

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMABLE FLORES Y SOGUILON, ACCUSED-APPELLANT.

G.R. No. 80914. April 06, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

AMABLE FLORES Y SOGUILON was sentenced by the Regional Trial Court of Valenzuela, Br. 172, to life imprisonment and to pay a fine of P20,000.00 for selling one (1) tea bag of marijuana dried leaves.[1] He appeals from his conviction.

On 1 June 1994 this Court appointed Atty. Martiniano P. Vivo as counsel de oficio to represent appellant. On 21 June 1994 appellant filed with us an Urgent Motion to Withdraw Appeal, which was indorsed by the Director of the Bureau of Corrections. We required appellant's counsel de oficio to comment thereon.

On 8 September 1994 Atty. Vivo informed this Court that after conferring with his client, the latter decided to withdraw his motion and to pursue his appeal.

On 3 October 1994 this Court resolved to disregard appellant's motion and required instead his counsel de oficio to submit his comment.

On 7 October 1994 appellant filed his brief and a motion for his immediate release from confinement[2] invoking our rulings in *People v. Simon*[3] and *People v. David*[4] which he prayed to be given retroactive effect to entitle him to a lesser penalty, i.e., prision correccional, since the marijuana involved is less than 750 grams. Appellant has already been detained for more than nine (9) years since his arrest on 16 January 1986. But we shall first discuss the case on the merits before resolving the motion of appellant for his immediate release.

Appellant faults the trial court (a) for disregarding the irreconcilable inconsistencies and contradictions in the evidence for the prosecution; (b) for convicting him despite lack of positive identification of the object he allegedly delivered to Pat. Arturo Pabalan; and, (c) for ignoring the credibility, reasonableness and plausibility of his defense, namely, that he could not have sold marijuana to Pat. Pabalan whom he knew to be a policeman long before 16 January 1986.[5]

The evidence for the prosecution shows that on 14 January 1986 an informant told the Valenzuela Police Force Anti-Narcotics Unit that appellant was selling marijuana at the Pag-asa Subdivision in Valenzuela. Pat. Eduardo Puchero, Officer-in-Charge (OIC) of the Anti-Narcotics Unit, relayed the information to P/Capt. Carlos Tiquia, Chief of the Special Anti-Narcotics and Station Investigation Unit, who then instructed the former to conduct a test-buy on appellant. Pat. Puchero gave P10.00 to the informant and instructed him to buy from appellant a tea bag of marijuana. The informant returned and delivered the marijuana to Pat. Puchero. The incident was noted in the police blotter and reported to Capt. Tiquia who thereupon formed a team composed of Patrolmen Eduardo Puchero, Arturo Pabalan, Victoriano Aguinaldo and Wilfredo Lucero to entrap appellant.

The team went to Pag-asa Subdivision and the informant pointed to appellant who was then standing in front of a

store as the person from whom he bought the marijuana. Pat. Puchero gave a P50-bill with serial number PQ40296 to Pat. Pabalan who approached appellant and gave him the money. Pat. Pabalan told appellant that he wanted to buy marijuana from him. Appellant did not say anything but gave Pat. Pabalan a plastic bag of marijuana. On the signal of Pat. Pabalan, the rest of the team approached appellant and identified themselves as policemen from the Anti-Narcotics Unit. Then appellant surrendered to the policemen forty-two (42) tea bags more of marijuana. After a while, appellant pointed to a tree where the team recovered a sack containing a pink-colored plastic "Happy bag" containing more marijuana.

Appellant was brought to the police station where he was turned over to the investigation division. The substance seized from him was submitted to the National Bureau of Investigation which after laboratory examination by its forensic chemist, Ms. Alicia Juan, certified that the examination yielded positive results for marijuana.[6]

The defense has a different version. Appellant claims that at about four o'clock in the afternoon of 16 January 1986 he was reading a newspaper near a sari-sari store at the Pag-asa Subdivision in Karuhatan, Valenzuela, when he was arrested by Patrolmen Pabalan, Aguinaldo, Lucero and Puchero. He said that he knew Pat. Pabalan even before that date because he was a former neighbor. He also knew Pat. Puchero for about a year prior to the buy-bust incident because the latter used to take his snacks in the canteen where he (appellant) worked as a cook.

Appellant denies having sold any tea bag of marijuana to Pabalan and that several tea bags of marijuana were also confiscated from him. He alleges that he was apprehended with two other persons one of whom pointed to a tree about 50 meters away where policemen found some more of the prohibited stuff.

Thereupon, appellant was taken to the police headquarters where he was mauled by policemen and forced to sign a statement. As a result of the beatings he received, the left side of his body became swollen and he had to be taken on 17 or 18 January 1986 to the Palo Emergency Hospital for treatment.

We sustain the conviction of accused-appellant. The basic question raised in this appeal hinges on the credibility of witnesses. The rule is settled that the findings of the trial court on the issue of credibility of witnesses are entitled to great weight and respect unless some material facts have been overlooked or misconstrued as to affect the result.[7] We find no excepting circumstances in this case to justify a deviation from the rule.

Appellant argues that there are glaring inconsistencies in the testimonies of Pat. Pabalan and Pat. Puchero: according to Pat. Pabalan, the team recovered the marijuana from appellant; according to Pat. Puchero, the marijuana was recovered by Pabalan from appellant during the buy-bust operation, hence, the marijuana presented as exhibits bore the initials of the latter on its package except the marijuana bought by the informer during the test-buy operation which bore the initials of Pat. Puchero. Moreover, Pat. Pabalan testified that the other members of the police team were only 3 meters away from the place of arrest while Pat. Puchero testified that they were 30 meters away. When asked on direct examination, Pat. Puchero testified that the test-buy operation was his idea of which Capt. Tiquia had no prior knowledge. But on cross-examination, Pat. Puchero attributed the test-buy plan to Capt. Tiquia.

On the whole, the alleged inconsistencies in the testimonies of Pat. Pabalan and Pat. Puchero are neither substantial nor of such nature as will cast a grave doubt on their credibility. The established rule of evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or weight of their testimony.[8] Such minor inconsistencies as to the details of the sale by appellant to Pat. Pabalan may even be considered as badges of truth rather than of falsehood.[9]

Contrary to the contentions of appellant, the police officers had shown through their testimonies that the elements

of the offense with which he was charged were present, i.e., that the appellant had sold and delivered a prohibited drug to another and that appellant knew that what he had sold and delivered was a dangerous drug.[10] The established fact is that there was marijuana taken from appellant pursuant to a buy-bust operation and the same was tested positively as such. In fact, appellant did not refute the fact that the substance recovered from him when he was arrested was marijuana, a prohibited drug.

The arrest of appellant after having been caught in flagrante is lawful. When police officers have no motive for testifying falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties. Appellant has not shown any such ill motive on the part of the police officers who testified against him.

Appellant submits that Pat. Pabalan, the poseur-buyer in the operation, failed to identify in court the bag of marijuana which appellant allegedly sold to him. Hence, his failure to do so proved that nothing had been confiscated or recovered from appellant. In the case of Pat. Puchero, appellant contends that he identified only the bag of marijuana which the informer bought from appellant as a result of the test-buy plan set up by the Anti-Narcotics Unit before conducting the actual buy-bust operation.

These submissions are far from persuasive. The testimony of Pat. Pabalan as the poseur-buyer is sufficient to prove the consummation of the sale. As long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the marijuana delivered to the former, the crime was consummated by the delivery of the goods.[11] This testimony was even corroborated by the positive identification and declaration of Pat. Puchero, the leader of the team, who witnessed the transaction. During his testimony, Pat. Puchero identified the plastic bag of marijuana which appellant sold and delivered to Pat. Pabalan. Thus -

Q.

How did Pabalan act as pusher-buyer (sic), if you know?

A.

Not far from where we were Pat. Pabalan approached the said alias Amable and they talked and when he was able to buy marijuana from alias Amable, he signaled to us.

Q.

After that signal from Pat. Pabalan, what did you do next, if you did anything?

A.

We approached them ma'am, and we introduced ourselves as policemen to alias Amable and that we are policemen from Anti-Narcotics Unit of the Valenzuela Police Station.

Q.

That particular marijuana which according to you Pabalan was able to buy from Amable at that particular moment, can you still identify the same if you see it again?

A.

Maybe, ma'am.

Q.

Showing to you again this bundle of exhibits, kindly show them to us.

A.

This one ma'am.[12]

FISCAL:

Witness identified this plastic bag of marijuana already marked as Exh. E-44 wherein there is a signature appearing as A.P. and the date, January 16, 1986. And also another date, January 16, 1986.

Q.

In this exhibit which you identified as the one handed to Pabalan by Amable, how do you know that it was it?

A.

This is the marijuana Pat. Pabalan was able to buy for P50.00 and we are putting our initials on this particular specimen to enable us to recognize, ma'am.

Q.

Will you please point to us which is your particular signature in that specimen?

A.

This one ma'am.

As long as the corpus delicti of the crime has been established with certainty and conclusiveness, the conviction of the accused for illegal sale in violation of Sec. 4, Art. II, of The Dangerous Drugs Act can be sustained. In the instant case, the laboratory tests conducted by the NBI revealed the contents of the plastic bags sold by appellant to Pat. Pabalan to be marijuana. The chemistry report attested to by the forensic chemist established the corpus delicti of the crime.[13]

Finally, appellant argues that he knew Pat. Pabalan and Pat. Puchero to be police officers even before the incident when he was arrested hence he could not have sold the marijuana to them.

This Court has ruled that knowledge by accused that the poseur-buyer is a policeman is not a ground to support the theory that he could not have sold narcotics to the latter.[14] Drugs are sold even to police officers nowadays.[15] Some are users, if not pushers, in fact.

With the passage of R.A. No. 7659, amending certain sections of The Dangerous Drugs Act, and following our pronouncement in *People v. Simon*[16] to make the amendatory provisions apply retroactively as they are favorable to the appellant, the penalties imposed by the trial court must be modified accordingly.

Violation of Sec. 4, Art. II, of R.A. No. 6425, as amended, carries the penalty of reclusion perpetua to death and a fine ranging from P500,000 to P10,000,000. That penalty according to the amendment to Sec. 20 of the law shall

be applied if what is involved is 750 grams or more of indian hemp or marijuana; otherwise, if the quantity be less, the penalty shall range from prision correccional to reclusion temporal.

In the instant case, the marijuana recovered from appellant during the buy-bust operation consisted of five (5) tea bags of marijuana placed in a plastic bag marked as Exh. "E-44", additional forty-two (42) tea bags of marijuana which were surrendered by appellant to Pat. Puchero marked as Exhs. "E-1 to E-42," and a pink plastic bag also containing marijuana marked as Exh. "E-45." [17] But appellant was charged in the Information with having sold and given away to another person only "one (1) tea bag of marijuana dried leaves." [18] Based on the testimony of the NBI forensic chemist, the weight of the marijuana contained in a plastic bag sold by appellant to Pat. Pabalan was 3.7100 grams. The plastic bag marked as Exh. "E-44" contained five (5) tea bags which if computed would result in .0742 gram per bag. Since the Information charged appellant with selling only one (1) tea bag of marijuana, appellant may only be adjudged criminally liable for selling one (1) tea bag as charged. And, as the marijuana sold was below 750 grams, the imposable penalty shall be prision correccional in its medium period there being no mitigating or aggravating circumstances. Applying the Indeterminate Sentence Law, the maximum penalty shall be taken from the medium period of prision correccional, which is two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is one (1) month and one (1) day to six (6) months of arresto mayor.

The records show that appellant has been detained for more than nine (9) years since his arrest on 16 January 1986. Apparently, he has already served the maximum of the penalty for the offense charged.

WHEREFORE, the decision appealed from finding accused-appellant AMABLE FLORES Y SOGUILON guilty of violating Sec. 4, Art. II, of R.A. No. 6425, as amended, is AFFIRMED, with the modification that he is sentenced to an indeterminate prison term of four (4) months and twenty (20) days of arresto mayor maximum as minimum, to four (4) years and two (2) months of prision correccional medium as maximum.

Since accused-appellant has already been detained longer than the maximum of the penalty herein imposed, he is ORDERED immediately released from custody unless held lawfully for another cause.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Rollo, p. 14.

[2] Reiterated in another motion filed on 20 February 1995.

[3] G.R. No. 93028, 29 July 1994, 234 SCRA 555.

[4] G.R. No. 105667, 16 August 1994, 235 SCRA 366.

[5] Appellant's Memorandum, pp. 10-14.

[6] Exh. "C", Folder of Exhibits, p. 4.

[7] People v. Lahaylahay, G.R. Nos. 104737-38, 26 October 1994.

[8] People v. Payumo, G.R. No. 81761, 2 July 1990, 187 SCRA 64.

[9] People v. Salinas, G.R. 107192, 18 November 1993, 228 SCRA 45.

[10] People v. Manzano, G.R. No. 86555, 16 November 1993, 227 SCRA 780.

[11] People v. Lakibul, G.R. No. 94337, 27 January 1993, 217 SCRA 575.

[12] TSN, 1 September 1986, pp. 3-4, Records, p. 23.

[13] See Note 10.

[14] People v. Salamat, G.R. No. 103295, 20 August 1993, 225 SCRA 499.

[15] People v. Manzano, G.R. No. 103393, 24 August 1993, 225 SCRA 590.

[16] See Note 3.

[17] TSN, 7 April 1986, pp. 12-14, Records, p. 99.

[18] Records, p. 1.

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