

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE MARCOS Y SIBAYAN, ACCUSED-APPELLANT.

G.R. No. 83325. May 08, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by the accused Dante Marcos y Sibayan, from the decision* of the Regional Trial Court, First Judicial Region, Branch V, Baguio City, in Criminal Case No. 2890-R finding him guilty of violation of Section 4, Article II of Republic Act No. 6425 (Sale and Distribution of Prohibited Drugs) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency.

The dispositive portion of the said decision reads:

"WHEREFORE, the Court hereby finds and declares the accused DANTE MARCOS y SIBAYAN guilty beyond reasonable doubt of the crime of illegal sale and distribution of marijuana as charged and hereby sentences him to suffer life imprisonment; to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

"In the service of his sentence, the accused shall be credited with his preventive imprisonment under the terms and conditions prescribed in Article 29 of the Revised Penal Code, as amended.

"The confiscated marijuana leaves (Exhibits "B", "B-1" to "B-9") are hereby declared forfeited in favor of the Government, and upon the finality of this decision, the Branch Clerk of Court is directed to turn over the same to the Dangerous Drugs Custodian (NBI), through the Chief, PC Crime Laboratory, Regional Unit No. 1, Camp Dangwa, La Trinidad, Benguet, for disposition in accordance with law.

"SO ORDERED."

An information was filed by the Second Assistant Fiscal Alberto G. Gorospe at the Regional Trial Court, First Judicial Region, Branch V, Baguio City on December 3, 1985 charging the accused, Dante Marcos y Sibayan, of violation of Section 4, Article II of Republic Act No. 6425 (Sale and Distribution of Prohibited Drugs), having been committed as follows:

"That on or about the 4th day of December, 1985, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, and without any authority of law, did then and there willfully, unlawfully and feloniously sell and distribute dried marijuana leaves weighing about nine (9) kilos, more or less, contained in a big sack, for P700.00 per kilo or a total of P6,300.00, Philippine Currency, knowing fully well that said leaves of marijuana is a prohibited drug in violation of the above-mentioned provision of law.

"CONTRARY TO LAW."

Upon arraignment, the accused entered a plea of not guilty and trial on the merits ensued.

As gathered from the records, Major Florencio Junio, Commanding Officer of the First Narcotic Regional Unit, Baguio City, acting upon an information given by a confidential informer that accused-appellant Dante Marcos was selling marijuana at the Holy Ghost Hill Proper, Baguio City, organized on December 4, 1985 a "buy bust" operation team composed of A2C Serafin Artizona who was to pose as the buyer of the prohibited stuff, with Major Junio, Maximo Peralta, Freddie Cortel and Philip de Vera providing the back-up support (Rollo, pp. 58-59). The testimony of this team which eventually apprehended the accused, constitutes the major part of the prosecution's evidence.

The prosecution presented the testimonies of the following witnesses:

Lt. Carlos V. Figueroa, a forensic chemist at the PC Crime Laboratory, Camp Dangwa, La Trinidad, Benguet, testified that on January 2, 1986, he received a request for laboratory examination dated December 16, 1985 (Hearing of March 18, 1986; TSN, p. 3; Record, p. 4) for nine (9) bundles of marijuana stuff, weighing 9.2 kilos. He examined the same by means of the Duquenois-Levine test and the thin-layer chromatography test. Both tests showed that the bundles were positive for marijuana (Hearing of March 18, 1986; TSN, p. 4; Records, pp. 5-6).

A2C Serafin Artizona, a soldier, assigned at the 1st Regional Narcotics Command, Baguio City, testified that on December 4, 1985, he was assigned by his immediate chief Major Florencio Junio to compose a team to entrap accused Dante Marcos in the Holy Ghost Proper (Hearing of April 28, 1986; TSN, pp. 13-14; Records, pp. 14-15). Thereafter, together with the confidential informer they went to the Holy Ghost Proper. He was also accompanied by the back-up team strategically positioned within the vicinity, namely Major Junio, Maximo Peralta, Freddie Cortel and Philip de Vera (Hearing of April 28, 1986; TSN, pp. 14-15; Records, pp. 15-16). Once at the Holy Ghost Proper, he was introduced by the confidential informer as a buyer of marijuana to the accused who was then standing at the stairway together with his companion. After a while, they were asked to proceed to the second floor (Hearing of April 28, 1986; TSN, pp. 20-22; Records, pp. 21-23). He then ordered ten (10) kilos of marijuana priced at seven hundred pesos per kilo (P700.00). The accused left the room to get the stuff, and returned with a light blue sack and gave it to him. After inspecting the contents of the aforesaid sack, he gave the pre-arranged signal to his companion by spitting through the window. Accordingly, the back-up team went inside the house. Meanwhile, he introduced himself to the accused as a NARCOM agent (Hearing of April 28, 1986; TSN, pp. 16-17; Records, pp. 17-18). Eventually, the accused was arrested while his companion was able to evade the arrest. He also testified that he did not execute any affidavit to support his complaint against the accused (Hearing of April 28, 1986; TSN, p. 18; Records, p. 19).

Pat. Maximiano Peralta, an investigator of the 1st Narcotics Regional Unit, testified that on December, 1985, he was a member of the back-up team of A2C Artizona who negotiated with the accused. He rushed to the house when Major Junio who posted himself near the house of the accused gave the pre-arranged signal that the accused was already held by A2C Serafin Artizona (Hearing of January 14, 1987; TSN, pp. 31-32; Records, pp. 32-33). Inside the house, he saw Artizona holding the accused. He further disclosed that the sack contained ten (10) bundles of marijuana weighing more or less 9-1/2 kilos (Hearing of January 14, 1987; TSN, pp. 33-34; Records, pp. 34-35). Moreover, he testified that he was the one who prepared the affidavit of arrest and other supporting papers (Hearing of January 14, 1987; TSN, pp. 34-35; Records, pp. 35-36).

With the presentation of the oral testimonies of the witnesses by the prosecution and the documentary evidence which consist of: (a) Letter-request for laboratory examination dated December 16, 1985, signed by Murphy Bugtong, Chief of Narcotics Division, Baguio City Police Station (Exhibit "A", Original Record, p. 195); (b) Blue

sack which contained marijuana leaves (Exhibits "B" - "B-10", *ibid.*, p. 196; (c) Chemistry Report (Exhibit "C", *ibid.*, p. 197); (d) Sketch (Exhibit "D", *ibid.*, p. 198); (e) Joint Affidavit (Exhibit "E", *ibid.*, p. 199); as well as the physical evidence, the prosecution rested its case.

On the other hand, the defense presented the accused Dante Marcos as its principal witness who vehemently denied the accusation against him and claimed instead that the sack of marijuana belonged to a certain Roland Bayogan.

He testified that he was a security guard of the Freeport and Vito Security Agency and an Architectural drafting student at the University of Baguio. He was boarding at the ground floor of No. 23-C Sumulong St., a two-storey boarding house owned by Melita Adase (Hearing of August 24, 1987; TSN, pp. 2-3; Records, pp. 74-75). On December 4, 1985, he went to his class until 2:30 p.m. Thereafter, he went to his boarding house and reviewed for his last subject at 3:30 p.m. (*Ibid.*, pp. 4-5; 15; Records, pp. 76-77; 87). However, while reviewing, Roland Bayogan, a student from Kalinga-Apayao who was occupying a room on the second floor (*Ibid.*, p. 4; Records, p. 76) knocked at his door and asked him to go to his (Roland's) room to entertain his visitors as he was to go somewhere for a while. Accordingly, he went to Roland's room, and there met Roland's visitors, an American, a Filipino and a Negro boy. He was introduced to the three visitors and then Roland left (*Ibid.*, pp. 5-7; Records, pp. 77-79). Ten (10) minutes after, Roland returned carrying a big sack which he brought near the bed which was hidden from his view by a curtain. Roland then called for the Negro boy who in turn called for the American. When the American saw the contents of the sack he overheard him say, "Okay, I'll pay it", at the same time brought out his money as he emerged from behind the curtain (*Ibid.*, pp. 7-8; Records, pp. 79-80). He testified that as Roland was sitting on his bed he was called by the Filipino visitor, who held the former. He was also called by the same visitor who held his hands saying, "Relax lang kayo, this is NARCOM." He saw the Negro boy jump out of the window while panicked-stricken Roland tried to free himself from the hands of the Filipino, but the Filipino visitor pulled them both outside the door. When they were near the stairs Roland was able to free himself. Roland ran downstairs and fled. Suddenly, he heard a shot. The Filipino held on to him while the American went back to the room and got the sack. Later, accompanied by the Filipino and the American, they were met by two male persons at the foot of the stairs. He was pulled inside a vehicle and brought to the police station. He further declared that once inside the said vehicle, he heard one of them say, "Hindi ito talaga ang target natin, yong nakatakbo." (Hearing of August 24, 1987; TSN, pp. 8-10; Records, pp. 80-82). He further stated that A2C Serafin Artizona was not one of the visitors of Roland Bayogan. He and Pat. Peralta were never at the boarding house during the incident. He also claimed that the sketch of the place as presented by A2C Artizona is erroneous (*Ibid.*, p. 12; Record, p. 84) and insisted that his only purpose in going to the room of Roland Bayogan was to entertain the latter's visitors.

On cross examination, the accused admitted that he came to know Roland Bayogan only on November 15, 1985. Their relationship was casual and he had been to the room of Bayogan for the second time only on December 4, 1985, the day of the incident.

Renato Padua, a law student at the Baguio Colleges Foundation, testified and corroborated the testimony of the accused that at about 3:30 to 4:00 o'clock p.m. of December 4, 1987, he was reading in the second floor of No. 23-D Holy Ghost Proper, about 1.5 meters from No. 23-C where the accused Dante Marcos lived (Hearing of March 11, 1987; TSN, pp. 1-5; Record, pp. 49-53); that on the said afternoon he heard a commotion at 23-C which was followed by successive stamping of feet going down to the first floor. He went out from his room and stayed at the porch of his boarding house. Later, he saw Roland Bayogan, a boarder of 23-C running toward a small alley (*Ibid.*, pp. 7-10; Record, pp. 55-58). Meanwhile, he saw two persons who were then standing fire a shot into the air (*Ibid.*, p. 10; Record, p. 58). Thereafter, the two men came down to 23-C and met the accused (*Ibid.*, p.

11; Record, p. 59). At the same time, the accused was being held by a certain man followed by an American holding a sack. Finally, they boarded a jeep and then left (Ibid., pp. 11-14; Records, pp. 59-61).

Lastly, the defense presented Raul Bayangdan, an AB-BSE student at Baguio Colleges Foundation, a board mate and province mate of the accused. He testified that he has been a boarder at the first floor of 23-C Holy Ghost St. from June 1984 to March 1986. He corroborated the testimony of the accused as to the boarders of that house including Roland Bayogan and his sister Anita. He declared that he came to know about the incident from Melita Adasen and Renato Padua, a neighbor, when he went home from school. He also learned that Roland Bayogan ran away and never returned. He asserted that he has no knowledge of the incident except that which has been told to him (Hearing of February 8, 1988; TSN, pp. 2-9; Records, pp. 94-100).

The trial court gave more weight to the evidence of the prosecution and found the accused-appellant Dante Marcos guilty as charged.

Hence, this appeal.

On October 28, 1988, accused-appellant through his counsel filed his brief (Rollo, p. 35), while on May 19, 1989, the appellee's brief was filed (Rollo, p. 54).

The crucial issue of this case is whether or not there is instigation or entrapment of the accused.

Appellant contends that there was an instigation or even frame up and not a real entrapment. The "buy-bust" operation team who went to the place does not know the accused. In fact, the alleged buyer had to be introduced. There was no marijuana yet when the authorities came or when the alleged poseur buyer came to buy the prohibited drug. Thus, the accused was not about to commit a crime or committing a crime.

The contention is without merit.

The testimony of Artizona, the poseur buyer, was clear and convincing and demonstrated that the accused needed no instigation or prodding to commit a crime he would not otherwise have committed. Noteworthy is the fact that the accused, as gathered from the records, had a ready supply of marijuana for sale and disposition to anyone willing to pay the price asked for the prohibited material. Thus, the acts of the arresting officers here constituted entrapment, a process not prohibited by the Revised Penal Code (People v. Sanchez, G.R. No. 77588, May 12, 1989; People v. Borja, G.R. No. 71838, February 26, 1990).

It must be noted that in instigation, where the officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense, which he otherwise would not commit and has no intention of committing, the accused cannot be held liable. But in entrapment, where the criminal intent or design to commit the offense charged originates from the mind of the accused and law enforcement officials merely facilitate the commission of the offense, the accused cannot justify his conduct. Instigation is a "trap for the unwary innocent". Entrapment is a trap for the unwary criminal (Cabrera v. Judge Pajares, Adm. Mat. R-278-RTJ & R-309-RTJ, May 30, 1986, En Banc, Per Curiam, 142 SCRA 124).

In entrapment, the entrapper resorts to ways and means to trap and capture a lawbreaker while executing his criminal plan. On the other hand, in instigation the instigator practically induces the would-be defendant into committing the offense, and himself becomes a co-principal (People v. Natipravat, *inpra*). Entrapment is no bar to prosecution and conviction while in instigation, the defendant would have to be acquitted (People v. Lapatha, 167 SCRA 159).

The difference in the nature of the two lies in the origin of the criminal intent. In entrapment, the means originates from the mind of the criminal. The idea and the resolve to commit the crime come from him. In instigation, the

law enforcer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution. The legal effects of entrapment do not exempt the criminal from liability. Instigation does (Araneta v. Court of Appeals, 142 SCRA 534 [1986]).

The mere fact that the authorities deceived the appellants into believing that the former were buyers of heroin does not exculpate the latter from liability for selling the prohibited drugs. The police can legitimately feign solicitation to catch criminals who habitually engage in the commission of the offense (People v. Natipravat, 145 SCRA 483 [1986]).

Moreover, as noted by this Court, the defense that the accused was framed by the apprehending officer can be easily fabricated and not acceptable for accused being a drug pusher or seller almost always uses such defense. (People v. Francia, 154 SCRA 694 [1987]). For the defense of having set up or framed up to prosper, the evidence adduced must be clear and convincing. Like alibi, it is a weak defense, that is easy to concoct and is difficult to prove (People v. Nabunat, No. 84392, February 7, 1990, First Division, Gancayco, J.).

But the more important consideration is the fact that the appellant was positively identified by the prosecution witnesses. This should prevail over his denial and inadmission of having committed the crime for which he was charged, since greater weight is generally accorded to the positive testimony of the prosecution witnesses than the accused's denial (People v. de Jesus, 145 SCRA 52 [1986]; People v. Khan, 161 SCRA 406 [1988]; People v. Marilao, G.R. No. 71681, September 5, 1989). As between the positive declaration of the prosecution witnesses and the negative statement of the accused, the former deserves more credence (People v. Melgar, G.R. No. 75268, 157 SCRA 718; People v. Marilao, G.R. No. 71861, September 5, 1989). Moreover, even if the appellant denied the participation in the crime, his presence during the negotiation and actual delivery indicates a common purpose with other accused to sell marijuana (People v. Natipravat, *supra*).

In the case at bar, the findings of the trial court are as follows:

"On the other hand, the accused's pretension that he went to Roland's room that afternoon of December 4, 1985 only to entertain the latter's visitors lacks appeal to reason. Considering his own admission that he met Roland only on November 15, 1985; that he had gone to Roland's room only once before December 4, 1985; that they are not even townmates as Roland is from Kalinga-Apayao while the accused is from Pinged, Sabangan, Mt. Province, there is simply no discernible special relationship between them that could have moved Roland to pick on the accused as his surrogate to entertain his visitors. What is more, the accused had a scheduled examination at 3:30 o'clock for which he had to review. Why should he accede to Roland's request and thereby lose precious time he badly needed for his review? To top it all, even as Roland had already returned to attend to his visitors, the accused still did not leave. The Court is thus inclined to believe that Roland and the accused were together that afternoon because both were engaged in the illegal trafficking of marijuana."

It must be pointed out that ownership and possession are not indispensable elements of the crime. The mere act of selling or even acting as broker in the sale of marijuana and other prohibited drugs consummates the crime (People v. Madarang, 147 SCRA 123 [1987]).

Furthermore Artizona's testimony was corroborated by the "buy-bust" operation team especially Pat. Maximo Peralta who confirmed that appellant was truly a marijuana dealer. The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction (People v. Macuto, G.R. No. 80112, August 25, 1989). In the case at bar, the appellant handed over the blue sack containing the ten kilos of marijuana upon the agreement with Artizona to exchange it for money. The circumstances show that there was an agreement between the poseur-buyer and the appellant to consummate the sale. The fact that the appellant returned with the amount of marijuana corresponding to the aforesaid price suffices to constitute if not sale, then delivery or giving

away to another and distribution of the prohibited drug punishable under Section 4, Article 11 of Republic Act 6425 (People v. Rodriguez, April 25, 1989, G.R. No. 81332; People v. Tejada, G.R. No. 81520, February 21, 1989). What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices (People v. Macuto, supra).

Neither can the appellant aver that no consideration or payment was made. In the case of People v. Tejada, supra, this Court held that so long as the marijuana actually given by the appellant was presented before the lower court the absence of the marked money does not create a hiatus in the prosecution's evidence (People v. Teves, G.R. No. 81332, April 25, 1989). Recently, this Court ruled:

"It is true that police officers did not have the amount of P1,600 with them to buy marijuana from the appellants during the incident. Be that as it may, it was not indispensable for their operation. Sgt. Raquidan went through the motion as a buyer and his offer was accepted by the appellants who produced and delivered the marijuana. There was no need to hand the marked money to the appellants in the payment thereof. The crime was consummated by the delivery of the goods." (People v. Galtong-o, 168 SCRA 716 [1988]).

The alleged contradiction in the date of the affidavit or the fact that prosecution witnesses Artizona and Peralta did not know the number and owner of the raided house will not impair their testimonies. There is no cogent reason for the witnesses to know the number nor the owner of the house at Holy Ghost Hills in Sumulong Street because Artizona who posed as a buyer was accompanied by a confidential informer, who was familiar with the place. It has been ruled that contradictions in the testimonies of the prosecution witnesses not on material points is not fatal (People v. Pulo, 147 SCRA 551 [1987]). The doctrinal jurisprudence has consistently held that minor contradictions are to be expected but must be disregarded if they do not affect the basic credibility of the evidence as a whole (People v. Ancheta, 148 SCRA 178; People v. Natipravat, 145 SCRA 483; People v. Reriodica, Jr., September 29, 1989).

Conversely, the actuations of the appellant during his arrest during which he did not make a protest, indicates his guilt. Unusually submissive stance of the appellant after his entrapment and absence of vigorous protest when he was arrested, destroy his alleged innocence (People v. Madarang, supra).

Appellant failed to show that the police officers were actuated by any improper motive in testifying as they did. There is nothing in the records to suggest that the arrest was motivated by any reason other than the desire of the police officers to accomplish their mission. Courts generally give full faith and credit to police officers for they are presumed to have performed their duties in a regular manner (Rule 131, Section 5(m), Rules of Court; People v. Lamong, et al., G.R. No. 82373 April 17, 1989; People v. Gamayon, 121 SCRA 642; People v. Policarpio 158 SCRA 85; People v. Patog, G.R. No. 69620, September 24, 1989; People v. Natipravat, supra; People v. de Jesus, supra). As such, their testimonies cannot be discredited where no motive is shown why they would frame up the appellant (People v. Ranola, April 12, 1989, No. 71752; People v. Line, 71 SCRA 249 [1976]).

Well-settled is the rule that findings of the trial court on the issue of credibility of the witnesses' testimonies are accorded great weight and respect on appeal because the trial judge has first hand opportunity to examine and observe the conduct and demeanor of the witnesses during the giving of their testimonies (People v. Rodriguez, G.R. No. 81332, April 25, 1989; People v. Tejada, supra; People v. Abonada, G.R. No. 50041, January 27, 1989; People v. Turla, G.R. No. 70270, November 11, 1988; People v. Aboga, 147 SCRA 404 [1987]).

PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

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

* Penned by Judge Salvador J. Valdez, Jr.

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