

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ALBERTO DOROJA Y PACANSA, DEFENDANT-APPELLANT.

G.R. No. 81002. August 11, 1994

Ponente: VITUG, J.

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VITUG, J.:

Alberto Doroja appeals from the 17th September 1986 Decision[1] of the Regional Trial Court of Manila, Branch 49, convicting him of a violation of Section 4, Article II, in relation to Sec. 21(b), Art. IV, of Republic Act No. 6425, also known as the Dangerous Drugs Act of 1972, as amended by Presidential Decree No. 1675, and imposing on him the penalty of life imprisonment and a fine of P30,000 plus costs (Criminal Case No. 84-24152).

Appellant was arrested by a Narcotics Command (NARCOM) team, headed by a certain Capt. Manzano, in his residence at 2377 Tenorio Street, Sta. Ana, Manila, following a buy-bust operation. In due time, the following information was filed; viz:

"The undersigned accuses ALBERTO DOROJA y PACANSA of a violation of Sec. 4, Art. II in relation to Sec. 21(b), Art. IV, Republic Act 6425, as amended by PD 1675, as follows:

"That on or about February 10, 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name, identity and present whereabouts are still unknown and mutually helping one another, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there wilfully and unlawfully sell, deliver and give away to a Narcom poseur-buyer two (2) aluminum foils containing dried marijuana leaves, which is a prohibited drug.

"Contrary to law."

On arraignment, Alberto pleaded, "NOT GUILTY," to the offense charged.

The prosecution submitted its evidence; narrated briefly -

At around 3:30 in the afternoon of 10 February 1984, the commanding officer of the NARCOM received a confidential information[2] that two brothers, later identified to be Alberto Doroja and Pedro Doroja (now deceased) were engaged in selling dried marijuana leaves along Tenorio Street, Sta. Ana, Manila. The commanding officer promptly organized and dispatched a "buy-bust" team. The group proceeded as directed, with Carlos Molina, a regular member of the NARCOM, as poseur-buyer, to the address provided by the informant.

Molina was introduced to Alberto and Pedro in front of their house.[3] The brothers asked Molina how much marijuana he[4] wanted to buy. Molina replied that he was "willing to buy P20.00 worth of marijuana leaves." [5] The two brothers then entered their house; minutes later, Alberto came out holding two aluminum foils which he handed over to Molina.[6] At Molina's pre-arranged signal, the other members of the team moved in and arrested Alberto.

The sale was concluded approximately three meters away from Alberto's residence, located at the interior of a

squatters' area, where the team forthwith likewise conducted a search. Barangay councilman Dionisio and Alberto witnessed the search. The group found in the room of Pedro^[7] dried marijuana leaves and marijuana sticks contained in a milk can.

The team brought Alberto to their Unit and the confiscated marijuana to the Narcotics Investigation Section for proper disposition. Pedro somehow eluded arrest.^[8]

Lina Sarmiento, a forensic chemist at the Philippine Constabulary Crime Laboratory, upon written request, examined the confiscated articles. The specimen consisted of eight (8) aluminum foils with pieces of rolling paper and suspected dried marijuana fruiting tops weighing 10.7 grams, fifteen (15) sticks of suspected marijuana cigarettes wrapped with a piece of white paper contained in a milk can, and two (2) aluminum foils of rolling paper and dried suspected marijuana fruiting tops with a total weight of 2.5 grams. A qualitative examination on these items by Sarmiento yielded positive result for marijuana.^[9]

The defense presented Francisco Dionisio, a barangay councilman in Sta. Ana, Manila, who testified that, at around one o'clock in the afternoon of 10 February 1984, while he was home resting, he was suddenly aroused from sleep by his son, the latter exclaiming, "Father, there are many people carrying guns." Dionisio hurriedly went down. A man, whom he later identified to be a certain Capt. Manzano, requested the councilman to assist in conducting a search in one of the nearby houses. Dionisio, together with Capt. Manzano's team, proceeded to the house of accused Alberto and Pedro. There, the group found Molina and Magno already undertaking a search. He observed that Alberto, holding his child, was freely moving in and about the house. Dionisio inquired whether the police officers had any search warrant. Having been informed that they had none, Dionisio remarked, "Captain, you have no search warrant and why are you doing that?" Forthwith, Capt. Manzano summoned the two policemen to get outside the house.^[10] Capt. Manzano then showed Dionisio a sketch, indicating thereon a room of the house, which they were "interested" to take a look at. The room belonged to Pedro, which was about twenty (20) feet away from Alberto's room. When the team went inside Pedro's room, Dionisio saw on top of a pillow a can of Bonna milk containing nine sticks and seven leaves of marijuana. He handed the can and its contents over to Molina. The latter thereupon issued two signed forms evidencing the confiscation of the articles. Alberto was "invited" to join the team in proceeding to Camp Crame.

Alberto, testifying in his own defense, said that he was at home taking care of his child in the afternoon of 10 February 1984 when several persons suddenly kicked the door open. Nine policemen came in, among them Molina, Orlando Mapunuan and Capt. Manzano.^[11] Without showing any search warrant, the police officers began to search the house. The search yielded negative results. Nonetheless, he was asked to join the group to Camp Crame. On cross-examination, Alberto stated that he was indicted for drug-pushing by Manzano, Molina and Magno only because they failed to get P500.00 from him.^[12]

On 17 September 1986, the trial court rendered its decision convicting Alberto of the crime charged. After the promulgation of the decision on 15 October 1986, Pedro Doroja, who happened to be in the courtroom, shouted, "Walang kasalanan ang kapatid ko. Palayain ninyo ang kapatid ko. Hahatulan wala namang kasalanan."^[13] The court ordered his incarceration for direct contempt.^[14] Pedro was ordered released from custody on 09 March 1987.^[15] The warden, however, mistakenly released Alberto instead of Pedro.^[16] Pedro was later released when Alberto surrendered to the authorities. On 09 May 1987, Pedro died.^[17] On 11 September 1987, the lower court denied Alberto's "motion to re-open the case for additional direct examination of the accused." The court^[18] said:

"The belated claim of Pedro Doroja that he, not the Accused, should be convicted for the crime charged is, to the Court, merely an afterthought. If it were true that he, not the Accused, was guilty for the crime charged, he has not explained to the Court as to why it was only after the Court promulgated its Decision convicting the Accused for the crime charged, did he come forward and confess guilt for the crime charged against his

brother, the Accused, in this case. Pedro Doroja could have come forward, during the trial of this case, and testified in favor of the Accused and confessed to the commission of the crime. He kept silent. This renders his claim that he, not the Accused, is liable for the crime charged, unreliable and incredible." [19]

Alberto interposed the instant appeal, contending that the lower court erred in admitting and considering illegally obtained evidence, and in convicting him despite the failure of the prosecution to adduce sufficient evidence to sustain the conviction.

The Solicitor General likewise pleads for appellant's exoneration.

Even if we were to agree that the confiscated marijuana, having been obtained during a warrantless search, is inadmissible in evidence against Pedro (now deceased), the remaining evidence on record insofar as the accused appellant himself is concerned, however, is sufficient to warrant his conviction by the trial court. Ample evidence has been presented to independently establish the buy-bust operation which netted two (2) aluminum foils with pieces of rolling paper and dried marijuana leaves with a total weight of 2.5 grams. No proof has been adduced to put to doubt the credibility of the prosecution witnesses, all law enforcement officers, who have undertaken the buy-bust operation in the regular performance of their official duties. [20] In countless cases, the Court has held that the matter of credibility is the province of the trial court to determine, the latter being in the best position to observe the demeanor of witnesses at the time their declarations before it are made. The bare denial by appellant, a most common defense raised in buy-bust operations, cannot overcome positive evidence to the contrary. Like defenses have almost invariably been similarly turned down in previous cases. [21]

The only significant discrepancy in the prosecution evidence was that while Molina did point to Alberto as having received the buy-bust money, [22] Magno, upon the other hand, said it was Pedro who received it. [23] Such variance, notwithstanding, it was clear that after Molina, the poseur-buyer, gave the money (whether to Alberto or Pedro), it was Alberto who later returned to hand over to Molina the two aluminum foils of marijuana.

Under Rep. Act No. 6425, the essence of the offense is the act of delivery. [24] We have since held that what really counts is that the poseur-buyer receives the prohibited drug from the accused. [25] The fact that the money used in the buy-bust operation is not accounted for or presented in court does not militate against the prosecution's case. [26]

Appellant's claim of alleged extortion by the law enforcers is, too, a standard excuse in the prosecution of drug cases. [27] Appellant's failure to offer independent corroborating evidence suggests that his defense of extortion is either a fabrication or an afterthought. [28] We have also since observed that if, indeed, an extortion attempt is made, it should behoove, the victim to come forward with the proper charges against the culprits. [29]

In view of the recent enactment (on 13 December 1993) of Republic Act ("R.A.") No. 7659, [30] it would be well to delve at least briefly into the proper imposable penalty. The Dangerous Drugs Act of 1972, as now amended by Section 17 of Republic Act No. 7659, [31] provides:

"Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

"Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or instrument of the Crime. - The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be Applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;
2. 40 grams or more of morphine;

3. 200 grams or more of shabu or methylamphetamine hydrochloride;
4. 40 grams or more of heroin;
5. 750 grams or more of indian hemp or marijuana;
6. 50 grams or more of marijuana resin or marijuana resin oil;
7. 40 grams or more of cocaine or cocaine hydrochloride; or;
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultation/hearings conducted for the purpose.

"Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity."

In *People vs. Martin Simon* (G.R. No. 93028, 29 July 1994), this Court ruled (a) that the amendatory law, being more lenient and favorable to the accused than the original provisions of the Dangerous Drugs Act, should be accorded retroactive application,[32] and (b) that pertinent provisions of the Revised Penal Code, in consonance with Article 10 thereof, as well as the Indeterminate Sentence Law, may now be considered suppletory to the Dangerous Drugs Act.

The quantity of dried marijuana leaves, subject of sale by accused-appellant, has been found to have a total weight of 2.5 grams; there being neither mitigating nor aggravating circumstance, the applicable penalty would be prison correccional in its medium period. Applying the Indeterminate Sentence Law, still in conformity with the *Martin Simon* case, appellant Alberto Doroja y Pacansa may be sentenced to an imprisonment term ranging from a minimum of six (6) months of arresto mayor to a maximum of two (2) years and four (4) months of prison correccional in its medium period.

Moreover, Section 17 of Republic Act No. 7659 does not prescribe any fine in cases involving a quantity of less than 750 grains of Indian hemp or marijuana; accordingly, the fine of P30,000.00 imposed by the trial court must now be deleted.

WHEREFORE, the decision of 17 September 1986 convicting appellant, Alberto Doroja y Pacansa, of the crime of violation of Sec. 4, Art. II, in relation to Section 21(b), Art. IV, of Rep. Act No. 6425 is hereby AFFIRMED, except that the penalty properly imposable, and hereby accordingly imposed, on appellant Alberto Doroja y Pacansa is REDUCED to an indeterminate period ranging from six (6) months of arresto mayor, as minimum, to two (2) years and four (4) months of prison correccional, as maximum. The fine imposed on accused-appellant by the trial court is deleted. Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Penned by Judge Oscar C. Fernandez.

[2] According to Rolando Magno, a patrolman assigned at NARCOM and a member of the team, a certain "Boy" was their informant.

[3] The records do not show who introduced Molina to the suspects but it is clear that the informer was present during the operation, and he was about two or three meters away from Molina (TSN, August 31, 1984, p. 3).

- [4] Molina testified thus: "They asked us how much are we going to buy x x x." (TSN, August 24, 1984, p. 8).
- [5] TSN, August 24, 1984, p. 8.
- [6] TSN, September 7, 1984, p. 3.
- [7] Ibid., p. 5.
- [8] Ibid., p. 3.
- [9] Exh. B.
- [10] TSN, September 6, 1985, pp. 4-9.
- [11] TSN, September 20, 1985, p. 4.
- [12] Ibid., p. 6.
- [13] TSN, October 15, 1986, p. 5.
- [14] Records, p. 93.
- [15] Ibid., p. 99.
- [16] Ibid., p. 109.
- [17] Ibid., p. 125.
- [18] Presided by Judge Romeo J. Callejo.
- [19] Record, p. 148.
- [20] *People v. Vilorio, Jr.*, 191 SCRA 777.
- [21] *People v. Ramos*, 186 SCRA 184.
- [22] TSN, September 7, 1984, p. 4.
- [23] TSN, August 31, 1984, p. 3.
- [24] *People v. Buendia*, 210 SCRA 531.
- [25] *People v. William*, 209 SCRA 808, 815 quoting *People v. Rumberal*, 200 SCRA 194.
- [26] *People v. Alerto*, 198 SCRA 656, 661, citing *People v. Marco Polo*, 147 SCRA 551.
- [27] *People v. Tejada*, 170 SCRA 497.
- [28] *People v. Bolasa*, 209 SCRA 476.
- [29] *People v. Mauryao*, 207 SCRA 732.
- [30] Entitled "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes."
- [31] Official Gazette, 17 January 1994, 321.
- [32] Article 22, Revised Penal Code; *Escalante vs. Santos*, 56 Phil. 483; *People vs. Alcaraz*, 56 Phil. 520.

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