

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO RIVERA Y MEJICO, ACCUSED-APPELLANT.

G.R. No. 86491. December 11, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal interposed by the accused-appellant, ANTONIO RIVERA Y MEJICO, from the decision of the Special Criminal Court, Regional Trial Court of Pasig, Branch 156 under Spl. Criminal Case No. 533-D, dated October 14, 1988. The accused was convicted for allegedly violating Section 4, Article II of Republic Act No. 6425, as amended, sentencing him to "suffer the penalty of reclusion perpetua with all its accessory penalties (sic), to pay a fine of P20,000.00 and to pay the costs." (Rollo, p. 35)

The Information dated September 2, 1987, charged the accused as follows:

"That on or about the 31st day of August, 1987, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there wilfully, unlawfully and feloniously sell, deliver and give away to another 1.94 grams of dried marijuana fruiting tops contained in a small transparent plastic bag, a prohibited drug, in violation of the above-cited law.

Contrary to law." (Rollo, p. 26)

On August 31, 1987, members of the Anti-Narcotics Unit of the Eastern Police District arrested the accused Rivera, allegedly during a buy-bust operation at Barangay Manggahan, Pasig, Metro Manila.

The trial court's decision indicates that before the said buy-bust operation took place, concerned parents from barangay Manggahan reported to the higher barangay officials the rampant selling of marijuana within the area. This report reached the Eastern Police District officials, thus, a group composed of Patrolmen Mateo Garcia, Romeo Cavizo, Isidro Mariano and Roberto Jocson was organized. The team was allegedly dispatched to the place and using a P10.00 bill, with Serial No. AP 189535 (Exhibit "E"), in exchange for a plastic bag of marijuana, the policemen apprehended Rivera.

The Anti-Narcotics Unit dispatched to the area, looked for the confidential informant (identity undis-closed) who revealed the identity and whereabouts of the suspect. After discussing intensively the method of conducting the operation, at around 5:00 o'clock p.m. of August 31, 1987, Pat. Garcia proceeded to the place where Rivera was drinking with two (2) other companions. Other members of the group were then deployed in "inconspicuous places in order to witness the would-be transaction between Pat. Garcia and the accused." (Ibid., p. 27)

Seeing the accused, Pat. Garcia at once approached him and asked him if he could "score" marijuana. The accused then left for a while and came back shortly bringing with him a small transparent tea bag of marijuana (Exhibit "F-2") which was handed to Pat. Garcia upon receiving from the latter a ten-peso bill. As pre-arranged, Pat. Garcia signalled his teammates who immediately came and assisted in the arrest of the accused and subsequently

taken to the Eastern Police District for investigation.

A letter-request dated August 31, 1987 (Exhibit "B") together with the alleged marijuana specimen was brought to the PC Crime Laboratory at Camp Crame, Quezon City for analysis. Thereafter, the Chemistry Report No. D-894A-87 (Exhibit "C") was presented by the prosecution, showing that the alleged specimen was positive for marijuana. (Ibid., p. 28)

The accused testified that on August 31, 1987, between 4:00 and 5:00 o'clock in the afternoon, while he was resting at his home, he was called by his mother to do some repair works on their house under lease, located at the corner of Magsaysay and MRR Streets, Pasig, Metro Manila. Obeying his mother's instruction, he proceeded to the house in question. On his way, he saw a person who was handcuffed together with a certain Adriano Arabit and several others whom he did not recognize. The person in handcuffs was later identified as Ricky Mariano, brother of Pat. Isidro Mariano, a member of the alleged "buy-bust" team.

Not far from the group of people referred to above, Rivera met Pat. Mateo Garcia who told him to come along as he was to be asked a few things. When the accused acceded, his arms were held by Pat. Garcia and he was asked to board the jeep together with Ricky Mariano, the man in handcuffs, and the three (3) other policemen of the team.

The jeep proceeded to the house of former Barangay Captain Mariano, father of Pat. Isidro Mariano and Ricky Mariano at Barangay dela Paz, where the two Mariano brothers disembarked after which the other policemen brought Rivera to a basketball court where he was ordered to sign a piece of paper stating therein that a "tea bag of marijuana was recovered from him." The accused refused to affix his signature thereon. Because of this refusal, he was maltreated by the police officers, who at the same time coaxed him to pinpoint the alleged pusher on the promise that he will be released. Due to his persistent denial, the accused was brought to the Eastern Police District headquarters. (Ibid., p. 29)

The prosecution witnesses, namely Patrolmen Mateo Garcia, Romeo Cavizo, Roberto Jocson, Isidro Mariano, of the "buy-bust" operations unit and Patrolman Wilson Balautan, the alleged investigator of the case were all members of the Eastern Police District stationed at Pasig, Metro Manila.

The records show that the witnesses for the prosecution gave contradictory statements not only with respect to the manner by which the operation was conducted but also with respect to the time, place and sequences of the buy-bust operation. Taking the accused's version of the incident, the contradictions become all the more serious, subjecting the testimonies of the prosecution witnesses to doubt and disbelief.

Specifically, the contradictory statements of the policemen who allegedly participated in the "buy-bust" operation pertain to the time elements involved: from the time of dispatching the team to respond to the reported rampant selling of the prohibited drug; the arrival at the place of the surveillance; the arrest; the return to the Police Headquarters; and the time of submission of the letter-request to the Philippine Constabulary Crime Laboratory (PCCL) together with the tea-bag supposedly confiscated from the accused.

Due to certain glaring contradictions, it is seriously doubted that what took place was really a carefully planned "buy-bust" operation. What becomes obvious from the records is a crafty frame-up of the accused in retaliation for his mother's (Mrs. Cielo Mejico Rivera) complaints on two (2) earlier occasions to the barangay captain about the proliferation of prohibited drugs being sold in the area where the accused lives, which complaints pin pointed an admitted drug user, brother of a member of the buy-bust team.

1. Pat. Mateo Garcia, allegedly the one who acted as the poseur-buyer, testified on direct examination that the group received from its superior officers complaints from the parents residing at Manggahan, Pasig, regarding the

rampant selling of marijuana, and the superior officer dispatched the team of Pats. Jocson, Caviso and Mariano including himself at about 1:00 o'clock in the afternoon of August 31, 1987. (TSN, September 23, 1987, p. 6) Parenthetically, it was the mother of the accused-appellant who filed the complaints.

On cross-examination, this witness alleged that "We made a surveillance and planned the operation. When we arrived there, it was still early, it was at around 1:00 p.m., and we arrested the person at already 5:00 p.m.". (TSN, October 8, 1987, p. 20) It should be emphasized here that the letter-request to the crime laboratory for analysis of the tea bag confiscated from the accused was stamped received at 4:00 P.M. that same day. In other words, the marijuana was forwarded to PCCL even before the possessor had been apprehended.

2. Patrolman Romeo Caviso testified that he was approximately fifty (50) meters from the location of Pat. Garcia who was talking to somebody, who turned out to be the accused. At this distance, he claimed to have seen the suspect hand something to Pat. Garcia, who later signaled him and arrested the accused. At the same distance of fifty meters, the witness said that the material which the accused gave to Pat. Garcia, "looks like the other marijuana already confiscated and it was wrapped in a tea bag. It pictures the marijuana being sold by the pusher." (TSN, October 8, 1987, pp. 37 and 38)

Pat. Caviso also claimed that he did not see the accused drinking together with two other companions, contrary to the testimony of the other police officers, and that he (Caviso, a policeman of Pasig) did not even know the name of the street or place in Pasig where the accused was arrested and did not hear anything regarding the conversation between the buyer-poser (Pat. Garcia) and the accused before the arrest was effected. (Ibid., 40-42).

3. Patrolman Roberto Jocson, another member of the alleged Anti-Narcotics Operatives, testified that during the alleged "buy-bust", he was deployed 20 to 30 meters away from Pat. Garcia and Rivera. (TSN, October 27, 1987, p. 64) He further said that the group went to Manggahan at 1:00 o'clock in the afternoon of August 31, 1987, but did not make the arrest until 5:00 o'clock in the afternoon, because they had to look for the suspect. The court even asked the witness why it took the group four (4) hours before the arrest was effected, to which the witness averred that: "Because, our asset was looking for him, Your Honor." (TSN, October 27, 1987, pp. 69, 72, & 73).

From the distance of between 20 to 30 meters away from Pat. Garcia and the suspect who were conversing in an alley, Pat. Jocson declared that he was not able to hear the conversation between the two. This witness also admitted that the report regarding the presence of the accused was made through a telephone call by a police "asset" whose name, as is common in drug cases was not divulged nor the person presented in court as a witness. (Ibid., pp. 76-77) He likewise asserted that when the accused was arrested, the latter was drinking together with two others. (Ibid., p. 80)

4. Patrolman Isidro Mariano testified on cross-examination that the mission conducted by the group was specifically to arrest Antonio Rivera; that they were dispatched at 11:00 o'clock in the morning of August 31, 1987, that his brother, Ricky Mariano is a drug-user and was apprehended since he (Ricky) had not gone home for three (3) days, and for this reason Ricky has been confined at the Bicutan rehabilitation center. (Ibid., pp. 120, 121, 123, 125 to 127)

5. Pat. Wilson Balauitan, Investigator assigned on the case, testified that on August 31, 1987, at about 6:00 o'clock P.M. Antonio Rivera, the accused was brought to the Headquarters by the members of the Anti-Narcotics Unit. That, "Before the group was dispatched, the operation was recorded particularly the date and the 4:00 o'clock time appear on page 8 xxx", possibly of the police blotter. (TSN, October 22, 1987, pp. 49 and 50) He also alleged that he wrote his initials "WBB", meaning Wilson B. Balauitan, on the four corners of the P10-bill (Exhibit "E-") used as the marked-money by the buy-busting group. He further alleged that he blotted the "serial number of Exhibit "D" at around 3:00 o'clock P.M. of the 31st of August 1987." (TSN, April 26, 1988, pp. 143,

144)

From these testimonies, it appears that the team left for the area where the accused was arrested at 1:00 o'clock in the afternoon without the marked money. The recording took place long after the team had already been dispatched to the place of operation.

The same witness admitted that on August 31, 1987, he prepared the laboratory request that submitted the "tea bag" allegedly containing the marijuana to the Philippine Constabulary Crime Laboratory (PCCL), after the "buy-bust" group returned to the police headquarters, an hour later, or about 5:00 o'clock on the same date August 31, 1987. (TSN, Nov. 11, 1987, pp. 94 & 95)

What is interesting, however, is the fact that if the letter-request marked as Exhibit "B" was prepared after the suspect Rivera was brought to the police headquarters, the same request was stamped received at the PCCL at "1600", or 4:00 o'clock in the afternoon. (Ibid., p. 96) The only explanation for this discrepancy is that whether the "buy-bust" group was dispatched at 1:00 or 4:00 o'clock of August 31, 1987, (Ibid., 94) someone went ahead to the PCCL to submit another "tea bag" containing marijuana fruiting tops even before the accused was apprehended at 5:00 o'clock in the afternoon.

Interestingly, however other members of the operatives such as Pat. Mariano, Pat. Garcia, Pat. Caviso and Pat. Jocson, alleged that the suspect, Rivera was apprehended and brought to the headquarters only at 6:00 P.M. of August 31, 1987. (Ibid., p. 94)

For the defense, the following witnesses were presented and their testimonies point out that the accused was apprehended in retaliation for the accused's mother, Mrs. Cielo Rivera complaining on two (2) separate occasions to the barangay captain about the proliferation of drug selling activities at Manggahan barangay by one, Ricky Mariano, brother of Patrolman Isidro Mariano and member of the alleged buy-bust team. The complaints were referred to the police.

1. Felicisimo Parale, retired police officer, testified that between 4:30 and 5:00 o'clock in the afternoon of August 31, 1987, he saw a man who was handcuffed at the middle of an alley at MRR Street, whom he did not know, while the accused was conversing with somebody he also did not know, a few feet away from where the handcuffed person was standing. Parale also testified that he knows the accused who works as a security guard because they are neighbors at MRR Street, Manggahan, Pasig, Metro Manila. (TSN, June 9, 1987, pp. 187 & 188)

2. Mrs. Cielo Rivera team leader of the Barangay Kababaihan, at Manggahan, testified that she wrote the first letter dated August 28, 1987, addressed to the barangay captain Alfredo M. Rivera of Manggahan, Pasig, Metro Manila (Exhibit "1"), after Ricky Mariano went to her house and seeing her at the window, confronted her in the morning of August 28, 1987 (TSN, May 18, 1988, pp. 168-170)

"O me reklamo. Yung nakukumpiska ng kuya ko, eto ipinagbibili ko. Me reklamo Ka?" (Ibid., p. 171)

Then on August 31, 1987, she again reported the drug activities in her locality, by writing another letter to barangay captain Alfredo M. Rivera (Exhibit "2"). (Ibid., pp. 171-172)

Mrs. Rivera testified that after her son was made to board the police vehicle, she followed the jeep and saw that the vehicle stopped in front of the house of ex-barangay captain and father of Pat. Mariano and Ricky Mariano. There, the two brothers disembarked from the police vehicle, went upstairs and were left behind. (Ibid., pp. 158, 160 to 162) Her son was allegedly mauled at the basketball court of barangay dela Paz. She proceeded to the Eastern Police District headquarters where she met Pat. Mariano who was very mad at her and told her the following, which remarks remained uncontested:

"Talaga palang pusher itong inyong anak. Kaya kung wala kayong P3,000.00, hindi maka-kalabas itong anak nyo dito sa pagkakakulong. Ikaw din pala ang nag-report sa kapatid ko." (Ibid., p. 165)

3. Barangay Captain Alfredo Rivera, (no relation to the accused) addressee of the two letters written by Mrs. Cielo Rivera, corroborated the testimony of the latter with respect to the reports made by her regarding the drug activities of Ricky Mariano, brother of a member of the so-called "buy-bust operatives" that arrested accused Rivera. (TSN, August 5, 1988, pp. 199-200)

4. The accused, Antonio Rivera, a security guard, and a resident of No. 273 A. Rodriguez Avenue, Manggahan, Pasig, declared that while he was at his residence, between the hours 4:00 o'clock and 5:00 o'clock in the afternoon of August 31, 1987, his mother, Cielo Rivera asked him to check their other house which is for lease, located about 250 meters from their place of residence. (TSN, August 29, 1988, pp. 210-211)

While he was walking at MRR Street, he saw a man in handcuffs, together with a certain Adriano Arabit. He passed the two persons and as he continued walking, he met Pat. Mateo Garcia who called him and told him that he (Garcia) would just like to ask him something, hence the accused obliged. The accused, together with the man in handcuffs and Pat. Garcia and the other policemen boarded the service vehicle, but leaving behind Adriano Arabit. The group then proceeded to Barangay dela Paz where Pat. Mariano and the handcuffed person, (Ricky Mariano), got off at the residence of former Barangay Captain Mariano, the father of Pat. Mariano and Ricky Mariano. (Ibid., pp. 212-214)

The group proceeded to the side of a basketball court also at barangay dela Paz, and the policemen asked the accused to sign a piece of paper stating that one tea bag of marijuana came from him. He (accused) refused to sign. Thus, due to this refusal, policemen Pat. Garcia and Pat. Jocson took turns in boxing and kicking him and manhandled him for almost twenty (20) minutes. He was also asked to identify the pusher, and at about 5:30 o'clock in the afternoon, they proceeded to the police headquarters at Pasig. At the Eastern Police District, his security guard identification card was taken from him, and he was not investigated, but was detained and manhandled further. He was visited by his mother at the jail, and he told her about the torture he was subjected to and his mother wanted to submit him to physical examination, but the investigator, Pat. Balautan, did not allow him to be taken out for the purpose. (Ibid., pp. 215-221)

From the foregoing, it becomes apparent that this particular "buy-bust" operation was a scheme of police officers whose objective was to protect the real drug pusher or user who happened to be the brother of another policeman and member of the Anti-Narcotics Unit in the Eastern Police District. This is not an entirely fantastic or bizarre story. It is unfortunate that some police officers in a mistaken sense of esprit de corps or camaraderie retaliate against the very complainants whom they should assist or pounce upon a victim who is usually the innocent member of the community and who does not have any connection with the police authorities. This pernicious practice ought to be stamped out, otherwise, the drug problem will continue to wreck or create a menace to society.

The records indicate that the group which arrested the accused were improperly motivated. A clumsy "buy-bust" operation tried to silence the mother of the accused, Cielo Rivera, who repeatedly complained about the drug pushing activities of Ricky Mariano. The latter even dared Mrs. Rivera and boasted that he was selling the marijuana confiscated by his brother policeman, Patrolman Mariano.

This Court in *People v. Patog* (144 SCRA 429 [1986]) cited the case of *People v. Valmores* (122 SCRA 922 [1983]), wherein entrapment was distinguished from instigation, in the following manner:

"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 himself becomes a co-principal. Entrapment is no bar to the prosecution and conviction; in instigation, the defendant would have to be acquitted."

Likewise, this Court reiterated by citing rulings in other cases, that the "findings of the trial court on credibility of witnesses are always accorded the highest degree of respect, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the same." (Ibid., pp. 429-430) This is exactly what happened in this case, because the trial court did not only over-look certain facts of substance and value, but it ignored un rebutted declarations of facts and circumstances.

In another drug case (People v. Taruc, 157 SCRA 178 [1988]), this Court held that while the trial courts' findings of facts carry great weight for these courts have the privilege of examining the demeanor of the witnesses while on the witness stand, this rule is subject to certain exceptions as: (1) when the conclusion is a finding based entirely on speculations; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; and (5) when the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and appellee. (People v. Canada, 144 SCRA 122 [1986] cited).

There was a serious misapprehension of facts, of the testimonies of the prosecution witnesses who testified on the same points but who came out with inconsistencies, discrepancies, inaccuracies and contradictions.

Moreover, in the instant case, the bold manner by which the "buyer-poser", Patrolman Garcia, allegedly conducted the "buy-bust" deal is quite surprising. He approached three (3) men who were drinking liquor. He asked one of the three who happened to be the accused, "that he wanted to score" marijuana. The accused-appellant did not recognize him as a police officer. The accused immediately stood up and secured marijuana as readily as he would a bottle of soft drinks or a pack of cigarettes. The procedure is contrary to the secrecy by which solicitation of drugs is supposed to be made. This Court in People v. Ale (145 SCRA 50 [1986]) stated:

"At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extort-ing money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalties for drug offenses." (Emphasis supplied)

Thus, finding that the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the Special Criminal Court, Regional Trial Court, Branch CLVI (156) of Pasig, Metro Manila, dated October 14, 1988, is REVERSED and SET ASIDE. The accused-appellant ANTONIO RIVERA is ACQUITTED.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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