

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REGALADO BATI, ACCUSED-APPELLANT.*G.R. No. 87429. August 27, 1990*

Ponente: PARAS, J.

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Upon being informed by their civilian informer, at around 5:30 o'clock in the afternoon of July 27, 1986, that there would be a transaction involving the buying and selling of marijuana which would take place on that same day at the Dona Crispina Park Subdivision in Barangay Bagong Bayan, San Pablo City, Patrolmen Jose Luciano, Angelito Caraan, Nelson Dimatulac and Democrito Cuenca immediately proceeded to the vicinity where the alleged transaction would take place. Cuenca and Dimatulac were dispatched by Luciano to the Bolante Section of the public market near the railroad tracks while Luciano himself together with Caraan, riding in a police jeepney proceeded to the Dona Crispina Park.[1]

When Luciano and Caraan reached the place where the alleged transaction would take place and while positioned at a street corner, they saw appellant Regalado Bati and Warner Marquez by the side of the street about forty to fifty meters away from them (the police officers). They saw Marquez giving something to Bati, who, thereafter, handed a wrapped object to Marquez who then inserted the object inside the front of his pants in front of his abdomen while Bati, on his part, placed the thing given to him inside his pocket. (pp. 5-7, *tsn.*, Luciano, Aug. 25, 1987; p. 5, *tsn.*, Caraan, Nov. 3, 1987; pp. 1-2, Decision, January 31, 1988)

As soon as the above observed transaction was completed, Bati and Marquez parted ways. Luciano and Caraan in their jeepney followed Marquez who was riding a bicycle. The police officers were able to catch up with him (Marquez) along the circular street going toward the general direction of the national highway. Marquez was questioned by them and, at first, denied having received anything from Bati. However, upon being asked about what he had inside the front of his pants, he brought out an object wrapped in newspaper. Stripped of the wrappings, the object turned out to be a pink plastic bag containing marijuana. Marquez then told the police officers that he had bought marijuana for P190.00 from Bati. Whereupon Marquez was arrested on the spot and was made to board the police jeep. (pp. 7-8, *tsn.*, Luciano, Aug. 25, 1987; p. 6, *tsn.*, Caraan, Nov. 3, 1987; p. 2, Decision, January 31, 1988).

Luciano and Caraan, on board the jeep, immediately gave chase and caught up with Bati at the Bolante section. Luciano went down the vehicle and confronted Bati who admitted to the police officers present that he sold the marijuana to Marquez for P190.00. Bati then was likewise arrested and made to board the police jeep. The money in the amount of P190.00 in Bati's possession was confiscated. Both Bati and Marquez were brought to the police station where, again, they admitted they were in the buying and selling of the confiscated marijuana (pp. 8-10, *tsn.*, Luciano, Aug. 25, 1987, pp. 6-7, *tsn.*, Caraan, Nov. 3, 1987, p. 2, Decision, January 31, 1988).

Before the confiscated money in the amount of P190.00 was turned over to Sgt. Bayani Yte, Chief of the Intelligence and Investigation Section of the San Pablo City Police Station, Luciano, one of the arresting officers,

affixed his initials "JBL" on the said confiscated peso bills. The marijuana confiscated was likewise turned over to Sgt. Yte and was personally delivered by Patrolman Nelson Dimatulac to the PC Crime Laboratory in Camp Vicente Lim, Canlubang, Laguna. The examination conducted by the Forensic Chemist, P/Lt. Rosalinda Royales, revealed that the confiscated specimen was positive for marijuana. (p. 9, tsn., Royales, July 21, 1987; pp. 10-11, tsn., Luciano, Aug. 25, 1987; pp. 3-9, tsn., Yte, Dec. 8, 1987; p. 2, Decision, Jan. 31, 1988).

In due course, an Information was filed with the Regional Trial Court, Fourth Judicial Region, Branch 30, San Pablo City and docketed as Criminal Case No. 4760-SP, charging REGALADO BATI with violation of Section 4, Article II of Republic Act No. 6425, as amended, committed as follows:

"That on or about July 27, 1986, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there wilfully, unlawfully and feloniously distribute and sell dried marijuana leaves, a dangerous drug, without being authorized by law.

"CONTRARY TO LAW."

(15, Rollo)

After trial, following a plea of not guilty upon arraignment, the trial court entered a judgment of conviction, the pertinent portion reading -

"The accused took the witness stand denying every damaging testimonies of the prosecution witnesses. He claimed he was then on his way to buy vegetables for his mother at the time of his arrest at 5:30 p.m. of July 27, 1986. The accused did not impress the Court as a well behaved individual who does marketing for his mother and wife. If he were really such a "good boy", why did Marquez and the police officers fabricate the charge of drug pushing against him? There was no ill-motive shown by the defense on the part of Marquez and the police officers. As already mentioned elsewhere, the accused admitted that he did not have any quarrel with them. He likewise admitted that when he signed the waiver before and in the presence of Atty. Vivencio H. Reyes, he knew him to be a lawyer and was acting as his lawyer when he explained to him his constitutional rights. (Hearing of September 20, 1987) It is also a matter of record that since his arrest, detention and up to the trial of the case, he never executed any written statement denying the charge against him narrating therein that he was about to do marketing when arrested by the police officers. Clearly, his alleged marketing is a mere after thought. The defense was not convincing when it was alleged that he does the marketing every afternoon buying the same vegetables and quantity since July 27, 1986 up to the present. His mother's testimony failed to convince the Court of his innocence.

"In sum, the prosecution overwhelmingly adduced material evidence beyond reasonable doubt to warrant the conviction of the accused for unlawfully selling and distributing marijuana as against the lame denials of the accused. His denials are only self serving negative evidence which cannot outweigh the positive evidence of the prosecution (People vs. Jara, G.R. Nos. 61356-57, September 30, 1986).

"As the records show that the accused had violated the terms of his bail for which reason his arrest was effected when he failed to honor his commitment, the Court believes that he should no longer be granted bail for his provisional liberty as the chances for his jumping bail are very strong.

"WHEREFORE, premises considered, the Court hereby renders judgment finding the accused Regalado Bati guilty beyond reasonable doubt of the offense of violation of Sec 4, Art. II, RA No. 6425 as amended, without any modifying circumstance to consider, hereby sentences him to suffer life imprisonment, to pay the fine of P25,000.00 with subsidiary imprisonment in case of insolvency and to pay the costs.

"The bail bond for his provisional liberty is hereby cancelled and the accused be immediately incarcerated."

(pp. 18-19, Rollo)

From the foregoing judgment of conviction, appellant came to this Court assigning the following errors allegedly committed by the court a quo to wit:

"FIRST ASSIGNMENT OF ERROR

"THAT THE HONORABLE COURT A QUO SERIOUSLY ERRED IN NOT HOLDING THAT THE ARREST OF THE ACCUSED-APPELLANT AND THE SEIZURE/TAKING OF THE MONEY FROM HIM BY THE POLICE OFFICERS WAS ILLEGAL AND UNLAWFUL BEING VIOLATIVE OF ONE'S CONSTITUTIONAL RIGHT TO BE SECURE IN HIS PERSON AND PROPERTY AND THERETO WHATEVER EVIDENCE OBTAINED THEREFROM WAS NOT ADMISSIBLE IN EVIDENCE.

"SECOND ASSIGNMENT OF ERROR

"THAT THE HONORABLE COURT A QUO SERIOUSLY ERRED IN NOT HOLDING THAT THE NON PRESENTATION OF THE ALLEGED BUYER WARNER MARQUEZ AND THAT OF THE CIVILIAN INFORMER AMOUNTED TO SUPPRESSION OF EVIDENCE WHOSE TESTIMONIES IF PRESENTED WOULD PRODUCE ADVERSE EFFECTS TO THE PROSECUTION'S CAUSE.

"THIRD ASSIGNMENT OF ERROR

"THAT THE HONORABLE COURT A QUO ERRED IN NOT HOLDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES WERE REplete WITH CONTRADICTION AND MATERIAL INCONSISTENCIES WITH RESPECT TO THE MARIJUANA SPECIMEN ADMITTEDLY TAKEN FROM THE ALLEGED BUYER-WARNER MARQUEZ AND NOT FROM THE HEREIN ACCUSED-APPELLANT WHICH DEFINITELY WILL NOT WARRANT CONVICTION OF THE ACCUSED BEYOND REASONABLE DOUBT."

(pp. 2-3, Brief for the Plaintiff-Appellee; p. 50, Rollo)

Appellant first contends that the arrest was not valid as the requirements for a warrantless arrest were not complied with.

This contention is without merit.

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

"Sec. 5. 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; x x x

x x x"

(underscoring supplied)

As the court a quo correctly ruled -

"It is the considered view of the Court that there was no need for Luciano and Caraan to be armed with a warrant of arrest when they arrested Marquez and the accused since they had personal knowledge of the actual commission of the crime, viz: They were eyewitnesses to the illegal exchange of marijuana and P190.00 between Marquez and accused who were caught in flagrante delicto. The facts and circumstances attendant precisely fall under Sec. 5, (a), Rule 113 of the Rules on Criminal Procedure. The subsequent arrest of

Marquez and accused were made under the principle of 'hot pursuit'. The recovery of the marijuana from Marquez and the P190.00 from accused by the said police officers were not violative of their constitutional rights since Marquez and the accused voluntarily surrendered them to the police officers. But even for the sake of argument that the recovery of the marijuana and peso bills were against the consent of Marquez and accused, still, the search on their persons was incidental to their valid warrantless arrest. For, the rule that searches and seizures must be supported by a valid warrant is not an absolute rule. There are at least three exceptions: (1) search incidental to an arrest, (2) search of a moving vehicle and (3) seizure of evidence in plain view (*Manipon v. Sandiganbayan*, 143 SCRA 267). In the case at bar, the searches made on Marquez and accused were incidental to their valid arrest."

(pp. 8-9, Brief for the Plaintiff-Appellee; p. 50, Rollo)

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 (*People vs. Paco*, 170 SCRA 681, 686; *People vs. Rodriguez*, 172 SCRA 742). And since appellant's arrest was lawful, it follows that the search made incidental to the arrest was also valid. (Rule 126, Sec. 12, Rules of Court; *Alvero vs. Dizon*, 76 Phil. 637; *People vs. Claudio*, G.R. No. 72564, April 15, 1988)

Appellant next contends that the non-presentation of the alleged buyer Warner Marquez and that of the civilian informer, amounted to suppression of evidence.

This contention is, likewise, without merit. In the case of *People vs. Andiza*, (164 SCRA 642, 647) this Court held -

"The appellant underscores the fact that Pat. Hernandez and the civilian informer were not made to take the witness stand, and maintains that their non-presentation rendered a fatal blow to the prosecution's case. We do not agree. Admittedly, Pat. Hernandez and the civilian informer would be highly competent witnesses, being, themselves, the poseurs-buyers: however, their testimonies are not indispensable in view of the declarations of not only one, but two other eyewitnesses. If presented, their testimonies would merely constitute cumulative evidence, thus, their non-presentation as witnesses does not mean suppression of testimony that is adverse to the prosecution. (*People vs. Extra*, No. L--29205, July 30, 1976, 72 SCRA 199, citing *People v. Sigayan*, et al., Nos. L-18523-26, April 30, 1966, 16 SCRA 844; *People v. Cristobal*, No. L-13062, January 28, 1961, 1 SCRA 151; and *People v. Escalona*, No. L-13294, March 29, 1961, 1 SCRA 891). At any rate, the matter of presenting witnesses for the People is a prerogative of the prosecuting fiscal. In the instant case, there was no need to present Pat. Hernandez because the testimonies of Sgt. Raquidan and Pat. de la Cruz, together with those of Cpl. Romeo Consengco and the forensic chemist, Daily Panganiban, were already clear, sufficient, and convincing. Besides the defense could have requested the court below to issue subpoenas requiring the said eyewitnesses to testify, but as the defense apparently failed to do that, they cannot now argue that said eyewitnesses testimonies would have been adverse to the prosecution."

(pp. 16-17, Brief for the Plaintiff-Appellee; p. 50, Rollo)

In the case at bar, there were other prosecution witnesses who testified and positively identified appellant as the principal participant in the illegal transaction. Both Patrolmen Luciano and Caraan actually witnessed the same and their testimonies were based on their actual and personal knowledge of the events that took place leading to appellant's arrest. They may not have been within hearing distance, specially since conversation would expectedly be carried on in hushed tones, but they were certainly near enough to observe the movements of the appellant and the buyer. Moreover, these prosecution witnesses are all law enforcers and are, therefore, presumed to have regularly performed their duties in the absence of proof to the contrary. (*People vs. Agapito*, G.R. No. 73786, Oct. 12, 1987)

Furthermore, We find the testimonies of the above eyewitnesses, given during the direct as well as in the cross-examination, to be consistent and compatible on the material points. Both Luciano and Caraan categorically stated that they saw Marquez who then inserted the object inside the front of his pants in front of his abdomen while Bati, on his part, placed the thing given to him inside his pocket. Since the testimonies of Luciano and Caraan were not actuated by "improper motives" they are entitled to "full faith and credit." (People vs. Patog, 144 SCRA 429; People vs. de Jesus, 145 SCRA 521).

Finally, anent the alleged inconsistencies like -

(a) in the information it is alleged on one hand that he was caught distributing and selling marijuana leaves and likewise in the latter request sent by Sgt. Bayani Yte to the Commanding Officer of Camp Vicente Lim, Canlubang, Laguna, it was therein mentioned that the marijuana leaves submitted for examination were confiscated from Marquez, on the other hand, in the Chemistry Report No. D-112-86, the Forensic Chemist Rosalinda Royales, allegedly mentioned that the specimen submitted to her for examination consisted of marijuana fruiting tops (p. 9, Appellant's Brief)

(b) The "conflicting versions" of Sgt. Yte and P/Lt. Rosalinda Royales taken during cross-examination. Sgt. Yte testified that he placed his initials both on the pink plastic bag and on the newspaper used as wrapper. Royales, on the other hand, testified that there were no markings whatsoever on the pink plastic bag.

Suffice it to state that these cannot serve to discredit the prosecution's case considering that the trial court has decisively found that the specimen confiscated from Marquez and submitted to the PC laboratory for examination consisted of marijuana leaves with fruiting tops wrapped in newspaper and placed inside a pink plastic bag. (p. 2, Decision) And the fact remains that the specimen indorsed by Sgt. Yte to the PC laboratory was the very same one taken from Warner Marquez and that after examination conducted by P/Lt. Royales, was positive for marijuana.

Thus, as aptly pointed out by the trial court -

"The defense contended that the specimen tested by the forensic chemist was not the same one taken in the possession of the accused and that Marquez did not identify it. This claim is not worthy of belief since the marijuana leaves with fruiting tops were inside a pink plastic bag (Exh. 5-B) when brought by Dimatulac to the PC crime laboratory and it was the same pink plastic bag containing 17.1 grams of marijuana that was the subject matter of the examination conducted by Sgt. Royales from which Exh. B came into being." (p. 2, Decision; underscoring supplied)

(pp. 26-27, Brief for the Plaintiff-Appellee; p. 50, Rollo)

The Court, after a careful study of the case finds the evidence presented by the prosecution, upon which the trial court based its judgment of conviction, to be overwhelmingly against the pretended innocence of the appellant and has proved to a moral certainty the latter's guilt of the crime of selling prohibited drugs.

The penalty for the sale of marijuana is life imprisonment to death and a fine ranging from P20,000 to P30,000 (Sec. 4, R.A. 6425, as amended by P.D. 1675)

The law is severe because those who are caught in the strangle hold of prohibited drugs not only slide into the ranks of the living dead, but, what is worse, they become a grave menace to the safety of the law-abiding members of society. (People vs. Lamog, 172 SCRA 342, 349). As this Court also declared in People vs. Policarpio, 158 SCRA 85, "(P)eddlers of drugs are actually agents of destruction. They deserve no less than the maximum penalty."

In the instant case, however, the trial court erred in not applying the rule that when the penalty imposed is higher

than prision correccional no subsidiary imprisonment shall be imposed upon the culprit. (Art. 39 (3) Revised Penal Code; People vs. Andiza, 164 SCRA 642, 650).

WHEREFORE, the judgment appealed from is AFFIRMED except that there shall be no subsidiary imprisonment in case of insolvency.

With costs against the appellant.

SO ORDERED.

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

[1] pp. 3-5, tsn., Luciano, August 25, 1987; pp. 4-5, tsn., Caraan, November 3, 1987; p. 1 Decision, January 31, 1988.

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