

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN DE LA CRUZ Y GONZALES AND REYNALDO BELTRAN Y ANIBAN, ACCUSED-APPELLANTS.

G.R. NO. 83260. April 18, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Juan de la Cruz y Gonzales and his co-accused Reynaldo Beltran y Aniban were charged in Criminal Case No. 87-54417 of the Regional Trial Court of Manila with violation of Section 4, Art. II, in relation to Section 21, Article IV of Republic Act No. 6425, as amended, in an information which reads:

"That on or about May 4, 1987, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there willfully, unlawfully, and knowingly sell, deliver or give away to another the following:

- One (1) cigarette foil wrapper containing marijuana;
- Two (2) cigarette foil wrapper (sic) containing marijuana which are prohibited drugs.

"Contrary to Law."[1]

The accused, who were assisted by a counsel de oficio, pleaded not guilty when arraigned on May 26, 1987. On August 18, 1987, trial on the merits started, with the prosecution thereafter presenting as its witnesses P/Pfc. Adolfo Arcoy, P/Capt. Luena Layador, T/Sgt. Jaime Raposas, Sgt. Vicente Jimenez, and S/Sgt. Armando Isidro. On its part, the defense presented both accused, Lolita Mendoza and Maribeth Manapat as its witnesses.

The court a quo, in a comparative evaluation of evidence, painstakingly summarized the clashing factual versions of the prosecution and defense as follows:

"x x x On its part, the prosecution alleged that after receiving a confidential report from Arnel, their informant, a 'buy-bust' operation was conducted by the 13th Narcotics Regional Unit through a team composed of T/Sgt. Jaime Raposas as Team Leader, S/Sgt. Rodelito Obice, Sgt. Dante Yang, Sgt. Vicente Jimenez, P/Pfc. Adolfo Arcoy as poseur-buyer and Pat. Deogracias Gorgonia at Maliclic St., Tondo, Manila at around 2:30 o'clock in the afternoon of May 4, 1987 to catch the pusher/s. P/Pfc. Adolfo Arcoy acted as the poseur-buyer with Arnel as his companion to buy marijuana worth P10.00 from the two accused, Juan de la Cruz and Reynaldo Beltran. At the scene, it was Juan de la Cruz whom Arcoy first negotiated (with) on the purchase and when Arcoy told De la Cruz that he was buying P10.00 worth of marijuana. De la Cruz instructed Reynaldo Beltran to give one aluminum foil of marijuana which Beltran got from his pants pocket and delivered it to Arcoy. After ascertaining that the foil of suspected marijuana was really marijuana, Arcoy gave the prearranged signal to his teammates by scratching his head and his teammates who were strategically positioned in the vicinity, converged at the place, identified themselves as NARCOM agents and effected the arrest of De la Cruz and Beltran. The P10.00 marked bill (Exhibit C-1) used by Arcoy was found in the possession of Juan de la Cruz

together with two aluminum foils and containing marijuana (Exhibits 'B-2' and 'B-3').

"Traversing this version is that of the defense which, in brief, consists of a denial to (sic) the prosecution's theory and the claim that accused Juan de la Cruz, who was then suffering from loose bowel movement, was all the time in bed at their place at 3034 Maliclic St., Tondo, Manila, that never left their place throughout that day of May 4, 1987; that he never had a visitor on that day and that he was never engaged in the sale of marijuana. The NARCOM agents raided his place without search warrant or without first securing his previous permission. One searched thoroughly his place, the second acted as a guard posted at the door of De la Cruz' place and the third agent was a mere observer. His place was ransacked and he was even bodily searched. As regards accused Reynaldo Beltran, he was arrested by the same group (prior to the arrest of Juan de la Cruz) while he was playing 'pool' at Aling Ely's place along Maliclic St. that afternoon and that without much ado, he was taken because he was fingered by one Arnel to be engaged in selling marijuana. Both accused were brought to a parked vehicle of the raiding team. From there, they were taken to NARCOM headquarters for investigation where for the first time they came to know that they were being charged of selling marijuana." [2]

Finding the version of the prosecution more worthy of credit, the court a quo rendered its decision [3] on March 15, 1988, the decretal portion of which states:

"WHEREFORE, in the light of the foregoing consideration, the Court finds the accused, JUAN DE LA CRUZ y GONZALES and REYNALDO BELTRAN y ANIBAN, guilty beyond reasonable doubt of the Violation of Section 4, Article II, in relation to Section 21, Article IV, both of Republic Act No. 6425, otherwise known as Dangerous Drugs Act of 1972, as further amended by Presidential Decree No. 1675 and as charged in the Information, and, accordingly, hereby sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law; to pay a fine of TWENTY THOUSAND (P20,000.00) PESOS, Philippine currency, without subsidiary imprisonment in case of insolvency, and each to pay one-half of the costs.

"The three (3) aluminum foils containing marijuana (Exhibits 'B-2' to 'B-4') placed in an empty Marlboro pack (Exhibit 'B-1') are hereby ordered confiscated and forfeited in favor of the government and once this Decision shall become final and executory, the same shall be turned over to the Dangerous Drugs Board through the Director, National Bureau of Investigation, Manila, for proper disposition while the P10.00 bill (Exhibit 'C-1') bearing Serial No. F-215962 shall be returned to T/Sgt. Jaime Raposas.

"Furnish copy of this Decision to the Honorable Supreme Court through the Honorable Court Administrator."
[4]

From this decision, accused Juan de la Cruz y Gonzales and co-accused Reynaldo Beltran y Aniban interposed the instant appeal.

In a letter of the Warden, Manila City Jail, dated March 3, 1989, [5] the Court was informed of the death of accused-appellant Juan de la Cruz y Gonzales on February 21, 1989. Counsel de oficio having thereafter submitted a certified true copy of the death certificate of the accused, [6] as directed by the Court, the criminal case against said accused-appellant was dismissed in our resolution of September 25, 1989. [7]

The present appellate proceeding is, therefore, limited only to appellant Reynaldo Beltran y Aniban who now faults the trial court with the following assignment of errors:

- The Buy-Bust Operation being done to enforce Republic Act 6425 is unconstitutional and any evidence acquired under such method should not be admissible in court.
- The Buy-Bust Operation should be declared illegal for it breeds corruption of police and military officers through planting of evidence for purposes of extortion.

- The Court erred in giving probative value to the confiscated marijuana sticks, despite the fact that no civilian or other neutral person signed as a witness to its taking. If it were true, there must be at least one civic-minded citizen who could easily be convinced by the police to witness it.

- The Court erred in considering the evidence, Exhibits "B-2," "B-3" and "B-4", as the very ones confiscated.

If they were the very ones taken from the accused, the original receipt prepared at the scene of the crime would not have been thrown away by the very agent who acted as the buyer. Exhibit "E" should have been given no probative value for having been executed by someone who did not actually confiscate the marijuana.

- The Court erred in giving probative value to the Buy-Bust Operation when even the alleged marked money utilized in the operation could not be identified by the leader, T/Sgt. Jaime Raposas.

- The Court erred in not giving value to the testimony of the two disinterested witnesses for the defense, namely, Lolita Mendoza and Maribeth Manapat, whose testimony corroborated substantially that of the accused.

- The Court erred in concluding that there was no motive for the military to manufacture evidence. It is common knowledge that apprehensions of this kind are made to fill up a quota of arrest in cases handled to comply with standard operating procedure and efficiency reports.[8]

We affirm the judgment of conviction.

Appellant assails, as unconstitutional the manner in which the so-called buy-bust operation is conducted in order to enforce the Dangerous Drugs Act. He stigmatizes it as no different from seizure of evidence from one's person or abode without a search warrant. He argues that this procedure is pregnant with opportunities, and gives rise to situations for corrupting our law enforcers.

We are not unmindful of the fact that the common modus operandi of narcotic agents in utilizing poseur-buyers does not always commend itself as the most reliable way to go after violators of the Dangerous Drugs Act as it is susceptible of mistakes as well as harassment, extortion and abuse.[9] By the very nature of this anti-narcotics operation, the possibility of abuse is great.[10]

We are not, however, inclined to shackle the hands of narcotics agents whose task, as it is, is already formidable and attended with great risk, lest their dedicated efforts for the apprehension and successful prosecution of prohibited drug violators be unduly hampered. The proliferation of drug addiction and trafficking has already reached an alarming level and has spawned a network of incorrigible, cunning and dangerous operators. Our experience has proven entrapment to be an effective means of apprehending drug peddlers as exemplified by this case.

The Solicitor General explains that a buy-bust operation is the method employed by peace officers to trap and catch a malefactor in flagrante delicto. It is essentially a form of entrapment since the peace officer neither instigates nor induces the accused to commit a crime.[11] Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker from whose mind the criminal intent originated. Oftentimes, it is the only effective way of apprehending a criminal in the act of the commission of the offense.[12]

While it is conceded that in a buy-bust operation, there is seizure of evidence from one's person without a search warrant, needless to state a search warrant is not necessary, the search being incident to a lawful arrest.[13] A peace officer may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense.[14] It is a matter of judicial experience that in the arrest of violators of the Dangerous Drugs Act in a buy-bust operation, the malefactors were invariably caught red-handed.[15] There being no violation of the constitutional right against unreasonable search and

seizure, the confiscated articles are admissible in evidence.

Appellant castigates the prosecution for not having presented any civilian or other neutral person who could attest that the foils of marijuana were indeed confiscated from him. The absence of any civilian witness should not undermine the case for the prosecution. The natural reaction of a civilian to inhibit himself from being a witness to a crime is understandable. A criminal proceeding entails a lot of unavoidable inconveniences, aside from the time involved in attendance as a witness in investigations and hearings. Adding to this the inherent fear of reprisal, we have the natural reticence and abhorrence of most people to get involved in a criminal case.

At any rate, the testimony of other witnesses in this case would only be cumulative or corroborative as they would only be repeating the facts already amply testified to by the government witnesses. Credence should be accorded to the prosecution's evidence more so as it consisted mainly of testimonies of policemen. Law enforcers are presumed to have regularly performed their duty in the absence of proof to the contrary.[16]

Appellant maintains that the court below should have rejected Exhibit E, which evidences the receipt of marijuana from appellant and which was prepared by Sgt. Vicente Jimenez, in the absence of the original receipt prepared at the scene of the crime by P/Pfc. Arcoy who was the poseur-buyer.

We agree with the Solicitor General, since this is borne out by the records, that Exhibit E is actually based on, as it is merely a clearer copy of the receipt prepared at the scene of the crime by P/Pfc. Arcoy. Since the draft receipt had to be prepared hurriedly at the scene in order that the accused could be brought to the Narcotics Command, such draft receipt was not clearly written, so Sgt. Vicente Jimenez mechanically transferred the written entries of P/Pfc. Arcoy into a more legible copy.[17] Nonetheless, there is no dispute that Sgt. Jimenez, a member of the team, had personal knowledge of the facts set forth in both receipts, being an eyewitness to the events that had transpired.

The testimony of T/Sgt. Jaime Raposas, the team leader who gave P/Pfc. Arcoy the money to pay for the marijuana, is challenged in that he failed to identify the marked money utilized in the operation. Appellant insists that the marked money must be recorded, if not photographed, in order to be admissible as evidence. This is clutching at evidentiary and argumental straws.

As found by the trial court, the money was in the possession of P/Pfc. Arcoy who had been assigned as the poseur-buyer. In the ensuing transaction, the foil of marijuana was handed to Arcoy by appellant and then Arcoy gave the money to accused Juan de la Cruz.[18]

Suffice it to say that even if the money given to De la Cruz was not presented in court, the same would not militate against the People's case.[19] In fact, there was even no need to prove that the marked money was handed to the appellants in payment of the goods. The crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. In the latter case, the act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration, consummates the offense.[20]

On the trial court's rejection of the testimony of the alleged two disinterested witnesses for the defense, namely, Lolita Mendoza and Maribeth Manapat, we find no reason to disturb its ruling. We reiterate the time-honored principle that on the issue of which version to accept, the findings of the trial court on the credibility of witnesses are given great weight and the highest degree of respect by the appellate court. Subject to exceptions which do not obtain in the present case, the trial court is in a better position to decide this question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[21]

Appellant imputes insidious motives on the part of the military to manufacture evidence, theorizing that a

buy-bust operation is for the purpose either of extorting money or, in line with alleged internal policies, complying with a quota of arrests.[22] These are bare unsupported allegations. From the evidence of record, we find no reason why the prosecution witnesses should fabricate their testimonies and implicate appellant in such a serious crime. The defense has not established any cogent motive for the police officers to falsely charge the accused with peddling marijuana. As found by the trial court, there is not even a breath, much less an accusation by the defense, that the military and police personnel involved were indeed engaged in such nefarious activities.[23]

Finally, appellant reproaches the prosecution for not presenting the civilian informer as a witness.[24] It is settled that the non-presentation of a certain witness by the prosecution is not a sufficiently plausible defense. If the accused believes that the testimony of said witness is important to his cause, he should avail thereof, even by compulsory judicial process if necessary. Furthermore, the non-presentation of some prosecution witnesses does not detract from the prosecution's case, since the number of such witnesses who should be called to testify is addressed to the sound discretion of the prosecuting officers.[25]

WHEREFORE, the judgment of the Regional Trial Court of Manila in Criminal Case No. 87-54417, insofar as accused-appellant Reynaldo Beltran y Aniban is concerned, is hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, 21.

[2] Ibid., 35-36.

[3] Per Judge Procoro J. Donato, Branch 12, Regional Trial Court of Manila.

[4] Rollo, 42.

[5] Ibid., 53-56.

[6] Ibid., 81-82.

[7] Ibid., 82-A.

[8] Ibid., 65-66.

[9] *People vs. Fernando*, 145 SCRA 151 (1986).

[10] *People vs. Ale*, 145 SCRA 50 (1986).

[11] Rollo, 94.

[12] *People vs. Gatong-o, et al*, 168 SCRA 716 (1988).

[13] Sec. 12, Rule 126, 1985 Rules of Criminal Procedure.

[14] Sec. 5(a), Rule 113, *id.*

[15] *People vs. Aminnudin*, 163 SCRA 402 (1988).

[16] *People vs. Claudio*, 160 SCRA 646 (1988).

[17] TSN, Sept. 7, 1987, 19-20.

[18] Rollo, 23.

[19] People vs. Polo, 147 SCRA 551 (1987).

[20] Sec. 2(f), Art. I, in relation to Sec. 4, Art. II, R.A. No. 6425, as amended.

[21] People vs. Bantac, et al., 167 SCRA 109 (1988); People vs. Espera, et al., G.R. No. 67173, July 31, 1989.

[22] Rollo, 73,107.

[23] Ibid., 37.

[24] Ibid., 108.

[25] People vs. Cerelegia, 147 SCRA 538 (1987); People vs. Castillo, G.R. No. L-32864, March 8, 1989.

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