

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO CRUZ Y DELA ROSA, ACCUSED-APPELLANT.

G.R. No. 87884. November 04, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal interposed by the accused--appellant who was sentenced to Life Imprisonment by the Regional Trial Court of Antipolo, Rizal, Branch 71, for violation of Section 4, Article 11, of the Republic Act No. 6425.

The accused-appellant was charged in the Information, as follows:

"That on or about the 3rd day of October, 1985, in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another twelve (12) grams of dried marijuana fruiting tops, a prohibited drug, in violation of the above-cited law." (Rollo, p. 66)

Details of the crime charged show that on October 3, 1985, an alleged buy-bust operation was conducted by Sgt. Edison Balatucan and two (2) unnamed informers who were not even presented as witnesses for the prosecution.

Accordingly, the team was dispatched to conduct the supposed buy-bust operation at Barangay Sta. Ana (Exhibit "B"). However, from the testimonies of the prosecution witnesses, accused Cruz accompanied the team to Barangay San Isidro and it is unclear whether Cruz was arrested at the original destination of the operation or at the latter barangay, when the alleged place turned out "negative", meaning that there was no marijuana that was found in the house of the supposed pusher. (TSN, December 9, 1987, p. 7)

After the two military men testified, the defense thru its Citizen's Legal Assistance Office counsel, filed a Motion to Dismiss by Way of Demurrer to Evidence, on the ground that "the guilt of the accused was not proven beyond reasonable doubt." (RTC Records, p. 72)

On May 10, 1988, the trial court inadvertently allowed the accused to present its evidence (Rollo, p. 90), however, on May 30, 1988, the court rectified the earlier Order and submitted the case for resolution. (Ibid., p. 93) Thus, the Decision subject of this review was promulgated on July 26, 1988, declaring:

"WHEREFORE, applying the provisions of Sec. 4, of the Dangerous Drug Act, as Amended by P.D. 1675, the Court sentences ANTONIO CRUZ y DELA CRUZ to suffer an imprisonment of Reclusion Perpetua. Likewise, to pay a fine of P20,000.00." (Ibid., p. 85)

The Court notes that the trial Judge sentenced the accused-appellant to reclusion perpetua. The correct penalty under the law is life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00.

The lone assigned error cited by the appellant is that: "The lower court erred in convicting accused-appellant considering that his guilt was not established beyond reasonable doubt." To prove its argument, appellant cited

testimonial inconsistencies and contradictions of the prosecution witnesses. In the course of this review, it is established that the trial court noted the inconsistencies and contradictions. But then it justified and ventured on reconciling, and explaining the alarming defects in the declarations of the witnesses in apparent contravention of what is expected of an impartial and judicious application of the law based on the personal knowledge of the witnesses with respect to the facts and circumstances subject of the charge. Portions of the Decision heretofore referred, are:

"A cursory study of the testimonial physical and documentary evidences presented by the prosecution during the trial of the instant case reveal significant points which the Court finds it compelling to discuss to serve as a guide for the Court in properly appreciating the merits of the case.

"Among this, that Court could not help but notice that there were certain inconsistencies in the testimonies of the witnesses for the prosecution as correctly pointed out by the defense in its motion to dismiss by way of demurrer to evidence.

"The testimony of Lt. Jose on direct examination stating that the marijuana leaves were found in the pocket of the accused directly conflicts with Sgt. Balatucan's handed to him by the accused. This conflict, through (sic) apparently clear can be explained.

"A witness who admittedly is present while a fact is taking place may not coincide in relating all the details of the occurrence because one may (sic) mention details which the other may not have observed or may not remember. The apparent (sic) conflict may be due to differences in observation or memory which does not necessarily imply falsehood on their part. (People vs. Tuazon, 47 O.G. 6177). Besides, Lt. Jose on cross-examination rectified its (sic) previous testimony when it later on categorically stated that (sic) said marijuana leaves were in fact with Sgt. Balatucan since (sic) it was he who bought the same from the accused. (p. 2, t.s.n. 1/13/86)

"Furthermore, to the mind of the Court, said inconsistencies only pertain to minor and inconsequential points and do not detract from the truthfulness and sincerity in their testimonies. Also, well settled is the rule the discrepancies and improbabilities of the testimony of the prosecution witnesses in matters of detail heighten (sic) the credibility rather than (sic) otherwise and show that the testimony was neither coached nor rehearsed. (People vs Pas, L-17320, May 31, 1965, 14 SCRA 137)

"Another salient point worth noting (sic) is the testimony of Sgt. Balatucan on direct examination alleging that it was he who personally approached the accused and bought the marijuana from him. (p. 5, t.s.n. 2/19/86) in his cross-examination, he testified to the effect that he never approached the accused but it was the informant who talked to him and opened up the conversation. (p. 8, tsn., 2/19/86) This conflict in the testimony of Sgt. Balatucan can be reconciled.

"Sgt. Balatucan did never approach (sic) the accused in the first place since he is not known and not acquainted with the accused. It was in fact the informant who approached the accused and opened up the conversation. Although, it was the informant who did so, it does not necessarily imply that Sgt. Balatucan could not have talked to the accused and agreed with him about the sale of the marijuana leaves since he was with the informant when they approached the accused (p. 7, tsn, 2/19/86). Besides, there is here a misconception on the part of Sgt. Balatucan on the meaning of the word "approached" as used during his cross-examination when propounded to him to the effect that it was obvious on is (sic) part that what he meant and understood it to be is to open up the conversation which in fact he never did." (Ibid., pp. 83 - 84; Emphasis supplied)

It is intriguing how the trial court could note the conflicting testimonies of the two witnesses for the prosecution, yet come up with a conclusion different from the plain reading of the testimonies. It was the court which supplied the justification or reconciliation of inherently irreconcilable and divergent testimonies of the witnesses who

composed the buy-bust team that carried out the operation. The explanations did not come from the witnesses. The act of the court is more properly the function of the prosecutor. It supplied the prosecution what the latter failed to adduce as evidence to prove the alleged acts constituting the offense charged. The justifications are not based on evidence found in the records.

Furthermore, the trial court even failed to take into account that its Order of October 10, 1988 was superseded by a subsequent Order on October 30, 1988, citing Section 15, Rule 119 of the New Rules of Criminal Procedure. The order precluded the accused from introducing his evidence after he had filed a Motion to Dismiss by Way of Demurrer to Evidence. The court stated in its Decision, that:

"Be that as it may, the defense failed to prove any improper motive on the part of the prosecution witnesses to testify falsely against the accused and therefore there would be reason to doubt their credibility. (People vs. Beltran, G.R. 38049, July 15, 1985) It is also well settled that when there is no credible evidence showing that the witness is prejudiced against the accused, the witness would not have imputed to the accused the commission of such a grave offense if it were not true that he was really guilty thereof." (People v. Ali, L-18519, Oct. 30, 1969, 29 SCRA 756)

The defense could not have proved improper motive as the court ruled that it waived its right to present evidence when it filed the demurrer.

Again, contrary to the already conflicting testimonies of Lt. Jose and Sgt. Balatucan, the trial court insisted that it was entrapment and not instigation that took place in bagging the accused, as follows:

1. The military operation conducted on October 3, 1985 was carried out in Barangay Sta. Ana, Taytay, Rizal according to Lt. Jose. Other members of the team were C2C Errol Era and two civilian informers. (TSN, Dec. 9, 1985, p. 3) Lt. Jose was about ten (10) meters from where the alleged buying was taking place between Sgt. Balatucan and the accused who were talking to each other. (Ibid., p. 4)

When the Court asked Lt. Jose about the quantity of the marijuana allegedly bought from the accused by Sgt. Balatucan, Lt. Jose replied that: "I don't know the quantity, it was furnished only to us by PCCL (Philippine Constabulary Crime Laboratory)." (Ibid., p. 6) Upon further questioning by the Court, whether accused accompanied the team to his house, the same witness testified that: "He accompanied us sir, in a house he was referring to as a pusher in Barangay San Isidro." There was no arrest made, "xxx because it was negative, meaning, there's no marijuana." (Ibid., 7)

Aside from the conflicting testimony of Lt. Jose, there were also tell-tale declarations he made, as follows:

Asked on cross-examination if Lt. Jose affirms the truth that the alleged dried marijuana leaves were recovered inside the pocket of the accused, the answer was "yes". (Ibid., p. 9)

When pressed whether he was the one who recovered the dried marijuana leaves from the pocket of the accused, the answer was "No" it was Sgt. Balatucan. However, when further asked if Sgt. Balatucan was the one who searched the pocket of the accused, the same witness answered that: "No, the marijuana was with Sgt. Balatucan when he was arrested because Sgt. Balatucan bought from him the marijuana leaves." (Ibid., p. 10)

Witness was reminded by the counsel for the accused that during his direct testimony he claimed that the marijuana was recovered inside the pocket of Antonio Cruz, the accused, but, the answer of Lt. Jose was, "No, it was done during the buy bust operation." And when asked about the name of the civilian informer who was a member of their team and was the one who approached the accused, Lt. Jose replied that "I do not know." and when pressed further, he declared: "That's all I know," and insisted that: "x x x it was Sgt. Balatucan who knows about that." That, "It was Sgt. Balatucan who cause (sic) as buyer and he was the one who pay (sic) P20.00 bill

and the one who received marijuana leaves from the accused Antonio Cruz." (Ibid., pp. 10 -11)

2. Sgt. Edison Balatucan was transferred to the 221st P.C. Company on October 1, 1985 and on October 3, 1985, went into the buy-bust operation at Sta. Ana, Tanay, Rizal, and not San Isidro, Tanay, Rizal, as testified to by Lt. Jose. (TSN, February 19, 1986, p. 3) Conflicting testimonies from that of Lt. Jose, are the following:

This witness claimed that he pretended to buy marijuana and alleged that he was able to buy marijuana, but according to Lt. Jose, the informant was the one who approached the accused. He stated that he paid P20.00 for the marijuana which P20.00 bill was accordingly recovered from him by Lt. Jose. (Ibid., p. 4)

Sgt. Balatucan when asked by the court what the agreement was all about, stated that he told the accused: "Because I need it badly." This contradicted his assertion that he did not approach the accused, since he was two (2) feet away from the informant and the accused when the transaction was going on. (Ibid., p. 7) As a matter of fact, when asked by the court whether he (Sgt. Balatucan) heard the conversation he said "No, sir." (Ibid., p. 9)

Sgt. Balatucan nevertheless asserted, when asked by the court what the response of the accused was when the former said he wanted to buy marijuana, that: "He has marijuana leaves in his pocket and he gave to me the stuff which turn I gave the money." (Ibid., p. 5) He also declared that he did not know the name of the informant who approached the accused and that this was the first operation he participated in. (Ibid., p. 8) He even denied that he executed a sworn affidavit, which was introduced in evidence and the signatures were identified by Lt. Jose, (Exhibit "B") including the signature of Sgt. Balatucan designated as Exhibit "B-2". (Ibid., p. 3)

From the above, it is apparent that the trial court erred in convicting the accused, based not only on the conflicting and contradictory testimonies of the witnesses for the prosecution, but the impossibility based on the positions of the witnesses for the prosecution and accused during the alleged buy-bust operation, of their active participation.

The counsel for the public respondent tried to explain the disconcerting arguments by maintaining that:

"Whether or not Sgt. Balatucan executed an affidavit attesting to the buy-bust operation and the subsequent arrest of accused-appellant is of no moment since the execution of an affidavit is not material in the present case. In fact, even if Sgt. Balatucan had executed an affidavit, the same is useless since he himself testified in court and was extensively cross-examined by appellant's counsel. This question will only become material if the witness was confronted with his affidavit and such affidavit contains matters which are completely irreconcilable with affiant's testimony. As it turned out, Sgt. Balatucan was not confronted with his affidavit and there is no showing that said affidavit contains matters that are contradictory with his testimony." (Brief for the Appellee, Rollo, p. 95)

The position taken by the appellee illustrated above is erroneous considering that Sgt. Balatucan, one of the affiants in the Affidavit marked by the prosecution as Exhibit "B" was asked point-blank on direct examination whether he executed an affidavit. He denied having done so. On further questioning with respect to the accused counsel's open court manifestation that the witness was looking at a note whenever he would answer questions of the trial fiscal, who asserted that the note referred to was the Affidavit that was already marked Exhibit "B" during the testimony of Lt. Jose, the witness again denied this assertion by saying, "None, sir." (TSN, February 19, 1986, p. 6)

Another instance why the testimony of this witness should not be given much probative value is his assertion that when the accused admitted that he had marijuana and that this witness told him that "bibili ako sa iyo ng halagang P20.00", Sgt. Balatucan gave said amount and the accused handed him the marijuana. Subsequently, four questions after the preceding answer, when asked by the counsel for the accused, if it is not a fact that the witness never approached the person of the accused and that it was only the informant who approached and talked to Antonio Cruz, Sgt. Balatucan's emphatic reply was: "Yes, sir, the informant only." (Ibid., p. 8)

These points illustrate the lack of credibility of the main witness who aside from contradicting the testimony of Lt. Jose, came out with conflicting testimonies of his own. It was grave error for the court to make generous explanations and justifications of what it considered inconsistent but then dismissed as minor matters.

It is clear from the records that the prosecution utterly failed to prove the crime charged, and taking note of the prosecution's failure, the trial court compounded the contradictory and conflicting testimonies of the witnesses by supplying explanations not apparent from the records.

In the case of *People vs. Guinto* (184 SCRA 287, [1990]) this Court took time to reiterate the following:

"The principle has been dinned into the ears of the bench and the bar that in this jurisdiction, accusation is not synonymous with guilt. The accused is protected by the constitutional presumption of innocence which the prosecution must overcome with contrary proof beyond reasonable doubt. This Court has repeatedly declared that even if the defense is weak, the case against the accused must fail if the prosecution is even weaker, for the conviction of the accused must rest not on the weakness of the defense, but on the strength of the prosecution. Indeed, if the prosecution has not sufficiently established the guilt of the accused, he has a right to be acquitted and released even if he presents naught a shred of evidence. x x x The accused-appellants have been condemned x x x based on uncertain evidence clearly insufficient to sustain their conviction. It is their guilt and not their innocence that has been presumed. It is their innocence and not their guilt that should have been pro-nounced. In these circumstances, only one thing has to be done if the Constitution is to be observed and justice is to be served."

Then in *People vs. Sadie* (149 SCRA 240, 244 [1987]) and *Perez v. Sandiganbayan and People of the Philippines* (180 SCRA 9 [1989]), this Court reiterated the ancient principle that "no one shall be found guilty of crime except upon proof beyond reasonable doubt."

Trial courts are admonished to always require precise and convincing testimony in cases involving buy-bust operations. Competent and effective handling of a case by the prosecution is particularly urgent in drug-related offenses.

We sustain the rule that police officers in buy-bust operations are entitled to the presumption of having acted pursuant to official duty. Their testimony is entitled to great respect. Theirs is a most difficult and, in the light of an ever increasing drug menace, a seemingly hopeless assignment. Anti-narcotics agents deserve utmost support and consideration.

Nonetheless, we are also cognizant of the ease with which prohibited drugs may be "planted" on innocent individuals. Except for influential persons or those who can afford the best lawyers, it is well nigh impossible to refute a charge that drugs were "planted" and not "possessed" or "pushed." The complaints of mulcting activities by unscrupulous policemen, especially by those who are assigned to traffic duties or some other chores but who somehow stumble on possession of prohibited drugs by teenagers or provincianos, are legion. It is for this reason that trial courts should be more wary and careful in assessing conflicting, ambiguous, or non-relevant testimony. More important than apprehending and convicting criminals is faithful adherence to due process, the need to accord to every accused the protections guaranteed to him or her by the Constitution.

WHEREFORE, the decision dated July 26, 1988 sentencing the accused to suffer an imprisonment of reclusion perpetua and a fine of TWENTY THOUSAND PESOS (P20,000.00) is REVERSED. The accused-appellant is ACQUITTED.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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