

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MARCELINO, ACCUSED-APPELLANT.

G.R. No. 85247. July 30, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The questions presented in criminal cases are mainly if not exclusively factual. Where a conviction is appealed, the task of the higher court is usually limited to the ascertainment of whether the factual findings of the trial court have been correctly reached. Such findings are received with respect and even as binding unless the record shows that they are flawed and should therefore be reversed.

In the case at bar, the trial court convicted Edwin Marcelino of violating Section 4, Article II of the Dangerous Drugs Act and sentenced him "to suffer the penalty of reclusion perpetua and to pay a fine of P20,000.00." [1] He is now before this Court to challenge the factual findings that led to his conviction.

As found by Judge Jose D. Azarraga of the Regional Trial Court of Iloilo, Marcelino was caught red-handed at a buy-bust operation conducted by a NARCOM team at half past six in the evening of January 22, 1987, near the University of San Agustin in Iloilo City, where the police had earlier begun a surveillance because of confidential reports of rampant drug pushing there.

The team was headed by Lt. Eleuterio Salde, with Sgt. Benito Bonete, Sgt. Rodrigo Gabasa, and CIC Felix Arroyo as members. Gabasa was to act as the buyer and was given a P50.00 bill and a P10.00 bill, both marked for the mock transaction. He testified that he approached Marcelino that night and said he wanted to buy P50.00 worth of marijuana. Marcelino left to get it after receiving the marked money from him. Marcelino returned after five minutes with a plastic bag which he handed to Gabasa. Seeing the delivery, the other team members, who had deployed themselves unobtrusively some ten meters away, now moved toward the two. As Bonete approached, Marcelino recognized him and immediately took flight. Bonete said he fired two warning shots and Marcelino stopped in his tracks as they surrounded and captured him. They then took him to police headquarters for investigation. [2] The seized plastic bag was sent to the PC Crime Laboratory for examination and was later found to contain marijuana. [3]

Bagasa and Bonete were corroborated by Salde. Forensic Chemist Zenaida Sinfuego of the PCCL testified on the result of her laboratory examination. [4]

Marcelino took the stand and denied the charge. He claimed he was going home that night after watching a basketball game when Bonete and another man accosted him and told him to come with them to police headquarters. He said he would have to get his parents' permission first, whereupon Bonete boxed him on the chest and pulled out a gun. Frightened, Marcelino took to his heels but stopped when he heard two shots from behind him. Bonete and his companion then manhandled him right there on the street. They kicked his waist and pistol-whipped the back of his head. Bonete took a plastic bag from his pocket and gagged Marcelino with it. Then he was forced into a jeep. On the way to the police station, he pleaded to be allowed to pass by his house as

he said he was under probation, but they rejected his request. He was stripped and divested of the P30,000 he was carrying when they reached the police station.[5]

Marcelino was corroborated by Melvin Hiponia, age 11, who said he followed the pursuers when he heard the two shots and saw how they mauled and arrested Marcelino and put the plastic bag in his mouth.[6]

The trial court, in finding for the prosecution, considered the evidence for the defense to be contrived. It is this conclusion that the appellant now questions.

In his brief, Marcelino argues that he would not have sold marijuana to a person he did not know and in a public place at that. He wonders why Bagasa would have given him P60.00 for only P50.00 worth of marijuana, and even before he could deliver it, considering that they were total strangers. Moreover, Marcelino did not offer the marked money as an exhibit. He contends that the trial court should have given more credence to his testimony and the corroboration of Hiponia as being more conformable to human experience and the constitutional presumption of innocence in his favor.

These arguments are unacceptable. The appellant raises questions of credibility, which are factual in nature. We have said time and again that these are issues best resolved by the trial judge because he has the opportunity to directly observe the witnesses and to determine by their demeanor whether they are telling or falsifying the truth.[7] We do not find his assessment incorrect.

Many cases decided by this Court have shown that drug-pushers do not confine their transactions only to known customers; even strangers are accommodated provided they have the money to pay.[8] Notably, the appellant contradicts himself when he also argues in his brief that he would not have transacted with Bagasa because he knew some of his companions. We have also affirmed the conviction of drug-pushers who have not hesitated to operate in billiard halls, public streets and markets, and other public places in open defiance of the law.[9] Their own recklessness is certainly not evidence of their innocence.

The conduct of Bagasa regarding the money is, indeed, curious but this must have been part of the team strategy of not unduly arousing Marcelino's suspicions. A different manner might have aborted the operation. As for the non-presentation of the marked money as evidence for the prosecution, we have held in several decisions that this is not a fatal omission.[10] It is less so in the case before us because the object of the sham sale was itself offered as an exhibit.

It was Marcelino himself who invited attention to his past criminal record when he testified that he was on probation. Further probing revealed that his conviction was for drug-pushing also and that another information against him for a similar offense had been provisionally dismissed. These circumstances may be taken as evidence against him under Rule 130, Section 34 of the Rules of Court, "to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like."

Given the fact that the transaction took place in a public place and in the early evening (as the appellant himself emphasizes), the Court finds it significant that only one witness corroborated Marcelino. The two warning shots must have attracted attention and caused the people to see what was going on. Many persons would have even come out of their houses. Those in the street would have paused to watch the impromptu show. Yet, by the defense account, only Mervin Hiponia seems to have witnessed the incident.

Only this 11-year old boy, who was still playing tansan at half past six that night, heard the shots; if others did, they must all have scampered in fright. He alone boldly followed the pursuers and witnessed the arrest of the appellant. His playmates did not go with him. Apparently, no one else saw the incident in that busy street near the university. No one else but the boy, whom the trial court disbelieved for his letter-perfect testimony, saw the

pistol-whipping of the appellant. Remarkably, there was no report of blood, and no medical certificate of injuries, although Marcelino was allegedly hit several times in the back of his head with a pistol.

We are satisfied with the trial court that the guilt of the appellant of the crime charged has been established beyond reasonable doubt. The constitutional presumption of innocence has been overcome not because the evidence of the defense is weak but because the evidence of the prosecution is strong.

The sentence must, however, be corrected. The penalty prescribed by the Dangerous Drugs Act for the offense charged is life imprisonment, not reclusion perpetua. Reclusion perpetua carries accessory penalties that do not attach to life imprisonment. This distinction was emphasized in Administrative Circular No. 6-A-92 dated June 21, 1993, reiterating *People v. Penillos*[11] and *People v. Baguio*. [12]

WHEREFORE, the appealed judgment is **AFFIRMED** as above modified and the appeal is **DISMISSED**, with costs against the appellant. It is so ordered.

Griño-Aquino, Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Rollo, p. 16.

[2] TSN, August 25, 1987, p. 4.

[3] Exhibit "A"; Records, p. 87.

[4] TSN, August 15, 1987, pp. 11-15.

[5] TSN, April 5, 1988, pp. 19-23.

[6] TSN, April 25, 1988, pp. 3-7.

[7] *People v. Molina*, 213 SCRA 52; *People v. Diaz*, 212 SCRA 147; *Ibay v. Court of Appeals*, 212 SCRA 160.

[8] *People v. Madriaga*, 211 SCRA 698; *People v. Madrid*, 210 SCRA 196; *People v. Blas*, 209 SCRA 339; *People v. Bernardino*, 193 SCRA 448; *People v. Cina*, 190 SCRA 199; *People v. Sanchez*, 173 SCRA 305; *People v. Ruedas*, 194 SCRA 553.

[9] *People v. Bagawe*, 207 SCRA 761; *People v. Arceo*, 202 SCRA 170; *People v. Garcia*, 198 SCRA 603; *People v. Hilario*, 196 SCRA 716; *People v. Kalubiran*, 196 SCRA 644; *People v. Tandoy*, 192 SCRA 28; *People v. Paco*, 170 SCRA 681; *People v. Policarpio*, 158 SCRA 85; *People v. Sarmiento*, 147 SCRA 252; *People v. Rubio*, 142 SCRA 329; *People v. Toledo*, 148 SCRA 259.

[10] *People v. Pascual*, 208 SCRA 393; *People v. Ruedas*, 194 SCRA 553; *People v. Avila*, 192 SCRA 242; *People v. Tandoy*, 192 SCRA 28; *People v. de la Cruz*, 191 SCRA 160; *People v. Mangusan*, 189 SCRA 624; *People v. del Pilar*, 188 SCRA 37; *People v. Marcos*, 185 SCRA 154.

[11] 205 SCRA 546.

[12] 196 SCRA 459.

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