

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MATEO ALILIN Y BISAVILLA, RAFAEL COLINA Y TUdTUD, DANILO JUNTILLA Y DE LA CALSADA AND ROLANDO PARRILLA, ACCUSED, MATEO ALILIN ...

G.R. No. 84363. March 04, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Following classified information that drug addiction had crept into the Sabang District in Ormoc City, preying on the youth mostly, the PC NARCOM confidential agents launched "Operation Lechon" (for marijuana) in early April of 1986. They not only conducted surveillance but also circulated among the youth and befriended them so they could identify the drug pushers who operated in that area.

On April 27, 1986, NARCOM agents S/Sgt. Cesar Maroto, Sgt. Luis Alfiler, Pfc. Vicente Brazil, CIC Elmer Feliciano, policewoman Linda Porcadilla and another NARCOM confidential agent met at the NARCOM office in Ipil, Ormoc City, to plan a "buy-bust" operation to be staged in front of the two-storey house of Porcadilla in the heart of the Sabang District at 3:00 o'clock in the afternoon of the next day. Porcadilla, who is a resident of the place and a native of Ormoc City, knew almost everyone in the neighborhood. According to the plan, Sgt. Cesar Maroto and Policewoman Linda Porcadilla would stay on the second floor of the policewoman's house, overlooking the site of the operation. Both had earlier been provided with telescopes and hand-held radio sets. The raiding team, composed of Sgt. Luis Alfiler, Pfc. Brazil, CIC Feliciano and another confidential agent who would pose as purchaser of marijuana from a targeted drug pusher, was posted at the corner of Burgos Street near Porcadilla's house. They were inside a white Ford Fiera and were also provided with hand-held radio sets. The two groups were to be in close contact through their radio sets and, as agreed, the password would be: "Go, go go!" As soon as Sgt. Maroto would give that signal, Sgt. Alfiler's team in the Ford Fiera would immediately swoop down on the drug pushers. The team members prepared P70.00 of marked money by taking down the serial numbers of two five-peso bills, one ten-peso bill and one fifty-peso bill.

In accordance with that plan, Sgt. Maroto secreted himself in Porcadilla's house at 2:00 o'clock in the early morning to avoid being seen.

Before 3:00 o'clock in the afternoon of April 28, 1986, Sgt. Alfiler and his companions posted themselves on Burgos Street aboard their motor vehicle to await the password.

From his vantage location, Sgt. Maroto saw the NARCOM confidential agent arrive in front of Porcadilla's house at around 3:00 o'clock in the afternoon. The appellant, Mateo Alilin y Bisavilla, and his companions, Rafael Colina and Danilo Juntilla, allegedly approached the agent. Policewoman Porcadilla who was watching beside Sgt. Maroto, recognized them and identified them by their names. The three men talked with their "customer" who gave the marked money to Alilin. Alilin whistled psst! upon hearing which Rolando Parilla came out of a neighbor's house, carrying a package which he gave to Juntilla who handed it to the confidential agent. Promptly,

S/Sgt. Maroto (who had been describing the proceedings over his hand-held radio) gave the password to strike and arrest.

Sgt. Alfiler and his team rushed to the scene straightaway and surrounded the appellant and his three companions. In the commotion that ensued, Parilla was able to escape but Alilin, Juntilla, and Colina were arrested. The team recovered from Alilin's pocket P20 consisting of one ten-peso bill and two five-peso bills. The marked fifty-peso bill was not recovered (pp. 14, 34-35, tsn, October 13, 1986). The package containing twenty-eight (28) sticks of marijuana cigarettes was also confiscated (pp. 17-18, tsn, October 13, 1986), and duly receipted for by Sgt. Alfiler, who gave the receipt to the appellant (p. 40, tsn, October 13, 1986). Nothing was found on the persons of Rafael Colina and Danilo Juntilla (p. 41, tsn, October 13, 1986).

During the investigation that followed, the NARCOM agents learned from the appellant and his co-accused, Juntilla and Colina, that the source of their marijuana was a certain Boy Ramoneda. A laboratory examination conducted by the PC crime laboratory on April 28, 1986 and the Chemistry Report (No. NB 77-86) issued by forensic chemist Liza Sabong revealed that the cigarette sticks were all positive for marijuana.

Alilin, Colina, Juntilla, and Parilla were charged in the Regional Trial Court of Ormoc City, Branch XII, in Criminal Case No. 2862-0 for violation of Section 4, Art. II of the Dangerous Drugs Act (Republic Act 6425, as amended). The information reads:

"That on or about the 28th day of April, 1986, at around 3:00 o'clock in the afternoon, in Sabang District, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused MATEO ALILIN y Bisavilla, RAFAEL COLINA y Tudtud, DANILO JUNTILLA y de la Calsada and ROLANDO PARILLA, conspiring together, confederating with and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously sell twenty-eight (28) sticks of marijuana cigarettes, thus violating Section 4 of Article II, Republic Act 6425." (p. 4, Rollo.)

Upon arraignment, Alilin, Juntilla, and Colina all pleaded not guilty. Parilla has remained at large.

As against the testimony of the prosecution witnesses, Sgts. Alfiler and Maroto, Alilin told the court that P40 (not P20 as claimed by the prosecution) in bills and some P10 in coins were taken from his possession. This is corroborated by the other defense witnesses, Danilo Cuizon, the accused Rafael Colina y Tudtud and Danilo Juntilla, as well as the prosecution's "Receipt for Property Seized" (Exh. D-2) which states that two (2) twenty-peso bills were taken from Alilin's possession.

Defense witness Ramon Mabitad, barangay secretary, testified that at around 3:00 o'clock in the afternoon of April 28, 1986, he saw Alilin walking casually, followed by an armed person, who called Alilin's attention and pointed to something on the ground. Mabitad heard the man say: "Pick it up!" and when Alilin was about to do so, the armed man boxed Alilin on the breast and brought him to Erlinda Porcadilla's house. The witness testified that Alilin was alone when arrested and that he never saw either Tudtud (Colina), or Juntilla with Alilin as he walked.

Witness Manuel Quizon testified that he and his brother, Victorino Quizon, were arrested by NARCOM agents at about 3:00 o'clock in the afternoon of April 28, 1986 at his mother's house. The arresting officer left them there for a short while and later came back with Rafael Tudtud (Colina). All of them were then brought to Linda Porcadilla's house where they saw Danilo Juntilla and Mateo Alilin. They were searched and various items were allegedly taken from their persons, but no marijuana.

These testimonies contradicted the claim of the prosecution that a buy-bust operation was conducted. It appears that what happened was that the NARCOM agents rounded up and/or arrested persons in Sabang Beach, Ormoc City, whom they suspected to be users or dealers of marijuana.

After trial, a decision was rendered on November 17, 1987, finding Mateo Alilin guilty as charged. The court sentenced him to suffer the penalty of reclusion perpetua and to pay a fine of P30,000, plus costs. Juntilla and Colina were acquitted.

Alilin comes before this Court on appeal, alleging that the trial court erred:

1. in not holding that the prosecution failed to prove his guilt beyond reasonable doubt because:
 - a. the twenty-eight sticks of marijuana cigarettes were not formally offered in evidence;
 - b. the prosecution witnesses' testimonies were not clear and convincing; and
 - c. the confidential agent was not identified nor presented on the witness stand;
2. in not holding that the marijuana sticks were not recovered from him;
3. in holding that the money seized from him were marked money and not his own; and
4. in holding that the evidence of the defense, compared to that of the prosecution, is "vacillating and flimsy" and that appellant's denial of the commission of the offense charged is not corroborated by the other defense witnesses.

There is merit in the petition.

Peddlers of prohibited drugs are "agents of destruction and deserve no less than the maximum penalty" (People vs. Bati, 189 SCRA 97). In view of the severity of Republic Act. No. 6425, to sustain a conviction for selling prohibited drugs, the sale must be clearly and unmistakably established.

However, the illegal sale of marijuana which merely requires proof of the consummation of the selling transaction (People vs. Dekingco, 189 SCRA 512; People vs. Marcos, 185 SCRA 154) would be impossible to establish when the price paid (the marked money) is not recovered from the alleged seller, the goods sold (the marijuana sticks) are not produced before the court, and the poseur-buyer is not presented at the trial. The absence of those elements of the transaction leaves a hiatus in the prosecution's evidence which is fatal to the case (People vs. Tangliben, 184 SCRA 220). The identity of the poseur-buyer is vital when the accused, as in this case, denies having sold marijuana to anyone (People vs. Ale, 145 SCRA 50). The failure to present the poseur-buyer engenders a well-grounded belief that he does not exist, or, that his evidence is being wilfully suppressed because it will be adverse if produced (Rule 131, Sec. 5[e], Rules of Court).

We have scrutinized the records of this case to ascertain whether or not the quantum of proof is sufficient to convict the appellant, and the following questions regarding the so-called "buy-bust" operation remain unanswered.

1. Why was the marijuana "recovered from Alilin" contrary to the declaration of the prosecution witnesses that it was given by Rolando Parilla to Juntilla who handed it over to the unnamed poseur-buyer?
2. If the marked bills amounting to P70 were indeed given to Alilin, why was the fifty-peso bill not found in his possession, despite the circumstance that he had no time to run and hide the money when the trap was sprung?
3. Why did the prosecution witnesses testify that P20 in marked P10 and two P5 bills were "recovered from Alilin's pocket" although the receipt (Exh. D-2) showed that two P20 bills (or P40) were seized from him?
4. Why was the pack of marijuana sticks not presented at the trial?
5. Why was the poseur-buyer not identified nor presented as a witness?

We need not belabor the settled doctrine in criminal procedure that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense. It must overcome the constitutional presumption of innocence which the accused enjoys, and must prove his guilt beyond reasonable doubt.

The prosecution's evidence in this case leaves much to be desired. The unexplained gaps in the evidence make us unable to conclude that the guilt of the accused has been proven beyond a reasonable doubt. Considering the severity of the penalty for drug-pushing, which is imprisonment for life, the Court hesitates to inflict it upon the appellant on the basis of the dubious evidence in this case.

WHEREFORE, the appealed decision is hereby reversed and set aside. The appellant Mateo Alilin is ACQUITTED of the crime charged with costs de oficio.

SO ORDERED.

Narvasa, C.J., Cruz, and Medialdea, JJ., concur.

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