

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON MACUTO, ACCUSED-APPELLANT.

G.R. No. 80112. August 25, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court, National Capital Region, Branch 77 at Quezon City finding appellant RAMON MACUTO y TUYOGON guilty beyond reasonable doubt of violating Section 4, Article II of Rep. Act 6425 (Dangerous Drugs Act of 1972 as amended) and sentencing him to suffer the penalty of life imprisonment, to pay a fine of P20,000.00 and to pay the costs. The lower court acquitted his co-accused, LUZVIMINDA LIBRE y DANTES of the crime charged.

The information filed against the appellant alleged:

"That on or about the 22nd day of April, 1987, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, conspiring together, confederating with and mutually helping one another, did then and there wilfully, unlawfully and feloniously sell and deliver one tea bag of dried marijuana fruiting tops, a prohibited drug worth P10.00, Philippine Currency, to one Pat. Steeve Moore, who acted as poseur buyer, in violation of said law." (at p. 7, Rollo)

The prosecution's evidence upon which the finding of guilt beyond reasonable doubt was based is narrated by the trial court as follows:

"That on or about 1:30 p.m., April 22, 1987, Pat. STEEVE MOORE, Pfc. EDUARDO CABUGWANG and Pat. ENRICO CELESTIAL, all of the Anti-Narcotics Unit, Quezon City Police Force, conducted a 'buy-bust' operation along Arayat St., near the corner of V. Benitez St., Bgy. San Martin de Porres, Cubao, Quezon City. Pat. STEEVE MOORE was utilized as the POSEUR BUYER to a certain known marijuana pusher, one alias 'Asiong' who is a resident thereat and who was earlier identified after a weeklong surveillance in the area. Pat. MOORE, poseur buyer met 'Asiong' and handed him two separate P5.00 bills marked money (Exhibits B and C) in exchange of one (1) Teabag of marijuana. 'Asiong' left Pat. MOORE and came back giving and handing to said Pat. MOORE, poseur buyer, one tea bag of marijuana (Exhibit G). Pat. MOORE immediately gave a pre-arranged signal (scratching his hair) to his companions Pat. ENRICO CELESTIAL and Pfc. EDUARDO CABUGWANG who were positioned some 7 meters away where they could actually see and watch the sale of marijuana to Pat. MOORE. Shortly thereafter Pat. MOORE nabbed 'Asiong'; Pat. CELESTIAL and Pfc. CABUGWANG closed in on them and took custody of 'Asiong' who later gave his name and identified himself as one RAMON MACUTO Y TUYOGON. Questioned by Pat. CELESTIAL and Pfc. CABUGWANG, MACUTO pointed to a certain 'Lucy' as the supplier of the marijuana and together with MACUTO they proceeded to the place of said 'Lucy' whom they invited for investigation at the office of the Anti-Narcotics Unit, QCPF at Edsa, Kamuning, Q.C. after she was found in possession of the marked money. At the office 'Lucy' identified herself as one LUZVIMINDA LIBRE Y DANTES. Pat. DOMINADOR ESPIRITU, JR. testified that he investigated this case; that when investigated and after having been appraised of their

constitutional rights, both accused chose to remain silent and declined to give their statements; after his investigation, he referred the matter to the Inquest Fiscal (Exh. A); he further testified that he prepared the Joint Affidavit of the apprehending officers Pat. ENRICO CELESTIAL and Pfc. EDUARDO CABUGWANG (Exh. I) and the affidavit of poseur buyer, Pat. STEEVE MOORE (Exh. E); that he requested the PC-INP, Crime Laboratory Service, Camp Crame for laboratory examination of Exh. G, one tea-bag of marijuana (Exh. F) and a certificate of laboratory result (Exh. D) was issued by the Forensic Chemist showing that the examination yielded the following results: positive to the test for marijuana, a prohibited drug (Exh. D--1).

"Police Capt. LINA C. SARMIENTO, Forensic Chemist, PC-INP Crime Laboratory Service, Camp Crame, testified that upon request of the Anti-Narcotics Unit, QCPF (Exh. F) she examined Exh. G, a 1.77 grms. of suspected marijuana fruiting tops and after a qualitative examination conducted on said Exh. G, the same gave positive result to the test of marijuana, a prohibited drug and for which she issued Chemistry Report No. D-394787 (Exh. H)." (Rollo, pp. 27-28)

The two accused, Ramon Macuto and Luzviminda Libre did not testify in their defense.

The two defense witnesses, Cecilia Aventorado and Antonio Reyes merely narrated how Macuto and Libre were respectively picked up from a halo-halo stand and a private residence.

Appellant Macuto raised the following assignment of errors in his appeal:

I

"THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT RAMON MACUTO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE." (Rollo, p. 58-Brief for the Accused-Appellant)

The main issue raised by the appellant involves the credibility of the prosecution witnesses and questions the weight given by the trial court to their testimonies. We have carefully reviewed the records of the case and are convinced that the illegal sale of marijuana was committed by the appellant as narrated by the prosecution witnesses.

We see no reason from the records why we should not apply the rule that the findings of the trial court on the issue of credibility of the witnesses' testimonies are accorded great weight and respect on appeal because the trial judge has the first-hand opportunity to examine and observe the conduct and demeanor of the witnesses during the giving of their testimonies (People v. Rodriguez, G.R. No. 81332 [April 25, 1989]; People v. Tejada, G.R. No. 81520 [February 21, 1989]; People v. Abonada, G.R. No. 50041 [January 27, 1989]; People v. Turla, G.R. No. 70270 [November 11, 1988]; and People v. Aboga, 147 SCRA 404 [1987]).

The appellant contends that the material inconsistency noted by the trial court in the testimonies of Pat. Steeve Moore and of Pat. Enrico Celestial constitutes a grave contradiction sufficient to cast serious doubt on the truthfulness of the entire prosecution's evidence. Pat. Moore testified that the marked money used in the buy-bust operation was recovered by him from the person of the accused appellant during the arrest while, Pat. Celestial narrated that it was taken from "Lucy", whom the appellant earlier implicated but who was later on acquitted on the basis of the stated discrepancy.

The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling

transaction whereby, as in this case, the accused handed over the tea bag of marijuana upon the agreement with the poseur buyer to exchange it for money. By itself, how the marked money was recovered is of no great significance for us in establishing the guilt of the appellant (*People v. Marco Polo*, 147 SCRA 551 [1977]). What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices. The identity of the tea bag of marijuana which constitutes the corpus delicti was established before the court. This being so, the conflicting testimonies for the prosecution regarding the recovery of the marked money did not discredit the whole of the prosecution evidence as being inconclusive (*People v. Tejada*, supra). The rule that the testimony of a prosecution witness may be disbelieved in some facts but may be believed in other facts is applicable to this case (*People v. Pacada*, 142 SCRA 427 [1986]).

The defense evidence upon which the appellant relies, namely: (1) that the appellant could not have been selling marijuana because he was merely buying halo-halo at the alleged scene of the crime; and (2) that the appellant's co-accused (Lucy) was suddenly arrested by three men while she was having snacks in a friend's house, do not overthrow the positive identification made by the police officers that he committed the offense. These are statements made by witnesses other than the appellant himself which the trial court deemed not deserving of positive consideration. Besides, if the appellant had meritorious defenses, he should have himself taken the witness stand so he could have met the charges squarely and refuted the accusations outright. He cannot now allege that no buy and sell transaction occurred simply on the basis of the discredited testimony of his witness that he was buying something else instead of selling prohibited drugs.

The appellant also contends that it is unbelievable and contrary to human experience for one to sell a prohibited drug fearlessly to a stranger. This contention is without merit. The Court ruled in *People v. Tejada*, supra, that "what matters is not an existing familiarity between the buyer and seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves."

The Court does not find as credible the allegation that the police officers framed-up the appellant through the buy-bust operation by planting evidence for the purpose of extorting money and filing charges in court. This defense requires stronger proof to overcome the finding of the trial court that the prosecution witnesses were the ones who made truthful statements. (*People v. Rualo*, 152 SCRA 635 [1987]). Since no such proofs of ill-motives on the part of the policemen to extort money and to impute a serious offense appear in the records, the presumption that there was regular performance of public duty by public officers was not overthrown (*People v. Alvarez*, G.R. No. 70446, January 31, 1989; *People v. Tejada*, supra; *People v. Rodriguez*, supra). Underlying said presumption is the general rule that credence is usually accorded to the testimonies of prosecution witnesses who are law enforcers (*People v. Claudio*, 160 SCRA 646 [1988]).

Hence, the reversal of the judgment of conviction now being sought for on the basis of the pronouncement in *People v. Ale* (145 SCRA 50 [1986]), re: the possibility of abuse in anti-narcotics operations, cannot be granted. In *People v. Ale*, there were factual circumstances which showed that the entire prosecution evidence was patently shaky. For instance, this Court noted that the police informant who was also the poseur buyer in the operation was not presented as a witness. His non-appearance in court was held to be fatal to the prosecution of Ale on the ground that evidence willfully suppressed is presumed to be adverse if not produced. There were material contradictions between the two prosecution witnesses regarding, among others, the identity of the poseur buyer. This Court in that case found unbelievable the testimonies of the two police officers that they were able to discern the identity of the alleged marijuana cigarettes while they were positioned about 10 to 15 meters away from the alleged sale. Moreover, the testimony of Ale that the reason for his arrest was because there was a time when one of the arresting officers threatened to make a revenge was not contradicted by the prosecution. The facts of the

present case are radically different so the pronouncement in *People v. Ale* does not apply.

The following explanation made in *People v. Agapito* 154 SCRA 694, 700 (1987) justifies our conclusion:

"In cases involving persons accused of being drug pushers or sellers, almost always the defense is that the accused was framed by the apprehending police officers. We realize the disastrous consequence on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed, exists."

There is no question from the records that the denials put forth by the appellant did not satisfactorily defeat the presumption that the police officers regularly performed their duty, that the appellant was positively identified as a seller of prohibited drugs and that the tea bag taken from him actually contained marijuana fruiting tops. We find that the guilt of appellant MACUTO has been established beyond reasonable doubt.

WHEREFORE, the judgment of the trial court in Civil Case No. Q-51210 for the sale of prohibited drugs is hereby AFFIRMED.

SO ORDERED.

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

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