

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO F. REMOROSA, ACCUSED-APPELLANT.

G.R. No. 81768. August 07, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Romeo Remorosa y Fernandez seeks the reversal of the judgment promulgated on November 13, 1987 by the Regional Trial Court, Branch 56, Makati, Metro Manila*, in Criminal Case No. 24093.

x x x Acting on the reported rampant drug pushing at Barangay Pitogo, Makati, Metro Manila, the Special Operation Group, Anti-Narcotics Unit, of the Makati Police Station launched a surveillance for five days, from May 16 to 20, 1986, in the said place and it was found out that accused Romeo Remorosa y Fernandez, alias "Ameng" was one of those selling prohibited drugs. Upon instruction of P/Lt. Ramon Salido Jr. who is the OIC of the Anti-Narcotics Unit, a buy-bust operation was conducted along Imelda Avenue, Brgy. Pitogo, Makati, Metro Manila on May 21, 1986, at about 4:00 o'clock in the afternoon by the team composed of Pfc. Virgilio Padua, Det. Hermie Ortiz, Det. Nicanor Candolesas, Det. Antonio Manalastas, and Det. Henry dela Cruz. Upon arrival at the place, Det. Henry dela Cruz, who was assigned as poseur-buyer, approached the accused, while the four others positioned themselves in strategic locations where they could clearly see the transaction between the two. As Pfc. De la Cruz approached, the accused asked him "Pare, iiskor ka ba" and he answered "yes". He gave the accused the amount of P10.00 (two P5.00 bills, Exhibits B & B-1) and the latter delivered to him one (1) tea bag of marijuana (Exh. D-1). Immediately thereafter, Pfc. Dela Cruz gave the pre-arranged signal and the other four members of the operatives rushed towards them and they arrested the accused after identifying themselves as police officers. The two P5.00 bills were recovered from the accused. They brought him to the police headquarters for investigation.[1]

The contents of the teabag were presented to the NBI for examination, the result of which showed:

xxx xxx xxx

Forensic Chemist Evelyn F. Pizarro who conducted the examinations indicated the findings in her Dangerous Drugs Report No. DDM-86-978 (Exh. "A") that microscopic, chemical and chromatographic examinations made on the specimen gave positive results for marijuana. Det. Ramon (actually Marlon) Almoguerra who was the officer on case prepared and submitted his investigation report (Exh. "C").[2]

Accordingly, an information[3] dated May 27, 1986 for drug pushing was filed against the appellant penalized under Sec. 4, Art. II of R.A. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972.

The defense gave a different account of the incident:

x x x At about 4:30 p.m. on May 21, 1986, while he was playing cards at the porch of their house located at 4248 Imelda Avenue, Pitogo, Makati, Metro Manila, together with his friends named Arnel Malbano, Ric Villamor and Rosalinda Remorosa, his sister, five policemen, among whom was Policeman Henry Ortiz, came up and they asked for the whereabouts of Nelson Beato who was his friend. He accompanied the policemen to the house of Nelson Beato which was only three houses away. With the permission of Nelson Beato's mother,

he went straight to the room of Nelson Beato, while the policemen who were following him stayed at the door. At that moment, Nelson Beato was wrapping marijuana with typewriting paper. When he informed Nelson Beato that there were policemen with him, the latter gathered all the marijuana and attempted to throw it outside but he was able to grab it and he gave the same to Pat. Henry Ortiz. Thereafter, he was brought to the Police Headquarters while Nelson Beato was interrogated at the jeep by Pat. Henry Ortiz and was being asked to give an amount of P3,000.00. Nelson Beato told the police that he had P3,000.00 but they should wait for his mother.

x x x (B)efore he accompanied the policemen to the house of Nelson Beato, he saw the latter (Nelson Beato) selling marijuana to a barriomate. He identified the tea bags of marijuana marked as Exhibits D-1 to D-19 as the same marijuana which he grabbed from Nelson Beato and he turned over to the policemen.[4]

After trial, the court a quo adjudged the accused guilty of the crime charged, and sentenced him to reclusion perpetua* plus a fine of twenty five thousand pesos.[5]

From this disposition, the accused submits the following assignment of errors:

I

The lower court erred in acting with manifest and clear bias and prejudice against the accused during the trial of the case.

II

The lower court erred when it considered the uncorroborated, inconsistent and contradictory testimony of prosecution witness, Pfc. HENRY DELA CRUZ, as the primary basis for the conviction of appellant when such evidence is insufficient to overcome the constitutional presumption of innocence.

III

The lower court erred when it failed to consider the testimonial admissions of prosecution's witnesses which corroborate the testimony of the accused, and sufficiently casts [sic] serious doubts as to the truth of the alleged buy-bust operation which led to the arrest of the accused.

IV

The lower court erred when it admitted in evidence the money bills marked as Exhibits "B" and "B-1".

V

The lower court erred in concluding that the unwillingness of the persons mentioned by the accused with whom he was playing cards in his house when the policemen came, to testify for the accused implies falsity of his version.

VI

The lower court erred in holding the accused ROMEO REMOROSA guilty beyond reasonable doubt of having sold Marijuana, in violation of Article II, Section 4, of Republic Act No. 6425.[6]

First, on error number one.

It is not true, as the appellant complains, that the trial court did not rule on the petition of the accused for reinvestigation. The trial court resolved the same in its Order dated October 13, 1986.[7] Nor is there basis for the

appellant's charge that the trial court did not rule on the offer of the evidence of the prosecution. The Order dated September 7, 1987[8] attests that the trial court did admit the prosecution evidence.

While it is true that there is no formal offer of evidence for the accused attached to the record and that there is no order admitting the evidence of the defense, these circumstances alone can not overturn the presumption that official duty has been regularly performed and that judicial proceedings are regular.[9] In any case, here the records show, in the hearing of October 5, 1986, that the defense rested its case, the lower court admitted its evidence, and declared the case submitted for decision.[10]

The gripe of the appellant that the trial court was too liberal in granting postponements to the prosecution, but allowed only one resetting in his favor, thus suggesting partiality on the part of the trial court, deserves no consideration. There is no question that the trial court allowed the prosecution several postponements. What the appellant forgot was that he had not objected to those continuances. The granting or denial of postponement is within the sound discretion of the trial court. In this instance, we are convinced that the trial court did not abuse such discretion. And if the appellant had been granted only one resetting by the trial court, it was because after the termination of the testimony of the accused, the defense counsel immediately rested the case.

Equally disturbing is the claim of the appellant that the lower court deprived him of his right to secure the attendance of his witnesses and of the production of other evidence on his behalf. In the first instance, the appellant did not ask for, much less insist on, the said right. No motion or request had been filed by his lawyer to compel the attendance of his witnesses nor the production of documents on his behalf. How can the lower court be faulted for these remissions of the accused? If the defense counsel believed that there were other witnesses to be presented, he should have called for them, even by compulsory process. But he did not.

Moreover, the Court painstakingly re-evaluating the proceedings, could not find in the actuations of the court a quo what could be construed as prejudicial to the rights of the accused. Simply, the conduct of the court a quo was above board.

All told, assigned error number one is without basis.

The rest of the errors assigned can be integrated into the principal issue of whether or not the trial court erred in determining the credibility of the evidence presented and the weight to be given to it.

Ordinarily, the trial court's findings of fact are accorded substantial weight, possessing as it does the opportunity of discerning whether or not witnesses are telling the truth,[11] by observing their deportment and manner of testifying at the witness stand. However, this rule does not apply where the trial court overlooked certain facts of substance and value which would affect the result of the case.[12] Another entrenched rule is that the testimonies of prosecution witnesses who are law enforcers are given credence for it is presumed that they were performing their duty in the absence of convincing proof to the contrary.[13]

In this case, the exception to the rule finds application. There is "convincing proof to the contrary" generated by the conflicting statements of Pat. de la Cruz. In his examination-in-chief, he reconstructed the events that transpired on May 21, 1986 in this manner:

Upon instruction of P/Lt. Ramon Salido, Jr., a buy-bust operation was conducted along Imelda Avenue, Brgy. Pitogo, Makati, M.M., on May 21, 1986, at about 4:00 o'clock in the afternoon by the team composed of Pfc. Virgilio Padua, Det. Hermie Ortiz, Det. Nicanor Candolesas, Det. Antonio Manalastas, and Det. Henry de la Cruz.[14] Upon arrival at the place, Det. Henry de la Cruz, assigned as poseur-buyer, approached the accused, while the other four positioned themselves in strategic locations where they could clearly see the transaction between the two.[15] As Pfc. de la Cruz approached, the accused asked him, "Pare, iiskor ka ba?", and he

answered "Yes".[16] He gave the accused the amount of P10.00 (two P5.00 bills, Exhibits B and B-1) and the latter delivered to him one (1) tea bag of marijuana (Exhibit D-1)[17] Immediately thereafter, Pfc. de la Cruz gave the pre-arranged signal and the other members of the operatives rushed towards them and arrested the accused after identifying themselves as police officers. The two P5.00 bills were recovered from the accused.[18]

On the basis thereof, an information for felonious selling of one tea bag containing dried marijuana flowering tops was filed against the accused.

However, on recall, Pat. de la Cruz testified that in the same buy-bust operation of May 21, 1986, eighteen more tea bags of marijuana were likewise confiscated from appellant. All in all, nineteen tea bags of marijuana were seized.

Another matter that surfaced was the involvement of one Nelson Beato from whom dried and crushed marijuana leaves wrapped in typewriting paper were seized. Emphasis must be made that in the examination-in-chief of Pat. de la Cruz, not a breath was heard of the participation of Beato in the buy-bust operation.

(Pat. de la Cruz on recall examination)

FISCAL KALALO:

Q: Will you please show to the court, Mr. Witness, which of the marijuana was confiscated from Nelson Beato?

A: This is the one, sir. (Witness referring to the marijuana wrapped in a typewriting paper with initial NAB dated May 21, 1986).

Q: How about the marijuana confiscated from accused Romeo Remorosa, could you please show to the court?

A: This is the one, sir. (Witness referring to the marijuana contained in red plastic bag).

Q: Will you please count, Mr. Witness, how many tea bags of marijuana confiscated from accused Remorosa?

A: 19 tea bags, sir.

Q: Where were these marijuana placed?

A: They were placed at the same bag, sir. (Witness referring to the red plastic bag)[19]

The court finds itself asking questions that should have been asked by the trial court: At what point were the eighteen tea bags of marijuana seized from appellant? Was it before, simultaneous with, or after, the alleged buy-bust operation? Was appellant charged as regards the eighteen tea bags of marijuana? If not, why? What was the participation of Nelson Beato? Was he also charged? If not, why? It puzzles this Court that the prosecution simply left the apparent inconsistencies unexplained. It made no effort at reconciling them. On the whole, the gaps and omissions in the evidence of the prosecution do not refer to minor or collateral matters. These sins of omission cast serious doubt on the credibility of witness Pat. de la Cruz. The net effect--the veracity of the prosecution's story--has been bemuddled. The rule is firm that:

Irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the guilt of appellant[20] and his culpability to the crime charged.[21]

Simply, that moral certainty of appellant's culpability has not been attained in this case. Instead, the obvious contradictions on material points corroborate and strengthen appellant's version of the incident. Particularly, the account of the appellant that the one tea bag of marijuana purportedly sold by him to Pat. de la Cruz and the other eighteen tea bags of marijuana allegedly confiscated from him actually belonged to Nelson Beato who was

collared in his (Beato's) residence by the five policemen. The appellant knew one of these policemen by the name of Pat. "Henry" Ortiz. This policeman was the one to whom the appellant gave the nineteen tea bags of marijuana. It is thus clear that this version of the incident squares with the testimony on recall of Pat. de la Cruz that nineteen tea bags of marijuana were allegedly seized from the appellant, the participation of Nelson Beato from whom marijuana dried leaves wrapped in typewriting paper were confiscated, and the presence of five policemen, one by the name of Hermie Ortiz. Though appellant stated that the name is "Henry," it is possible that he was mistaken considering that Henry and Hermie are idem sonans.

If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[22]

In fine, a warning we issued in another case like this one bears repeating:

x x x (We) cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the usually severe penalties for drug offense.[23]

WHEREFORE, the appealed decision is REVERSED, and on reasonable doubt, the appellant is hereby ACQUITTED of the crime charged.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

* Hon. Nemesio S. Felix, Presiding Judge.

[1] Decision, 2; Rollo 15.

[2] Ibid., 15.

[3] Ibid., 8.

[4] Ibid., 15-16.

* It should be life imprisonment as provided for under sec. 4, Art. II, R.A. 6425, as amended.

[5] Decision, rollo, 17.

[6] Ibid., 52-53.

[7] Original Record, 44.

[8] Ibid., 100.

[9] Phil. British Co. Inc. vs. de los Angeles, L-33720, March 20, 1975.

[10] Minutes, Original Record, 120.

[11] People vs. Carido, L-32242, November 18, 1988, 167 SCRA 462.

[12] People vs. Royeras, G.R. No. 64849, June 29, 1984, 130 SCRA 259.

- [13] People vs. Sariol, G.R. No. 83809, June 22, 1989, 174 SCRA 237.
- [14] TSN, June 15, 1987, 5.
- [15] Ibid., 11
- [16] Ibid., 14.
- [17] Ibid., 18.
- [18] Ibid., 9.
- [19] TSN, September 2, 1987, 3-4.
- [20] People vs. Caboverde, No. 66646, April 15, 1988, 160 SCRA 550.
- [21] People vs. C.F.I. of Rizal, et al., No. 52780, May 9, 1988, 161 SCRA 249.
- [22] Cited in People vs. Ale, No. 70998, October 14, 1988, 145 SCRA 50, 64.
- [23] Ibid., 58-59.

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