

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY DEKINGCO, ACCUSED-APPELLANT.

G.R. No. 87685. September 13, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

In an information dated September 30, 1988 and filed with the Regional Trial Court, Branch 3, at Kalibo, Aklan, accused-appellant was charged with violation of Section 4 (Sale of Prohibited Drugs) and Section 8 (Possession of Prohibited Drugs) of Republic Act No. 6425, as amended, otherwise known as "The Dangerous Drugs Act of 1972," allegedly committed during the period from September 20, 1988 to September 25, 1988 at Poblacion, Kalibo, Aklan.[1]

At his arraignment on October 13, 1988, appellant, through counsel, offered to plead guilty to a violation of the aforesaid Section 8 of the law, but the said offer was not accepted by the prosecution hence appellant entered a plea of not guilty.[2] The prosecution presented as its witnesses Barangay Captain Allen Alcedo, Sgt. Dionisio Magwale, Forensic Chemist P/Lt. Zenaida Sinfuego and T/Sgt. Rizaldo Labitan, Jr. The defense consists of the testimonies of appellant himself and his cousin, Alejandro Aquino, and are limited to denials of the charges.

The evidentiary facts, upon which the judgment of the trial court are based, show;

"That on September 20, 1988, because of a previous tip, NARCOM agent Dionisio Magwale, accompanied by Rizaldo Labitan and a certain Valeria, in civilian clothes and pretending to be ordinary persons, conducted a 'test-buy' operation, and was able to buy five (5) sticks of marijuana cigarettes (Exhibits 'A-1' to 'A-5') at the price of P5.00 per stick or a total of P25.00, from the accused Rudy Dekingco in his store. Assured now that Rudy Dekingco was selling prohibited drugs, the NARCOM agents applied for, and were granted a search warrant by Kalibo Municipal Trial Judge Francisco Ureta (Exh. 'B').

"It was further established that when the NARCOM agents conducted a raid in the house of Rudy Dekingco at about 5:00 o'clock early morning of September 25, 1988, armed with the search warrant, they were able to confiscate twenty-eight sticks of marijuana cigarettes (Exhibit 'C'), a weighing scale (Exhibit 'G') used for weighing cocaine, and P34.00 placed inside a plastic bag (Exhibit 'H'). The raid was conducted in the presence of the Municipal Mayor of Kalibo, Aklan, Mayor Allen S. Quimpo, the Barangay Captain of Poblacion Kalibo, Allen Alcedo, who is also a radio announcer, several policemen and army soldiers.

"The five sticks of marijuana cigarettes, and the other twenty-eight sticks, were all sent to the Crime Laboratory Service in Iloilo City for chemistry examination, and were found to be positive for marijuana (Exhibit 'E')."[3]

After trial, judgment[4] was rendered finding appellant guilty beyond reasonable doubt of selling marijuana and sentencing him to reclusion perpetua with all the accessory penalties provided by law and to pay the costs.[5]

In the present appeal, appellant faults the court a quo with the following errors:

1. The trial court made a grave and serious error in finding the accused-appellant guilty beyond reasonable

doubt of the crime of violation of Section 4, Article II, of the Dangerous Drugs Act of 1972 (Republic Act 6425).

2. The trial court erred in holding that the twenty-eight (28) sticks of cigarettes allegedly taken from the house of the accused are marijuana leaves.

3. There is no showing that the marijuana leaves allegedly taken from the house of the accused belongs to him.[6]

According to appellant, it is rather disturbing, if not intriguing, why he was not arrested by Sgt. Dionisio Magwale during the "test-buy" operation when the latter knew fully well that he was selling marijuana cigarettes. He claims that said sale was never reported to the police authorities for entry in the police blotter. Furthermore, he disputes the report of P/Lt. Zenaida Sinfuego as unreliable, it having emanated from a person whose expertise on prohibited drugs has allegedly not been adequately established.

The appeal is devoid of merit.

Appellant was correctly convicted of selling five (5) sticks of marijuana cigarettes. In order to sustain conviction for selling prohibited drugs, the element of sale must be unequivocally established.[7] Also, what the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering.[8] The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction. What is important is that the poseur-buyer received the marijuana from the accused.[9] Sgt. Dionisio Magwale, who acted as poseur-buyer during the "test-buy" operation, categorically asserted that he paid P25.00 to appellant in exchange for five (5) sticks of marijuana cigarettes.[10] This was corroborated by T/Sgt. Rizaldo Labitan, Jr. who also attested to the fact of sale.[11] Prior to the "test-buy" operation, appellant was under close surveillance.[12] This operation, conducted by the NARCOM operatives on September 20, 1988, confirmed the veraciousness of the information earlier gathered by the former that appellant was engaged in illicit drug activities.

The failure of Sgt. Dionisio Magwale to arrest appellant during the "test-buy" operation was adequately explained by him. He felt the need to secure a search warrant as part of their standard operating procedure.[13] Judge Francisco M. Ureta would not have issued the search warrant[14] had he not been satisfactorily convinced that a probable cause exists therefor. Moreover, the NARCOM operatives were not under a specific mission order to conduct a "buy-bust" operation. The "test-buy" operation was intended only to confirm the report submitted to them by their confidential informant that appellant was engaged in such an activity.[15]

Their decision to apply for a search warrant did not turn out to be fruitless. The search conducted in the house of appellant yielded other prohibited drugs and paraphernalia used by appellant in his illicit trade activity, that is, twenty-eight (28) sticks of marijuana and a weighing scale used for weighing cocaine. The evidence thus recovered certainly bolsters the prosecution's case as it incontrovertibly shows that appellant had a ready supply of marijuana for sale and disposition to anyone willing to pay the price asked for the prohibited material.

The legality of the search was never questioned by appellant, and in fact he consented to the search when the search warrant was shown to him,[16] hence, the aforesaid incriminating evidence may be considered against him. However, since possession of marijuana is generally inherent in the crime of selling them and as the conviction for both offenses is not feasible,[17] especially under the formulation of the particulars in the indictment filed in this case, the court below committed no error in convicting appellant only of selling prohibited drugs.

It is apparent that the NARCOM operatives had no known motive or reason to falsely impute a serious and unfounded charge against appellant. Their testimonies, therefore, carry the presumption of regularity in the performance of official functions.[18] Nor should the insinuation that said drugs and weighing scale belonged to

the raiding team merit any consideration. In fact, appellant himself postulated the possibility that the prohibited drugs retrieved from his house may have been brought by the other members of his family and by his visitors.[19]

Finally, appellant tries to discredit the testimony of P/Lt. Zenaida Sinfuego, the forensic chemist, on the ground that she lacks the necessary knowledge to qualify as an expert in the field subject of her testimony. This submission is untenable. The rule is that an expert must have made the subject upon which he gives his opinion a matter of particular study, practice, or observation, and he must have particular and special knowledge on the subject. However, there is, no exact standard by which to determine the degree of skill or knowledge which a witness must possess in order that he may testify as an expert.

We are satisfied that the unrebutted recital of P/Lt. Sinfuego's qualifications and duties as a forensic chemist since 1980, her having conducted professional examination of marijuana leaves in more than a thousand cases, and her explanation of the procedure followed in examining the drugs in question resulting in her official conclusion,[20] bespeak sufficient expertise on her part and warrant judicial acceptance of her testimony.

As to the kind of proof necessary to determine whether a certain substance offered in evidence is a prohibited drug or not, we have held in *United States vs. Sy Liongco*[21] that a chemical analysis is not an indispensable prerequisite to the establishment of an allegation of this kind and that "the ability to recognize these drugs can be acquired without a knowledge to such an extent that testimony of a witness on the point may be entitled to great weight. Such technical knowledge is not required, and the degree of familiarity of a witness with such drugs only affects the weight and not the competency of his testimony." In the case at bar, the trial court has opted to give weight to the testimony of P/Lt. Zenaida Sinfuego and, in the absence of abuse of such discretion or grave misapprehension of the facts, we find no cogent reason to disturb the findings of the trial court in this regard. Moreover, appellant failed to refute the expertise of this witness on the matter of her testimony.

The court a quo imposed the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs. This deviates from the penalty of life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00 provided by Section 4, Article II of Republic Act No. 6425, as amended. The penalty imposed on appellant should have been indicated as, and it is hereby declared to be, life imprisonment. A fine in the amount of P30,000.00 is also hereby imposed on accused-appellant, without subsidiary imprisonment.

WHEREFORE, with the foregoing modifications, the judgment appealed from is hereby **AFFIRMED** in all other respects.

SO ORDERED.

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

[1] Original Record, 16.

[2] *Ibid.*, 29-30.

[3] *Ibid.*, 129.

[4] Per Judge Sheila Martelino-Cortes.

[5] *Ibid.*, 131.

[6] Brief for Accused-Appellant, 2.

[7] *People vs. Ramos*, G.R. Nos. 85401-02, June 4, 1990.

- [8] People vs. De la Cruz, et al., G.R. No. 83260, April 18, 1990.
- [9] People vs. Fernandez, et al., G.R. No. 80481, June 27, 1990.
- [10] TSN, December 7, 1988, 6.
- [11] TSN, January 5, 1989, 4.
- [12] TSN, December 7, 1988, 3.
- [13] TSN, December 8, 1988, 7; January 5, 1989, 11.
- [14] Exhibit B, Folder of Exhibits, Criminal Case No. 2722.
- [15] TSN, December 7, 1988, 3-4.
- [16] TSN, December 7, 1988, 11.
- [17] People vs. Ramos, *supra*.
- [18] People vs. Paco, 170 SCRA 681 (1984); People vs. Estevan, G.R. No. 69676, June 4, 1990; People vs. Borja, G.R. No. 71838, February 26, 1990.
- [19] Brief for Accused-Appellant, 6.
- [20] TSN, December 13, 1988, 2-9.
- [21] 33 Phil. 53 (1915).

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