

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AUREO ROJO Y GABRIEL, DEFENDANT-APPELLANT.

G.R. No. 82737. July 05, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Once again, this Court must determine if the judgment of conviction rendered by the trial court imposing a sentence of life imprisonment on the defendant-appellant is proper against the theory of the defense that the accused was never found in possession of marijuana or caught selling the same and that the case filed against him was instigated by policemen who were allegedly extorting money as a consideration for the release of the accused.

In an information that was filed by the Office of the City Fiscal of Manila with Branch 15 of the Regional Trial Court of Manila, appellant was charged with violation of Section 4, Article II, Republic Act No. 6425, as amended by Presidential Decree No. 1675, as follows:

"That on or about April 15, 1987, in the City of Manila, Philippines, the said accused, not being authorized by law to distribute any prohibited drug, did then and there wilfully and unlawfully deliver, give away, distribute, sell or offer for sale, dried flowering tops of marijuana, which is prohibited drug.

Contrary to law."[1]

The case was docketed as Criminal Case No. 87-54030.

Upon his arraignment on September 17, 1987, the appellant, assisted by counsel, pleaded not guilty. After trial, the trial court[2] convicted the appellant in a decision dated February 17, 1988, the dispositive portion of which reads:

"WHEREFORE, in the light of all the foregoing considerations, the Court finds the accused, AUREO ROJO Y GABRIEL, guilty beyond reasonable doubt of the crime of violation of Section 4, Article II, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Presidential Decree No. 1675, and as charged in the Information, and, accordingly, hereby sentences him to suffer the penalty of reclusion perpetua, with all the necessary penalties provided for by law; to pay a fine of TWENTY THOUSAND PESOS (P20,000.00), without subsidiary imprisonment in case of insolvency, and to pay the costs.

Once this Decision shall become final and executory, the dried flowering tops of marijuana (Exhibit "F-1") shall be turned over to the Dangerous Drugs Board through the Director, National Bureau of Investigation, Taft Avenue, Manila, for proper disposition. On the other hand, the marked money which is a P10.00 bill with Serial No. ZF-222446 (Exhibit "G") shall be returned to P/Sgt. Jimmy Carbonel.

SO ORDERED."[3]

In this appeal, appellant assigns the following errors on the part of the trial court, to wit:

"I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT FOR VIOLATION OF SECTION 4 OF ARTICLE II, R.A. 6425, AS AMENDED, DESPITE THE WANT OF EVIDENCE SUFFICIENT TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE."^[4]

The findings of fact of the trial court are as follows:

"The Special Operations Unit [or the Narcotics Control and Investigation Section (NCIS)] received numerous complaints through telephone calls on the rampant drug-pushing going on at Barreto St., Pandacan, that month of April 1987. The NCIS operatives looked for an informant to help them bust such operations until finally, Pat. Maniquiz saw his former informant living within the vicinity of Barreto St., Pandacan, Manila. Said informant, upon Maniquiz invitation, came to the Special Operations Unit at around 10:00 o'clock that night of April 14, 1987 and confirmed the rampant activities of drug pushers at Barreto St., identifying the pushers as 'Jay jay', 'Pete' and 'Bong'. Sgt. Carbonel immediately organized a team - he as the team leader and Patrolmen Maniquiz, Ramon Alferos, Danilo Paltra, Jorge Balatbat and Zaldy Papa as team members. Once organized they proceeded with the informant to Barreto St., Pandacan, to conduct a surveillance to ascertain/verify whether drug-pushing was really rampant at that area. They conducted the necessary surveillance by posting themselves at strategic places and observing what was going on. In due time, they saw the accused, alias 'Bong', talking to teenagers (some riding on bicycles and others walking), after which he (accused) gave something to the teenagers whom he talked to and in turn, he received something from the recipients. Convinced that drug-pushers really proliferated in that area, the team-members returned to the Ford Fiera vehicle which they used and where their team leader, Sgt. Carbonel, was waiting, and reported what they saw. Then and there, Carbonel briefed them and told them to implement their 'buy-bust' operations with the informant as the poseur-buyer, using a P10.00 bill marked money (Exhibit 'G') to buy marijuana. Pat. Maniquiz was told to stay near the informant which he did by staying 5-7 meters from him. Sgt. Carbonel and Pat. Balatbat acted as perimeter security while Patrolmen Alferos, Peltra and Papa will be the arresting officers. The police informant proceeded to where the accused was at that time which is right in front of their (accused) house. The place was well lighted by MERALCO street lamps. Alferos was 10 meters from the informant and the accused while the others stayed at a fair distance so as not to arouse suspicion. Carbonel and Balatbat stayed in their jeep parked at Beata St., which is some 100 meters from the scene. It was agreed that the moment their informant, would give the signal (his left hand to scratch the left side of his head to indicate that the marijuana was already handed to him and he, in turn, gave the money to the pusher), they will immediately converge and effect the arrest. So, when they saw the informant scratching the left side of his head, the team members converged and closed in. Maniquiz identified himself as a policeman to the accused, after which he, with the assistance of Alferos, arrested him for selling one tea bag of dried flowering tops of marijuana (Exhibit F-1'). The arrest was effected at 12:45 o'clock in the early morning of April 15, 1987. They then brought the accused, together with the evidence, to the NCIS office. Once they reached their office, Carbonel turned over to the police investigator, Pat. Eliseo Zamora, the body of the accused and the subject marijuana (Exhibit 'F-1') and the marked money (Exhibit 'G'). Zamora informed Rojo of his constitutional rights to remain silent, to counsel and the nature of the accusation against him which is drug pushing. Then, he prepared a written request to the NBI for examination of the specimen, which, together with said specimen, he handcarried to the NBI Forensic Chemistry Laboratory for the determination of whether the same is positive of marijuana or not. Meanwhile, Carbonel and the others executed a joint affidavit of arrest (Exhibit 'A' and 'A-1').

"The accused, known as Bong, was not only the pusher in that place. For he has companions like Jayjay (somewhat fat with a height of 5'5") and Pete (medium built and brown complexion). Actually, the three pushers were their objective that night but it was only Rojo who appeared.

"After Rojo was arrested, he was asked by Pat. Maniquiz to empty his pockets. The marked money (Exhibit 'G') was one of those brought out from the front right pocket of his (Rojo) pants. Maniquiz took it while their informant delivered the marijuana to Carbonel. Pat. Zaldy Papa later affixed his initials (Exhibit 'G-1') on the P10.00 bill while Pat. Zamora placed his initials 'EZ' and date (Exhibit 'F-1-A') on the rolling paper inside the plastic tea bag containing dried marijuana leaves to insure that they were the very same articles involved in the 'buy-bust' operations conducted herein." [5]

The theory of the defense is as follows:

"Defense evidence tends to show that at around 12:30 o'clock in the morning of April 15, 1987, appellant was in front of his house conversing with his relatives relative to the passion-week reading (pabasa) which he failed to attend. After their conversation, his relatives left to eat and proceeded to the bakery. Soon after he was left alone, two men approached him. Asked who they were by the appellant and what crime did he commit, he was nevertheless frisked and told to stand. They collared him and accused him of being a drug pusher. Maintaining his innocence, he was brought their service vehicle parked not far away. Because he does not know of any offense which he has committed, appellant struggled to free himself. While he was frisked by the 2 policemen, Pat. Maniquiz placed the marked money (Exh. "G") in his pocket. Then again Pat. Maniquiz showed him a small tea bag of marijuana (Exh. "F-1"). They then forced him to board their vehicle and appellant was accompanied by his uncle Conrado Gabriel to Precinct 5. The policemen were asking P5,000.00 in consideration of the appellant's release which amount was later on reduced to P3,000.00. Appellant denied selling marijuana." [6]

The question now before Us is - in the light of the conflicting evidence presented, is there sufficient evidence beyond reasonable doubt to sustain a conviction? The charge is a grave one that carries with it a penalty of reclusion perpetua. Hence, the evidence must be evaluated with extreme care.

It is a fundamental rule that a judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense. The trial court cannot merely depend upon probabilities and improbabilities of alleged events. It must determine whether or not the alleged events actually happened based on the evidence adduced. In this case, the alleged entrapment must be established by clear and convincing evidence.

The theory of the prosecution is that the informant acted as buyer in the entrapment proceedings. However, the alleged informant was never presented as a witness. His identity was never revealed because it was supposed to be confidential information.

The evidence of the prosecution on the matter of the participation of the informant as alleged buyer in the entrapment proceedings is contradictory. Thus, according to the testimony of witness Sgt. Jimmy Carbonel, the person who acted as buyer in the entrapment proceedings was Patrolman Francisco Maniquiz, with Patrolmen Ramon Alfero, Danilo Peltra and Rizal Papa as arresting officers, and Patrolman George Balatbat in charge of perimeter security. He testified as follows:

"DIRECT EXAMINATION BY THE FISCAL:

"Q. Will you tell the court the names of the members of your team who participated in this operation and their respective participation?

"A. The one who acted as poseur-buyer was Pat. Francisco Maniquiz with Pat. Ramon Alfero and Pat. Danilo

Peltra and Rizal Papa as the arresting officers and myself, Pat. George Balatbat as perimeter security (sic).

"Q. How about your informant, did he have any participation?

"A. He went with the poseur-buyer in the area of the suspect and conducted the buy-bust operation.

"Q. What exactly did the poseur-buyer, Pat. Francisco Maniquiz do, if you know?

"A. With the assistance of the informant who transacted the negotiation and after a few minutes the buy-bust operation was already conducted and the suspect was arrested.

xxx xxx xxx xxx

Q. Why was he arrested?

"A. He was arrested because of selling one tea bag of a special marijuana.

"Q. To whom?

"A. To the informant with the poseur-buyer." (Emphasis supplied.)(7]

On the other hand, prosecution witness Patrolman Francisco Maniquez testified otherwise in that the informant was the one who acted as buyer in the entrapment proceedings. His testimony follows:

"DIRECT EXAMINATION BY THE FISCAL:

"Q. What else did you do after you saw... you allegedly saw the accused Rojo transacting with persons?

"A. We then had a briefing in the jeep and we told the informant what he will do.

"Q. What happened next?

"A. Then Sgt. Carbonel gave the marked money to him and he will buy to the pusher, Aureo Rojo,..... in order for him to buy marijuana.

"Q. And how about you, what did you do?

"A. When the informant was already buying we positioned ourselves at the place.

"Q. Where specifically is this place where your informant and the accused allegedly had a transaction?

"A. In front of the house of Aureo Rojo.

"Q. Where is this?

"A. Barreto street.

"Q. Where? What district or city?

"A. Pandacan, Manila.

"Q. And where were you at the time when the accused allegedly handed marijuana to your informant?

"A. Around 5 to 7 meters." (Emphasis supplied.)(8]

Obviously, there is a fatal flaw in the prosecution's evidence on how the alleged entrapment proceedings took place. The so-called informant was never presented as a witness and he was never identified. His having acted as buyer in the alleged entrapment proceedings was not established as a fact by evidence beyond reasonable doubt because of the contradictory evidence as to who really posed as buyer. There is now even a doubt as to whether or

not the entrapment proceedings ever took place at all.

In a prosecution for violation of Section 4, Article II of Republic Act No. 6425 as amended by Presidential Decree No. 1675 which penalizes any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any such transactions, the prosecution must be able to establish by clear and convincing evidence that the person charged at a particular time, date and place committed any of said unlawful acts.

In this particular case, the witnesses for the prosecution who were members of the police team at the time of the alleged "buy-bust operation," particularly Sgt. Carbonell and Pat. Balatbat, were in their jeep parked at Beata street, some 100 meters away from the scene. Pat. Alferos was 10 meters away from the informant and the appellant while Pat. Maniquiz was about seven (7) meters away and the others stayed at a far distance so as not to arouse suspicion. It was only after the informant gave the signal by scratching the left side of his head with his left hand to indicate that the marijuana was already handed to him and that he in turn gave the money to the appellant that the said police officers converged and arrested the appellant.

These are the facts as found by the trial court which show that none of the prosecution witnesses actually saw the appellant deliver the alleged bag of flowering tops of marijuana which was allegedly sold to the informant. It also indicates that they did not see the informant pay the alleged consideration of the sale with a 10-peso bill. They just assumed that the transaction was consummated upon a signal from the informant. There is, therefore, no direct evidence, much less conclusive proof, to establish the alleged unlawful sale of marijuana being pinned on the appellant.

If truly there was such an entrapment that was undertaken in this case, the informant would be the best witness for the prosecution. Inasmuch as he was not presented, the case of the prosecution must fall. The police officers and the prosecution aver that they did not present the informant as his identity was a confidential matter. If the purpose is to conceal the identity of the informant from the appellant and for the personal security of said informant, the said objective cannot be attained by withholding the testimony of the informant during the trial. The informant must be well known if not familiar to the appellant otherwise the latter would not readily sell the marijuana to the former. Thus, the identity of the informant was known to the appellant all the time and when immediately thereafter the appellant was apprehended and arrested by the police officers and the informant was not similarly taken into custody, the only logical conclusion is that the appellant right then and there found out that he was the victim of an entrapment and that the informant was in collusion with the police authorities.

There is, therefore, no reason why the prosecution could not and did not present the informant as a prosecution witness. He is the best witness to establish the charge against the appellant who denies the charge.[9] As the appellant correctly observed, such a failure to present the informant as a witness gives rise to the presumption that such evidence wilfully suppressed would be adverse if produced.[10]

On the other hand, assuming that the testimony of Sgt. Carbonell is correct in that the poseur-buyer was not the informant but Pat. Francisco Maniquiz, then with more reason the theory of entrapment of the prosecution become even more incredible. The appellant did not know Pat. Maniquiz. It is improbable that the appellant would risk selling marijuana to a person he met for the first time.

Moreover, the transaction was allegedly consummated in a public street within the view of the public including some teenagers. The street light was bright and shining. If the appellant was really a drug pusher, he would not have so openly sold marijuana in such a public place within the view of so many people. He would have attempted to conceal the transaction. It allegedly transpired in front of his house. Hence appellant could have asked the buyer to go up his house or behind the house if only to insure its secrecy.

In the light of the shaky evidence of the prosecution, the defense of the appellant consisting not only of a categorical denial of the imputation against him but an assertion that it was a frame-up and that the policemen attempted to extort money from him becomes significant.

Conrado Gabriel, uncle of the appellant, testified that immediately after the arrest of the appellant by the policemen, they asked the arresting policemen what crime the appellant committed and they were told that he was a drugpusher and that if they wanted his release, they must raise the amount of P5,000.00; that he went home to raise the amount but was only able to bring P2,000.00; that the policemen refused to accept the amount and insisted on P3,000.00 instead; and that he did not remember the name of said policemen.

The appellant corroborates the testimony of his uncle in that when he was locked inside the cell, his uncle talked to the arresting officer after which he was told by his uncle that they were asking for P5,000.00 as consideration for his release. He told the policemen that they could not afford such amount. This prompted Sgt. Carbonell to lower their demand to P3,000.00. The haggling took place inside the cell of Police Precinct No. 5.

Natalia Gabriel, mother of the appellant, also testified that in the early morning of April 16, 1987, Conrado Gabriel returned and told her that the arresting policemen were demanding money for her son's release; that she went to the police headquarters that morning and learned that the arresting policemen were Sgt. Carbonell, Patrolmen Balatbat and Maniquiz; that they haggled for a lesser amount and she was advised to talk to the police investigator, Pat. Eliseo Zamora; and that after several days she was able to talk to Zamora who told her it was too late because the case against her son was already filed.

The Court is disturbed by this evidence tending to show that members of the law enforcement agencies who figured in this case tried to extort money from the appellant and his family. Although it is true as observed by the court *quo* that no complaint was filed against said policemen by the appellant, it should be understandable not only because the transaction was not consummated but that appellant and his relatives would certainly think twice before filing such complaint against the police.

This matter should be inquired into. Three witnesses attest to the incident. Said law enforcement agents should be held liable if proven to be true. By the same token they should be given a chance to clear their names, if it is without basis. It is about time that shady characters in police uniform should be weeded out.

There can be no dispute that drug pushing is a serious offense that should be relentlessly ferreted out and the persons responsible prosecuted. They are peddlers of destruction. It cannot be denied that one of the most effective means of their apprehension is through a "buy-bust" operation with the assistance of an informant. As above discussed, in such an instance, the prosecution could easily prove its case with the informant as its witness.

On the other hand, it is a matter of fact that opium, marijuana or any other prohibited drug can easily be planted by some corrupt law enforcement agents on innocent victims as a convenient vehicle of extortion. And many such persons would rather buy peace than risk a prosecution however false it maybe.

In any case the courts must be vigilant. A handy defense in such cases is that it is a frame-up and that the police attempted to extort from the accused. Extreme caution must be exercised in appreciating such defense. It is just as easy to concoct as a frame-up. At all times the police, the prosecution and the courts must be always on guard against these hazards in the administration of criminal justice.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another judgment is hereby rendered ACQUITTING appellant Aureo Rojo y Gabriel, with costs de oficio. Let a copy of this Decision be furnished the National Police Commission (NAPOLCOM) for such appropriate action as may be deemed proper against the members of the law enforcement agency alluded to in this case.

SO ORDERED.

Narvasa, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.
Cruz, J., concurring opinion.

[1] Page 65, Rollo.

[2] Judge Procoro J. Donato of Branch 12 of the Regional Trial Court of Manila wrote the decision.

[3] Page 58, Rollo.

[4] Page 71, Rollo.

[5] Pages 67-70, Rollo

[6] Page 4, Appellant's Brief.

[7] T.S.N. dated November 4, 1987, page 4; page 6, Appellant's Brief.

[8] T.S.N. dated December 15, 1987, page 4.

[9] People vs. Ale, 145 SCRA 50, at 62 (1986).

[10] Section 5(e), Rule 131, Rules of Court.

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SEPARATE OPINION**CRUZ, J.:**

I concur in the acquittal insofar as it is based on the finding that there is not enough evidence to sustain a conviction. With regret, however, I am unable to agree that the presentation of the supposed informer at the trial was indispensable to the cause of the prosecution. The decision itself recognizes the reason for not exposing him but declares just the same that he should have been called to testify. It says the sale to him would have been believable, presuming he was a friend of the accused, but not to the police officers, who were total strangers. Perhaps so. But what to me was fatal to the People was its own evidence that the sale took place in a brightly-lit public street in plain view of some other people and just in front of the defendant's house. That is what I find implausible. Even supposing that the accused was really a drug pusher, I do not think he would have made the sale in such a place and such circumstances, not even if the informer was a friend. That flaw rendered more credible the charge of police extortion, which broke the camel's back.

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