

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN ASIO Y MOLINTAS, ACCUSED-APPELLANT.

G.R. No. 84960. September 01, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Efren Asio y Molintas was charged with violation of Sec. 21 (b), in relation to Sec. 4, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972. The Information reads:

"The undersigned accuses EFREN ASIO Y MOLINTAS for VIOLATION OF SEC. 21(b) in relation to SEC. 4 of ART. II of REPUBLIC ACT No. 6425, AS AMENDED by Batas Pambansa Bilang 179 (Sale, Administration, Delivery, Distribution and Transportation of Dangerous Drugs), committed as follows:

"That on or about the 4th day of December, 1985, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not authorized by law, did then and there willfully, unlawfully and feloniously attempt to sell, deliver, distribute, dispatch in transit or transport 3,500 grams of dried marijuana leaves, knowing fully well that said leaves are marijuana leaves, a prohibited drug, in violation of the above mentioned provision of law." (At p. 1, Original Record)

Upon arraignment on January 7, 1986, the accused, assisted by counsel, pleaded not guilty to the crime charged.

The trial court, however, upon careful evaluation of the evidences presented, found the accused guilty of the crime charged. The dispositive portion of its decision reads:

"WHEREFORE, the accused, Efren Asio y Molintas, is found guilty beyond reasonable doubt of delivery of marijuana, a prohibited drug, without authority of law, under Section 4, Article II of Republic Act No. 6425, as amended, and hereby sentences him to suffer life imprisonment, as well as to pay a fine of Twenty Thousand Pesos (P20,000.00) without subsidiary imprisonment, in case of insolvency. He shall be credited with the preventive imprisonment undergone by him, subject to the conditions prescribed by Article 29 of the Revised Penal Code, as amended.

"The subject marijuana leaves are confiscated in favor of the government." (At pp. 184-185, Original Records)

The People's summary of the prosecution's evidence is as follows:

"On December 4, 1985, at about 3:00 o'clock in the afternoon, an informant went to the office of the First Narcotics Regional Unit in Baguio City. The informant gave information that selling of marijuana was rampant in Wright Park, Baguio City (pp. 4-8, TSN, February 26, 1987) and that appellant was involved in said trafficking of marijuana (p. 3, TSN, December 23, 1987).

"Acting on the information given by the informant, Captain Emmanuel O. Manzano formed a team composed of Sgt. Alexander Cao, Pat. Maximiano Peralta and A2FC Freddie Cartel. They were instructed to conduct a 'buy-bust operation' against appellant. Cartel was designated to pose as buyer. Sgt. Cao and Pat. Peralta would serve as the back-up of the team (pp. 8-9, TSN, February 26, 1987; p. 4, TSN, December 23, 1987).

"After the team was formed and the members were assigned their specific functions, they went to Wright Park. They reached Wright Park at about 3:30 o'clock in the afternoon (p. 4, TSN, September 23, 1987). They saw appellant conversing with somebody in front of a little store in Wright Park. Cartel and the informant approached appellant while Sgt. Cao and Pat. Peralta stayed about 15 meters away. While Cartel and appellant were conversing, Sgt. Cao and Pat. Peralta then moved closer until they were only about 4 to 5 meters away from Cartel and appellant (pp. 4-6, TSN, *ibid*).

"After about 10 minutes of conversation, appellant left, going towards the north (p. 6, TSN, *ibid*).

"At about 4:30 o'clock in the same afternoon, appellant returned to Cartel. He was carrying with him two small sacks. Upon appellant's arrival, Sgt. Cao and Pat. Peralta rushed to where Cartel and appellant were. They identified themselves as NARCOM agents, confiscated the two bags and arrested appellant (pp. 9-12, TSN, *ibid*). They brought appellant to the police station where he was investigated. Appellant was charged the following day (p. 13, TSN *ibid*).

"The two bags were endorsed to Sgt. Bugtong, the Chief of the Narcotics Division of the Baguio City Police Station, who, in turn, sent the same to the PC INP Crime Laboratory Service at Camp Dangwa, La Trinidad, Benguet (p. 14-15, TSN *ibid*).

"The forensic chemist Carlos V. Figueroa found that the 2 bags contained 'marijuana' flowering tops' (p. 5, TSN, November 7, 1986)." (At pp. 3-6, Brief for the Appellee, Rollo, p. 85)

The accused-appellant now raises before us the following assignments of errors:

I

"THE TRIAL COURT ERRED IN HOLDING THAT THE SCHEME EMPLOYED BY THE NARCOM AGENTS WAS MERELY AN ENTRAPMENT OPERATION AND NOT ONE WHICH INDUCED THE ACCUSED TO A COMMISSION OF AN OFFENSE, THE LATTER BEING AN ABSOLUTORY CIRCUMSTANCE;

II

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF EVIDENCE OBTAINED IN VIOLATION OF SECTION 2, ARTICLE III OF THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES;

III

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF AN OFFENSE DIFFERENT FROM THAT CHARGED IN THE INFORMATION AND DESPITE THE PRESENCE OF CIRCUMSTANCES WHICH GIVE RISE TO REASONABLE DOUBT AS TO HIS GUILT." (At pp. 43-44, Rollo)

Appellant's contention that the scheme used by the NARCOM agents was instigation and not entrapment is without merit. This is a bare allegation not borne by evidence on the part of the accused.

As seen from the facts, the operation conducted by the police officers was clearly one of entrapment. The case of *People v. Valmores*, 122 SCRA 922 [1983] clearly elucidates the difference between entrapment and instigation. "In an entrapment, ways and means are resorted to for the purpose of trapping and capturing the law breakers in the execution of their criminal plan; whereas in instigation, the instigator practically induces the would-be defendant into the commission of the offense and he himself becomes a co-principal." There is no such inducement in the case before us. In the first place, the police officers did not know the petitioner beforehand. There is no reason for the NARCOM agents to induce appellant to violate the law. There is nothing in the records

which could explain why the prosecution witnesses would fabricate their testimonies and implicate appellant in such a serious crime (*People v. Rodante Bautista*, 147 SCRA 500 [1987]). The principal prosecution witnesses are all law enforcers, and are therefore, presumed to have regularly performed their duty in the absence of proof to the contrary (*People v. Neil Tejada*, G.R. No. 81520, February 21, 1989; *People v. Carlito de Jesus*, 145 SCRA 521 [1986]; *People v. Alvarez*, G.R. No. 70446, January 31, 1989).

On the contrary, what is evident from the records is the criminal resolve of the accused even before the NARCOM agents met him. It was precisely on the basis of a report that there was rampant drug trafficking at Wright Park that the buy-bust operation was conducted. The accused was already pushing marijuana. The agents simply waited for appellant to ply his trade and then trapped him.

The existence beforehand of such unlawful trade is evident from the fact that the accused-appellant had a ready supply of marijuana to meet the buyers' demands. He might not have had it right at the time the initial transaction took place but he was readily able to produce the desired quantity. In fact, it took him only a few minutes to produce the marijuana. If it were really true that he was induced into looking for marijuana, it would have taken him a considerable length of time to look for a source. The fact that he returned shortly after the transaction shows that he already had contacts from whom he could readily get the marijuana.

This is clearly not a case where an innocent person is induced to commit a crime. This is simply a trap to catch the criminal.

The accused-appellant further questions the non-presentation of the informant. This allegation is of no moment since it is up to the Fiscal to present his witnesses. The absence of the informant as witness is not fatal (*People v. Cerelegia*, 147 SCRA 538 [1987]). Moreover, there is a need to protect the identity of informers to enable them to help in the identification of drug traffickers.

The non-presentation of the poseur-buyer, Cartel, was likewise assailed by the defense. This was, however, satisfactorily explained by the prosecution. Cartel's whereabouts are unknown because he was already discharged from the service. But even in the absence of the testimony of said poseur-buyer, the evidence against the accused remains strong. Sgt. Cao and Pat. Peralta's testimonies corroborate each other regarding the delivery of marijuana by Asio to Cartel.

The second issue raised by the accused is the absence of a warrant of arrest or search warrant when the two (2) bags were seized from him and he was arrested.

The rule that a search and seizure must be supported by a valid warrant is not an absolute one. There are recognized exceptions to the rule among them, 1) a search incidental to an arrest; 2) a search of a moving vehicle; and 3) the seizure of evidence in plain view (*Mariposa, Jr. v. Sandiganbayan*, 143 SCRA 267). Par. a, Sec. 6, Rule 113 of the Rules of Court specifically states:

"A peace officer or a private person may, without a warrant arrest a person:

"a) when the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence x x x."

A search and seizure without a warrant is allowed in buy-bust operations, the circumstances being among those which can be considered exceptional.

The accused, in this case, was caught red-handed while pushing marijuana. Hence, he could be lawfully arrested and searched.

Lastly, the accused-appellant alleges that he was convicted of an offense different from that charged in the

information. According to him, he was charged under Sec. 21(b) in relation to Sec. 4 of Art. II of the Dangerous Drugs Act, which states:

"Sec. 21. Attempt and Conspiracy - The same penalty prescribed by this Act for the commission of the offense shall be imposed in the case of any attempt or conspiracy to commit the same in the following cases:

x x x x x x x x

"b) Sale, administration, delivery, distribution and transportation of dangerous drugs;"

His conviction was, according to him, based on a different provision. That is Sec. 4 of the same Article which provides:

"The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by 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. 1675, February 17, 1980)"

There is nothing inconsistent about the two provisions, they referring to one and the same offense and carrying with it the same penalty. Sec. 21(b) of RA 6425 merely specified the manner of violation of the prohibited acts mentioned in Section 4 of the same Article.

The accused-appellant further argues that the Information does not charge only one offense. The contention is without basis. There is only one offense charged - the violation of Sec. 4 of RA 6425. The words "sell, deliver, distribute, dispatch in transit or transport merely describe the specific acts constituting the violation of Section 4. Moreover, the alleged defect has become academic at this point. It should have been properly raised in a motion to quash before the appellant pleaded to the Information. Failure to do so is deemed a waiver in accordance with Section 8, Rule 117 of the 1985 Rule on Criminal Procedure.

There is one other important reason why this appeal should be dismissed. After the records of this case were transmitted from the Court of Appeals on July 26, 1988 where they were erroneously forwarded, the accused-appellant escaped from detention. His own lawyer says he could not contact the appellant.

On that basis alone, the appeal may be dismissed.

WHEREFORE, premises considered, the decision of the trial court is AFFIRMED in toto.

SO ORDERED.

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

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