

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO DE LA CRUZ Y MEDA, ACCUSED-APPELLANT.

G.R. No. 87607. October 31, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Accused-appellant, ROMEO DELA CRUZ Y MEDA, was charged with the crime of violation of section 4, Republic Act No. 6425, as amended, before the Regional Trial Court, National Capital Region, Pasay City, Branch CXIV, in an information which read:

“That on or about the 11th day of September, 1987 in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously sell, give away to another and deliver two (2) foils of dried marijuana leaves, a prohibited drug.

“CONTRARY TO LAW.”

On September 18, 1987, upon arraignment, accused-appellant assisted by counsel de officio entered a plea of not guilty to the offense charged. Pre-trial was waived, so trial ensued thereafter.

At the hearing Patrolman Pedro Serafico, the principal witness for the prosecution, testified that he is a member of the Special Operations Group of the Pasay City Police; that on September 11, 1987, at about 12:30 in the afternoon, he proceeded to Leonardo and De Las Alas Streets, Pasay City, to conduct a surveillance per instruction of Cpl. Lammatao, as the latter received an information that in said area there were men involved in the use of prohibited drugs; that Col. Apolonio Lammatao, Patrolman Ricardo Reyes, Patrolman Norman Reyes and Patrolman Marcos Butay acted as his back-up; that at the corner of De Las Alas and Leonardo Streets, Pasay City, he saw three men being approached by another man who handed a rolled paper to the group of men in exchange of money; that he approached the group and posed as a buyer; that he gave a twenty-peso bill to one of the men in the group who turned it over to the accused-appellant; that the accused-appellant left the group and after a few minutes returned and handed to him (Serafico) two foils of suspected marijuana; that he grabbed accused-appellant after which Cpl. Lammatao, who supplied him the twenty peso bill, approached them; that they brought accused-appellant to the headquarters where he was investigated; that the two foils of suspected marijuana were brought to the NBI for laboratory examination. In the trial he positively identified accused Romeo de la Cruz as the person who handed to him the two foils of marijuana leaves (Hearing of February 12, 1988; TSN, pp. 39-46).

Mrs. Neva Gamosa, Forensic Chemist of the National Bureau of Investigation, testified that the preliminary, chemical and chromatographic examinations of the specimen (Exhibits “C,” “C-1” and “C-2”) proved positive of marijuana (Hearing of October 5, 1987; TSN, pp. 1-8).

Cpl. Apolinario Lammatao and Patrolman Norman Reyes corroborated the testimony of Patrolman Serafico on the surveillance conducted by their group and on the buy-bust operation directed against the group of alias “Itik”

using the latter as the poseur-buyer. They also confirmed the arrest of accused-appellant during the buy-bust operation and the submission of the suspected marijuana leaves wrapped in cigarette foils to the NBI for laboratory examination (Hearing of December 9 and 22, 1987; TSN, pp. 10-46).

On the other hand, the accused-appellant denied that he sold marijuana to Serafico. He testified that in the afternoon of September 11, 1987, he was outside their house located at No. 25, Leonardo Street, Pasay City, when a policeman in plain clothes grabbed him and forced him to point to one alias "Itik," a known marijuana peddler in the area. He was forcibly made to board a parked vehicle. When he pointed to the man they were looking for, the policemen brought both of them to their headquarters at Fort Bonifacio (Hearing of May 24, 1988, TSN; pp. 75-87).

Orlando Miranda, a witness for the defense, testified that the man from whom the police officers bought marijuana on that day of September 11, 1987 was not the appellant but one named Berto (Hearing of May 10, 1988, TSN; pp. 65-73).

On June 6, 1988, judgment was rendered by the trial court finding the accused-appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

"WHEREFORE, this Court finds the accused ROMEO DE LA CRUZ Y MEDA, guilty beyond reasonable doubt as principal of a violation of Section 4, Article II of Rep. Act No. 6425 as amended, and hereby sentences said accused to life imprisonment and to pay a fine of twenty thousand (P20,000.00) pesos without subsidiary imprisonment in case of insolvency, and to pay the costs.

The dried marijuana flowering tops in two (2) separate foils (Exhibits "B-2" and "B-3") and the dried flowering marijuana tops wrapped in a piece of comics magazine paper (Exhibit "B-4"), are confiscated in favor of the Government to be turned over under receipt to the Dangerous Drugs Board for proper disposal." (p. 23, Rollo)

In his appellant's brief, accused Romeo de la Cruz y Meda assigned the following errors:

1. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION THAT THERE WAS A REAL ENTRAPMENT INSTEAD OF AN INSTIGATION.

11. THE LOWER COURT ERRED IN STATING THAT THERE WAS A SALE OF MARIJUANA.

111. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES INSPITE OF THE TOO MANY CONTRADICTIONS, INCONSISTENCIES AND FABRICATION WHICH AFFECT THEIR CREDIBILITY AND VALUE OF THEIR TESTIMONIES.

IV. THE LOWER COURT ERRED IN ADMITTING AND GIVING CREDENCE TO THE RECEIPT OF PROPERTY SEIZED.

V. THE LOWER COURT ERRED IN NOT GIVING CREDENCE AND WEIGHT TO THE TESTIMONIES OF THE ACCUSED AND HIS WITNESSES.

The appellant faults the trial court for finding that there was an entrapment instead of finding that there was an instigation. The idea to commit the crime allegedly came not from him but from Serafico, the poseur-buyer.

There is a wide difference between entrapment and instigation, for while in the latter case the instigator practically induces the would-be accused into the commission of the offense and himself becomes co-principal, in entrapment ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of the criminal plan. (People v. Galicia, C.A. No. 8156, Sept. 29, 1941, 40 O.G. 4476; see also People v. Gatong-o, No. 78698, December 29, 1988). There was no showing on the part of appellant that the police

officers induced him to sell marijuana leaves and that he would not have sold the same without their inducement. Serafico simply approached the group of three (3) men standing in the corner of Leonardo and De las Alas Streets, offered to buy marijuana from them and handed a twenty peso bill. The appellant accepted the money, immediately left and upon his return he handed two (2) foils of the “stuff” to Serafico. We noted the ease with which the police officers were able to purchase the marijuana leaves from the accused-appellant which shows that it was customary for him to sell the “stuff” on demand. This finding belies any claim by appellant that there was instigation instead of an entrapment:

“x x x, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the ‘decoy solicitation’ of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence or the instigation of the detective. (16 Corpus Juris, page 88, section 57; cited in *People vs. Lua Chu and Uy Se Tieng*, 56 Phil. 52-54)” *U.S. v. Phelps*, 16 Phil. 440)

The appellant contends that based on the testimony of Serafico, the team who planned to conduct the buy-bust operation proceeded to the area to entrap a certain “Itik,” based on the report received from some residents of Tramo Street, Pasay City, about the prevalence of drug-peddling in the locality. Before the apprehension of the appellant, the police officers had no real evidence that the appellant was a marijuana seller.

Lammatao, the leader of the team which conducted the operation instructed his men to proceed to the area not solely to capture “Itik,” the known supplier of marijuana in the area, but to conduct a surveillance of the area and if possible to buy from “Itik”’s group (p. 5, TSN, Testimony of Lammatao, Dec. 9, 1987). The fact that the appellant was not known to the authorities as a marijuana peddler before the latter conducted the buy-bust operation is not fatal to the cause of the prosecution in view of the positive testimony of Serafico that he bought the marijuana leaves from accused-appellant and the latter was arrested while delivering the marijuana leaves to Serafico.

Appellant further contends that there was no sale of marijuana because the prosecution failed to present in evidence the money used in the buy-bust operation.

The failure of the prosecution to present the twenty-peso bill used in the buy-bust operation does not negate the existence of the crime charged against the appellant. In *People v. Gatong-o*, No. 78698, December 29, 1988, it was held that even without the money to buy the marijuana, when the police officer went through the motion as a buyer and his offer was accepted by the appellants and the marijuana delivered to the police officer, the crime was consummated by the delivery of the goods. Likewise, in *People v. Teves*, G.R. No. 81332, April 25, 1989, “(T)he fact that the accused returned with the amount of marijuana corresponding to the offered price suffices to constitute if not sale, then delivery or giving away to another and distribution of the prohibited drug punishable under Section 4, Article 11 of Republic Act 6425.” It was not clearly established where the twenty-peso bill went but it does not weaken the cause of the prosecution. So long as the marijuana actually given by the accused was presented before the lower court, the absence of marked money does not create a hiatus in the prosecution evidence (*People v. Teves*, G.R. No. 81332, April 25, 1989).

In his third assignment of errors, petitioner argues that the uncorroborated testimony of the poseur-buyer (Serafico) and that of the other police officers are beset with several inconsistencies and contradictions, particularly on the money used in the alleged buy-bust operation and the identification of the wrapper used to wrap the foils containing marijuana. Lammatao testified that he supplied the money used in the “buy-bust”

operation but when he was asked what the denomination/s of the money was/were, he answered that he could not remember. Serafico however, testified that it was a twenty-peso bill.

It may be that Lammatao, the head of the “buy-bust” team, was least interested in taking note of the denomination of the money used in the entrapment. Thus, when he was asked on the witness stand, he testified that he could not remember the denomination of the “buy-bust” money he gave to Serafico. Serafico however, did not contradict Lammatao. Serafico positively identified the money as a twenty-peso bill. Serafico was in a better position to testify that it was a twenty-peso bill because he was the actual poseur-buyer. When Serafico was asked on the kind of paper used in wrapping the marijuana leaves, he testified on direct examination that the accused-appellant handed him two (2) foils of suspected marijuana leaves wrapped in cigarette wrapper and further wrapped in a cigarette foil. (TSN, Pat. Serafico, February 12, 1988, p. 3). Again, Serafico was in a better position to testify that the two (2) foils of marijuana leaves sold to him were wrapped in cigarette foils. Reyes, on the other hand, testified that there were three (3) foils of marijuana leaves taken from the accused, two (2) foils wrapped in cigarette foils and one (1) foil wrapped in a piece of comics page. (TSN, Pat. Norman Reyes, December 22, 1987, p. 6). Reconciling the testimonies of Serafico and Norman Reyes, what was actually taken from the accused-appellant were three (3) foils of marijuana leaves two (2) foils wrapped in cigarette foils were taken from him by Serafico at the time of the actual “buy-bust” and the third foil, wrapped in a comics paper was not taken from the accused-appellant by Serafico at the time the “buy-bust” actually took place but after the other members of the team closed-in on the appellant, arrested him and frisked him for any possible concealed weapon. Be that as it may, the matter of what wrapper was used on the marijuana leaves or what was the denomination/s of the “buy-bust” money are collateral matters and do not touch upon the commission of the crime itself which was consummated when accused-appellant gave the marijuana leaves, a prohibited drug, to the poseur-buyer.

According to the appellant, the investigation conducted by the police investigators while the accused was in their custody failed to comply with the requirement mandated by the Constitution that a person under investigation must be represented by a lawyer of his choice. The receipt signed by the appellant, while he was under investigation, showing that the marijuana leaves seized belongs to him should not have been admitted in evidence by the trial court.

It should be noted that the appellant in this case was caught in flagrante delicto. The marijuana presented in evidence was taken from him during the buy-bust operation and not when the appellant was under investigation after he was accosted. It was evidence obtained pursuant to a lawful arrest and therefore, admissible in court. Even without presenting the receipt he was allegedly made to sign while he was under investigation, Serafico, the poseur-buyer positively identified him as the seller of the marijuana. The two foils of marijuana bought from him and the rolled marijuana taken from his person when brought to the NBI laboratory was tested positive for marijuana. His guilt was proven beyond reasonable doubt on the basis of the testimonies and evidence independent of any extra-judicial confession or other evidence gathered during the investigation.

The appellant also submits that the testimony of its witness, Orlando Miranda is convincing. His demeanor in the witness stand has all the marks of honesty, clarity and straightforwardness. Even on cross-examination, he testified that the man from whom the police officers bought the marijuana leaves was a certain Berto and not the herein appellant.

It cannot be believed as the trial court did not believe that Serafico bought marijuana leaves during the buy-bust operations from a person named Berto and not from the appellant. If it were true that, as claimed by Orlando Miranda, a witness for the prosecution, that the actual seller was Berto and not the accused, the police officers should have arrested Berto and not the accused-appellant. Also, the authorities should not have allowed Berto to leave after selling them the “stuff” as they were conducting a buy-bust operation.

We have held that the matter of assigning value to declarations at the witness stand is best and most competently performed by the trial judge, who unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and thereby placed in a more competent position to discriminate between the true and the false (*People v. Baluyut*, G.R. No. 82998, February 23, 1989). Generally, the findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying (*People v. Pimentel*, G.R. No. L-47915, January 7, 1987, 147 SCRA 25, *People v. Ramilo*, G.R. No. 69579, January 7, 1987, 147 SCRA 102, *People v. Madarang*, G.R. No. 70569, January 7, 1987, 147 SCRA 123), unless the trial court has plainly overlooked certain facts of substance and value which if considered, might affect the result of the case (*People v. Martinez*, G.R. No. L-39402, September 24, 1986, 144 SCRA 303).

We have reviewed the records of this case and We find no reason to depart from the findings of the trial court. The prosecution witnesses have no reason to impute the crime upon the appellant if it were not true. The prosecution witnesses being law enforcers are presumed to have regularly performed their duty (*People v. Andiza*, 164 SCRA 642). The record does not show that the x x x officers who were responsible for the appellant's entrapment were motivated by any improper motive other than to accomplish their mission (*People v. Capulong*, G.R. No. 65674, April 15, 1988, 160 SCRA 533). There was even no suggestion on the part of the defense of any evil motive on the part of the police officers in imputing the crime against appellant.

The trial court correctly imposed the penalty of life imprisonment and a fine of twenty thousand pesos without subsidiary imprisonment in case of insolvency in accordance with Section 4, Republic Act No. 6425, as amended, otherwise known as "The Dangerous Drugs Act of 1972."

ACCORDINGLY, the appealed decision is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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