

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL FERNANDEZ Y SABARILLO, ACCUSED-APPELLANT.

G.R. No. 86495. May 13, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Raul Fernandez y Sabarillo was charged before the Regional Trial Court of Rizal with the violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, as amended, in an information which reads:

"That on or about the 20th day of August, 1987, in the municipality of Marikina, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, without having been authorized by law, did, then and there willfully, unlawfully and feloniously sell to police poseur buyer 2.18 grams dried marijuana fruiting tops placed in a white plastic and 0.97 grams dried marijuana fruiting tops wrapped with cigarette foil and in consideration of P10.00, which is a prohibited drug.

Contrary to law.”[1]

The information was filed on 11 September 1987, docketed as Criminal Case No. 539-D and assigned to Branch 156 of the court.[2]

Arraignment was set for 21 September 1987. Upon a claim by counsel for the accused that a motion for reconsideration was filed with the Office of the Provincial Fiscal, the arraignment on that date was reset to 30 September 1987.[3]

Upon arraignment on 30 September 1987, the accused, with the assistance of counsel, entered a plea of not guilty.[4]

On 16 October 1987, trial on the merits commenced with the presentation of first prosecution witness, P/Cpl. Jaime Navarro, head of the buy-bust team.[5] However, before the prosecution could present its next witness, the defense, at the hearing of 8 January 1988, moved that the accused be allowed to plead guilty to the lesser offense defined in Section 6 of Republic Act No. 6425.[6] That same day, the trial court denied said motion.[7] The accused then filed a motion to reconsider such denial[8] which the trial court likewise denied on 2 February 1988 on the ground that "the lesser offense to (sic) Section 4 of R.A. No. 6425, as amended, is Section 8 thereof.”[9]

The prosecution then presented two (2) more witnesses: P/Capt. Luena Layador, the forensic chemist who examined the alleged marijuana specimens, and Pfc. Benjamin Feliciano, a member of the buy-bust team.

For his defense, the accused relied on his own testimony which he sought to bolster with the testimonies of his mother, Remedios Fernandez, and his grandfather, Eliseo Fernandez.

After evaluating the evidence adduced by the parties, the trial court promulgated on 25 November 1988 a decision finding the accused guilty beyond reasonable doubt of the crime charged and sentencing him:

"x x x to suffer the penalty of reclusion perpetua with all its accessory penalties, to pay a fine of P20,000.00 and to pay the costs." [10]

He was granted full credit for the period of his preventive imprisonment.

Unable to accept the verdict, he immediately filed a notice of appeal.

The evidence for the prosecution upon which the judgment of conviction is based, is summarized by the trial court as follows:

The suspected marijuana specimens (Exhibit "E" and "E-1") were then referred to the PC Crime Laboratory at Camp Crame, Quezon City for laboratory examination through a letter-request dated August 20, 1987 (Exhibit "B"). After conducting three (3) separate tests on the subject specimens, Forensic Chemist P/Capt. Luena Layador declared in her Chemistry Report No. D-862-87 (Exhibits "C" and "D") whereon she testified that the subject specimens were positive for marijuana. Meanwhile, P/Cpl. Jaime Navarro executed an Affidavit dated August 20, 1987 (Exhibit "DD") concerning the arrest of the accused herein." [11]

The version for the defense is summarized by the trial court as follows:

"Accused, in his defense, vehemently denied the accusation imputed against him. He alleged that on August 20, 1987 at about 11:30 a.m., he was washing his clothes at home when suddenly two (2) men together with his cousin entered the yard of their house looking for him. When his cousin left, the two (2) men immediately arrested him and charged him of (sic) selling marijuana. Then he was escorted by the two (2) men upstairs and was asked to get his clothes since he was half-naked at that time. Right then and there he saw the two (2) men placed (sic) something on top of the table of his room which turned out to be marijuana. His mother who was with him in the house, likewise, saw the alleged frame-up. Thereafter, he was brought to the police headquarters where he was investigated and was finally detained." [12]

In his Appellant's Brief, the accused, through the Citizens Legal Assistance Office, [13] assigns the following errors:

"On August 20, 1987 at about 8:00 o'clock in the morning, P/Cpl. Jaime Navarro, the Officer-in-Charge of the Anti-Narcotics Unit of the Marikina Police Station, was tipped off by a civilian informer that a certain Raul Fernandez was engaged in selling marijuana somewhere along Bonifacio Avenue, Marikina, Metro Manila. The message was relayed to P/Capt. William Coronado, the Chief of the Special Operations Group, who, in turn, directed said P/Cpl. Navarro and his men composed of Pfc. Wilfredo Mendoza, Pfc. Wenceslao Miano (now deceased), Pfc. Benjamin Feliciano and Pfc. Bello Birgueta to proceed to the area and to conduct 'buy-bust operation' (sic) in order to apprehend the suspected pusher. P/Cpl. Navarro designated the confidential informant (identity undisclosed) to act as poseur-buyer and gave him a previously marked ten-peso bill (Exhibit "A") with instruction to buy P10.00 pesos worth of marijuana stuff from the suspect.

Arriving at the site of the operation, the confidential informant went to see the suspected pusher while P/Cpl. Navarro and his men posted themselves inconspicuously near the area where the suspect and the confidential informant would meet. At a distance of about five (5) to six (6) meters, P/Cpl. Navarro was able to witness on (sic) how the actual exchange of money and marijuana took place between the confidential informant and the suspect, i.e., when the confidential informant handed over the money to the suspect, the latter, left, entered the steel gate of their house, came back a few minutes thereafter and delivered the marijuana wrapped in an aluminum foil to the confidential informant. The same incident was seen by the other members of the team. At this juncture, the confidential informant made a pre-arranged signal to the back-up team prompting P/Cpl. Navarro to close in and arrest the suspect (accused herein). The latter was ordered to bring out the contents of his pocket and there the ten-peso bill marked money was confiscated. With the cooperation and permission of the accused, additional marijuana stuff this time contained in a small white plastic bag was recovered from his room. Accused was later brought to the Marikina Police Station and was subjected to interrogation.

"I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE (sic) TO THE CONTRADICTORY AND IMPROBABLE TESTIMONY OF P/CPL. JAIME NAVARRO THAT ACCUSED WAS CAUGHT IN THE ACT OF SELLING MARIJUANA TO THE POSEUR-BUYER.

II

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE MARIJUANA FRUITING TOPS (EXHS "E" AND "E-1") WHICH WAS (sic) OBTAINED IN VIOLATION OF ACCUSED'S CONSTITUTIONAL RIGHTS.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON GROUND OF REASONABLE DOUBT."[14]

Under the first assigned error, the accused assails the credibility of prosecution witnesses P/Cpl. Jaime Navarro and Pfc. Benjamin Feliciano on the ground that their testimonies are full of inconsistencies especially with respect to the contents of the aluminum foil which was allegedly taken from the accused, the identity of the actual possessor thereof at the time of apprehension and the time the money was delivered to the accused. Pointing to specific portions of the transcripts of the stenographic notes of their testimonies, accused maintains that Navarro claimed that the aluminum foil contained "marijuana fruiting tops." Thus:

"Q Will you please describe to the Honorable Court the marijuana which was sold by the accused and which was handed over by the accused to your civilian informer, sir.

A It was wrapped in aluminum foil, sir.

x x x

Q In what form was the marijuana?

A It was wrapped in aluminum foil, sir.

Q Did you open it?

A Yes, sir.

Q And what was inside?

A Marijuana fruiting tops, sir."[15]

Upon the other hand, Feliciano stated that it was marijuana "dried leaves" that he saw. Thus:

"Q What did you see was given?

A The suspected marijuana wrapped in aluminum foil, sir.

Q Why, did you see the suspected marijuana?

A Because Cpl. Navarro opened it to (sic) us, sir.

Q What did you see?

A Dried leaves, sir."[16]

As to who was in actual possession of the marijuana at the time of apprehension, accused zeroes in on the conflicting testimony on direct examination of Navarro. While initially, Navarro declared that he apprehended the accused when the latter "was about to give the marijuana to the poseur-buyer," he later testified that when he held the hand of the accused, the marijuana was already in the possession of the poseur-buyer. Thus:

"FISCAL:

Q Why did you employ a civilian informer and why you did (sic) not employ one of your policemen?

A Because we are known in that place, sir.

Q All the members of your team?

A Yes, sir.

Q So what happened?

A I asked our civilian informer to track the said suspect and successfully I apprehended him when he was about to give the marijuana to our poseur buyer, sir.

Q How far were you from your poseur buyer?

A From there to here, sir.

INTERPRETER:

Witness showing a distance about five to 6 meters.

Q And how about your men?

A They were at the other side of the street, sir.

Q And what did you see after you gave the ten peso bill to your poseur buyer?

A I gave the ten peso bill to my civil informer and then he handed it to the said suspect and then he left and entered their steel gate and after a few minutes he came back, then handed the marijuana to our poseur buyer. At that instance, my CI signaled me to show up and then I apprehended him by holding his hand, sir.

Q So when you apprehended the accused by holding his hand, where was the marijuana?

A He was about to give it to our poseur buyer, sir.

Q So the marijuana had not yet been (sic) changed hand (sic)? Is that what you mean?

A No, sir, Because when I held the hands of the accused, the marijuana was already on the hands of our poseur buyer, sir.

Q And so what did you do?

A I asked him about the other stuff of marijuana and he told me that all the stuff has already been disposed. Then I invited him to the headquarter (sic)."[17]

In his affidavit[18] executed on 20 August 1987, Navarro declared:

"The herein affiant used a confidential informant to post (sic) as poseur-buyer and advise (sic) the said buyer to buy worth P10.00 (sic) of suspected marijuana fruiting tops. The herein (sic) poseur buyer handed the money (P10.00) to male person in exchange of a (sic) suspected marijuana fruiting tops wrapped in an aluminum foil at this instance while the said male person was about to give the aluminum foil containing suspected dried marijuana fruiting tops to the poseur buyer, immediately the herein affiant grabbed and caught red handed Raul

Fernandez."

We are not persuaded. It was established beyond any shadow of a doubt that the aluminum foil with its contents of dried marijuana fruiting tops and the 2.18 grams of suspected dried marijuana fruiting tops found in the room of the accused were delivered to the PC Crime Laboratory Service for laboratory examinations[19] and were found to be "POSITIVE to the tests for marijuana, a prohibited drug." [20] The accused made no attempt to show that the seized articles were substituted by the peace officers or that the findings of the PC Crime Laboratory Service are incorrect.

The inconsistency brought about by the claim of Pfc. Feliciano that what he saw were dried marijuana leaves is insignificant, for it raises a discrepancy on a very minor matter. Having established the contents of the aluminum foil to be marijuana, a distinction between dried leaves and dried fruiting tops thereof became irrelevant. Marijuana embraces every kind, class and character of the Indian hemp, whether dried or fresh, flowering or fruiting tops of the pistillate plant and all its geographic varieties in any form whatsoever.[21]

The rule is well-settled that discrepancies on minor matters do not impair the essential integrity of the prosecution evidence as a whole or reflect on the witnesses' honesty.[22] The inconsistencies may be caused by the natural fickleness of memory, which even tends to strengthen rather than weaken the credibility of the prosecution witnesses because they erase any suspicion of rehearsed testimony.[23] What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole.[24]

The trial court has capsulized in a single paragraph the prosecution's case. It said:

"Of paramount consideration is the testimony of P/Cpl. Jaime Navarro who categorically stated that he saw from a distance of about five (5) to six (6) meters the actual exchange of marijuana and money between the accused and the confidential informant (TSN, October 16, 1987, pp. 4-5). The said exchange was also witnessed by the other members of the team. (See testimony of Pfc. Benjamin Feliciano, TSN, July 22, 1988, pp. 3-4). Likewise, the marked money was recovered from the accused himself. And witness P/Capt. Luena Layador, a forensic chemist, confirmed in her testimony and in Chemistry Report No. D-962-87 that what was really sold by the accused was marijuana. All these are proof of the sale of a prohibited drug punishable under Section 4, Article II of Republic Act No. 6425, as amended." [25]

Neither is there any inconsistency in the statements of P/Cpl. Navarro regarding the possessor of the aluminum foil at the time the accused was apprehended. Accused clearly misconstrued the import of the testimony of said witnesses by confining the concept of apprehension to the actual laying of Navarro's hand on the hand of the accused. What appears clearly to this Court is that Navarro decided to apprehend the accused in flagrante delicto; but, at the precise moment he was able to hold the accused's hand, the latter had already reached the receiving hand of the poseur-buyer who accepted the aluminum foil. There was then a completed delivery of the marijuana.

Nevertheless, whether or not the accused was still in possession of the aluminum foil at the time Navarro held the former's hand is totally immaterial. For liability to attach under Section 4 of R.A. No. 6425, as amended, which reads as follows:

"SECTION 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. -- 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 death of a victim thereof, the maximum penalty herein provided shall be imposed."

it is not necessary that the seller physically delivers the prohibited drug to the buyer or victim or that the contract be consummated by the actual delivery of the subject matter to the buyer. It is enough that there be a perfected contract of sale. There is perfection of such a contract at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price, from which moment the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.[26] In the instant case, accused sold to the poseur-buyer marijuana contained in an aluminum foil wrapper and received from the latter the consideration therefor in the amount of P10.00 which the peace officers recovered from him. Up to that point then, the contract of sale had already been perfected, even if the subject matter was not licit,[27] and the accused already became liable as a seller under the above Section 4 of R.A. No. 6425, as amended.

There is as well no merit in the claim of the accused that the non-presentation of the poseur-buyer as a witness is a clear suppression of evidence. The testimony of the poseur-buyer, if it were given, would at best be corroborative because Navarro and Feliciano sufficiently established how the crime was committed. Thus, his non-presentation was not fatal to the prosecution's case.[28] Of course, it would be different if the police officers were unable to see the actual sale of marijuana. In such a situation, an exception arises and the poseur-buyer should be presented as a witness.[29] Besides, there is no showing in this case that the poseur-buyer was not available for examination. If the accused honestly believed that the testimony of such poseur-buyer would be adverse to the prosecution, the former should have availed of the compulsory process to have such poseur-buyer produced as his witness, or even as a hostile witness.

Accused's postulation regarding the improbability of his committing the offense because it is contrary to human experience for a drug pusher to sell to a total stranger merits no attention. What matters is not the existing familiarity between the buyer and the drug pusher, but rather their agreement and the acts constituting the sale and delivery of the marijuana leaves.[30] Besides, there is no evidence on record to show that the accused and the poseur-buyer are strangers to each other. The defense counsel did not press for the disclosure of the identity of the latter or of his relationship with the accused.

As to the accused's allegation that he was a victim of a frame-up, We agree with the trial court that it deserves scant consideration:

"The charge of alleged frame-up interposed by the accused deserves scant consideration. The police officers as such are presumed to have regularly performed their duties in the absence of evidence to the contrary (Rule 131, Section 5 (m), Rules of Court). From the attendant circumstances, the Court sees no reason why the police officers would falsely concoct a serious charge against accused herein if he really did not commit the offense charged. Absent a showing that the police officers were actuated by improper motive, their testimonies are entitled to full faith and credit (People vs. Patog, 144 SCRA 429)."[31]

In several drugs cases, this Court has consistently held that absent any proof to the contrary, law enforcers are presumed to have regularly performed their duty.[32] This presumption perforce requires that the proof of the defense of frame-up must be strong.[33] For, as stated in *People vs. Agapito*: [34]

"In cases involving persons accused of being drug pushers or sellers, almost always the defense is that the accused was framed by the apprehending officers. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption, that official duty has been regularly performed, exists."

In *People vs. Del Pilar*, [35] this Court was more emphatic in stressing that the defense of frame-up must be proved by clear and convincing evidence because it is of the same category as alibi. Thus:

"The defense of frame-up can undoubtedly be fabricated with facility. It must, therefore, be proved by clear and convincing evidence. Like alibi, it is a weak defense that is easy to concoct and is difficult to prove."

Under the second assigned error, accused contends that the ten-peso bill and the marijuana recovered from him and from his room are inadmissible in evidence for having been the product of an unlawful arrest and search. This is patently without basis. He was arrested while in the act of selling marijuana to the poseur-buyer. Section 5 (a), Rule 113 of the Rules of Court provides, that:

"SECTION 5. Arrest without warrant; when lawful. -- A peace officer or a private person, may, without warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;"

x x x

Moreover, Section 12, Rule 126 provides:

"SECTION 12. Search incident to lawful arrest. -- A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

In *People vs. Paco*,^[36] this Court ruled:

"Having caught the appellant in flagrante as a result of the buy-bust operation, the policemen were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest. And since the appellant's arrest was lawful, it follows that the search made incidental to the arrest was also valid (Rule 126, Sec. 12; *Alvero vs. Dizon*, 76 Phil. 637 [1946]; *People vs. Claudio*, G.R. No. 72564, April 15, 1988)."

Hence, since the arrest without warrant was valid, then the search of the accused as a consequence of such arrest was likewise valid. The ten-peso bill and the marijuana obtained from the search of the accused's body are, therefore, admissible in evidence.

However, the search of the accused's room cannot be considered as incidental to his arrest because the arrest was made outside his house and there is no valid reason to search his room. Nevertheless, an examination of the record reveals that the accused consented to the search of his room even without a warrant. In fact, the trial court found that "[W]ith the cooperation and permission of the accused, additional marijuana stuff this time contained in a small white plastic bag was recovered from his room."^[37] Therefore, there is a clear waiver of the accused's right against unreasonable searches and seizures making the marijuana found in his room likewise admissible in evidence.

In view of the foregoing disquisitions, there is no need to take up the third assigned error.

The affirmance then of the judgment of the trial court finding the accused guilty of the crime charged is in order. The penalty imposed, which is reclusion perpetua, with all its accessory penalties is, however, incorrect. It should be life imprisonment. Section 4, Article II of Republic Act. No. 6425, as amended, provides for the penalty of life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00. The penalty of reclusion perpetua, a penalty provided for in appropriate cases under the Revised Penal Code and which carries accessory penalties, is completely different from life imprisonment.^[38]

IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby AFFIRMED, subject to the modification above indicated changing the penalty of reclusion perpetua to life imprisonment without any accessory penalty.

Costs against the accused.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Original Records, 1.

[2] This Branch was named as a Special Criminal Court pursuant to Circular No. 20, dated 7 August 1987, and Administrative Order No. 120, dated 11 August 1987, of the Supreme Court.

[3] Original Records, 7.

[4] Id., 13.

[5] Id., 22.

[6] This section penalizes employees and visitors of prohibited dens, dives or resorts with imprisonment ranging from two (2) years and one (1) day to six (6) years and a fine ranging from two thousand pesos (P2,000.00) to six thousand pesos (P6,000.00).

[7] Original Records, op. cit., 60.

[8] Id., 73.

[9] Original Records, 75.

[10] Id., 184-189.

[11] Original Records, 185-186.

[12] Id., 186-187.

[13] Now the Public Attorney's Office.

[14] Appellant's Brief, 1.

[15] TSN, 16 October 1987, 6.

[16] TSN, 22 July 1988, 6.

[17] TSN, 16 October 1987, 4-5.

[18] Exhibit "DD".

[19] Exhibit "B".

[20] Exhibit "C".

[21] Section 2 (i), R.A. No. 6425, as amended.

[22] People vs. Bernardino, 193 SCRA 448 [1991].

[23] People vs. Custodio, 197 SCRA 538 [1991]; People vs. Cabato, 160 SCRA 98 [1988]; People vs. Salufrania, 159 SCRA 401 [1988]; People vs. Pasco, 181 SCRA 233 [1990].

[24] People vs. Gadiana, 195 SCRA 211 [1991]; People vs. de Guzman, 188 SCRA 407 [1990].

[25] Decision of the trial court, 4; Original Records, 187.

[26] *Pacific Oxygen & Acetylene Company vs. Central Bank*, 37 SCRA 685 [1971]. Article 1458 of the Civil Code provides as follows:

"By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional."

[27] Article 1459, Civil Code.

[28] *People vs. Vocente*, 188 SCRA 100 [1990]; *People vs. Tangliben*, 184 SCRA 220 [1990]; *People vs. Capulong*, 160 SCRA 533 [1988].

[29] *People vs. Olaes*, 188 SCRA 91 [1990].

[30] *People vs. Tejada*, 170 SCRA 497 [1989]; *People vs. Rodriguez*, 172 SCRA 742 [1989]; *People vs. Macuto*, 176 SCRA 762 [1989]; *People vs. Borja*, 182 SCRA 581 [1990].

[31] Decision of the trial court, 5; Original Records, 188.

[32] *People vs. De Jesus*, 145 SCRA 521 [1986]; *People vs. Claudio*, 160 SCRA 646 [1988]; *People vs. Khan*, 161 SCRA 406 [1988]; *People vs. Rodriguez*, *supra*; *People vs. Bati*, 189 SCRA 97 [1990].

[33] *People vs. Rualo*, 152 SCRA 635 [1987]; *People vs. Macuto*, *supra*; *People vs. Marcos*, 185 SCRA 154 [1990].

[34] 154 SCRA 694, 700 [1987].

[35] 188 SCRA 37, 46 [1990], citing *People vs. Estevan*, 186 SCRA 34 [1990]; *People vs. Nabunat*, 182 SCRA 52 [1990]; *People vs. Agapito*, *supra*.

[36] 170 SCRA 681, 686 [1989]. See also *People vs. Rodriguez*, *supra*; *People vs. Bati*, *supra*.

[37] Decision of the trial court, 3; Original Records, 186.

[38] *People vs. Dekingco*, 189 SCRA 512 [1990]; *People vs. Baguio*, 196 SCRA 459 [1991]; *People vs. Penillos*, G.R. No. 65673, 30 January 1992.

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