

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR KALUBIRAN, ACCUSED-APPELLANT.

G.R. No. 84079. May 06, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant is questioning his conviction by the Regional Trial Court of Dumaguete City of selling marijuana in violation of the Dangerous Drugs Act. He contends that the trial court erred in giving credence to the evidence of the prosecution, in violating his constitutional rights against unreasonable searches and seizures, and in not according him the presumption of innocence.

Nestor Kalubiran was arrested on July 12, 1985, at about nine o'clock in the evening, at Real Street in Dumaguete City, by elements of the Narcotics Command stationed in that city. His arrest was the result of a "buy-bust" operation in which Pat. Leon Quindo acted as the buyer while the other team members lay in wait to arrest Kalubiran at the pre-arranged signal. Quindo approached the accused-appellant, who was with a group of friends in front of the Gamo Memorial Clinic, and asked if he could "score," the jargon for buying marijuana. Kalubiran immediately produced two sticks of marijuana, for which Quindo paid him a previously marked P5.00 bill. Quindo then gave the signal and Cpl. Levi Dorado approached and arrested Kalubiran. Dorado frisked the accused-appellant. He recovered the marked money and found 17 more sticks of marijuana on Kalubiran's person. The other team members, namely, M/Sgt. Ranulfo Villamor and Sgt. Ruben Laddaran, came later in a jeep, where they boarded Kalubiran to take him to the police station.

The 19 sticks of marijuana were marked and then taken to the PC Crime Laboratory, where they were analyzed, with positive results, as reported and later testified on by Forensic Chemist Myrna Arreola. The above-named Narcotics agents all testified and corroborated each other in narrating the "buy-bust" operation.

As might be expected, the defense had a different version of the accused-appellant's arrest. Kalubiran said he and his friends were in front of the Gamo Memorial Clinic that evening of July 12, 1985, when a jeep stopped in front of them and several persons alighted. One of them - whom he subsequently identified as Quindo - approached and frisked him. Finding nothing on him, Quindo went back to the jeep, and he for his part left for his house. However, he was called back by another person he later came to know as Villamor. He was told at gunpoint to board the jeep and taken to PC headquarters, then to the police station. He was released the following day with the help of a lawyer his girl friend, Norma Diez, had contacted. He denied having sold marijuana and insisted that the 19 sticks of marijuana and the marked bill never came from him.

Norma Diez corroborated Kalubiran. So did the other defense witness, Bob Reloj, except that he testified he was also frisked and likewise taken to PC headquarters and later to the police station, where he and Kalubiran were detained for three days.

After examining and evaluating the evidence of the parties, Judge Enrique C. Garrovillo found in favor of the prosecution, declared Kalubiran guilty as charged, and sentenced him to life imprisonment plus a P20,000.00 fine

and the costs. It is from this judgment that Kalubiran has filed this appeal.

This Court places much reliance upon the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to gauge by their demeanor whether they are being true to their oath or lying in their teeth. Such an opportunity is not available to the appellate judge, who must depend on the inanimate record that cannot reveal the tell-tale signs by which the truth may be discerned and the falsehood exposed. Lacking any showing of arbitrariness - and there is none in the case at bar - such findings of the trial court cannot be faulted by this Court.

There are indeed some inconsistencies in the testimonies of the prosecution witnesses but we do not find them substantial enough to impair the essential veracity of their narration of Kalubiran's arrest as it actually happened. We have said often enough that such imperfections may in fact bolster rather than emasculate a person's credibility as one cannot be expected to remember a particular incident with unerring accuracy in every minute detail.

It is the defense evidence that in fact suffers from the defects it would impute to the prosecution. While it has not been shown that the Narcotics agents were acting with ulterior motives rather than merely pursuing their duties, Norma Diez's testimony is reasonably suspect as she is the girl friend of Kalubiran and can be expected to be loyal to him, to the point of even lying for him. As for Reloj, his inconsistency with Kalubiran's testimony is not merely insignificant but loudly proclaims its own falsity. It is noted that Reloj said he was also arrested with the accused-appellant and the two of them were detained at the police station for three days. The accused-appellant said he was the only one arrested and that he was released the following morning.

The defense argues that Kalubiran would not have sold marijuana at a public place and in plain view of the people as this would be contrary to human nature and caution. We are not impressed. The people he was with at the time were his own group, friends who were probably aware of his unlawful trade and did not care much what he did. Moreover, it is to be expected that he did not sell the marijuana openly or with reckless fanfare but with appropriate furtiveness, as befitted his shameful trade.

At any rate, we have already observed in *People v. Paco*[1] that:

Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall (*People v. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329; *People v. Sarmiento*, G.R. No. 72141, January 12, 1987, 147 SCRA 252), in front of a store (*People v. Khan*, *supra*) along a street at 1:45 p.m. (*People v. Toledo*, G.R. No. 67609, November 22, 1985, 140 SCRA 259), and in front of a house (*People v. Policarpio*, G.R. No. 69844, February 23, 1988).

The defense posture that Kalubiran's arrest and search violated the Bill of Rights demonstrates an unfamiliarity with the applicable rules and jurisprudence. The accused-appellant was arrested in *flagrante delicto* as a result of the entrapment and so came under Section 5, Rule 113 of the Rules of Court, authorizing a warrantless arrest of any person actually committing a crime. The search was made as an incident of a lawful arrest and so was also lawful under Section 12 of Rule 116. In addition to the *aforecited* Rules, there is abundant jurisprudence justifying warrantless searches and seizures under the conditions established in this case.[2]

The argument that the marijuana and the marked money were not sufficiently identified must also be rejected. The

exhibits were placed in a steel cabinet by Villamor for safekeeping before he personally took the marijuana to the PC Crime Laboratory for examination. It was also Villamor who had also earlier initialed the P5.00 bill and later identified it at the trial as the money paid to the accused-appellant in exchange for the two sticks of marijuana.

The Court notes that Kalubiran was accused only of selling the two sticks of marijuana under Section 4 of the Dangerous Drugs Act when he should also have been charged with possession of the 17 other sticks found on his person at the time of his arrest. It is unfortunate that he cannot be held to answer for the second offense because he has not been impleaded in a separate information for violation of Section 8 of the said law.

It is futile for Kalubiran to invoke the constitutional presumption of innocence because it has been overcome with overwhelming evidence establishing his guilt. His defense is not only weak; what is worse for him is that the prosecution is clearly strong and has proved his offense beyond the whisper of a doubt.

Persons like the accused-appellant deserve the severe sanctions of the law for the misery they spread among our people, especially the youth, many of whom have forfeited their future because of the evil influence of drugs. The strong arm of the law must never weaken against the onslaughts of this terrible affliction.

WHEREFORE, the appealed judgment is AFFIRMED in toto.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] 170 SCRA 681.

[2] People v. Claudio, 160 SCRA 646; People v. Rodriguez, 172 SCRA 742; People v. Tangliben, 184 SCRA 220; People v. Ortiz, G.R. No. 82115, December 3, 1990.

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