of suspected dried marijuana flowering tops. Thereupon, Marlene asked for the payment. Cartel handed her the 'boodle' money they had earlier prepared consisting of one (1) P100.00 bill stuffed with coupon bond(s) cut into the size of paper bills. Then, Cartel gave the pre-arranged signal to the members of the back-up team who closed in and arrested Marlene, Camarao and Paragas (and) confiscated the marijuana they were selling. Sgt. Fider recovered the P100.00 entrapment money from Marlene.

Later on, the suspected marijuana [was] referred to the PC Crime Laboratory, Regional Unit No. 1, Camp Dangwa, La Trinidad, Benguet, for chemical analysis. Forensic Chemist Carlos Figueroa conducted the requested examination and determined that the specimens, weighing 1.9 kilos, were positive to the standard tests for marijuana.”[2]

The gist of the testimony of the witnesses for the defense is found in the trial court's decision:

"The accused Camarao and Paragas are baggage boys, pointed to their co-accused Marlene as the owner/source of the confiscated marijuana. Camarao revealed that in that morning of October 21, 1985, he saw Marlene at the City Market and asked her if she had some marijuana to which the latter answered in the affirmative. Thereupon, Marlene requested Camarao to get the marijuana from her residence at Zamora Street. That was at about 6:00 o'clock. Camarao went to get the stuff together with Paragas who happened to be with him at the time and a certain Lito, a marijuana buyer. Camarao carried the marijuana from the residence of Marlene up to Saint Louis University, as per his agreement with her, and then gave it to Lito who, in turn, placed it in a baggage compartment of a car whose occupant later on arrested them. Camarao, however, did not see anyone giving money to Marlene.

Subsequently, Camarao retracted his revelations and claimed that his earlier declaration on his having asked Marlene if the latter had some marijuana was but a joke. This time, too, he averred that he does not know what marijuana is and how it looks like; that Marlene just requested him to go with her to her residence at Zamora Street to carry some baggages; that he, in turn, asked Paragas, who happened to be with him, to tag along and help and that they were to be paid P20.00 for the errand. True enough, Marlene gave Camarao the bag, Exhibit 'B', which he carried up to Saint Louis University following Marlene who led the way until they were arrested. Camarao denied knowledge of the contents of the bag, saying that he did not know that it was marijuana until their arrest.

On his part, Paragas maintained the stance that he just innocently tagged along with Camarao when the latter was called by Marlene to go with her and carry some baggage. In fact, he first met Marlene only that morning. While he confirmed that Marlene gave the bag, Exhibit 'B', to Camarao which the latter carried up to the Saint Louis University, he, however, averred that he never knew the contents of the bag and that it was only Camarao who carried it.

On the other hand, Marlene disclaimed ownership of the subject marijuana, stating that it had all along been in the possession of Camarao whose mother is her 'komadre'. She also denied having negotiated the sale of the stuff with anyone in the afternoon of October 20, 1985 which was to be effected the following morning. In fact, she claimed never to have seen Sgt. Mendez who arrested her and her two co-accused.

Marlene further narrated that in the morning of October 21, she met Camarao at the City market who was then with Paragas whom she did not know. Because Camarao owed her some money, she followed him and

Camarao until they were arrested in front of the Saint Louis University.

Lolita Masing, a vegetable gardener who used to sell her produce to Marlene, tried to corroborate the latter's claim that she (Marlene) could not have made a deal about marijuana in the afternoon of October 20 because she (Masing) slept at Marlene's place that evening.

Estela Alejandro, a vegetable vendor who was then selling at the same stall as Marlene, also tried to corroborate the latter's ascertain (sic) that in the morning of October 21, Marlene saw two male debtors at the City Market and when she demanded payment, they told her to follow them as they were to get money elsewhere.

x x x x x x x x[3]

After trial, the court a quo rendered a decision dated 28 January 1987 convicting Robert Camarao and Marlene Mariano of the crime charged and sentencing them to life imprisonment and to pay a fine of P20,000.00 each, with subsidiary imprisonment in case of insolvency. Rodrigo Paragas, however, was acquitted. Both Marlene Mariano and Robert Camarao filed notices of appeal;^[4] however, only Robert Camarao filed a brief and there he assigned the following errors:

1. That the trial court erred in giving weight and credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense; and
2. That the trial court erred in finding the accused-appellants guilty beyond reasonable doubt of the crime charged despite insufficient (sic) of evidence.^[5]

It is thus clear that accused-appellant Camarao raises only the issues of credibility of witnesses and sufficiency of the evidence. His basic argument is that the only evidence presented by the prosecution to prove his participation in the sale of marijuana was "the self-serving and unreliable testimony of A2C Cartel who acted as poseur-buyer for the NarCom Team."^[6]

The rule is well-settled that the positive identification by prosecution witnesses of the accused as having committed the crime charged, prevails over the simple denial of the latter.^[7] In the case at bar, A2C Cartel positively identified Camarao as the person who had delivered the bag -- a white straw bag -- containing the marijuana and had quoted to him the price of the marijuana at P700.00 per kilo. Camarao, on the other hand, admitted that he had delivered that bag, but denied that he knew it contained marijuana or that he had quoted the price of the marijuana to A2C Cartel. Such denials notwithstanding, examination of the records reveals that the testimony of Camarao actually corroborated the statements made by A2C Cartel:

Q: On that day, October 21, 1985, in the morning, you were apprehended holding a bag containing marijuana. Where did you get that marijuana?

WITNESS: [Robert Camarao]

A: At their house at Zamora Street.

ATTY. BASCO:

Q: From whom did you get in that house?

A: Marlene.

Q: On that day, October 21, 1985, did ever Marlene hold for a time the bag containing marijuana?

A: Yes, sir.

Q: At what point did Marlene hold the marijuana leaves in the morning of October 21, 1985?

A: Near their house.

Q: From their house to the SLU guardhouse on October 21, who carried that bag containing marijuana?

A: I, sir.

Q: To whom did you deliver that marijuana?

A: To Lito.

Q: And what did Lito do with the bag?

A: When we arrived there, we were about 7 meters away, I handed the bag to Lito.

Q: To whom did Lito deliver that bag?

A: At the baggage compartment of the car.

Q: Whose car?

A: The car of the arresting officer.

x x x x x x x x"[8]

(Underscoring supplied)

On cross-examination, Camarao testified as follows:

"FISCAL: You said that the three of you went to get this marijuana from the house of Marlene?

A: Yes, sir.

Q: You said three. Who were you?

A: Lito and Paragas and myself.

Q: How about Marlene, where was she when you went to get the marijuana from their house?

A: In their house.

Q: Why did you go and get this marijuana from their house? Did you have any previous understanding with her or from anybody?

A: Yes, sir.

Q: With whom did you agree to get this marijuana from the house of Marlene?

A: Marlene, sir.

Q: Who else?

A: Only Marlene, sir.

Q: And what time did you actually go to the house of Marlene to get this marijuana on October 21, 1985?

A: 6:20.

Q: In the morning?

A: Yes, sir.

Q: Where did you come from before going to the house of Marlene to get the marijuana?

A: In that morning, sir, I was planning to accompany Paragas and when we were at the market, we saw Marlene.

Q: What happened when you saw Marlene in the market, what did you talk about?

A: I asked her if she has some marijuana.

Q: And what did she tell you?

A: She answered me, 'yes'.

Q: So, that's why you went to her house to get the marijuana?

A: Yes, sir.

Q: Did you know already Marlene Mariano before October 21, 1985?

A: Yes, sir.

Q: How long have you known her before that time?

A: Almost three years.”[9]

Camarao's subsequent feeble attempt at retraction -- by claiming that he had been merely jesting when he asked Marlene whether she had some marijuana[10] -- is not sufficient to overcome the evidence of the prosecution. It has been recently stressed by this Court that "recantations are hardly given much weight in the determination of a case and in the granting of a new trial. The rare exception is when there is no evidence sustaining the judgment of conviction other than the testimony of a witness or witnesses who are shown to have made contradictory statements as to material facts, under which circumstances, the Court may be led to a different conclusion so that a new trial or a reversal of the judgment may be called for".[11]

In the instant case, as earlier observed, the testimony of accused-appellant Camarao corroborated that of the prosecution's main witness, i.e., A2C Cartel. Thus, Camarao's subsequent testimony that he had merely been jesting was clearly contrived, months after his original incriminating testimony had been delivered. The defense, moreover, presented no proof of any evil motive or plan on the part of the prosecution witnesses, all law enforcement officers, falsely to implicate either or both of the accused in the crime charged.[12] Camarao also protested that the presentation of the informer (one known as Lito) as a witness for the prosecution was "indispensable".[13] It has, however, been many times held that the non-presentation of the informer as a witness in court, where his testimony would be merely corroborative or cumulative, is not fatal to the prosecution's case.[14] In the instant case, the testimony of the informer Lito would have been merely corroborative of that of A2C Cartel, considering that the only role played by the informer during the entrapment operation, was to introduce Cartel to the accused Marlene Mariano and Robert Camarao. It is interesting to note that Robert Camarao himself confirmed the existence of Lito the informer by testifying that:

" x x x x x x x x

Q: Do you know one by the name of Lito?

A: Yes, sir.

Q: Have you seen Lito in October 21 in the early morning, 1985?

A: Yes, sir.

COURT:

Q: What's the full name of Lito?

A: I don't know her.

ATTY. BASCO:

Q: What has he to do, this Lito, with regards to the marijuana that you mentioned?

A: He was the one looking for a buyer of marijuana.

x x x x x x x x"[15]

Robert Camarao also argued that because Rodrigo Paragas had been acquitted "for having no knowledge that the [white] bag contains marijuana leaves, in the same vein, he [Robert] should [also] have been acquitted".[16] As the Solicitor General, however, noted in his Brief,[17] the acquittal of Paragas was not based upon his own assertions of his innocence but rather on the testimony of his co-accused Camarao and Mariano. Thus, the trial court stated in its decision:

"On the part of Paragas, the Court finds credence in his stance that he was merely an innocent hanger-on. Marlene herself stated that she did not know him from Adam. And Camarao declared that he just invited him to tag along."[18]

We note moreover that the prosecution witnesses were silent in respect of the participation of Paragas in the entrapment transaction which took place that morning of 21 October 1985. Only Marlene Mariano and Robert Camarao were pinpointed by the poseur-buyer A2C Cartel as having actively negotiated with him and the informer.

We turn to the appeal interposed by Marlene Mariano. As a matter of practice, where an accused filed only a notice of appeal and failed to submit a brief within the regle-mentary period, the appeal is dismissed. Failure to file a brief is deemed to connote lack of interest on the part of the accused in his own appeal. As noted, Marlene Mariano filed only a notice of appeal and did not submit any brief. We are therefore compelled to dismiss her appeal.

We should add, however, that the dismissal is premised not simply on the technical ground of failure to file a brief but upon a consideration of the merits as well. Firstly, there is the direct and positive testimony of the poseur-buyer, Sgt. Cartel:

"FISCAL:

Q: Do we understand from you that it was your first time to meet the three accused when you met them in front of the St. Louis University in the morning of October 21?

A: Yes, sir.

Q: How did you know them?

A: Our confidential informer introduced me to them.

Q: And then to you?

A: Yes, sir.

x x x x x x x x

COURT:

Q: How did your confidential informer introduce you to the three?

A: The confidential informer told me that they are the ones selling.

Q: No. The question is, how did the confidential informer introduce you to the three accused?

A: He introduced me as his friend.

x x x x x x x x

Q: You talked about the price, as you said already. Who among them did you talk with regarding the price?

A: Robert Camarao.

x x x x x x x x

Q: How much is the price of one kilo?

A: P700.00, sir.

Q: What else did you talk about after the introduction?

A: I told them to get the marijuana and I will buy it.

Q: Did you -- how many kilos were you going to buy?

A: Two kilos, sir.

Q: Where were the woman Marlene and the other accused Paragas when you were talking about the price with Camarao?

A: They were together, sir.

x x x x x x x x

Q: After you have talked about the price, what happened next?

A: Robert Camarao and Rodrigo Paragas left, sir.

Q: Where did they go?

A: I don't know where they went.

Q: How about the woman?

A: She was left.

x x x x x x x x

COURT:

Q: Camarao and Paragas returned at about 6:20 o'clock in the morning, you said that they had with them the two kilos of marijuana. What happened when they arrived.

A: They gave me the marijuana.

COURT:

Continue, Fiscal.

FISCAL:

Q: Who gave you the marijuana?

A: Robert Camarao.

Q: Why, was he the one carrying the bag?

A: Yes, sir.

Q: And you received the marijuana from him?

A: Yes.

Q: And what did you do with the marijuana?

A: I looked at the contents of the bag.

Q: And what did you find?

A: Marijuana, sir.

x x x x x x x x

COURT:

Q: After examining the marijuana, what did you do?

A: Marlene Mariano asked for the payment.

FISCAL:

Q: So, what did you do when Marlene asked for the payment?

A: I gave the money, sir.

Q: How much?

A: I gave the boodle money with a P100.00 bill on top.

Q: After delivering the payment to Marlene Mariano, what happened?

A: I gave the pre-arranged signal.

x x x x x x x x"[19]

(Underscoring supplied)

Secondly, her co-accused Robert Camarao and Rodrigo Paragas consistently pointed to her as owner of the marijuana and of the house from whence the bag containing the marijuana was produced.[20] The testimony of Marlene's friends Lolita Masing and Estela Alejandro were not helpful to her. Lolita testified that she had slept at Marlene's house on the night of 20 October 1984 and left the next day at 5:30 o'clock a.m.; thus, her narration did not account for Marlene's whereabouts and activities at 6:00 o'clock a.m. of 21 October 1984, the time when the "buy-bust" operation was carried out. Estela Alejandro was presented in an attempt to corroborate Marlene's excuse that she was in the company of Camarao because she wished to collect an outstanding debt from the latter. But Camarao denied having owed her any money and stated that Marlene had hired him to carry a bag for a P20.00 fee.[21]

WHEREFORE, premises considered, the appeal of accused-appellant Marlene Mariano is DISMISSED and the

Decision of the trial court dated 28 January 1987 is hereby AFFIRMED. No pronouncement as to cost.

SO ORDERED.

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

[1] Rollo, p. 10.

[2] Decision of the Regional Trial Court. Rollo, pp. 19-20.

[3] Id., pp. 20-22.

[4] Rollo, pp. 8-9.

[5] Appellants' Brief, p. 1; Rollo, p. 64.

[6] Id., p. 8; Rollo, p. 71.

[7] *People v. Khan*, 161 SCRA 406 (1988); *People v. Delavin*, 148 SCRA 257 (1987); *People v. Tuscano*, 137 SCRA 203 (1985).

[8] TSN, 15 January 1986, pp. 55-56; Records, pp. 57-58.

[9] Id., pp. 57-58; Records, pp. 59-60.

[10] TSN, 20 June 1986, p. 7.

[11] *Tan Ang Bun v. Court of Appeals and the People of the Philippines*, G.R. No. L-47747, 15 February 1990.

[12] *People v. Sayoh*, 141 SCRA 356 (1986); *People v. Cabanit*, 139 SCRA 94 (1985); *People v. Demata*, 113 SRA 353 (1982).

[13] Appellants' Brief, p. 8; Rollo, pp. 71-72.

[14] *People v. Tangliben*, G.R. No. 63630, April 6, 1990. See also *People v. Asio*, G.R. No. 84960, September 1, 1989; *People v. Viola*, G.R. No. 64262, March 14, 1989; *People v. Capulong*, 160 SCRA 533 (1988); *People v. Ceregoa*, 147 SCRA 538 (1987).

[15] TSN, 15 January 1990, p. 54; Record, p. 56.

[16] Appellants' Brief, p. 9; Rollo, p. 72

[17] Id., p. 19; Rollo, p. 105.

[18] Decision of the Regional Trial Court, Rollo, p. 22.

[19] TSN, Testimony of F. Cartel, 15 January 1986, pp. 16-21.

[20] TSN, Testimony of R. Paragas, 2 April 1986, p. 86; TSN, Testimony of R. Camarao, January 15, 1986, p. 56; TSN, Testimony of R. Camarao, 20 June 1986, p. 8 and 12.

[21] TSN, 20 June 1986, pp. 4 and 8.

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