

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO A. ALERTA, JR., ACCUSED-APPELLANT.

G.R. No. 85250. July 01, 1991

Ponente: PARAS, J.

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PARAS, J.:

In an Amended Information that was filed by the Assistant City Fiscal of Cagayan de Oro with Branch 18 of the Regional Trial Court of Misamis Oriental, Romeo Alerta, Jr. was charged with violation of Section 4, Article II of Republic Act No. 6425 (Sale of Prohibited Drugs), committed as follows:

"That on or about February 1, 1988 at more or less 2:15 o'clock p.m., at Main gate of Philippine Packing Corporation fronting the National Highway, Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority, did then and there willfully, unlawfully and feloniously sell and distribute one (1) tea bag of dried marijuana leaves to a CI, not knowing that he is a CI, marijuana being a prohibited drug, well-knowing that it is prohibited, by then and there receiving P10.00 cash (marked money) from the said CI as payment of said marijuana.

"Contrary to and in violation of Section 4, Article II, R.A. 6425 otherwise known as the Dangerous Drugs Act of 1972." (p. 7, Rollo)

The case was docketed as Criminal Case No. 88-55.

Upon his arraignment on April 25, 1988, the accused, assisted by counsel, pleaded not guilty. Trial thereupon ensued where the prosecution presented Bernabe Aranga, NBI agent, CIC Anuario Olaco and Cpl. Emilio de Guzman as witnesses. On the other hand, the defense presented as witnesses Zaldy Sarenas, Felipe Adarne and the accused Romeo Alerta, Jr.

Finding that the accused had committed the crime as charged in the Information, the trial court, on July 19, 1988, rendered a judgment of conviction. The Decision disposes:

"WHEREFORE, the court finds the accused ROMEO ALERTA, JR., guilty as charged of violation of Section 4, Article II, Republic Act No. 6425, as amended by P.D. No. 1675, and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of twenty thousand pesos (P20,000.00) and the costs. The marijuana (Exhibit B) is confiscated and forfeited in favor of the Government and shall be turned over to the Dangerous Drug Board for proper disposal without delay.

"SO ORDERED." (p. 45, Rollo)

The accused raises the following assignments of error in this appeal, to wit:

THAT THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT BECAUSE:

A. THE ALLEGED CONFIDENTIAL AGENT/INFORMER, WHO ACCORDINGLY ACTED AS

POSEUR-BUYER OF ONE (1) TEA BAG OF DRIED MARIJUANA LEAVES AND WHO HANDED THE SAID TEA BAG (EXHS. B & B-1) TO THE NARCOM AGENTS WAS NEVER IDENTIFIED NOR PRESENTED AS WITNESS, HENCE HIS NON-PRESENTATION AND NON-IDENTIFICATION IS THEREFORE SUBJECT TO THE PRESUMPTION THAT IF EVER SO IDENTIFIED AND PRESENTED, HIS TESTIMONY WILL ONLY BE ADVERSE TO THE PROSECUTION'S CAUSE;

B. CONSIDERING THAT THE CONFIDENTIAL AGENT/INFORMER WHO WAS THE POSEUR-BUYER WAS NOT PRESENTED AS A WITNESS, THERE IS THEREFORE NO IOTA OF EVIDENCE TO PROVE THAT THE TEA BAG OF DRIED MARIJUANA LEAVES (EXHS. B & B-1) WAS THE VERY SAME TEA BAG ALLEGEDLY HANDED BY THE ACCUSED AND LATER TURNED OVER TO THE NARCOM AGENTS BY THE CONFIDENTIAL INFORMER.

C. NO MARKED MONEY WAS EVER PRESENTED AS EVIDENCE OF THE CORPUS DELICTI. (p. 46, Rollo; pp. 1-2, Accused-appellant's brief)

The facts, as established by the evidence and summarized by the trial court in its decision, are:

"On February 1, 1988, at about 2:15 o'clock in the afternoon, a composite anti-narcotics team was in Zone 2, Barangay Bugo, Cagayan de Oro City. The team was composed of S/Sgt. Rey Bernal, PA; Patrolwoman Susan Tuseco, INP; Cpl. Emilio de Guzman, PA; and CIC Anuario J. Olaco, PC. They were on a 'buy-bust operation'. Also with the Narcom elements were four confidential informants (CI) whose identities have not been disclosed for security reasons.

"At that time and place aforementioned an unnamed confidential agent posing as buyer, handed a ten-peso bill to the accused Romeo Alerta, Jr. In turn Romeo Alerta, Jr. gave to the CI a tea bag of marijuana. The CI then gave the 'one tea bag' to one of the companions in the team. (tsn, 13-18, May 17, 1988). Prosecution witnesses CIS Olaco, Cpl. Emilio de Guzman and the other members of the team were only about four or five meters away. CIC Olaco and Cpl. de Guzman testified that they saw the CI hand the money to the accused and also the accused when he handed the tea bag of marijuana to the former. (tsn. 19, 44 id). After Alerta had given the marijuana to the CI, Alerta went inside the house. It was outside that house that the 'buy and sale' was made. Thereupon the Narcom agents followed Alerta into the house, introduced themselves as Narcom agents and arrested not only Romeo Alerta, Jr. but also Eduardo Saarenas, Roel Ravidas, Noel Ravidas, and Victorino Casino. (tsn, 21, 30, 37, id). The house where Alerta went to after the sale of the marijuana is identified by the prosecution witness Olaco as that of Saarenas (tsn, 18, 21, 24, id) and as that of Ravidas, by prosecution witness Cpl. De Guzman (tsn, 36, 37, 44, 46, 48, id). The fact is that Romeo Alerta, Jr. went inside the house near which the 'buy-bust operation' had taken place.

"Accused Romeo Alerta, Jr. and the several others arrested inside the house were next brought by the police officers to the Anti-Narcotics Command Unit Office in Cagayan de Oro and there investigated. (tsn, 22, May 17, 1988) The marijuana subject of the present prosecution was submitted to the NBI, Cagayan de Oro, for laboratory examination to determine its contents as to prohibited drug on February 2, 1988, upon written request (Exh. A) dated February 1, 1988 of Capt. Michael Silva, Jr. C.C. of the 10th Narcotics Command Unit, which was personally delivered by CIC Anuario Olaco.

"The specimen as received by prosecution witness, NBI Forensic Chemist Bernabe Arenga, is described as 'dried flowering tops' suspected to be marijuana contained in a transparent plastic bag wrapped in a piece of paper markings: Re: ROMEO ALERTA y AGWIN, 16 years old, single, a resident of Zone 2, Bugo, Cagayan de Oro City.

"Upon microscopic, chemical and chromatographic examinations conducted on the aforementioned (0.6075 gram) specimen, it gave 'POSITIVE RESULTS FOR MARIJUANA' (Exhibit C). Bernabe Arenga who conducted the tests testified on his Dangerous Drugs Report No. DDM-88-21 (NEMRO), marked as Exhibit

C." (pp. 41-43, Rollo)

The accused denied having sold marijuana to any person whomsoever in the afternoon of February 1, 1988. He stressed that he has not met any person outside the house of Zaldy Saarenas on his way to the latter's house to take his bath therein, and that he was inside the house of Zaldy Saarenas when he was arrested and while he was picking up a basin in the kitchen to be used in bathing. The testimony of the accused was corroborated by defense witness Zaldy Saarenas.

The trial court gave credence to the prosecution's version of the incident. It gave scant consideration to the accused's pretense of innocence and found that the peace officers acted without any ill-will or corrupt motive to trump-up a charge against the accused who was a complete stranger to them.

Appellant contends that his guilt has not been established beyond reasonable doubt. He underscores the fact that the civilian informant was not made to take the witness stand and maintains that the non-presentation rendered a fatal blow to the case of the prosecution and is a clear suppression of evidence which if produced would be adverse. We do not agree. Admittedly, the civilian informant would be a highly competent witness; being himself the poseur-buyer. However, his testimony is not indispensable in view of the testimony of the two (2) prosecution witnesses, CIC Anuarco Olaco and Cpl. Emilio de Guzman, who were members of the Narcotic Command team which conducted the buy-bust operation, categorically declaring that they saw the appellant sell one tea-bag of dried marijuana leaves (Exh. B) to the confidential informant while the latter handed the P10.00 marked money. (tsn, May 17, 1988, pp. 17-18). They testified further that they were about four (4) to five (5) meters away from the place where the illegal transaction was conducted. They positively established that after the drug deal was completed, the appellant went inside the house of a certain Zaldy Saarenas while the confidential informant approached one of the Narcom agents and handed to him the dried marijuana leaves placed in a plastic sachet. (TSN, May 17, 1988, pp. 18-20). Thereupon, they immediately proceeded inside the house and, after introducing themselves as Narcom agents, they arrested the appellant (Ibid., p. 20).

At any rate, the matter of presenting witnesses for the People is the prerogative of the fiscal. (People v. Adiza, 164 SCRA 643; People v. Solomon, 166 SCRA 767). Apparently, it was found unnecessary to present the informer because there was sufficient evidence to establish the case of the prosecution.

Appellant next contends that the marked money allegedly paid to him was not offered in evidence. As such, the sale was not proved.

This Court had the opportunity to rule on this issue recently in the cases of People v. Tejada, GR No. 81520, February 21, 1989, and People v. Rodriguez (172 SCRA 742).

"x x x The fact that the appellant returned with the amount of marijuana corresponding to the offered price, suffices to constitute, if not sale, then delivery or giving away to another and distribution of the prohibited drug punishable under Section 4, Article II of Rep. Act 6425 x x x. So long as the marijuana actually given by the appellant was presented before the lower court, the absence of the marked money does not create a hiatus in the prosecution's evidence."

The fact, then, that the money given to the appellant was not presented in court does not militate against the prosecution's case where there is, as in this case, an un rebutted testimony of eyewitnesses who saw the actual handing over of the marijuana in exchange for the money. (People v. Marco Polo, 147 SCRA 551).

Appellant's pretense that he was not engaged in the drug deal as he was inside the house of Zaldy Saarenas about to take a bath when he was arrested cannot overcome the overwhelming evidence of the prosecution. His allegation that he was arrested inside the house completely jibes with the prosecution's version that he went inside

the house after he had sold one tea-bag of dried marijuana leaves to the confidential informant. So well-entrenched is the rule that greater weight is given to the positive testimony of prosecution witnesses than to accused-appellant's denials. (People v. de Jesus, 145 SCRA 521)

Moreover, no ill motives were imputed to the prosecution witnesses who happened to be NARCOM agents. They are presumed to have regularly performed their duties in the absence of proof to the contrary. Their testimonies, therefore, deserve full faith and credit. (People v. Rodriguez, supra) There is, likewise, no question from the records that the denials put forth by the appellant did not satisfactorily overcome the positive testimonies of the prosecution witnesses that the appellant was positively identified as a seller of prohibited drugs and that the tea bag taken from him actually contained marijuana leaves.

All things considered, We find that the guilt of the appellant has been established beyond reasonable doubt.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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