

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELEE, VS. SAID SARIOL Y MUHAMADING, ACCUSED-APPELLANT.

G.R. No. 83809. June 22, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Said Sariol y Muhamading was charged with violation of Section 4, Article 11 of R.A. 6425 or the Dangerous Drugs Act in an Information which alleged:

"That on or about the 5th day of September, 1987, in the Municipality of San Juan, 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 4.37 grams of dried marijuana fruiting tops placed in a plastic bag contained in two (2) sealed small plastic bags, a prohibited drug, in violation of the above-cited law." (Rollo, p. 7)

Upon arraignment on September 17, 1987, the accused pleaded not guilty to the crime charged. Trial proceeded and the accused was convicted as follows:

"WHEREFORE, the Court hereby sentences the accused, SAID SARIOL Y MUHAMADING to suffer the penalty of reclusion perpetua with all accessory penalties, to pay a fine of P20,000.00 and to pay the costs.

"In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment.

"The two (2) sealed small plastic bags containing 4.37 grams of dried marijuana fruiting tops, subject of the offense charged, are hereby ordered turned over to the Dangerous Drugs Board Custodian, NBI, to be disposed of according to law." (Rollo, pp. 23-24)

The case is now before us on appeal. The accused-appellant specifically assigns the following as errors committed by the trial court:

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE HIGHLY IMPROBABLE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE OFFENSE OF VIOLATION OF SECTION 4, ARTICLE II OF REPUBLIC ACT 6425, AS AMENDED, CONSIDERING THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. (Rollo, p. 41)

The trial court summarized the factual scenario of the case in the following manner:

"x x x On September 5, 1987, at about 2:00 p.m., a confidential informant came to the office of the Narcotics Investigation Unit in Camp Crame, Quezon City and informed Cpt. Benjamin de los Santos, the Commanding Officer, that a certain person with alias 'Muslim' was engaged in the illegal trading of marijuana in the vicinity

located at Road 7, First West, Camp Crame, San Juan, Metro Manila. Upon receipt of said information, Cpt. de los Santos organized a team composed of T/Sgt. Roberto Angeles as team leader, Sgt. Ellecer Tuyay, Sgt. Elmer Feliciano, Pat. Pedro Tan and Pat. Ronnie Campita, all NARCOM agents, and dispatched said team in the mission area in order to conduct a 'buy bust' operation to apprehend the suspect who is the herein accused. The group, all clad in civilian clothes, arrived at the place of operation at around 2:45 p.m. of the same date. T/Sgt. Angeles designated at once Pat. Campita to act as 'poseur-buyer'. He was furnished by Sgt. Tuyay with two (2) five-peso bills previously marked with Serial Nos. FF 183869 and DD 445654 (Exhibit 'I') with which to buy marijuana from the accused alias 'Muslim'. At 3:00 p.m., Pat. Campita and the confidential informant chanced upon the accused near Jennie's Bakery along said area. They approached the accused and the informant introduced Pat. Campita as a prospective buyer of marijuana. The accused left awhile and came back shortly with one (1) small transparent plastic bag containing marijuana dried leaves which he delivered to Pat. Campita. 'The latter in turn handed the 'buy- bust' money (two (2) five-peso bills) to the accused. At this point, Pat. Campita made a pre-arranged signal to his other teammates nearby who immediately rushed in and placed the accused under arrest. Recovered from the accused after he consented to a body search were the 'buy-bust' money of two (2) five-peso bills and another small transparent bag containing marijuana dried leaves, the latter being voluntarily brought out by the accused after rigid interrogation.

"The accused, together with the evidences confiscated from him, was brought to the Office of the Narcotics Investigation Unit, NARCOM, Camp Crame, Quezon City and there subjected to questioning. Upon showing an identification card, accused revealed his name as SAID SARIOL Y MUHAMADING alias 'Muslim'. After the accused was informed about the nature of the charges against him and about his constitutional rights, accused verbally admitted that he was engaged in marijuana trade as a means of livelihood but refused to reduce in writing his verbal admission. Meanwhile, Sgt. Elmer Feliciano prepared the Booking Sheet and Arrest Report (Exhibit 'C'), a receipt of the property seized (Exhibit 'A') and a Statement regarding the constitutional rights of the accused (Exhibit 'D'), all of which were signed by the accused. On the other hand, Patrolmen Campita and Tan executed a Joint Affidavit dated September, 1987 (Exhibit 'J') concerning the surrounding circumstances for the apprehension and arrest of the accused.

"The two (2) small transparent bags containing suspected marijuana dried leaves were submitted to the PC Crime Laboratory for examination upon request of P/Sgt. Francisco Yraola through a letter-request dated September 5, 1987 (Exhibit 'F'). Witness Cpt. Nelly Cariaga, a Forensic Chemist of the PC Crime Laboratory, conducted microscopic and chemical examinations on the said specimens and submitted Chemistry Report No. D-899-87 (Exhibit "H") where she categorically stated therein that the subject specimens were positive for marijuana.

"Upon the other hand, the defense of the accused consisted of a denial that he had sold the dried marijuana leaves to the NARCOM agent. He related his version of the incident as follows: On September 5, 1987 at about 3:00 p.m., he went to a bakery along Road 7, First West, Camp Crame, Quezon City since he was asked by his guardian to buy bread for merienda. After buying bread and while on his way home, two (2) persons approached him and told him that he was selling marijuana. Immediately, they held him (accused) and brought him to their service vehicle. While inside the vehicle, he was frisked and was surprised that marijuana was found in his pocket which he knew very well at that time that it (sic) contained no marijuana. Thereafter, accused was brought to the office of the NARCOM agents in Camp Crame where he was allegedly mauled, boxed and forced to admit that he was selling marijuana. Since he refused to sign his admission in writing, he was brought to a detention cell and was detained for ten (10) days. Subsequently, he was brought to the Rizal Provincial Jail where he was detained up to the present.

"On cross-examination, accused admitted having signed a receipt for the marijuana and the marked money seized from him and also the Booking Sheet and Arrest Report. He contended that the officers testified against him because they were able to apprehend somebody who pointed to him as the one selling marijuana. He further averred that although he was maltreated by the NARCOM agents, he nevertheless did not file a

complaint against them for fear of reprisal." (pp. 16-19, Rollo).

The issue raised in this appeal is whether or not the trial court erred in convicting the accused of the crime charged.

The answer is in the negative as we find no reason to reverse the trial court's findings which resulted in a judgment of conviction. The appellant has failed to show that the trial court committed an error in convicting the accused considering that the testimonial as well as documentary evidence pointing to the guilt of the accused-appellant has not been overcome or shown to be unreliable.

First, the accused-appellant was caught in flagrante delicto. He was apprehended and positively identified by the prosecution witnesses while peddling marijuana stuff to one of the Narcom agents.

The circumstances surrounding the commission of the crime have been clearly and adequately testified to by the prosecution witnesses who were the very police officers conducting the buy-bust operation. Their testimonies were corroborated by the testimony of Forensic Chemist Nelly Cariaga as well as by documentary evidence such as the receipt for marijuana, the marked money, and the Booking Sheet and Arrest Report.

The main defense of the accused is denial. The appellant's bare denial cannot, however, prevail over his positive identification by prosecution witnesses as actually engaged in the sale of the contraband item. As held in several rulings of this Court, the unconvincing and bare denial of the accused that he had not committed the crime is not sufficient to overcome the positive testimonies of prosecution witnesses (See *People v. Pasco, Jr.* 137 SCRA 137 [1985] and *People v. Tuscano*, 137 SCRA 203 [1985]). Such denials constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the declarations of credible witnesses who testify on affirmative matters (*People v. Alcantara*, G.R. No. 74737, July 29, 1988).

Aside from denying the charges, the appellant claims that he was set up, mauled, boxed and forced to admit by the police officers who interrogated him. As aptly stated by the trial court, the accused-appellant's allegation of maltreatment is inconsequential for guilt or innocence considering that no extrajudicial confession was extracted from him. His conviction was based on other evidence.

The appellant explains that the reason the officers testified against him is because his arrest was a mere off-shoot of the apprehension of somebody else who pointed to him as the one selling marijuana. He did not, however, present further evidence to corroborate this rather implausible theory. Moreover, if it were true that the appellant suffered physical injuries he should have filed a complaint for maltreatment. He excuses himself by explaining that he did not do so for fear of reprisal. There is no need to go into this issue as the conviction is not based on any admission or confession but on more reliable proof than that which comes from the accused's declarations himself.

A careful consideration of the records shows that the prosecution evidence substantially and convincingly proves the commission of the crime and the arrest of the accused.

The Narcom agents who conducted the buy-bust operation did not know the accused-appellant. Their apprehension of the accused came about only as a result of the information given them by the confidential informer. There is not the slightest showing of an evil or bad motive on their part. We see no valid obstacle to the application of the ruling in *People v. Capulong*, (160 SCRA 533 [1988]) that credence is accorded to the testimonies of prosecution witnesses who are law enforcers for it is presumed that they have regularly performed their duty in the absence of convincing proof to the contrary. The appellant has not shown that the prosecution witnesses were motivated by any improper motive other than that of accomplishing their mission.

The accused-appellant likewise questions the non-presentation of the confidential informer. The matter of

presentation of its witnesses by the prosecution is not for the accused or, except in a limited sense, for the trial court to control. Discretion belongs to the city or provincial fiscal as to how the prosecution should present its case. He has the right to choose whom he should present as witnesses. (*People v. Campana*, 124 SCRA 271 [1983]). Moreover, if the defense believes that there are other witnesses who could have exculpated the accused, it should have called for them even by compulsory process. (*People v. Boholst*, 152 SCRA 263 [1987])

It is evident that the appellant knew what he was going through during the custodial investigation because he signed Exhibits A (Receipt of Property Seized), C (Booking and Arrest Report), and D (Statement that accused was informed of his rights) and, at the same time, refused to have his alleged verbal admission put into writing, aware that it could be unfavorable to him.

The appellant however, claims that the above documents were signed by him during custodial investigation without the assistance of counsel and after being mauled. These documents, however, are not evidence of guilt insofar as the crime charged is concerned. They refer to procedures which are followed after an arrest is effected but are not material in determining the innocence or guilt of the accused.

Said Sariol further argues that it is improbable that he would ply his illegal trade in broad daylight, publicly, and not far from Camp Crame and for a measly sum of P10.00. Obviously, what the accused is trying to point out is that if the sale of marijuana was his only means of livelihood, he would not risk discovery. This is a standard defense which under the circumstances of this and similar cases has not been accorded much credence. Not a few drug trafficking cases brought before the Supreme Court involved measly amounts of P10, P20, etc. and most of the accused were found to be guilty beyond reasonable doubt. The amount involved has not proved material to the existence of the trade considering the brisk turn-over of profits and the fact that the volume of trades varies transaction to transaction.

In view of the above, we find no ground in this appeal to alter the trial court's findings and appreciation of the evidence presented (*People v. Claudio*, 160 SCRA 646 [1988]). The trial court's ruling on the credibility of prosecution witnesses is sustained. Imputation of improper motives on the part of the witnesses has not been proved (*People v. Panuelos*, 136 SCRA 501 [1985]).

WHEREFORE, the appealed judgment is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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