

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON SALCEDO Y SISON, ACCUSED-APPELLANT.

G.R. No. 86975. March 18, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by Marlon Salcedo from the decision* of the Regional Trial Court of Manila, Branch VI, in Criminal Case No. 84-30953 for violation of Article II, Section 4, in relation to Section 2 (e-1) and (i), of Republic Act 6425, as amended by P.D. 1675, otherwise known as the Dangerous Drugs Act of 1972, entitled "People v. Marlon Salcedo y Sison", finding him guilty as charged, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the guilt of the accused having been proven beyond reasonable doubt of a violation of Sec. 4, Article II, in relation to Sec. 2 (e-1) and (i) of Rep. Act No. 6425 and further amended by P.D. 1675, and there is no showing that he is properly licensed or has any authority to dispose of the prohibited drugs, he is hereby sentenced to Life Imprisonment, to pay a fine of P20,000.00, and to pay the costs.

SO ORDERED."

The appellant was charged in an information filed by Second Assistant City Fiscal Ramon O. Santiago of Manila on October 18, 1984, which reads:

"The undersigned accuses Marlon Salcedo y Sison of a violation of Section 4, Article II, in relation to Section 2 (e-1) and (i) of Republic Act No. 6425 and further amended by P.D. 1675, committed as follows:

"That on or about October 17, 1984, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drugs, did then and there willfully, unlawfully and knowingly sell, deliver or give away to another a teabag of dried flowering tops of marijuana, a prohibited drug.

"Contrary to law." (Rollo 5; p. 1, Original Record).

Upon arraignment, the accused-appellant entered a plea of not guilty to the crime charged (Original Record, p. 3).

After trial, on the basis of the evidence presented, the findings of the trial court are as follows:

"The testimonial and documentary evidences adduced by the prosecution clearly established the fact that on October 17, 1984, at around between 4:00 and 5:00 o'clock in the afternoon, accused Marlon Salcedo tried to dispose or sell one plastic teabag of dried marijuana leaves to Eugene Tagana at the price of P10.00. Eugene Tagana acted as a buyer and in fact Tagana delivered the two P5.00-bills to Marlon Salcedo representing the cost of one teabag of marijuana dried leaves. The two 5.00-bills were accepted by the accused Marlon Salcedo and upon acceptance of the two P5.00-bills from Eugene Tagana, he, Marlon Salcedo proceeded to an alley to get the necessary stuff as ordered by Eugene Tagana. A few minutes thereafter, Marlon Salcedo returned with the stuff and tried to deliver the stuff which is contained in a plastic container of one teabag of dried marijuana

leaves. It was at this moment that the policemen, namely: Pat. Renato Borela, Pat. Rodrigo Basilio, Pat. Reynaldo Tan and Pat. Danilo Chua closed in and tried to arrest Marlon Salcedo. However, when Marlon Salcedo had noticed the approach of the policemen, he, Marlon Salcedo threw the plastic container containing the teabag of dried marijuana leaves to the river bank. However, the said teabag thrown by Marlon Salcedo was retrieved by Pat. Basilio and thereafter Pat. Basilio frisked the pocket of Marlon Salcedo and confiscated the two P5.00-bills delivered by Eugene Tagana to him as a result of which the policemen arrested the accused and took him to the police headquarters for further investigation. The marijuana dried leaves contained in the teabag was referred to the Forensic Chemistry Section of the NBI and Forensic Chemist Ma. Carina Madrigal-Javier clearly examined and determined whether the teabag which was referred to her for verification was positive or not of marijuana. Upon her microscopic, chemical and chromatographic examinations, the specimen was positive for marijuana as contained in her report marked Exh. 'B' and final examination report marked Exh. 'C'. There is no doubt that the one plastic teabag containing dried marijuana leaves and flowering tops which the accused had sold to Eugene Tagana was positive for marijuana. The defense of the accused that it was not he who brought the plastic teabag containing marijuana and it was Eugene Tagana who pleaded to him to be delivered to one Magat and it was Eugene Tagana, who threw the said teabag to the river bank, is not only unbelievable but incredible. The defense of the accused is a last ditch defense in order to exculpate himself from any liability of selling prohibited drug."

As earlier stated, the Court a quo convicted the appellant of the crime charged.

The only issue in this appeal hinges on the credibility of witnesses.

Verily, there is no question that the findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by appellate courts (*People v. Carido*, 167 SCRA 462 [1988]; *People v. Ramos*, 162 SCRA 794 [1988]) and that credibility "is a matter that is peculiarly within the province of the trial judge, who had the first hand opportunity to watch and observe the demeanor and behaviour of witnesses both for the prosecution and the defense at the time of their testimony" (*People v. Turla*, 167 SCRA 278 [1988]). But this rule is not without exception. Thus, it does not apply where the lower court overlooked certain facts of substance and value that if considered, would affect the result of the case (*People v. Royeras*, 130 SCRA 265 [1984]; *People v. Martinez*, 144 SCRA 303 [1986]; *Arcadio Cortez y Vengzon v. C.A. and People of the Philippines*, 163 SCRA 139 [1988]). In fact, it has been settled that the Supreme Court is not bound by factual findings of the lower court which are contradicted by the evidence (*Edward A. Keller & Co. Ltd. v. C.O.B. Group Marketing Inc.*, 141 SCRA 86 [1986]).

The case at bar falls under the exception as the trial court failed to consider the conflicting testimonies of the prosecution witnesses, particularly those of Pats. Rodrigo Basilio, Renato Borela and Feliciano Sarte with regard to the conduct of the alleged buy-bust operation, which as correctly noted not only by the defense but by the Solicitor General himself that if considered, would have greatly affected the result of the case.

The inconsistencies pointed out in the case at bar, are as follows:

First: Pat. Basilio claimed that upon receiving a tip-off from their alleged informant, Eugene Tagana, their Commanding Officer Pacifico Calling ordered him (Basilio), Patrolmen Tan, Borela, and Chua to the place mentioned by Tagana in order to apprehend the appellant (TSN, Hearing of January 16, 1985, p. 11).

On the other hand, Borela claimed that upon receiving the phone call from Tagana, he (Borela) immediately mapped out a buy-bust operation and proceeded to Gomez St., Paco, Manila without mentioning that it was made in response to an order issued by a superior officer (TSN, Hearing of April 29, 1985, p. 38).

Second: Basilio claimed that the police officers who mounted the operation consisted of himself, Borela, Tan and Chua (TSN, Hearing of January 16, 1985, p. 11).

On the other hand, Borela, who acted as the team leader of the operation and who conceived of the alleged entrapment plan (TSN, Hearing of April 29, 1985, p. 45), identified the apprehending team as consisting only of Tan, Chua and himself (Borela) (p. 38, supra). All throughout Borela's testimony, no mention was made of Basilio's participation in the operation. Likewise, Pat. Sarte testified that the apprehending officers were Borela, Tan, and Chua only (TSN, Hearing of April 15, 1985, p. 33).

Third: Basilio alleged that two (2) five peso (P5.00) bills were used in the operation (TSN, Hearing of January 16, 1985, pp. 13-14). Borela, however, testified that only one (1) ten peso (P10.00) bill was used (TSN, Hearing of April 29, 1985, pp. 38; 42).

Sarte corroborated Borela's testimony that only one ten peso (P10.00) bill was used (TSN, Hearing of April 15, 1985, p. 35).

The reasons for the difference in the testimonies of these witnesses were not explained by the prosecution. Even the court a quo itself closed its eyes on these irreconcilable testimonies as it adopted the testimony of Basilio that two (2) five peso (P5.00) bills were utilized by the police officers, a fact which is contrary to the testimony of Borela, as corroborated by Sarte.

Fourth: In his testimony, Basilio stated that he was the one who retrieved the packet of marijuana from the river bank after appellant threw the same (p. 13 supra).

In contrast, Borela adamantly declared that it was Tan who recovered the same from the river bank (p. 39, supra).

Fifth: Without any hesitation, Basilio testified that he (Basilio) and Chua were the ones who brought the packet of marijuana to the NBI for examination (p. 14, supra). Borela, on the other hand, first claimed that he did not know who brought the packet of marijuana to the NBI (p. 41, supra). It was only after some prodding from the court that Borela suddenly "remembered" positively that he was the one who brought the specimen to the NBI (Ibid.).

Sixth: As to the whereabouts of the money used in the alleged buy-bust operation, Pat. Basilio stated that the money was recovered from Tagana and that the money was with Pat. Borela. The court a quo asked the same question and received the same answer (pp. 13-14, supra), in contrast to the findings of the court that the money was confiscated from the accused when the latter was apprehended.

This wavering testimony of Basilio is repeated in Borela's testimony who testified on whether or not it was recovered but never mentioned from whom it was recovered, viz:

"Q -

This P10.00 bill was not recovered?

A -

Yes sir (p. 42, supra).

Court

Q -

Now, correct me if I am wrong, you stated that the P10.00 bill that you gave to Tagana was not recovered, is

that right?

A -

Yes sir.

Q -

Even up to the present?

A -

No sir.

Will you please read the booking sheet and arrest report wherein your signature appears?

A -

(Witness reading the document).

Q -

Wherein it appears that the suspected marijuana which was found positive and the P10.00 bill were recovered from him and signed by you?

A. -

Yes your honor" (p. 43, supra).

Still further, the testimonies of Basilio and Borela are proofs that they have either forgotten the incidents of the arrest or they were merely fabricating the circumstances thereof. Thus, the statement of Basilio that he and his companions proceeded to Paco at 2:00 o'clock in the afternoon cannot be reconciled with the claim of Borela that the tip-off was received by phone call only at 2:00 o'clock in the afternoon (p. 16, supra). Considering that according to Borela, said tip-off had still to be confirmed at the station, it is highly improbable for the police contingent to have been in Paco at 2:00 o'clock in the afternoon as claimed by Basilio. The prosecution did not even attempt to reconcile the contradictory testimonies of said witnesses, rendering them unworthy of full faith and credence.

As ruled by this Court, irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the guilt of appellant (People v. Caboverde, 160 SCRA 550 [1988]) and his culpability to the crime charged (People v. CFI of Rizal, Branch IV, Quezon City, 161 SCRA 249 [1988]).

The last four (4) inconsistencies pointed out by the defense are very serious contradictions and since they have not been explained, We find them indicative of appellant's innocence.

In contrast to the testimonies of the prosecution witnesses, the testimony of Marlon Salcedo was straightforward and unwavering.

He testified that he is 23 years old, single, a construction worker, and residing at 1467 Int. 33 Gomez St., Paco, Manila; that between 4:00 to 5:00 o'clock in the afternoon, he was at his residence watching a pool game, when a boy by the name of Eugene Tagana called him and asked for Rudy Magat. When Tagana approached him asking for Rudy Magat, he (Tagana) was holding a plastic bag of marijuana which he, (Tagana) would sell to Rudy Magat. While the two were conversing near the river bank, the accused rejected the plea of Eugene Tagana that the plastic bag of marijuana dried leaves be delivered to Magat. While they were arguing about the matter, the policemen arrested him and Eugene Tagana threw the plastic bag of marijuana into the river. He was frisked by the policemen and when the policemen did not recover anything from his body, they brought him to police headquarters. Inside the police headquarters the father of Eugene Tagana was present and he (the father) hit him with a rattan cane while he was being maltreated by the policemen. Under such maltreatment, he was forced to sign his name on a piece of paper. On another occasion in 1984, he had likewise been arrested by the policemen who mistook him for Rudy Magat who had snatched a necklace.

His testimony was clear and explicit that it was Tagana who was in possession of the packet of marijuana and it was also Tagana who had asked the accused-appellant to accompany him to the house of Rudy Magat. Accused's testimony remained unshaken despite rigid cross-examination.

This Court has observed that:

"Judges trying narcotics cases are often placed in a non-enviable predicament. The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant. Courts should not hamper, in any way the dedicated although sometimes puny efforts to stem the giant menace. Courts should not unwittingly tie down the hands of narcotic agents whose work is already difficult and dangerous enough without legal and procedural obstacles to successful prosecutions.

"At the same time we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting 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 usually severe penalties for drug offenses. (People v. Ale, 145 SCRA 58-59 [1986]).

Considering appellant's outright denial and totally different version of the events resulting in his arrest, it became incumbent upon the prosecution to rebut appellant's allegations by presenting Tagana, the alleged poseur-buyer. This it failed to do, giving rise to the presumption that evidence willfully suppressed would be adverse if produced [Rule 131, Sec. 5 (e)]. This failure which as ruled by this Court constitutes a fatal flaw in the prosecution's evidence since the so-called informant who was never presented as a witness and never identified, is the best witness for the prosecution (People v. Rojo, 175 SCRA 119 [1989]). In fact, this Court has stated that the common modus operandi of narcotic agents of utilizing poseur-buyers does not always commend itself as the most reliable way to go after violators of the Dangerous Drugs Act as it is susceptible to mistake as well as to harassment, extortion and abuse (People v. Fernando, 145 SCRA 159 [1986]; People v. Yutuc y Tellis, G.R. No. 82590, July 26, 1990). In any event, the presumption that official duty has been regularly performed cannot by itself, prevail against the constitutional presumption of innocence accorded an accused. (People v. Ale, supra).

The improbability of the prosecution's version becomes more manifest when scrutinized as to the alleged conduct of the accused in the illegal transaction. It was supposed to have been carried out in full view of the public which

include the apprehending police officers, for the small amount of P10.00. It is a truism that evidence to be believed must not only proceed from the mouth of credible witnesses but must be credible in itself (*People v. Dimacali*, 153 SCRA 454 [1987]). No better test has yet been found to measure the value of a witness than its conformity to knowledge and common experience of mankind (*People v. Maribung*, 149 SCRA 292 [1987]). Undoubtedly, the prosecution's version of the manner by which appellant conducted the drug trafficking business is not in conformity with common experience.

Conviction must come from the strength of the prosecution's evidence and not from the weakness of the defense (*People v. Magallanes*, 147 SCRA 92 [1987]); neither can the prosecution be relieved of the onus of proving guilt beyond reasonable doubt by the weakness of the defense (*People v. Sadie*, 149 SCRA 240 [1987]).

A careful review of the records shows numerous inconsistencies and contradictory statements of the prosecution witnesses that cannot support with moral certainty a finding of guilt beyond reasonable doubt. Indeed it is well established that if 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 conviction (*People v. Taruc*, 157 SCRA 178 [1988]).

PREMISES CONSIDERED, the appealed decision is hereby REVERSED and the accused-appellant is hereby ACQUITTED on reasonable doubt.

SO ORDERED.

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

[*] Penned by Judge Ernesto S. Tengco.

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