

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLLO MARIANO Y DING-DING, ACCUSED-APPELLANT.

G.R. No. 86656. October 31, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The campaign against drug trafficking more than other law enforcement concerns deserves the priority consideration of Government. Subject to constitutional constraints contained in the Bill of Rights, we are duty-bound to lend our full support to the save-a-user-jail-the-pusher drive currently enforced by narcotic agents. Resolving the instant appeal, we affirm the judgment of conviction rendered by the Regional Trial Court, Third Judicial Region, Branch 10, Malolos, Bulacan as there are no such constraints warranting a reversal. The facts call for an affirmance.

The accused-appellant was charged with violation of Section 4, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act in an information dated August 19, 1986, committed as follows:

"That on or about the 4th day of June, 1986, in the municipality of Meycauayan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the said accused Apollo Mariano y Ding-Ding, together with one Marcos de Leon alias "Bebe", without authority of law, conspiring, confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously sell, deliver, dispatch in transit and transport one (1) tea bag of dried marijuana flowering tops, which is prohibited drugs. (Rollo, p. 4)

After trial, following a plea of not guilty entered upon arraignment, the lower court on November 29, 1988, adjudged the accused-appellant guilty beyond reasonable doubt of the crime as charged. The pertinent portion of the decision reads:

"Considering, therefore, that the accused was caught in flagrante delicto in a 'buy-bust' operation, conducted by law enforcers for the purpose of apprehending drug traffickers or pushers in Meycauayan, Bulacan and was positively identified; coupled with the fact that accused was previously charged and found guilty for violation of the Dangerous Drugs Act, a judgment of conviction for the accused in this case is warranted.

WHEREFORE, finding the accused, APOLLO MARIANO Y DINGING, alias 'Bodie' guilty beyond reasonable doubt of violating Section 4, Art. II of RA 6425 (Dangerous Drugs Act of 1972, as amended), the Court hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency, with all the accessory penalties provided by law, and to pay the costs." (Rollo. p. 22)

The antecedent facts are succinctly summarized by the Solicitor General in his brief, as follows:

"On June 4, 1986, the Mobile Team stationed at Meycauayan, Bulacan received an information from a Confidential Informant (CI) that there was rampant drug trafficking in the vicinity of Gasak, Meycauayan, Bulacan (tsn, pp. 1 & 2, June 11, 1987).

After evaluating the information, a buy-bust operation team was organized headed by Team Leader S/Sgt. Pablito Reyno (tsn, p. 2, June 11, 1987; tsn, p. 3, September 7, 1987).

Agent Crispin Velarde, an agent of EIIB, was assigned to act as a poseur-buyer and was given a marked P10.00 bill (Exhibit "A"; tsn, pp. 2 & 3, June 11, 1987; tsn, pp. 2 & 3, September 7, 1987).

At around 4:15 in the afternoon of the same day, the buy-bust operation team proceeded to Gasak, Meycauayan, Bulacan and positioned themselves where they could actually see the transaction (tsn, pp. 3 & 4, June 11, 1987).

Agent Velarde standing about 30 to 50 meters away from the Meycauayan Church was approached by the appellant together with his companion and asked if he would like to buy ('kung iiskor', in the local language of the addicts) and he replied positively ('oo, iiskor kami') (tsn, pp. 3 & 4, September 7, 1987).

Thereat, appellant handed to Agent Velarde one (1) plastic tea bag containing marijuana in exchange of a marked P10.00 bill (tsn, p. 4, September 7, 1987).

Thereafter, Agent Velarde gave the pre-arranged signal to effect the arrest of the appellant and his companion (tsn, p. 4, June 11, 1987; tsn, p. 4, September 7, 1987).

Immediately, the buy-bust operation team effected the arrest of the appellant and was able to confiscate from him the marked P10.00 bill. The plastic tea bag containing marijuana handed by appellant to Agent Velarde was taken by the team from the latter. Appellant's companion, however, was able to elude the arrest by running towards a small pathway ('eskinita') where only one person can pass through (tsn, pp. 4 & 5, June 11, 1987; tsn, pp. 4 & 5, September 7, 1987).

Later, the team proceeded to the Municipal Police Station of Meycauayan, Bulacan to enter the incident in the blotter (tsn, pp. 4 & 5, September 7, 1987).

The team returned to its headquarters in Bulacan and placed the appellant under arrest (tsn, p. 7, June 11, 1987).

The seized one (1) plastic tea bag of marijuana was forwarded to the PC Crime Laboratory, Camp Olivas, Pampanga for examination (Exhibit 'B'; tsn, pp. 5 & 6, June 11, 1987; tsn, p. 2, October 5, 1987) and which yielded positive result for marijuana (Exhibit 'C'; tsn, pp. 3 & 4, October 5, 1987)." (Appellee's Brief, pp. 4-7)

The accused-appellant, in his effort to exonerate himself, testified that:

"xxx [O]n June 1, 1986 at around 3:00 p.m. he was at Gasak, Meycauayan, Bulacan at their house specifically near the stairway. He was then fetching water when all of a sudden Sgts. Reyno and Bazar appeared and handcuffed him. He was brought to a ricefield and they forced him to point a certain person whom he does not know. Sgts. Reyno and Bazar want him to point to a certain person named Marcos de Leon who is unknown to him. When he was not able to make the day of the two aforementioned nice and friendly sergeants he was brought to the residence of the barangay captain of Bangkal, Meycauayan, Bulacan. The name of the barangay captain of Bangkal is unknown to him because he is a resident of Gasak, Meycauayan, Bulacan which is different and a distant barangay.

While inside the house of the said barangay captain he was mauled and forced to admit the possession of one tea bag of marijuana. From 3:00 to 7:00 p.m. of the said date, June 1, 1986, accused-appellant together with the two military officers stayed at the residence of barangay captain of Bangkal. At around 7:00 p.m. he was brought to the Meycauayan Municipal Jail where he was detained for four (4) days. While at the Meycauayan Municipal Jail he was forced to make a statement. The said statement was signed by the accused-appellant at Camp Olivas but the same was not presented in court by the prosecution. After being detained illegally at Meycauayan Municipal Jail for four (4) days he was brought to Camp Olivas. At the said camp, he was again

placed behind bars up to September 19, 1986. Thereafter, he was brought again to the Meycauayan Municipal Jail. The arrest or kidnapping on June 1, 1986 was done by two military officers with no one witnessing the incident." (Rollo, pp. 39-40)

Maintaining his position that he is innocent of the crime imputed to him, the accused-appellant in this appeal presents the following assignment of errors, to wit:

I

"THE LOWER COURT GRIEVOUSLY ERRED IN GIVING WEIGHT, CREDENCE AND PROBATIVE VALUE TO THE TESTIMONIES OF SGT. RUBEN BAZAR AND AGENT CRISPIN VELARDE". (Rollo, p. 41)

II

"THE LOWER COURT GRIEVOUSLY ERRED IN DISREGARDING THE DEFENSE SET FORTH BY THE ACCUSED-APPELLANT AND GIVING WEIGHT TO THE PREVIOUS VIOLATION OF THE ACCUSED-APPELLANT OF R.A. 6425". (Rollo, p. 47)

III

"THE LOWER COURT GRIEVOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION AND IMPOSING UPON HIM THE PENALTY IN THE DECISION APPEALED FROM." (Rollo, p. 48)

All the assigned errors are anchored on the issue of whether or not the trial court committed reversible error in appreciating and assessing the credibility of the witnesses who appeared and made their declarations in open court.

For the prosecution, the following witnesses were presented: (1) Staff Sergeant Ruben Bazar of the Armed Forces of the Philippines assigned to the NARCOM Regional Unit, Mobile Team stationed at Meycauayan, Bulacan who testified that he was one of the members of the seven-man "buy-bust" operation team which was organized immediately after he received confidential information on June 4, 1986 relating to drug-trafficking in Gasak, Meycauayan; (2) Agent Crispin A. Velarde, intelligence agent of the Economic Intelligence Investigation Bureau assigned to the Narcotics Command in Malolos, Bulacan who acted as poseur-buyer in the "buy-bust" operation aforestated; (3) Capt. Marlene Salangad, forensic chemist at the PC Crime Laboratory in Camp Olivas, San Fernando, Pampanga who conducted physical, chemical and confirmatory tests on the contents of a sealed plastic tea bag which yielded positive results for marijuana.

For the defense, there were also three witnesses, namely: (1) Accused-appellant himself who insisted that he was framed-up by Staff Sergeants Pablito Reyno and Ruben Bazar after he failed to direct them to the person whom they forced him to point to; (2) Corporal Antonio Yap Tinchay, member of the INP, Meycauayan, Bulacan assigned as jail warden at the Meycauayan Police Station who testified that the jail blotter for June 1986 was destroyed by flood (so that there were no records of the alleged detention of the accused-appellant for a previous offense at the time of the crime under consideration) and that when a person is brought to the police station for the purpose of safekeeping only as what probably might have happened to the accused-appellant, such fact is not reflected in the records; and (3) Sergeant Ruben Bazar as an adverse witness whose testimony failed to strengthen the defenses of the accused-appellant.

The quantum of evidence necessary to convict the accused-appellant is established by the prosecution. The accused-appellant's commission of the crime charged is readily manifest from the evidence on record. Agent

Crispin Velarde, the prosecution witness who acted as poseur-buyer categorically pinpointed the accused-appellant as the author of the crime of selling one small plastic bag of marijuana for P10.00. When asked to testify on what transpired on June 4, 1986, he gave the following statement:

xxx xxx xxx

"FISCAL:

You mentioned the name Apollo Mariano, why do you him? (sic)

A. He was the one who was arrested during the buy-bust operation in Meycauayan, sir.

Q. Do you have any participation in this buy-bust operation that was conducted in Meycauayan?

A. Yes, sir,

Q. What was your participation in that buy-bust operation?

A. I was the one who acted as a poseur-buyer.

xx xxx xxx

Q. Who are your companions?

A. S/Sgt. Reyno, Ruben Bazar, Agent Orquia, Pat. Villaluz and concerned citizens of Meycauayan.

Q. Were you able to reach Meycauayan, Bulacan?

A. Yes, sir.

Q. And upon reaching Meycauayan, Bulacan, what did you do?

A. We arrived at Meycauayan Church then I was instructed by the team leader then he gave P10.00 marked money.

Q. Who is that team leader?

A. S/Sgt. Reyno, sir.

Q. And do you know what is the purpose of this marked money?

A. Yes, sir.

Q. What is the purpose of this marked money?

A. To be used in purchasing one tea-bag of marijuana fruiting tops.

Q. After Reyno gave you this P10.00 marked money what happened next?

A. We proceeded to the area together with my confidential informer.

Q. Were you able to reach this area together with your confidential informer?

A. Yes, sir.

Q. Now, when you were at the area that (sic) you proceeded what happened next?

A. Two males approached us, sir.

Q. After these males approached you what happened next?

A. They asked if we are going to buy (kung iiskor daw kami).

Q. Will you please explain the meaning of 'iiskor'?

A. Meaning to buy.

Q. What was your reply?

A. I replied yes (Oo iiskor kami).

Q. After you replied what happened next?

A. Apollo Mariano handed to me one small plastic bag containing marijuana.

Q. And after Apollo Mariano handed to you that plastic bag of marijuana what did you do?

A. I gave the P10.00 marked money to Apollo Mariano.

Q. You mentioned that there are two males who approached you, do you know the identity of the other male aside from Apollo Mariano?

A. I know him only as 'alias' BEBE.

Q. After you handed to him that P10.00 marked money what happened?

A. I immediately gave the pre-arranged signal, sir.

Q. To whom did you address that pre-arranged signal?

A. To my team members, sir.

Q. And what is this signal or what is the purpose of this signal?

A. If the transaction is positive, sir.

Q. And what is the signal that you gave to your team members?

A. I threw a lighted cigarette.

Q. And after you have drawn this signal what happened next?

A. My back-up team members came and introduced themselves as NARCOMS.

xxx xxx xxx

Q. You mentioned that your team members introduced themselves and after that they have introduced themselves what happened next?

A. They immediately took Apollo Mariano and arrested him and proceeded to the Municipal Police Department of Meycauayan to make the necessary blotter.

Q. Now, you mentioned that Apollo Mariano was arrested and do you know what happened to alias 'BEBE'?

A. He eluded arrest.

xxx xxx xxx

Q. Now, if that Apollo Mariano is in court can you point to him?

A. Yes, sir.

Q. Will you look around and tell us if you can point to Apollo Mariano?

A. He is the one, sir. (witness pointing to accused who was already identified).

Q. Is this Apollo Mariano the same Apollo Mariano who handed to you the plastic tea-bag?

A. Yes, sir. (TSN, September 7, 1987, pp. 2-6)

We are aware of the fact that the use of poseur-buyers by narcotic agents as a means of apprehending prohibited drug violators is susceptible to abuse (*People v. Juan dela Cruz y Gonzales*, G.R. No. 83260, April 18, 1990 citing *People v. Fernando*, 145 SCRA 151 [1986]). However, in the case at bar, there is convincing proof that such abuse is not present. The testimony of the poseur-buyer is corroborated by another prosecution witness who took part in the “buy-bust” operation that led to the entrapment of the accused-appellant. The pertinent portion of Staff Sergeant Bazar’s testimony reads:

xxx xxx xxx

"Q. What is your tour of duty on June 4, 1986?

A. 24 hours, sir.

Q. And did you report for work on June 4, 1986?

A. Yes, sir.

Q. On June 4, 1986, where were you at that time?

A. At the office of Mobile team, Meycauayan, Bulacan.

Q. And while in your office at Meycauayan, what happened?

A. We received from one of our CI (confidential informant) on June 4, 1986 about 2:00 to 3:00 information that drug trafficking in Gasak, Meycauayan, Bulacan is rampant.

Q. Upon receiving that information, what did you do?

A. We then evaluated the information given us and found that alias Bodie and Bibe are one of the drug traffickers in that area.

Q. Will you kindly tell us the name of your CI?

A. I cannot for security purposes.

Q. Now, what did you do after that?

A. After evaluating the information, we planned the buy-bust operation to effect the apprehension and arrest of the marijuana pushers.

Q. Do you have any companion?

A. Yes, S/Sgt. Pablito Reyno.

Q. You mentioned that you were able to effect the buy-bust operation, what did you do?

A. At about 4:15 in the afternoon of June 4, 1986, we then planned the buy-bust operation and one of our members in the team who acted as pusher-buyer was handed by Sgt. Reyno P10.00 marked money bill.

xxx xxx xxx

Q. Now, when one of your companions posed as buyer, what happened next?

A. We proceeded to the place of transaction as reported by our CI.

Q. Were you able to reach that place?

A. Yes, sir.

Q. What happened?

A. When we reached Gasak, Meycauayan, with one of our companions who acted as buyer with the P10.00 bill and together with our CI, we then proceeded to the place of transaction and we asked for back-up team. We placed ourselves in certain position in such a way that we could actually see the transaction.

Q. You mentioned that one of your companions posed as buyer, tell us the name of your companion?

A. Agent Crispin Velarde.

Q. When you have deployed yourselves to see the transaction, what happened next?

A. When we were in the place of transaction the CI with Agent Velarde proceeded to the place of transaction. We saw a man, malefactor approached the CI and poseur-buyer.

Q. What happened after this man approached your CI and buyer?

A. Later, we saw the malefactor handed something that we presumed to be marijuana and we likewise saw when agent Velarde handed the P10.00 to the malefactor.

Q. Tell us how far were you when this transaction was going on?

A. 10 to 15 meters.

Q. And if you will see that malefactor again, will you be able to identify him?

A. Yes, sir.

Q. Look around if he is inside the courtroom?

A. Witness pointed to Apollo Mariano.

Q. After the exchange of that item with the P10.00 bill, what happened next?

A. There was this pre-arrangement signal. If the marijuana transaction is already complete, he will give the signal and effect the arrest of the person.

Q. And what is this signal?

A. Scratching the head of the poseur-buyer.

Q. Was the signal given by the poseur-buyer?

A. Yes, sir.

Q. And after the signal was given, what did you do?

A. We rushed to the place and introduce ourselves to said malefactor who identified himself as Apollo Mariano alias _____.

Q. What did you do next?

A. We arrested said malefactor and we were able to confiscate the P10.00 bill from his possession." (TSN, June 11, 1987, pp. 2-5)

There is no doubt from the records that the accused-appellant in this case was caught in the very act of selling marijuana fruiting tops, a prohibited drug in violation of section 4 of the Dangerous Drugs Act of 1972, as amended. The testimonies of the above prosecution eyewitnesses are consistent and compatible on the material points considering that there is nothing in the record to show that the said witnesses were actuated by improper motives to falsely testify contrary to the accused-appellant's allegation. (See *People v. Alvino Anciano*, G.R. No. 88937, September 13, 1990; *People v. Robert Camarao y Laoyan*, G.R. No. 78681, August 20, 1990; *People v. Cerelegia*, 147 SCRA 538 [1987]). Moreover, the said prosecution witnesses are both law enforcers, hence, presumed to have regularly performed their duties in the absence of proof to the contrary. (*People v. Regalado Bati*, G.R. No. 87429, August 27, 1990 citing *People v. Agapito*, 154 SCRA 694 [1987]); *People v. Moises Maspil, Jr., y Wayway*, G.R. No. 85177, August 20, 1990 citing Rule 131, sec. 5(m), Rules of Court; *People v. Marcos*, G.R. No. 83325, May 8, 1990; *People v. Yap and Mendoza*, G.R. Nos. 87088-89; May 9, 1990).

The inconsistencies pointed out by the accused-appellant in the testimonies of the prosecution eyewitnesses, namely, the disparities in the pre-arranged signal (whether scratching the hand or throwing a lighted cigarette) and where the "buy-bust" operation was planned and organized (whether in the office of the Mobile Team in Meycauayan, Bulacan or in Camp Olivas, San Fernando, Pampanga) are, in our view, not substantial enough to affect the veracity of the prosecution evidence as to how the crime imputed to the accused-appellant was committed. (see *People v. Daniel Mangusan y Butete*, G.R. No. 77832, September 14, 1990; *People v. Leonardo Manalansan*, G.R. Nos. 76369-70, September 14, 1990). As we have repeatedly held, minor contradictions are to be expected but must be disregarded if they do not affect the basic credibility of the evidence as a whole. (*People v. Leonardo Periodica, Jr.*, G.R. No. 73006, September 29, 1989)

Moreover, in prosecutions for the offense of illegal sale of marijuana, what is material is the proof that the selling transaction transpired coupled with the presentation in court of the corpus delicti as evidence. We reiterate our ruling in the case of *People v. Agayas Vocente y Toydaan*, G.R. No. 80533, promulgated on July 30, 1990, citing *People v. Macuto*, 176 SCRA 762 [1989] that:

"The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction whereby, as in this case, the accused handed over the tea bag of marijuana upon the agreement with the poseur-buyer to exchange it for money. xxx What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices. The identity of the tea bag of marijuana which constitutes the corpus delicti was established before the court. xxx" (on page 11)

This is another occasion where the presumption of innocence in favor of the prosecution is overcome by the positive testimonies of the prosecution witnesses. The defenses of denial and alibi given by the accused-appellant in this case require stronger proofs considering that at the time of the commission of the offense in question, the accused-appellant was under probation for the previous violation of the Dangerous Drugs Act of 1972, as amended. (TSN, November 12, 1987, p. 4; TSN, November 24, p. 2; TSN, August 18, 1988, pp. 8-9). The alleged manhandling by the police officers who arrested the accused-appellant was not duly substantiated. Hence, we find the defenses used by the accused-appellant to assert his innocence both flimsy and shallow. It is a time-honoured rule that as between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence and weight. (*People v. Jonathan v. Adap*, G.R. No. 66237, September 12, 1990; *People v. Cornelio Marilao y Samson*, G.R. No. 71681, September 5, 1989)

In view of the foregoing, we hold that the trial court correctly found the accused-appellant guilty of the crime with

which he is charged. However, for accuracy, the designation of the penalty imposed upon the accused should be changed from reclusion perpetua, as ordered by the trial court, to life imprisonment which is the penalty specifically provided for by law. (Art. II, sec. 4, Republic Act No. 6425, as amended).

There is no adequate basis for tempering with mercy our resolve to affirm the judgment appealed from as the accused-appellant prays in his appeal considering that:

"Drug addiction is one of the most pernicious evils that has ever crept into our society. More often than not it is the young who constitute the greater majority of the citizenry who are the victims. It is of common knowledge that drug addicts become useless if not dangerous members of society and in some instances turn up to be among the living dead. This is the reason why the courts and law enforcement agencies should continue in their relentless campaign not merely to minimize but to totally eradicate the evil before it is too late. And everyone must be involved in this drive if we are to succeed. The peddlers of drugs are actually agents of destruction. They deserve no less than the maximum penalty. (People v. Policarpio, 158 SCRA 85 [1988]).

WHEREFORE, with the modification that the accused-appellant is sentenced to life imprisonment, the judgment appealed from is hereby **AFFIRMED** with costs against the accused-appellant.

SO ORDERED.

Fernan, C.J., (Chairman), and Bidin, J., concur.

Feliciano, J., on leave.

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