

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTURO MERABUENO, EMMANUEL TRINIDAD Y FERNANDEZ, FERNANDO BASILIO Y FAJARDO AND ERNESTO CRUZ Y MARCIAL, ACCUSED-APPELLANTS.

G.R. No. 87179. December 14, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal by Arturo Merabueno, Emmanuel F. Trinidad, Fernando F. Basilio and Ernesto M. Cruz, from the decision of the Special Criminal Court, Regional Trial Court, Branch 156, Pasig, Metro Manila, in Special Criminal Case No. 513-D, convicting them of violating Section 4, Article II of Republic Act No. 6425, as amended, and sentencing them to "suffer the penalty of reclusion perpetua with all its accessory penalties, to pay a fine of P20,000.00 and to pay costs" (Rollo, p. 35).

I

The Information filed by the Office of the Provincial Fiscal of Rizal against appellants reads as follows:

"That on or about the 4th day of August, 1987, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, without having been authorized by law, did then and there willfully, unlawfully and feloniously engage themselves in the selling, delivering, giving away and passing to buyers including the poseur-buyer marijuana leaves and when apprehended, the following were recovered from them:

1. 3.05 grams of dried marijuana fruiting tops placed in two (2) small transparent plastic bags
2. 34.93 grams of dried marijuana fruiting tops placed in one transparent plastic bag
3. 2,075 grams of marijuana dried leaves placed in a plastic bag contained in one (1) black travelling bag labelled "ACE" (Rollo, p. 20).

II

On July 18, 1987, the Special Operative Division of the Anti-Narcotics Unit of the Eastern Police District, Meralco Avenue, Pasig, Metro Manila, received an information by telephone regarding the rampant peddling of marijuana in the vicinity of the Herbosa Compound, Barangay Parang, Marikina. Thus, a team composed of Patrolmen Roberto Jocson, Romeo Cavizo, Isidro Mariano, Silvino Gamboa and Mateo Garcia, was organized to conduct a surveillance of the place.

The surveillance yielded positive results as the police team was able to pinpoint Arturo Merabueno, Emmanuel F. Trinidad and Fernando F. Basilio as the suspected pushers.

On August 4, at a briefing as to the conduct of the operation, Pat. Romeo Cavizo was designated to act as the

poseur-buyer. He was given a marked twenty-peso bill with Serial No. BK071672 to be used in purchasing marijuana from the suspects. The other members of the team, who were deployed in inconspicuous places, employed pre-arranged hand signals as their means of communication.

Shortly thereafter, Pat. Cavizo spotted Merabueno, who was standing beside a tree near a store inside the Herbosa Compound. He then approached Merabueno and inquired if he could "iskor ng damo" (buy marijuana) worth P20.00. When Merabueno asked for the money, Pat. Cavizo handed him the marked twenty-peso bill. After telling Pat. Cavizo to wait, Merabueno went to an alley, unknowing that Pat. Jocson and the other members of the Anti-Narcotics Unit were following him. Merabueno headed towards Trinidad to whom he gave the marked twenty-peso bill. Trinidad handed him a packet, the size of a tea bag. After Merabueno left, Pat. Jocson and his teammates accosted Trinidad.

The policemen, together with Trinidad, followed Merabueno to town. They saw Merabueno talking with Basilio. They surrounded the two and ordered the three suspects to empty their pockets. Two tea bags of marijuana were recovered from Merabueno; one tea bag of marijuana from Basilio and the marked twenty-peso bill from Trinidad.

The trio were brought to the Marikina Police Headquarters, where Basilio revealed the name of Ernesto "Erning" Cruz, a resident of Antipolo, Rizal, as his source of marijuana. That same morning, the team, together with Merabueno and Basilio, went to Antipolo but they were not able to apprehend Cruz.

At about 7:00 P.M. of the same day, the team went back to Antipolo with Basilio. On their way, they met Cruz, who was carrying a dark-blue bag. After placing Cruz under arrest, the policemen searched the bag of Cruz and found more than a kilo of dried marijuana leaves. Cruz was questioned several times as to the identity of the source of the marijuana and he kept uttering the name of a certain "Carding." The policemen were unable to ascertain the whereabouts of said Carding.

All the appellants were apprised of their constitutional rights during their investigation. Cruz, with the assistance of his counsel, Atty. Edith Pio of the CLAO, voluntarily executed a written sworn statement dated August 5, 1987 (Exh. "F"), wherein he admitted that he sold P50.00 worth of marijuana to Basilio.

The items, which were confiscated from the appellants, were brought to the PC Crime Laboratory in Camp Crame for chemical analysis. The chemistry report (Exh. "C") stated that the subject specimen was positive for marijuana.

At the trial, Merabueno, Trinidad and Basilio denied that a buy-bust operation ever took place. They claimed that the arresting policemen physically forced them to admit the offense and demanded P5,000.00 from each of them for the white-washing of the case.

Cruz on the other hand, claimed that two persons suddenly barged into his house without any search warrant to search for marijuana. Although nothing was found inside his house, he was brought to the Eastern Police District Headquarters, where he was maltreated and forced to sign a document wherein he admitted the ownership of the bag containing marijuana.

The trial court found the version of the prosecution more credible and convicted appellants of the offense imputed against them.

III

Before us, appellants assail the trial court for giving more weight and credence to the evidence of the prosecution. In particular, Merabueno, Trinidad and Basilio also claim that the evidence does not sustain the findings of the court that: (1) the policemen conducted a surveillance upon the persons of appellants and a buy-bust operation; (2) appellants conspired to sell marijuana; (3) Merabueno was the agent of Trinidad and Basilio; (4) Cruz was the source of the marijuana; and (5) the marijuana examined at the PC Crime Laboratory was the same article taken from appellant.

The findings of fact of the trial court should be accorded great respect (*People v. Sanchez*, 199 SCRA 414 [1991]). The trial court is in a better position to determine questions involving credibility, having heard the witnesses and having observed their deportment and manner of testifying (*People v. Pido*, 200 SCRA 45 [1991]).

It is immaterial that during the surveillance conducted by the police they failed to ascertain the addresses of appellants and their respective occupations. Neither are the inconsistencies pointed out by Cruz, with regard to the failure of the prosecution witnesses, to corroborate each other on the matter of the color of the bag nor the manner he carried it. What is important is the fact that appellants were caught in possession of marijuana.

In the absence of proof to the contrary, the law enforcers who participated in the buy-bust operation are presumed to have regularly performed their duty (*People v. Como*, 202 SCRA 200 [1991]).

Appellants further point out that "a person in his right mind will not peddle illegal trade before several people passing by" (*Rollo*, p. 44). Obviously, appellants presume that drug traffickers are in their right mind.

It is of common knowledge that pushers, especially small-time dealers or retailers, peddle prohibited drugs in the open like any other articles of commerce. Hence, drug pushers have been caught selling prohibited drugs in billiard halls, on roadsides, on the streets and in front of residential houses (*People v. Arceo*, 202 SCRA 170 [1991]).

Merabueno, Trinidad and Basilio also interposed the defense that there was no conspiracy among the three of them as they were arrested in different places inside the compound.

The existence of conspiracy may be inferred and proved through the acts of appellants, which point to a common purpose, concert of action, and community of interest (*People v. Bausing*, 199 SCRA 355 [1991]). It is enough that their actions were coordinated, which indicated their common purpose to sell prohibited drugs (*People v. Natipravat*, 145 SCRA 483 [1986]).

The records show that there was close coordination between Merabueno, Trinidad and Basilio which indicate their common purpose to sell prohibited drugs.

However, there is nothing in the record that shows that Cruz conspired with the other appellants in the sale of the prohibited drugs. Cruz was merely the source of the prohibited drugs. He sold the marijuana to Basilio without knowing whether the latter bought it for his own use or for resale. There is no evidence to show that the accused were engaged in one and the same venture, with Merabueno, Trinidad and Basilio working and acting as mere agents for Cruz.

Hence, Merabueno, Trinidad and Basilio cannot be considered to be in conspiracy with Cruz.

Bereft of merit is Basilio's claim that the extrajudicial confession made by Cruz, implicating him as a buyer of marijuana, should be disregarded and not admitted as evidence for having been executed without the assistance of counsel. It appears that when Cruz executed the sworn statement, he was assisted by Atty. Edith Pio (Exh. "F-4").

As a matter of fact, the sworn statement was signed by both Cruz and Atty. Pio (Exhs. "F-1" and "F-4"). Besides, the privilege against self-incrimination belongs to Cruz and he alone can urge it (cf. *United States v. Reynolds*, 345 US 1, 97 L Ed 727, 73 S Ct 528, 32 ALR 2d 382 [1953]).

With regard to appellants' contention that a blatant violation of their constitutional rights was committed when they were arrested and searched without a warrant, suffice it to say that the law allows warrantless searches in certain cases.

Section 5, Rule 113 of the 1985 Rules in Criminal Procedure provides:

"Arrest without warrant, when lawful. - A peace officer or 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;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it."

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Appellants Merabueno, Trinidad and Basilio were caught in flagrante delicto, in the act of committing drug trafficking. As a consequence of the arrest, the three were searched and were found to be in possession of marijuana. Since the arrests were lawfully made, it follows that the searches made incidental thereto were also valid (*People v. Bati*, 189 SCRA 97 [1990]).

The procedure followed by the police with respect to the seizure of the marijuana from Cruz after a warrantless search is another matter. It was during the investigation of Basilio that the police learned that the supplier of the marijuana was Cruz. A police team was dispatched to Antipolo, Rizal, where Cruz lived. The first mission returned without finding Cruz. The team returned to Antipolo at 7:00 P.M. of the same day. According to the police, they met Cruz on their way to his house while Cruz claimed that the police just barged into his house. But assuming that the version of the police is the correct one, there was no reasonable basis to place Cruz under arrest without a warrant and then search him, also without a warrant. Certainly, the arrest was not made in the course of a "hot pursuit" of Cruz, because he was not in Marikina during the "buy-bust" operation. In such a case, the police should have first secured a warrant of arrest and a search warrant before they arrested and bodily searched Cruz.

However, Cruz did not timely question the legality of his arrest, the search on his person and the seizure of the marijuana. As a matter of fact, he made an extrajudicial confession with the assistance of counsel. There is no legal basis to set aside said confession.

Appellants' imputation to the police of attempted extortion does not weaken the fact that they were caught red-handed in possession of prohibited drugs and the marked peso bill used to buy the marijuana (*People v. Mallorca*, 133 SCRA 132 [1984]).

As to appellants' contention that there is no convincing proof that "the alleged marijuana examined at the PCCL is the same marijuana allegedly taken from the accused," is contradicted by the records of the case. The members of the Anti-Narcotics Unit that conducted the buy-bust operation followed the standard operating procedure of turning over the items seized from appellants to Pat. Balaitan, who, in turn, delivered the same to the PC Crime Laboratory for analysis.

IV

The trial court sentenced Merabueno, Trinidad and Basilio to suffer the penalty of reclusion perpetua and to pay the fine of P20,000.00 under Section 4, Article II of the Dangerous Drugs Act of 1972, as amended by B.P. Blg. 179. However, said law was further amended by R.A. No. 7659.

Inasmuch as the provisions of R.A. No. 7659 with regard to the penalty imposed favors Merabueno, Trinidad and Basilio, we shall apply it retroactively in their favor. This is in consonance with the provision of Article 22 of the Revised Penal Code which states that "penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony."

In *People v. De Lara*, G.R. No. 94953, September 5, 1994, we ruled that:

"In order to determine the penalty to be imposed on appellant, we first divide the amount of 750 grams into three to correspond to the three applicable penalties, namely, prision correccional, prision mayor and reclusion temporal.

If the marijuana involved is from 500 to 749 grams, the penalty to be imposed is reclusion temporal. If the marijuana involved is from 250 to 499 grams, the penalty to be imposed is prision mayor and if the weight of the marijuana involved is below 250 grams, the penalty to be imposed is prision correccional."

Hence, the maximum penalty that can be imposed upon Merabueno, Trinidad and Basilio, who were caught with a total of 37.98 grams of dried marijuana, is prision correccional. Applying the Indeterminate Sentence Law to the said appellants, the minimum penalty that can be imposed on them should be within the range of arresto mayor (*People v. Simon*, G.R. No. 93028, July 29, 1994).

On the other hand, the provisions of R.A. No. 7659 cannot be applied retroactively to Cruz as it is prejudicial to him. Hence, considering the amount of marijuana seized from him, the penalty of life imprisonment, not reclusion perpetua, is the proper penalty.

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION that appellants Merabueno, Trinidad and Basilio shall suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum. Appellant Cruz is sentenced to suffer the penalty of life imprisonment and to pay the fine of Twenty Thousand Pesos (P20,000.00).

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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