

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTURO MAUYAO Y LORENZO, ACCUSED-APPELLANT.*G.R. No. 84525. April 06, 1992*

Ponente: MELENCIO-HERRERA, J.

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For "pushing" five (5) tea bags of marijuana, Arturo Mauyao, then 41, was sentenced to a life in prison and to pay a fine of P20,000.00. Once more, he reasserts his innocence, this time, before this Court.

Interestingly, on 19 August 1991, the accused-appellant filed a Motion to Withdraw Appeal only to retract it in a letter dated 11 January 1992. The Court allowed the withdrawal on 19 February 1992.

The prosecution evidence narrates that a team of police operatives from the Narcotics Unit of the Western Police District conducted a surveillance after "the Office received several phone calls from residents of Leyte del Sur (Street) that a suspect by the name of Arthur is (was) actually engaged in the illegal sale of marijuana cigarettes at the street of Leyte del Sur" (TSN, October 14, 1987, 29-31).

A "buy-bust operation" was then conceived. Thus, on 20 April 1987, at about 6:00 o'clock in the evening, after relating with an informant who admitted having acted as a "runner" (or a person who approaches would be buyers) for the accused-appellant Arturo Mauyao (ibid.), P/Sgt. Jimmy Carbonell formed a raiding team composed of himself as team leader, and four (4) others as members, among them, Pat. Rizal Papa and Pat. Ramon Alferos (TSN, September 23, 1987, 7). Pat. Alferos would be the poseur-buyer and thus, was handed two (2) ten peso bills, both initialled by Pat. Papa (ibid., 7-8). P/Sgt. Carbonell would be the arresting officer, while the others would act as back-up security (TSN, October 14, 1987, 31-32).

The apprehending party then boarded a civilian Ford Fiera (ibid., 10) and proceeded to Leyte del Sur Street, stopping a few meters away from where the suspect was expected (ibid., 11). Pat. Alferos walked with the informant towards the residence of the accused-appellant. P/Sgt. Carbonell, who was then in short pants and slippers, positioned himself on the other side of the street across the residence of the accused-appellant, pretending to buy fish balls from a fish ball stand. He was, more or less, four (4) meters away from where the transaction was to take place. The others likewise took their respective positions (ibid., 12; 31-33).

Upon seeing the accused-appellant, who was just standing outside his house at 923 Leyte del Sur Street, the informant introduced Pat. Alferos. Pat. Alferos was described to the accused-appellant as a "drug addict." Pat. Alferos then told the accused-appellant that he wanted to buy "five (5) tea bags." Pat. Alferos gave him the two (2) marked ten peso bills." The accused-appellant, in turn, handed over to Pat. Alferos five (5) tea bags and two (2) sticks of marijuana cigarettes "as free" (TSN, September 23, 1987, 9; TSN, October 14, 1987, 16).

At this point, Pat. Alferos introduced himself as a police officer and arrested the accused-appellant. Meanwhile, after witnessing the exchange, P/Sgt. Carbonell, who was across the street, "immediately ran towards the suspect (accused-appellant) and assisted the poseur-buyer to arrest the suspect" (TSN, October 14, 1987, 34-35). The

other team members, upon seeing P/Sgt. Carbonell, also closed in on the accused-appellant.

The accused-appellant then voluntarily surrendered the red clutch bag tucked to his waist which turned out to contain ten (10) more tea bags of marijuana leaves and four (4) more sticks of marijuana cigarettes (*ibid.*, 16-17). The two (2) marked ten pesos bills and some other bills were likewise recovered from him (*ibid.*, 36). The place where the transaction took place was well-lighted by a street light (*ibid.*, 27). There was no search and seizure warrant for the subject operation (*ibid.*, 21).

The accused-appellant was taken to the Narcotics Control Investigation Section of the Western Police District and turned over to Police Investigator Martin R. Orolfo who also received from P/Sgt. Carbonell one (1) red clutch bag containing ten (10) tea bags of marijuana leaves and four (4) sticks of marijuana cigarettes, five (5) tea bags of marijuana leaves, two (2) sticks of marijuana cigarettes, two (2) marked ten-peso-bills and some other bills amounting to thirty (P30.00) pesos. The accused-appellant was then made to sign the Receipt of Property Seized to admit that the above-mentioned items were indeed seized from him (Exh. H; Exh. H-4; TSN, August 5, 1987, 11).

Afterwards, the accused-appellant, in the presence of his wife, P/Sgt. Carbonell, the Police Investigator, and the Chief of the Narcotics Section allegedly admitted that he sold five (5) tea bags of marijuana and owned a red clutch bag containing ten (10) tea bags of marijuana (TSN, October 14, 1987, 40). The admission, however, was made without the presence of counsel (*ibid.*, 41).

He was also made to sign Exhibit E, where the two (2) marked ten-peso-bills were attached, to acknowledge that the marked bills were "taken and confiscated from the possession/control of one Arturo Mauyao x x x during a buy bust narcotics operation" (Exh. E, Exh. E-3, TSN, August 5, 1987, 8-9), and the Booking Sheet and Arrest Report to affirm that he had, indeed, sold and delivered five (5) tea bags of marijuana leaves and two (2) sticks of marijuana cigarettes to a police poseur-buyer (Exh. I, Exh. I-1; August 5, 1987, 13).

On 21 April 1987, the tea bags of marijuana leaves and the marijuana cigarettes seized from the accused-appellant were transmitted to the National Bureau of Investigation (NBI) for proper examination (*ibid.*, 42). Upon receipt of the specimens submitted and the accompanying letter-request for examination, NBI Forensic Chemist Felicisima Francisco conducted microscopic, chemical and chromatographic examinations. All three (3) tests revealed that the seized articles were "positive for marijuana" (TSN, July 24, 1987, 4-6).

For his part, the accused-appellant denied having sold marijuana. He had his own version of the incident. He alleged extortion. He averred that on 20 April 1987, at about 6:00 o'clock in the evening, he was invited to drink at the house of Tina, a neighbor who just got married. Present were Tina's brother-soldier, Ernesto Estrada, Manuel Guadialla and others. Then, a power failure occurred. The accused-appellant was requested by Tina's husband to buy wine, cigarettes, "pulutan," "katol," and candles. Tina's husband gave P50.00; Ernesto another P50.00; and Manuel also P50.00, for a total of P150.00. The accused-appellant was not able to buy the above-mentioned items because as he stepped out of Tina's place, he saw a Ford Fiera whose passengers, led by a certain Lt. Carbonell, went down and held him "for verification only." After he was ordered to board the Ford Fiera, his P150.00 was taken. He was told that it would be returned once they reached the precinct. However, upon reaching Precinct 5, he was locked-up and was asked to produce a substantial amount of money in exchange for his release. He was shown a red clutch bag full of marijuana leaves and was told that if he had money, the clutch bag would not be his, however, if he did not, he would "own" the clutch bag. He was threatened and ordered to write his name on the clutch bag. At around 2:00 o'clock the following morning, when P/Sgt. Carbonell and the rest of the group were no longer around, Pat. Orolfo took him out of his cell and subjected him to an investigation which lasted until 4:00 in the morning. Pat. Orolfo demanded P4,000.00 for his release, but when he

replied that he could only afford P2,000.00, Pat. Orolfo said: "Hindi raw pwede at marami sila" (TSN, January 11, 1988, 3-26; TSN, January 25, 1988, 2-16; TSN, March 4, 1988, 3-188 TSN, April 11, 1988, 2-4). Four other witnesses corroborated the accused-appellant's version regarding the wedding party. One Ernesto M. Estrada averred that he did not believe that accused-appellant had sold marijuana in the evening of April 20. Not one defense witness, however, testified that accused-appellant was not a drug-pusher nor did the latter deny that the informant was his former "runner."

After evaluating the contradicting versions, the Trial Court rejected the accused-appellant's assertions, convicted him, and sentenced him to life imprisonment and to pay a fine of P20,000.00.[1]

Reaffirming his plea of innocence, the accused-appellant now, before us, faults the Trial Court in giving credence to the testimonies of the prosecution witnesses despite irreconcilable inconsistencies and improbabilities; in admitting the evidence of the prosecution despite manifest violation of his constitutional rights; and in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt (Appellant's Brief, 5-6, Rollo, 185-186).

After a careful and thorough review of the evidence on record, we hold that the Trial Court did not err in giving credence to the testimonies of the prosecution witnesses. Accordingly, we affirm the conviction rendered by the Court a quo.

While there may be some inconsistencies in the testimonies of P/Sgt. Carbonell and Pat. Alferos, at best these refer to insignificant details and trivial matters. The "irreconcilable inconsistencies and improbabilities" painstakingly pointed out in accused-appellant's brief are: that P/Sgt. Carbonell testified that it was Capt. Cablayan who received the telephone call from the informer, while Pat. Alferos said that it was P/Sgt. Carbonell himself; that P/Sgt. Carbonell stated that the informer came to their headquarters, whereas Pat. Alferos maintained that they met the informer near "where the pusher was selling his wares;" that P/Sgt. Carbonell said that the "buy-bust team" stopped at thirty (30) meters away from where the pusher was, while Pat. Alferos admitted that the team alighted from the Ford Fiera at two hundred (200) meters away from the residence of the accused-appellant.

Whether it was Capt. Cablayan or P/Sgt. Carbonell who received the call of the informer, or whether the informer went to the headquarters or was merely met at an agreed place, or whether the "buy-bust team" stopped at 200 or 30 meters away from where the accused-appellant was expected, is de minimis. The irrefutable fact is that the accused-appellant was caught in flagrante delicto as a result of the "buy-bust operation." The inconsistencies asserted to by the accused-appellant are too minor to affect the credibility of the prosecution witnesses who are all law enforcers presumed to have regularly performed their duties in the absence of convincing proof to the contrary (Sec. 5[m], Rule 131, Revised Rules of Court; *People v. Yap and Mendoza*, G.R. Nos. 87088-87089, May 9, 1990, 185 SCRA 222; *People v. Mariano*, G.R. No. 86656, October 31, 1990, 191 SCRA 136). P/Sgt. Carbonell and Pat. Alferos, both members of the Special Reaction Unit of the Narcotics Section, a unit formed precisely to operate against drug dealers, could have had no other motive, other than to accomplish their mission, which is to enforce the laws, particularly the Dangerous Drugs Acts.

We have ruled, time and again, that minor inconsistencies and contradictions in the declaration of witnesses do not destroy their credibility, but even enhance their truthfulness as they erase any suspicion of rehearsed testimony. As a matter of fact, it attests to the human mind's imperfection. Well-settled is the rule that inconsistencies in the testimony of prosecution-witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony (*People v. Payumo*, G.R. No. 81751, July 2, 1990, 187 SCRA 64, and a host of cases mentioned therein).

Indeed, when the issue raised by the accused-appellant concerns the credibility of witnesses, this Court will not disturb the findings of the Trial Court except in case of an evident abuse thereof. This Court, in a long line of decisions, has repeatedly held that the findings of fact of a trial judge who has seen the witnesses testify and who has observed their demeanor and conduct while on the witness stand are not disturbed on appeal, unless certain facts of substance and value have been overlooked which, if considered, may affect the outcome of the case (People v. De Mesa, G.R. No. 87216, July 28, 1990, 188 SCRA 48; People v. Sagun, Jr., G.R. No. 86816, May 14, 1990, 185 SCRA 405; People v. Cruz, No. L-71462, June 30, 1987, 151 SCRA 609, and other cases listed therein). We perceive no misapprehension of facts by the Trial Court in this case.

The accused-appellant even questions the non-presentation of the informant. On this point, this Court has ruled that the matter of presentation of prosecution witnesses is not for the accused-appellant or, except in a limited sense, for the Trial Court to dictate. Discretion belongs to the city or provincial prosecutor as to how the prosecution should present its case (People v. Sariol, G.R. No. 83809, June 22, 1989, 174 SCRA 237). Besides, the testimony of an informant in a drug case is not essential for conviction to lie. The failure of the prosecution to present the testimony of the informant is not fatal. The non-presentation of the informant as witness does not weaken the prosecution's evidence, as his testimony would be merely corroborative and cumulative (People v. Cerelegia, No. L-72353, January 30, 1987, 147 SCRA 538). What is crucial in this case is that the accused-appellant was caught red-handed, in the act of trafficking the prohibited plant.

The accused-appellant then argues that even if assuming for argument's sake that he was truly engaged in the illicit trade, he would not have sold right in front of his doorstep, in full view of his inquisitive neighbors and passers-by, nor would he have sold to Pat. Alferos, a total stranger, and for a measly sum of P20.00, considering the gravity of the offense and the penalty of life imprisonment imposed by law.

This posture has been discredited in the recent case of People v. Hilario (G.R. No. 94037, May 6, 1991), where this Court ruled:

"Small level drug-pushing may be committed at any place and at any time. It is completed clandestinely and swiftly after the offer to buy is accepted and the exchange made. The fact that the parties are in a public place and in the presence of other people does not necessarily discourage drug pushers from plying their trade as these may even serve to camouflage their illicit operations. Hence, the Court has sustained convictions of drug-pushers caught selling illegal drugs at a basketball court (People v. Paco, G.R. No. 76893, 27 February 1989, 170 SCRA 681), in billiard halls (People v. Rubio, G.R. No. 66875, 19 June 1986, 142 SCRA 329; People v. Sarmiento, G. R. No. 72141, 12 January 1987, 147 SCRA 252), in front of a store (People v. Khan, G.R. No. 71863, 23 May 1988, 161 SCRA 406), along a street at 1:45 p.m. (People v. Toledo, G.R. No. 67609, 22 November 1985, 140 SCRA 259), and in front of a house (People v. Policarpio, G.R. No. 29844, 23 February 1988, 158 SCRA 85; all cited in People v. Paco, supra)."

Accused-appellant's charge of extortion by police officers has not been proven. The Court has noted that this is the usual defense in the prosecution of drug cases. But if, indeed, there was extortion, accused-appellant should have come forward with the proper charges against the culprits.

We, however, agree with the accused-appellant that his signatures on the Receipt of Property Seized (Exh. H-4); on Exhibit E, acknowledging the confiscation of the marked bills from him (Ex. E-3); and on the Booking Sheet and Arrest Report (Exh. I-1) are inadmissible in evidence. His conformance to these documents are declarations against interest and tacit admissions of the crime charged, since merely unexplained possession of prohibited drugs is punished by law (People v. Turla, No. L-70270, November 11, 1988, 167 SCRA 278). They have been obtained in violation of his right as a person under custodial investigation for the commission of an offense, there being nothing in the records to show that he was assisted by counsel (People v. De la Pena, G.R. No. 92534, July

9, 1991; *People v. Yutuc*, G.R. No. 82590, July 26, 1990, 188 SCRA 1).

We have consistently ruled that any admission wrung from the accused in violation of his constitutional rights is inadmissible in evidence against him.[2] Once again, we stress this ruling.

It bears emphasis, however, that the accused appellant's conformity to the questioned documents has not been a factor at all in his conviction. For even if these documents were disregarded, still the accused-appellant's guilt has been adequately established by other evidence of record. The Trial Court's verdict was based on the evidence of the prosecution not on his signatures on the questioned documents. Accused-appellant's denials simply can not prevail over the detailed and unshaken testimonies of the apprehending officers who caught him red-handed selling marijuana and who have not been shown to have had any ulterior motive to testify falsely against accused-appellant.

Weighing the prosecution evidence as against the denials by the accused-appellant including his allegation of extortion by the police officers, we find that his guilt, for drug-pushing, has, indeed, been established beyond reasonable doubt.

WHEREFORE, the decision appealed from is AFFIRMED in toto. Costs against accused-appellant Arturo Mauyao y Lorenzo.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Judgment rendered by the Regional Trial Court, National Capital Judicial Region, Branch 45, Manila, Hon. Andres E. Matias, presiding.

[2] Section 12(1) and (3), Article III of the 1987 Constitution provides:

SEC. 12 (1) any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

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