

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON RUEDAS Y TARA-TARA, ACCUSED-APPELLANT.

G.R. No. 83372. February 27, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Marlon Ruedas, was charged with violation of Section 4, Article II of Republic Act No. 6425[*] otherwise known as the Dangerous Drugs Act in Criminal Case No. 85-587 before the Regional Trial Court, Fourth Judicial Region, Branch 60, Lucena City. The information filed in said case reads, as follows (p. 24, Rollo):

“That on or about the 19th day of September, 1985, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there wilfully, unlawfully and feloniously sell 1.35 grams of marijuana dried leaves contained in two (2) small plastic bags, in violation of the aforementioned law.”

Upon being arraigned, the accused-appellant entered the plea of not guilty to the crime charged. After trial on the merits, the trial court rendered its decision on March 17, 1988, the dispositive portion of which, reads (p. 28, Rollo):

“IN VIEW OF THE FOREGOING, the Court finds Marlon Ruedas y Tara-tara guilty beyond reasonable doubt for Violation of Article II, Section 4 of Republic Act No. 6425, as amended, and the Court taking into consideration Article 63 of the Revised Penal Code hereby sentences him to suffer an imprisonment of Reclusion Perpetua and to pay the fine of P20,000.00.

“SO ORDERED.”

Hence, the present appeal.

The antecedent facts, as stated in the plaintiff-appellee’s brief are, as follows (pp. 3-6, Brief for plaintiff-appellee; p. 59, Rollo):

“In the morning of September 19, 1985, the 4th PC Narcotics Regional Unit at Camp Nakar, Lucena City received a telephone call from its ‘asset’ or confidential informer that a certain Marlon Ruedas was indulged in the ‘rampant selling of marijuana leaves’ in the interior (‘looban’) of Malvar Street, Lucena City. (pp. 3-5, tsn, Feb. 21, 1986; pp. 7-8, tsn, April 11, 1986; pp. 9-10, tsn, May 9, 1986).

“Acting thereon, Sgt. Rico Atienza organized a team composed of himself as team leader, with Sgt. Arnel Angsioco and CIC Alberto Colambo as members thereof. Initially, a surveillance was conducted by Colambo and the Informer. After the Informer had pointed to Colambo the house of the suspect, and the ‘ins’ and ‘outs’ of the place, they returned to where the two other members of the team were waiting inside the jeep and informed them of the veracity of the information. (pp. 9-13, tsn, April 11, 1986; pp. 10-15, tsn, May 9, 1986; pp. 2-4, tsn, July 3, 1986).

“Thereafter, the team conducted a ‘buy bust’ operation, with Colambo and the Informer to pose as buyers of marijuana while the two other members of the team were to wait for Colambo’s signal to arrest the suspect. When the Informer and Colambo returned to the place of the suspect, they were able to contact the latter who was later identified as the accused Marlon Ruedas. When the Informer asked the suspect if he has marijuana leaves for sale, the latter answered in the affirmative and left. A short while later, the suspect returned with two tea-bags of marijuana leaves, which he handed to the Informer for P20.00. At this juncture, Colambo, who was about two arms-length from the two, made the pre-arranged signal to his two companions to arrest the suspect. This made the accused suspicious so much so that he ran away to escape arrest (pp. 13-16, 18-19, tsn, April 11, 1986).

“The following day, when the two tea-bags of suspected marijuana leaves were brought to the Philippine Crime Laboratory at Camp Vicente Lim, Canlubang, Laguna, for examination (Exhibit ‘A’), the same were found to be positive for marijuana (Exhibit ‘C’) (pp. 15-18, tsn, April 11, 1986; pp. 10-13, tsn, Feb. 21, 1986).

“Meantime, finding nobody in the house where the two tea-bags of marijuana leaves were sold, Sgt. Angsioco called for the Barangay Captain of the place, who confirmed to them the name of the suspect as Marlon Ruedas (pp. 7-9, tsn, Feb. 21, 1986). Thereafter, the latter was apprehended by the police on the strength of a warrant of arrest issued as a consequence of the filing of complaint against him for Violation of Section 4, Article II of Rep. Act. No. 06425, (sic) as amended, with the Fiscal’s Office of Lucena City (p. 19, tsn, April 11, 1986).”

In this appeal, the accused-appellant assigns a single error committed by the trial court, that is, having given credence to the testimony of CIC Alberto Colambo. In support of this assignment of error, he alleges that from the outstart, CIC Colambo did not know his identity because Sgt. Angsioco had to ask the Barangay Chairman as to the person who resides in the place where the selling of marijuana took place.

That is not so. The identity of the accused-appellant was known to CIC Colambo, as revealed by his testimony in the direct examination:

“Q.

Upon reaching the place, as pointed to you by the confidential informer, did you see anybody there?

“A.

Yes, sir.

“Q.

And what did you do next?

“A.

Our confidential informer told me about the suspect or the seller, the exit and entrance of the place and also the house of the suspect, ma’am.

“Q.

Did you see the suspect as pointed by the confidential informer?

“ATTY. AYUMA:

Leading, your Honor.

“COURT:

Reform your question.

“FISCAL:

“Q.

Did he tell you the name of the suspect?

“A.

Yes, ma’am.” (p. 11, tsn, April 11, 1986)

Moreover, CIC Colambo testified that he actually saw the accused-appellant when the latter sold and delivered the two (2) tea bags of marijuana leaves to the informer:

“Q.

What did you do, Mr. Witness in connection with your buy-bust operation?

“A.

Our informer and I returned to the place and we conducted the buy-bust operation. Our informer approached the suspect while I was still two (2) arm stretches away from him he asked the suspect if they have the stub of marijuana and the suspect answered they have and then the suspect left the place for a while (madali lang). Upon the returned (sic) of the suspect, he gave the two (2) tea bags to the informer and in return he gave the suspect P20.00 and when I (sic) saw that I gave the pre-arranged signal to my team to apprehend the suspect but the suspicion of the suspect was arose so, he ran away, ma’am.

“Q.

Now, your are referring to (sic) your testimony about the suspect, can you recognize that suspect if you see him again?

“A.

Yes, ma’am.

“Q.

Is he present in the courtroom?

“A.

Yes, ma’am.

“Q.

Please point to him? (sic)

“A.

There, ma’am. (Witness pointed to a person inside the courtroom who stood up and when asked his name he said that he is Marlon Ruedas.)” (pp. 13-15, tsn, April 11, 1986)

Inasmuch as the transaction occurred in broad daylight and while CIC Colambo was near the accused-appellant, it was easy for the former to have recognized the latter.

The team conferred with the Barangay Chairman merely to verify the name of the accused-appellant as previously supplied by the informer. In so doing, the information given by the Barangay Chairman as to the name of the resident of the house where the two (2) tea bags of marijuana leaves were sold bolstered the identity of the suspect as the accused-appellant Marlon Ruedas. Sgt. Atienza, in the direct examination, testified:

“Q.

Were you able to apprehend the person/persons who sold the tea bags of suspected marijuana?

“A.

They were not there anymore, sir.

“Q.

Why were they not there anymore?

“A.

I do not know, ma’am.

“Q.

Upon reaching the place and seeing nobody in the house, what did you do next?

“A.

Sgt. Angsioco called for the barangay captain, ma’am.

“Q.

Who was that barangay captain?

“A.

Barangay Captain Aurora Garcia, ma’am.

“Q.

Was he able to talk with her?

“A.

Yes, sir.

“Q.

What was the nature of this conversation?

“A.

The Sgt. asked her as to the other persons who reside in the place where the selling of marijuana took place, ma’am.

“Q.

What was the answer?

“A.

Marlon Ruedas, Ma’am.” (pp. 8-9, tsn, Feb. 21, 1986)

Even the cross-examination conducted on CIC Colambo failed to discredit his positive identification of the accused-appellant:

“Q.

As a matter of fact, you will admit, Mr. Witness that it was only at 2:00 o’clock when you were already conducting this buy bust operation when you first saw the person who was alletedly (sic) selling dried marijuana leaves?

“A.

Yes, sir.

“X X X.

“Q.

And you were able to identify this person only because of what the Barangay Captain has conveyed to you, is that right?

“A.

No, sir. When we were already facing with (sic) each other and when it was already the buying and selling of marijuana, I came to know him.

“Q.

You asked him the name when you were confronting with each other, Mr. Witness?

“A.

It was our informant who informed me about that. He told me to remember that person that he is Marlon Ruedas to (sic) whom he will buy marijuana and when they were already dealing with each other I can arrest him right there.

“Q.

So you want to impress the Court that all along you will be arresting a certain Marlon Ruedas, is that right?

“A.

Yes, sir.

“Q.

Because that was the name your informant has given you?

“A.

Yes, sir.” (pp. 6-7, tsn, July 3, 1986)

The accused-appellant contends also that it was not necessary for CIC Colambo to give a pre-arranged signal to his teammates to apprehend him when he was then alone and unarmed whereas he (CIC Colambo) himself together with the informer could easily arrest him (the accused appellant). It is of judicial notice that a Philippine Constabulary officer, especially those attached to the Narcom Unit are adequately armed with guns, at least a sidearm.

On the contrary, CIC Colambo’s actuation was in accordance with the usual practice in “buy-bust” operations against illegal transactions involving prohibited drugs. Those who pose as buyers are usually unarmed so as not to arouse the suspicion of the suspect.

The other “arguments” of the accused-appellant regarding the credibility of CIC Colambo are no arguments at all. According to the accused-appellant, the fact that CIC Colambo was not able to identify him was buttressed by his (CIC Colambo) own statement “[t]hat thru the assistance of Brgy. Captain Aurora Garcia of stated place, we were able to identify the suspect as one Marlon Ruedas y Taratara, 23 years old, single, married, jobless, residing at Malvar Interior, Lucena City” (p. 12, Brief for accused-appellant; p. 40, Rollo). Disagreeing, the accused-appellant asserts that this statement is not correct insofar as his status is concerned. The truth of the matter is that he is single. What is more intriguing in the testimony of CIC Colambo which renders him incredible and ineffective, the accused-appellant continues, is his articulation to the effect that they conducted a buy-bust operation to apprehend him (the accused-appellant) when nothing was mentioned about the quantity of marijuana to be purchased and the corresponding amount to be paid therefore. Allegations of this kind, being nonsense, waste the precious time of the Court.

We find no cogent reason to depart from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses should be accorded the highest respect because it has the advantage of observing the demeanor of witnesses and can discern if a witness is telling the truth (People v. Samson, G.R. No. 55520, August 25, 1989, 176 SCRA 710; People v. Orita, G.R. No. 88724, April 3, 1990, 184 SCRA 105). The trial court, which had the opportunity to observe the demeanor of the witnesses and to listen to their respective testimonies, correctly gave more credence to the statements of the arresting officers (People v. Tandoy, G.R. No. 80505, December 4, 1990). In People v. Patog, et al., G.R. No. 69620, September 24, 1986, 144 SCRA 429, this Court held that when there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit. Thus, it was the trial court’s finding that (p. 28, Rollo):

“x x x. Considering that there is no credible evidence submitted by the accused to show ill motive on the part of the police officer Alberto Colambo who positively identified Marlon Ruedas as the person who handed to them the marijuana leaves, the Court gives credit to his testimony as against the mere denial of the charge by the accused.”

Although not in any way related to the assignment of error, the accused-appellant attacks also the prosecution’s failure to present as witnesses the informer and the Barangay Chairman from whom CIC Colambo allegedly came to know his identity and to introduce as evidence the P20.00 bill allegedly paid by the informer to him.

Suffice it to say that it is up to the prosecution to determine who should be presented as witnesses on the basis of

its own assessment of their necessity (*Tugbang v. Court of Appeals, et al.*, G.R. No. 56679, June 29, 1989, 174 SCRA 424; *People v. Somera*, G.R. No. 65589, May 31, 1989, 173 SCRA 684; *People v. Orita*, supra). The failure of the prosecution to present in evidence the P20.00 bill paid by the informer to the accused-appellant is consistent with CIC Colambo's testimony that the accused-appellant ran away and escaped arrest after having been paid for the two (2) tea bags of marijuana leaves. At any rate, the presentation at the trial of the "buy-bust money" was not indispensable to the conviction of the accused-appellant because the sale of the marijuana had been adequately proved by the testimony of the police officers. So long as the marijuana actually sold by the accused-appellant had been submitted as an exhibit, like in this case, the failure to produce the marked money itself would not constitute a fatal omission (*People v. Tandoy*, supra).

For the accused-appellant's defense, he reiterates the alibi that he was in Manila when the alleged crime happened. He went there on August 20, 1985 and worked at the Najjar Garment Factory located at Vito Cruz, Makati. He returned to Lucena City only on September 30, 1985 when he was informed by his sister that a case was filed against him. He presented as evidence a bus ticket to prove that he returned to Lucena City only on said date. His defense was corroborated by Teresita Atentar.

We are in conformity with the ruling of the trial court that (pp. 26-27, Rollo):

"After careful examination of the defense of the accused, the Court rejects the same in view of the positive identification by prosecution witness CIC Alberto Colambo that the accused was the one who handed and sold to them two (2) tea bags containing marijuana leaves (*People vs. Ubaldo*, L-19490, Aug. 26, 1968, 24 SCRA 24, 752).

"It must be emphasized that defense of alibi is one of the weakest defense that could be resorted to by an accused. The reason is that oral evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence ('*People vs. Badilla*,' 48 Phil. 718). While it is true that the accused presented a fare ticket (Exhibit '1') when he allegedly returned from Manila to Lucena City, a scrutiny of the said ticket shows that it was dated September 30, 1985 or long after the date when he was caught handing marijuana leaves to the police officers on September 19, 1985. In other words, since the accused was able to escape from the raiding team on September 19, 1985, he could have so easily went to Manila and returned to Lucena City on September 30, 1985 to prove his alleged alibi."

Besides, no evidence whatsoever from the accused-appellant's employer was submitted to corroborate his self-serving testimony, which the latter could have easily done if indeed he was employed in Makati. Instead, the accused-appellant presented Teresita Atentar. However, her testimony cannot be said to have sufficiently corroborated the alibi of the accused-appellant:

"Q.

By the way, Mrs. Witness, do you know where Marlon Ruedas was on September 19, 1985?

"A.

What I know is that he was in Manila, sir.

"Q.

And will you please tell this Court when did he leave Purok Maligaya when he went to Manila?

“FISCAL SIA:

Objection, your Honor, the witness is incompetent to testify.

“ATTY. AYUMA:

If she knows, your Honor.

“COURT:

Is the defense of the accused alibi?

“ATTY. AYUMA:

Yes, your Honor, the affidavit of the accused states that he was in Manila during the time of the incident.

“COURT:

I think you should have presented first the accused.

“ATTY. AYUMA:

But we are taking the opportunity to present this witness, your Honor. Anyway, the accused is available any time.

“COURT:

All right, witness may answer.

“WITNESS:

From the month of August, I have not seen him, and according to the sister, he had gone to Manila and from that time on, I have not seen him anymore, sir.” (pp. 7-8, tsn, March 20, 1987)

Even assuming that the accused-appellant was employed in Makati at the time of the incident, it was not physically impossible for him to have returned to Lucena City and committed the crime charged on September 19, 1985, taking into account modern means of transportation (*People v. Villapando*, G.R. No. 73656, October 5, 1989, 178 SCRA 341). The rule is too well-known that the defense of alibi can prosper only if it is so convincing as to preclude any doubt that the accused could not have been physically present at the scene of the crime or its vicinity at the time of its commission (*People v. Yeban, et al.*, G.R. Nos. 90279-81, October 11, 1990).

We, therefore, find that the guilt of the accused-appellant for the crime charged has been proven beyond reasonable doubt. However, the penalty of reclusion perpetua imposed by the trial court is improper as it is not the penalty provided for the offense charged. Section 4, Article II of Republic Act No. 6425, as amended, provides the penalty of life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00. The penalty of reclusion perpetua, a penalty provided in the Revised Penal Code which carries accessory penalties, is completely different from life imprisonment.

ACCORDINGLY, the appealed decision of the Regional Trial Court of Lucena City is AFFIRMED insofar as it imposed a fine of P20,000.00 but MODIFIED with regard to the penalty of reclusion perpetua which is changed to life imprisonment.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

[*] Section 4, Article II of Republic Act No. 6425 provides:

“Sec. 4 Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. – The penalty of life imprisonment to death and a fine ranging from twenty thousand pesos to thirty thousand pesos shall be imposed upon any person who, unless authorized 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 of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed. (As amended by PD No. 1625, February 17, 1980).”

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