

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HAIDE DE LUNA, ACCUSED-APPELLANT.

G.R. No. 82180. November 08, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Once more, the Court is confronted with a "drug" case. The accused, a businesswoman-lessor, was found by the court a quo to have peddled marijuana, and was condemned to a life in jail.

The information reads as follows:

The undersigned 4th Assistant Fiscal accuses Haide de Luna y Oca of the crime of Violation of Section 4, Art. II, R.A. 6425, As Amended, committed as follows:

That on or about the 13th day of June, 1987, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to another 13.97 grams of dried marijuana fruiting tops wrapped with paper labelled "Panorama," a prohibited drug, in violation of the above-cited law, as amended.

On the same date, dried marijuana fruiting tops weighing one (1) kilogram contained in a plastic bag were surrendered by the above-named accused.[1]

The facts, as found by the trial court, refer to the respective testimonies of the prosecution and accused. We quote:

The prosecution's evidence rests chiefly on the testimony of Sgt. Vicente Jimenez, 31 years old, P.C. soldier assigned with the Narcotics Regional Unit, Camp Crame, Quezon City, who substantially averred that he was a member of a team led by a certain T/Sgt. Jaime Raposas, who proceeded to the De Castro Subdivision, Pasig, Metro Manila in the late morning of June 13, 1987, together with other team members, Sgt. Benjamin Basto, Pfc. Adolfo Arcoy and Pfc. Dominador Mendiola, based on an information furnished by a confidential informer that somebody was selling marijuana at the above-mentioned address; that upon reaching the place, Sgt. Raposas designated Sgt. Basto to be the posseur-buyer and instructed Sgt. Arcoy to mark a P50.00 bill (Exhibit F) to be used in the operation, to which Sgt. Arcoy complied by placing his initials (Exhibit F-1) on the face of the bill; that Sgt. Basto, accompanied by the confidential informer succeeded in transacting with the accused, whom he initially identified as having the alias of "Mamay," handing to her the marked money, and that marijuana wrapped in a newspaper [Exhibit D-2] was in turn delivered to Sgt. Basto. On a pre-arranged signal by Sgt. Basto, the team members, who were watching the alleged transaction from a distance of six (6) to eight (8) meters, swooped down and accosted the accused, introducing themselves as Narcom agents; that after the arrest was made and the marijuana seized, together with a plastic bag containing also marijuana fruiting tops (Exhibit D and D-1) (sic), voluntarily surrendered by the accused, a receipt (Exhibits A, A-1, A-2) of the properties confiscated was issued to the latter. After the incident, the accused was turned over to the duty-investigator at their office at Camp Crame, Quezon City and the arresting officers submitted a joint affidavit of Arrest and Affidavit of Posseur-Buyer (Exhibit B).

Nelly Cariaga, 33 years old, a Forensic Chemist, at the P.C. Crime Laboratory, Camp Crame, Quezon City presented as the second witness for the State, testified that she examined two specimens transmitted to their office through a letter-request from the Commanding Officer of the NarcomUnit at Camp Crame, Quezon City, dated June 15, 1987 (Exhibit E), and further stated that she had no personal knowledge as to how and when the specimen (sic) were confiscated; that after the proper examination she prepared a written report, denominated as Chemistry Report No. D-561-87 (Exhibit C and C-l) (sic), which showed that the specimens were both positive as marijuana.

T/Sgt. Jaime Raposas, 39 years old, P.C. soldier likewise assigned with the Narcotics Regional Unit, placed on the witness stand, identified himself as the team leader of the group that conducted the buy-bust operation and corroborated the narration of the incident, as laid down in the testimony of Sgt. Jimenez.

Pfc. Adolfo Arcoy, 32 years old, a San Juan policeman on a detached service with the Narcotics Command at Camp Crame, Quezon City, testified on his participation in the operation as the one who marked the P-50.00 bill that was used as the marked money in the buy-bust operation against the accused; that the marking he made on the bill consisted of his initials, "A.S.A." which he put on the forehead of President Sergio Osmena, whose picture appears on the face of the P50.00 bill.

The prosecution tried to present Sgt. Benjamin Basto, the team-member who acted as possessor-buyer in the buy-bust operation, as its last witness, but efforts to locate him proved futile, so on the basis of the testimonies of its four (4) witnesses, the prosecution rested its case.

The defense, for its initial witness, presented the accused herself, Haide de Luna, a.k.a. Mamay, 49 years old, widow and a resident of No. 20-D Bigonia St., De Castro Subdivision, Pasig, Metro Manila, who declared at (sic) around 8:30 o'clock in the morning of June 13, 1987, while she was doing some cleaning chores in her apartment unit, which (sic) she received two (2) visitors, who came one after the other. First to arrive was a certain Rodet, whom she identified as a cousin of the suitor of her daughter, who requested her that the plastic bag he was carrying be left upstairs in the house, to which she consented; that shortly after Rodet came, a certain Digna Perez, an alleged long-time friend of her (sic), arrived and offered her decorative jars for sale; that while she and Digna Perez were engaged in a conversation, Rodet came down and entrusted to her the amount of P600.00 for safekeeping after which he left; that around 10:30 o'clock of the same morning, while she and Digna Perez were still in the midst of a conversation, the door of her apartment unit was sprung open and a group of seven (7) men barged inside, of which three of them immediately went upstairs, while the four remain (sic) downstairs with Rodet, who was with the group; that at gunpoint, all the members of her household were herded in one corner of the apartment unit, and she saw one of the three men who went upstairs came downstairs carrying the white plastic bag left by Rodet; that after Rodet pointed to her and her family, one of the men, whom she identified as Sgt. Raposas tried to handcuff her, but failed, due to her protestations; that all the while that these men were at her house, they didn't identify themselves, and she came to know only that they are Narcom agents when she and her son, Albert, were brought to the Narcom Headquarters at Camp Crame, Quezon City.

Accused further declared that she was detained for three days, with the Narcom agents demanding from her the amount of ten thousand pesos (P10,000.00) in exchange of her release, even going to the extent of allegedly instructing her to tell her son, who was released earlier, to raise the said amount; that after she appeared before the Fiscal's office for the inquest, she was brought to the Narcotics Investigation Unit (NIU), where she stayed for three months, doing the laundry and ironing chores for the Narcom personnel and their families.

Confronted with the fact that her signature appears on the receipt of the property seized in the buy-bust operation, accused, while admitting that it was her signature, reasoned out that she was threatened to sign the document, and had no knowledge of the contents of the said document.

Digna Perez, 38 years old, married and a resident of No. 20-Q, San Nicolas, Pasig, Metro Manila, corroborating the version of the accused substantially testified that she is a long-time friend of the accused, and

a frequent visitor to her house; that at the time of the incident, she was at the accused's house, offering her some decorative jars for sale; that she saw a male person whom she haven't seen before at the house of the accused, arrive, carrying a white plastic bag and talked to the accused, after which, this person, proceeded upstairs; that at 10:30 o'clock of the same morning, a group of armed men in civilian clothes barged inside the house, accompanied by the male person she saw earlier talked to the accused who was in handcuffs, that some of the armed men went upstairs and came down bringing the white plastic bag; that after herding all the members of the household to one corner of the house, the accused and her son, Albert, were singled out by the armed men, and were brought along to their vehicle; that she testified in this case at the request of Albert, considering that she was an eyewitness to the alleged incident.

Elvis Elidad, 23 years old, single, and one of the boarders of the accused, confirming the version of the latter, averred that on the day of the incident, while he was upstairs in his room, he saw a man in white pants, whom he could not identify as his view of the upper torso of the person was obstructed by the curtain of his room's door, pass by, carrying a white plastic bag. Witness further averred that after searching the apartment unit, the armed men in civilian clothes wanted to bring along the accused and her two children, Albert and Vicky, but succeeded only in taking along the accused and Albert, as he prevented them from taking Vicky.

The testimony of Albert Oca, 18 years old, the accused's son and a resident of the Ilagan Metal Works, Ortigas Avenue, Pasig, Metro Manila, merely affirmed the earlier testimonies of the witnesses for the defense.[2]

According to the trial court, "[t]he only issue is credibility." [3] On this regard, the Supreme Court has said over and over that "credibility" is the province of the trial court.[4] This is not, however, an iron-clad rule.

The conclusions of the trial court may be rightly ignored when, say, the judge has committed a grave abuse of discretion.[5] "[I]f the inculpatory facts and circumstances," so we held further in *People v. Abana*, [6] "are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the text of moral certainty and is not sufficient to support a conviction." [7] It is not enough to say that a piece of evidence is "more credible" than the other, simply because the court is minded to think so. The judge must have, and provide, sound reason why he finds such evidence "more credible" than the other, and why it should reject the latter.

We agree with His Honor, the late Emmanuel Peña, that "[i]n view of the gravity of the offense charged and the severity of the imposable penalty ... it becomes the bounden duty of the Court to thoroughly examine and assess the evidence of the prosecution against the herein accused." [8] The question, however, is whether or not he was up to that task.

The version of the accused is to the effect that it was a certain Rodet who owned the white plastic bag subject of the controversy. She says that Rodet was a "family friend" who had helped himself freely inside her dormitory. She also avers that Rodet left her the sum of P600.00 "lest he spend (sic) it for his gang." [9] Moments later, seven armed men, plainclothes police elements, "sprung (sic) open" the door of her apartment and "barged inside." Rodet, who had been placed in handcuffs, subsequently fingered the accused as a mastermind or a co-conspirator. Rodet was later released. We are not, however, told why. Only the accused was charged for violation of the Drugs Act.

It is a recital corroborated by three witnesses, which we find to be more convincing and credible.

We reject, as a consequence, the prosecution's own version: that "Mamay," the accused, had been on surveillance; that on June 13, 1987, a raiding party, led by Sgt. Vicente Jimenez of the Narcotics Regional Unit, Camp Crame, Quezon City, conducted a "buy-bust" operation at Mamay's boarding house; that Mamay was paid with marked peso bills; that soon thereafter, the latter delivered marijuana wrapped in a newspaper or magazine; and that on a prearranged cue, the rest of the raiding team swooped down on the accused to make the bust.

It is a version too oversimplified for comfort. It is also a story told and re-told often that it is "lumang tugtugin."

What distresses us is the fact that Sgt. Benjamin Basto, the poseur-buyer himself, was never presented at the witness stand. The trial court says that "efforts to locate him proved futile," but what it does not say is why he has disappeared, whether he has left the service, gone AWOL, gone abroad, or gone, finally, to meet his maker. There is, indeed, no excuse for the trial judge's nonchalant, if cavalier, dismissal of the matter, because the prosecution's case rose or fell on Sgt. Basto's testimony. It is also doubtless that the rest of the members of the raiding party's testimonies would have been hearsay in the absence of testimony given straight from the horse's mouth.

The rule, finally, is that "evidence willfully suppressed would be adverse if produced." [10]

There is merit in Mamay's claim that the authorities had taken her hostage — instead of Rodet — for purposes of extortion. Quite obviously, the police had better to gain by holding on to the accused, rather than Rodet, because she, unlike Rodet, was a person of means.

The prosecution has failed, finally, to rebut successfully the "Rodet angle." To our mind, the accused could not have concocted that subplot under pain of perjury.

Secondly, the prosecution does not deny whether or not Rodet indeed existed. We take its silence to be admission.

It is also undoubted that the accused, Mamay, was a businesswoman who operated a dormitory business aboveboard.

There is no reason why she had to deal in prohibited substances, on the side, to augment her income. As for the alleged marked fifty-peso bill, the prosecution is hazy whether or not she, Mamay, indeed received it.

Once again, we must not be taken as sending pushers, pimps, and addicts back to the streets. In many cases, we have put the so-called dregs of society (rightly or wrongly) either to jail or to halfway houses. In the case at bar, we leave the benefit of the doubt to Mamay. It is in these close cases that our sympathy is on the side of the accused who, if not for this decision, would have unjustifiably served a life behind bars.

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE. The accused is hereby ACQUITTED.

SO ORDERED.

Paras (Acting Chairman), Padilla, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairperson), on leave.

[1] Rollo, 16.

[2] Id.. 16-22.

[3] Id., 22.

[4] People v. Idnay, No. L-48269, August 15, 1988, 164 SCRA 358; People v. Andiza, Nos. 71986-87, August 19, 1988, 164 SCRA 642; People v. Tapeno, No. L-33573, August 29, W88, 164 SCRA 696.

[5] RULES OF COURT. Rule 65, Sec. 1.

[6] 76 Phil. 1 (1946).

[7] Supra, 4-5.

[8] Rollo, id., 22-23.

[9] Id., 46.

[10] RULES OF COURT, Rule 131, Sec. 3, par. (e).

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