

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO PAYUMO Y BAGUNA, DEFENDANT-APPELLANT.

G.R. No. 81761. July 02, 1990

Ponente: CORTES, J.

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CORTES, J.:

The appellant Virgilio Payumo y Baguna, together with Angelito Belen y Reyes, was charged before the Regional Trial Court of Caloocan City, Branch 131 with violation of Section 4, Art. II. Rep. Act. No. 6425, more commonly known as drug-pushing, allegedly committed as follows:

That on or about the 17th day of August 1987 in Caloocan City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping with one another, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to Pat. Renato Postrado, who posed as poseur-buyer of 4 sticks of marijuana cigarette and dried marijuana flowering tops, prohibited drug, knowing the same to be such.

Contrary to law.

Caloocan City, M.M.

18 August 1987

[Rollo, p. 7.]

Upon being arraigned on September 1, 1987, both the appellant and Belen pleaded not guilty to the crime charged [Record, p. 4.] The prosecution presented the oral testimonies of Pat. Renato Postrado, Pat. Jose Marte, both of the Caloocan City Police Station, and Evelyn Pizarro, a forensic chemist of the National Bureau of Investigation (NBI). The prosecution also presented the following: four (4) sticks of marijuana cigarettes allegedly sold by the appellant to Pat. Postrado, a marked P10.00 bill and 35 pieces of cigarette rolling paper seized from the house of the accused Belen. The evidence for the prosecution was summarized by the trial court as follows:

On August 7, 1987, Police Major Florencio A. Sanchez, Chief of the Anti-Narcotics Unit (ANU) of the Caloocan City Police Station sent a team of ANU agents composed of Policemen Renato Postrado, Francisco Marte and Police Aide Francisco Garcia, Jr. to conduct surveillance and buy-bust operation on suspected marijuana pushers along 11th Avenue, Caloocan City, acting on the report of a confidential informant that marijuana was being peddled on said street.

Upon reaching the designated place on the afternoon of the aforesaid date, policeman Postrado left his companions at a certain distance and proceeded with the confidential informant to the place where accused Virgilio Payumo, alias Papay, was . . . Postrado was introduced to Payumo by the confidential informant . . . Postrado made it appear that he was a regular user of marijuana.

Postrado was able to convince Payumo [to sell him marijuana] and gave him a marked P10.00 bill but was made to wait by Payumo who left. After a while Payumo returned and handed to Postrado four (4) sticks of

suspected marijuana cigarettes. Postrado opened the four (4) sticks to determine that they are really marijuana, and thereafter, made the pre-arranged signal to his companions who arrived and together they checked Payumo and arrested him. Postrado and his companions then conducted a spot interrogation of Payumo to find out where Payumo got the marijuana. Payumo pointed to the house of the other accused Angelito Belen, alias Aday, which was about twenty-five (25) meters away from the place where Payumo was apprehended.

The anti-narcotics team, together with Payumo, proceeded to the house of Belen. Payumo knocked at the door and called for Belen. Somebody opened the door and they saw Belen seated in front of crushed marijuana leaves placed on a spread-out newspaper, segregating the seeds or those parts which couldn't be useful when hand-rolled into cigarettes. Belen was arrested and upon being frisked, the marked P10.00 bill was found in the right front pocket of his pants. The P10.00 bill was the same P10.00 which Postrado gave to Payumo in consideration for the four (4) sticks of marijuana cigarettes. Also confiscated in the house of Belen were thirty-five (35) sheets of cigarette rolling paper and five (5) empty small plastic bags.

The P10.00 bill was marked with the letters "RRP" which are the initials of Postrado and its serial number CL281211 were listed down before the same was handed to Payumo.

Both accused were then brought to the police headquarters for investigation where they verbally admitted the charges imputed against them but refused to reduce the same into writing after having been duly apprised of their constitutional rights.

The four (4) sticks of cigarettes and 9.6 grams of crushed, dried leaves of suspected marijuana, after being marked for identification purposes with the letters WLT, the initials of police investigator Cpl. Wilfredo L. Tomondong, were sent to the NBI Forensic Chemistry Section for examination. Miss Evelyn Pizzaro, forensic chemist thereat, conducted the examination and found the aforesaid positive of marijuana. These evidence as well as both accused were properly identified in open court by the prosecution witnesses.

[Trial Court Decision, pp. 1-3.]

On the other hand, the defense presented as its first witness Valentin Justiniano, a driver of a passenger jeepney plying the 11th Avenue route. The appellant was a jeepney barker, who, at the time the crime was allegedly committed, was trying to fill Justiniano's jeepney with passengers. According to Justiniano, while the appellant was busy calling for passengers, a man alighted from another jeepney, approached and talked to the appellant. After a brief conversation between the two, the man brought the appellant to the former's jeepney [TSN, September 23, 1987, p. 4.] Justiniano testified that he did not see the appellant sell marijuana cigarettes to that man [Id., p. 5.]

The second defense witness, Carlos Baguna, is an uncle of the appellant and the dispatcher of the jeepneys in that area. According to him, at around 2:20 p.m. on August 17, 1987, he noticed that the appellant was not at his post. Upon investigation, he saw the appellant inside a jeep with some men. When he asked what was wrong, the men told him that they will just take the appellant for a ride but will release him later [TSN, September 23, 1987, p. 19.] However, Baguna found out later that the appellant was detained at the police station for allegedly selling marijuana.

The third defense witness, Ester V. Rojo, a Yakult vendor, testified that at around 2:30 p.m. on August 17, 1987, while making her delivery of Yakult, she saw the appellant, who was her regular customer, with two men in front of the drugstore where the appellant usually called for passengers. She noticed that appellant's hands were tied with a red handkerchief [TSN, October 2, 1987, p. 3.] According to Rojo, the three men, together with the appellant, left the place using the 11th Avenue in Caloocan City and came back using the same avenue but this time, they were with the accused Belen [Id., pp. 3-4.]

The defense also presented the appellant as witness who testified to the following:

On the afternoon of August 17, 1987 at exactly 2:30 while accused was performing his task as a caller (barker) of jeepney passengers along 11th Avenue, Postrado and companions arrived in a passenger jeepney and took him for a ride; along the way his hands were handcuffed and Postrado asked him whether he knew anybody selling marijuana; the policemen tried to force him to divulge the name of the person selling marijuana but he repeatedly refused to do so until they mentioned the name Adoy, his co-accused Angelito Belen; he then told them he knew Belen as well as his residence; he pointed the house of Belen when they were about three houses or about thirty meters away from said house; Postrado and Marte left him in the jeepney and proceeded to the house of Belen and kicked the door; before the incident he already knew Postrado because the latter frequented the facade of Ericson Drug Store along 11th Avenue; Belen was ordered to come down from his house and both accused were handcuffed together; he did not see the policemen carry anything with them when they went out of the house of Belen; they were brought to the Caloocan City Hall then to Dagat-Dagatan reclamation area where they were to be salvaged but later brought to the police headquarters; he denied any knowledge of the four sticks (4) of marijuana and marijuana flowering tops as the first time he saw said items was in the police headquarters; he likewise denied receiving the P10.00 bill but Postrado insisted in giving it to him; he does not know of any reason why Postrado would charge him this offense.

[Trial Court Decision, p. 3.]

The last defense witness was the accused Angelito Belen whose testimony was summarized by the trial court thus:

On August 17, 1987 at about 2:45 p.m. while he was taking his snack inside his house at 11th Avenue, somebody knocked at the door: they introduced themselves as policemen and were going to arrest him for possession of marijuana; he denied such possession and asked them if they had a warrant of arrest which they failed to present; he then heard a loud noise and saw Payumo coming to his house with a policeman; Postrado poked a gun at him at the time he entered his house: when the policemen found nothing in his house, he was handcuffed and brought to the police headquarters: he denied that the marijuana leaves were taken from his house: that the first time he saw the said marijuana was inside the courtroom: he likewise denied that the P10.00 bill was confiscated from him.

[Trial Court Decision, p. 4.]

After trial, the trial court ruled that the warrantless search made on the house of Belen was illegal. The marked P10.00 bill and the thirty-five (35) sheets of cigarette rolling paper seized therefrom were excluded for being inadmissible as evidence. While Belen was acquitted, the trial court, after considering the remaining evidence on record, convicted the appellant. The dispositive portion of the trial court's decision dated November 19, 1987 reads:

WHEREFORE, the prosecution having proven the guilt of the accused VIRGILIO PAYUMO Y BAGUNA beyond reasonable doubt, this Court finds said accused guilty of violation of Section 4, Article II of R.A. 6425, as amended, and hereby sentences accused VIRGILIO PAYUMO Y BAGUNA to life imprisonment and to pay a fine of twenty thousand (20,000.00) pesos and to pay the costs.

The case against the accused ANGELITO BELEN Y REYES is hereby dismissed. The City Jail Warden is hereby ordered to release ANGELITO BELEN Y REYES from the custody of the law, unless further detained for any other legal cause.

SO ORDERED.

[Trial Court Decision, pp. 6-7.]

The accused Virgilio Payumo filed a motion for reconsideration of the aforesaid decision. The motion having been denied, the present appeal was filed before the Court.

The appellant assails the buy-bust operation conducted by the policemen, contending that it was not an entrapment but an instigation, which, it is claimed, should absolve him from criminal liability.

The nature and legal consequences of entrapment as distinguished from instigation were explained by the Court in this wise:

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: whereas, in instigation, the instigator, practically induces the would-be defendant into the commission of the offense, and himself becomes a co-principal: in instigation, the defendant would have to be acquitted.

[People v. Valmores, G.R. No. 58635, June 24, 1983, 122 SCRA 922, 928.]

Explaining further the distinction between entrapment and instigation, the Court, in *People v. Gatong-o* G.R. No. 78698, December 29, 1988, 168 SCRA 716, 717, stated:

Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Oftentimes it is the only effective way of apprehending a criminal in the act of the commission of the offense. A criminal is caught committing the act by the ways and means devised by the peace officers.

It must be distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and become a co?principal. In entrapment ways and means are resorted to for the purpose of capturing the lawbreaker in flagrante delicto. In entrapment, the crime had already been committed while in instigation, it was not and could not have been committed were it not for the instigation by the peace officer.

In the case at bar, Pat. Postrado, Pat. Marte and police aide (P/A) Francisco Garcia Jr. were sent on August 17, 1987 by the chief of narcotics unit of the Caloocan Police to conduct a surveillance along 11th Avenue, Caloocan City, upon an information that a drug pusher was plying his trade in that area [TSN, September 10, 1987, pp. 2-3.] Upon reaching the place and meeting the informant, Pat. Postrado, accompanied by the latter, left Pat. Marte and P/A Garcia to meet the appellant. The informant introduced Pat. Postrado to the appellant. Pat. Postrado said that he was a regular marijuana user and that he wanted to buy P10.00 worth of marijuana [Id., p. 2.] Pat. Postrado offered a P10.00 bill which the appellant accepted upon the understanding that the latter would have to leave for a few minutes to secure the marijuana. The appellant left but returned very quickly and handed four (4) sticks of marijuana cigarettes to Pat. Postrado [Id., p. 6.] At this point, Pat. Postrado arrested the appellant and also made the pre-arranged signal for Pat. Marte and P/A Garcia to move in [Id., p. 7.]

The policemen interrogated the appellant as to his source of the marijuana [Id., p. 7.] The latter pointed to the accused Angelito Belen. The appellant also led the policemen to the residence of Belen [Id.] Upon reaching the house, the policemen conducted a search in the presence of Belen and seized thirty five (35) sheets of cigarette rolling paper and found inside Belen's pocket the marked P10.00 bill given by Pat. Postrado to appellant as payment for the four (4) sticks of marijuana cigarettes [Id., pp. 8-9.] The four (4) sticks of cigarettes were examined by the forensic section of the National Bureau of Investigation and were confirmed to be marijuana [Exh. "C"; TSN, September 9, 1987, p. 9.]

It is apparent from the evidence on record that Pat. Postrado did not perform any act which in any way induced or influenced the appellant to sell marijuana. The appellant has been selling the illegal merchandise and Pat. Postrado only posed as a buyer. The idea to commit the crime did not originate from the policemen, who merely employed ways and means of trapping and catching the appellant in flagrante delicto. Thus, the buy-bust operation was not tainted with infirmity which would absolve the appellant from criminal liability. The act of the

arresting officer in the instant case constituted entrapment, a process or operation sanctioned by the Revised Penal Code [See *People v. Sanchez*, G.R. No. 77588, May 12, 1989; *People v. Borja*, G.R. No. 71838, February 26, 1990.]

The next issue raised by the appellant pertains to the credibility of witnesses. The appellant impugns the credibility of the prosecution witnesses on the ground that their testimonies contained inconsistencies.

According to the appellant, Pat. Postrado made inconsistent statements as to whether or not he was accompanied by the informant during the actual sale. The appellant claims that Pat. Postrado stated in his joint affidavit with Pat. Marte [Exh. "B"] that he was with the informant when he approached the appellant but contradicted himself on the witness stand by stating that he talked to the appellant alone.

The allegations are not borne out by the record. In their joint affidavit [Exh. "B"], Pat. Postrado and Pat. Marte stated:

* * *

That on or about 2:20 p.m., 17 August 1987, upon receiving information that a certain @ Papay and ADOY was [sic] engaged in the illegal sale of marijuana along 11th Ave., near Abonce, this city, we immediately proceeded to the aforesaid place, [and] upon arrival thereat. I (Pat. Renato Postrado) who acted as a poseur/buyer together with our informant and other members [sic] posted in strategic place to witness our poseur/buyer and the suspect. I (Pat. Postrado) together with our informant talked to a certain person which tally the description given to us . . .

[Underscoring supplied.]

Consistent with his statement, Pat. Postrado was forthright in his testimony in open court that when he made the transaction with the appellant, he was accompanied by the confidential informant. Thus:

Fiscal:

Q. Now, After receiving that information you proceeded at (sic) that place, what happened to (sic) that place.

A. Together with our informant, I left some of my companion and I proceeded to that place where a certain alias Papay was in possession (of marijuana). Together with my informant and my informant introduced me to him and I talked to him and told him that I want to buy some marijuana.

[TSN, September 10, 1987, p. 4; Underscoring supplied.]

But the appellant claims that even Pat. Marte contradicted the aforequoted joint affidavit (Exh. "B") by testifying that Pat. Postrado was alone when the latter approached the appellant.

Again, this allegation is belied by the evidence on record. Pat. Marte, contrary to the claim of the appellant, stated quite clearly on the witness stand that the confidential informant accompanied Pat. Postrado when the latter approached the appellant [TSN, September 17, 1987, p. 5.] Furthermore, from where Pat. Marte was positioned, he saw the confidential informant introduce Pat. Postrado to the appellant [Id.]

In any case, the alleged inconsistencies just discussed, which were proven to be not so, as well as the other inconsistencies mentioned in the appellant's brief, are neither substantial nor of such nature as to cast a grievous doubt on the credibility of the prosecution witnesses. 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 the weight of their testimony [*People v. Irene*, G.R. Nos. L-44410-11, August 5, 1988, 164 SCRA 121; *People v. Carino*, G.R. No. 73876, September 26, 1988, 165 SCRA

664.] Inconsistencies in the testimonies of witnesses, if only in minor details, reinforce rather than weaken their credibility, for it is usual that witnesses to a stirring event should see differently some details of a startling occurrence [People v. De Gracia, G.R. No. L-21419, September 29, 1966, 18 SCRA 197.] Discrepancies on minor details, which do not destroy the substance of the witness' testimony show that the witness was not rehearsed [People v. Munoz, G.R. No. 61152, July 29, 1988, 166 SCRA 730; Cordial v. People, G.R. No. 75880, September 27, 1988, 166 SCRA 17.]

In fine, the Court, after a thorough examination of the entire record of the case, finds no substantial reason to depart from the established rule that the Supreme Court regards with respect and will generally not disturb the findings of the trial court on the credibility of witnesses, unless certain facts of substance and value have been overlooked which if considered might affect the result of the case [People v. Sinaon, G.R. No. L-15613, May 27, 1966, 17 SCRA 260; People v. Abonada, G.R. No. 50041, January 27, 1989, 169 SCRA 530.] Moreover, the principal prosecution witnesses in this case, whose credibility the trial court sustained, are law enforcers who are presumed by law to have regularly performed their duty in the absence of proof to the contrary [Rule 131, Sec. 5(m), Rules of Court; People v. Paco, G.R. No. 76893, February 27, 1989, 170 SCRA 681.] It is presumed that they could have had no other motive to testify the way they did except to enforce the laws, particularly the Dangerous Drugs Act, as is their bounden duty [People v. Yap. G.R. Nos. 87088-89, May 9, 1990.]

Having sustained the findings of the trial court on the credibility of the prosecution witnesses, the defense put up by the accused, denial cannot be accepted. The Court has consistently held that denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime [People v. Chavez, G.R. No. L-38603, September 30, 1982, 117 SCRA 221; People v. Torres, G.R. No. 76711, September 26, 1988, 165 SCRA 702; People v. Sabado, G.R. No. 76952, December 22, 1988, 168 SCRA 681; People v. Laredo, G.R. Nos. 81249-51, May 14, 1990.]

The Court, after a careful study of the case, including its entire record, finds the evidence presented by the prosecution, upon which the trial court based its judgment of conviction, to be overwhelmingly against the pretended innocence of the appellant and has proved to a moral certainty the latter's guilt of the crime of selling prohibited drugs.

WHEREFORE, in view of the foregoing, the decision appealed from, is hereby AFFIRMED.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

Fernan, C.J., on leave.

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