

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN PASCUAL Y FLORES, ACCUSED-APPELLANT.

G.R. No. 88282. May 06, 1992

Ponente: DAVIDE, JR. J.

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DAVIDE, JR. J.:

In an information filed on 2 August 1988 in the Regional Trial Court of Pasig, Metro Manila, accused Edwin Pascual was charged with the violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, as amended. The said information alleges:

"That on or about the 28th day of May, 1988, in the Municipality of Pateros, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to another 3.80 grams of marijuana fruiting tops placed in a transparent plastic bag, which are prohibited drug (sic), in violation of the above-cited law.

Contrary to law." [1]

The case was docketed as Spl. Criminal Case No. 717-D.

Upon arraignment on 22 August 1988, [2] accused pleaded not guilty. Trial was set for 26 September 1988. On that date, however, accused signified his intention to plead guilty to the lesser offense defined in Section 8 of the Dangerous Drugs Act, as amended. To afford him time to secure "the necessary approvals (sic) from the authorities concerned regarding" that intention, the hearing was reset for 7 October 1988. [3] Since nothing positive developed thereafter, trial on the merits ensued. At the trial, the prosecution presented as witnesses the arresting officers, Pat. Armando de Villa, Pat. Domingo Casiño and Pat. Romeo de Castro of the Pateros Police Station, and P/Lt. Tita B. Advincula of the PC Crime Laboratory Services at Camp Crame, Quezon City. [4] The prosecution's theory of the case, as summarized by the trial court, is as follows:

"x x x Prior to May 28, 1988, P/Major Ernesto I. Josef, the Station Commander of the Pateros Police Station, received telephone calls from residents of Pateros informing him of rampant drug selling along said area. Acting on said information, he tasked Pat. Romeo de Castro to compose (sic) a team to conduct surveillance in the area in order to identify the suspected pusher and to apprehend him through the so-called 'buy-bust' operation. Chosen as members of the team were Pat. Armando de Villa, Pat. Domingo Casiño and Pat. Eduardo Reyes of the Pateros Police Station.

At the height of a week-long surveillance, the group was able to ascertain the identity of the suspected pusher as a certain alias 'Tabo'. On May 28, 1988 at around 7:10 o'clock in the evening, they conducted the 'buy-bust' operation at T. Sulit St., Barangay Aguho, Pateros, Metro Manila where the suspected pusher allegedly indulged in the illicit trade of marijuana. Pat. Romeo de Castro briefed each member of the team on how to go about the operation. He assigned Pat. Armando de Villa as poseur-buyer and the rest as back-up. He then gave Pat. de Villa three (3) previously xeroxed ten-peso bills with Serial Nos. FK920246, EK440768 and FH627260 (Exhibits "A", "A-1" and "A-2", respectively) which would be used in purchasing marijuana from

the suspect.

In (sic) just a while, Pat. de Villa spotted the suspect in a dimly lit vacant lot talking to a person and when he came near them, the suspect asked him: 'Tiskor ka ba'. Since he answered yes, worth P30.00 of marijuana, the suspect told him to wait for a while as he would come back. A few moments later, the suspect appeared and handed to Pat. de Villa three (3) tea bags of marijuana in exchange of (sic) the amount of P30.00 which Pat. de Villa paid to the suspect. At this point in time, Pat. de Villa executed a pre-arranged hand signal to his teammates who immediately closed in and assisted him in apprehending the suspect. The latter was frisked and recovered from his possession were the three (3) ten-peso bills found at his right back pocket. He was subsequently brought to the Pateros Police Station where he was investigated by Pat. Domingo Casiño. The suspect pointed to one alias John-John Pilay of Barangay Martinez de 96 as the source of marijuana.

Through a letter-request for technical assistance signed by Pat. Domingo Casino on May 28, 1988 (Exhibit "D"), the marijuana specimens confiscated from the suspect were brought to the PC Crime Laboratory Services at Camp Crame, Quezon City for chemical analysis. After conducting three (3) tests on the subject specimens, namely: microscopic, chemical and thin layer chromatographic tests, Forensic Chemist, P/Lt. Tita B. Advincula, declared in her Chemistry Report No. D-492-88 (Exhibit "C") and Certificate of Laboratory Result (Exhibit "F") and which she affirmed in her testimony that the subject specimens gave positive result for marijuana, a prohibited drug.[5]

Upon the other hand, the defense presented the accused, who denied committing the crime, the accused's neighbors, Ernesto Nicdao and Conrado Asuncion, who corroborated his testimony, and the accused's sister, Jocelyn Tolentino. Their testimonies were condensed by the trial court as follows:

"Accused, in his defense, claimed that he did not commit the crime as charged. He alleged that on May 28, 1988 at around 5:10 o'clock in the afternoon, he arrived home from work at T. Sulit St., Barangay Aguho, Pateros, Metro Manila and took a short rest. At about 7:00 o'clock in the evening, three (3) persons whom he later identified as police officers approached him while he was just resting near their house and invited him to go with them to the Pateros Municipal Hall because somebody allegedly bought three (3) bags of marijuana from him. He vehemently denied said accusation but the police officers nevertheless handcuffed him, searched him and brought him to the Municipal Hall of Pateros without a warrant. At the Pateros Police Station, he was shown the tea bags of marijuana which allegedly came from him. He disowned them but the police officers would not believe him. He was later detained and the corresponding charge was filed against him.

Accused's testimony was supported by the testimonies of his neighbors Ernesto Nicdao and Conrado Asuncion who at that time were near the place of the arrest. They were united in saying that accused was handcuffed and frisked by three (3) unidentified male persons but nothing except a plastic bag of rice was found in his possession. Later accused was asked to board a tricycle going to the municipal hall.

For her part, accused's sister, Jocelyn Tolentino, told the Court that after receiving the information that his brother was arrested she immediately went to the Pateros Municipal Hall. There she saw her brother at the investigation room being frisked by a policeman and was being forced to admit that he was selling marijuana. Then she saw her brother being brought to the detention cell."[6]

After evaluating the evidence of both parties, the trial court promulgated a decision on 8 May 1989, the dispositive portion of which reads:

"WHEREFORE, finding the accused EDWIN PASCUAL y FLORES guilty beyond reasonable doubt of the offense charged, he is hereby sentenced to suffer the penalty of reclusion perpetua with all its accessory penalties, to pay a fine of Twenty Thousand Pesos (P20,000.00) and to pay the costs.

In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment.[7]

On 9 May 1989, accused filed his notice of appeal.

In his four-page Brief,[8] accused contends that:

"I

The trial court erred in finding that the testimony (sic) of the three (3) policemen who allegedly conducted a 'buy-bust' operation against the appellant is more credible than (sic) the testimony of the three (3) witnesses for the defense and the appellant.

II

The trial court erred in finding appellant guilty of the capital offense charged based on the testimony (sic) of said policemen.

III

The trial court erred in finding no violation of the constitutional rights of the appellant against arrest without warrant and against unreasonable search."

In support of these assertions, he presents the following bare arguments and nothing more:

"The testimony (sic) of said policemen is not more credible than (sic) the testimony of the appellant and his three (3) witnesses.

The evidence for the prosecution does not constitute proof beyond reasonable doubt that the appellant committed said capital offense.

The reasons are:

Nicdao and Asuncion, the neighbors of the appellant, categorically testified that they witnessed the arrest of the appellant and the search of his body by said policemen.

Nicdao and Asuncion categorically testified that they did not see the transfer from the appellant to Pat. de Villa of three (3) tea bags of marijuana.

Nicdao and Asuncion categorically testified that they did not see the transfer of xerox copies of three (3) ten-peso bills from Pat. de Villa to the appellant.

The testimony of said policemen that they used xerox copies of three (3) ten-peso bills in the 'buy-bust' operation is hard to believe.

Hence, the incredible testimony (sic) of said policemen cannot be considered as constituting proof beyond reasonable doubt that the appellant committed said capital offense.

Violations of the constitutional rights of the appellant against arrest without warrant and against unreasonable search were committed by said policemen.

The testimony (sic) of the appellant and his witnesses proves (sic) that the appellant was not committing said capital offense at the time that he was arrested and his body was searched by said policemen.

Hence, the constitutional rights of the appellant against arrest (sic) without warrant and against unreasonable search were violated by said policemen when they arrested the appellant and searched his body without a warrant of arrest and without a search warrant."[9]

These arguments do not deserve the scantest consideration as they are nothing but mere conclusions which betray either the hopelessness of the accused's cause or his counsel's lack of zeal and seriousness in defending his client. If the latter was due to counsel's firm conviction of the futility of the appeal, he should have, instead of pursuing the appeal only to file a pro-forma brief therein, given the accused a candid and honest opinion on the merits and probable results of the case.[10]

Nevertheless, if only to satisfy accused's plea for justice, this Court is inclined to consider the assigned errors.

1. Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[11] This present case cannot qualify as an exception to the rule and the accused miserably failed to point out any reason why it should be considered as such. Two important considerations enhance the correctness of the findings of the trial court. Firstly, the testimonies of the arresting officers are positive in character while that of the accused is negative. Thus, the former testimonies necessarily prevail over the latter. Secondly, no improper motive had been imputed to the arresting officers. They are, therefore, presumed to have regularly performed their official duty in the absence of any evidence to the contrary.[12] That the accused sold three (3) tea bags of marijuana and received consideration therefor in a buy-bust operation was duly proved by the testimony of Pat. Armando de Villa, thus:

"Q Who was your suspect according to the result of your surveillance?

A A certain Tabo, Edwin Pascual alias Tabo.

Q Please tell the Court the result of your operation against Tabo on the night of May 28, 1988?

A At about 7:15 in the evening the group led by Lt. De Castro and I and I (sic) was assigned as poseur buyer of the suspect and when I reached the vacant lot when (sic) Tabo was there and approached me and asked if I would score and I said, Yes and I gave him the three-ten peso bills and then he go (sic) to the alley and when he come (sic) back he was bringing with him three tea bags of marijuana.

Q Were you able to get the three bags of marijuana?

A Yes, sir.

Q What else did you and your group do after you were handing the three bags of marijuana?

A I gave my signal. When I raised my right hand that is the time, sir.

Q Did you raise your hand for the signal?

A Yes, sir.

Q What happened after that?

A My companion came near me and apprehended the suspect and brought him to the station, sir."[13]

Upon cross-examination, Pat. de Villa narrated more specifically how the buy-bust operation was conducted:

"Q In that point of operation when for the first time did you see the accused?

A Around 7:10, sir.

Q Where was the accused at that time when you first saw him?

A At the vacant lot, sir.

Q Could you give us the specific location of that vacant lot?

A Corner of T. Sulit and Quiogue St., sir.

Q Were you alone when you first saw the accused at that vacant lot?

A Yes, sir.

Q What action did you take when you saw the accused at the vacant lot?

A I went at (sic) the vacant lot and the suspect arrived and asked me if I would buy marijuana.

Q What were the exact words of the accused when he approached you about your intention to buy marijuana?

A He asked me and I quote, 'Pare, i-score ka ba at ilan?' I said worth P30.00.

Q How did the accused come (sic) to know that you are (sic) buying marijuana?

A Because during the surveillance that is what we got from the residents in the area.

Q What were (sic) your reply when the accused offered to buy marijuana?

A We said Yes.

Q And then what happened?

A When I said Yes and he left the place and when he came back, the suspect, marijuana (sic) was already with him.

Q And after that, were you able to buy marijuana?

A Yes, sir."[14]

The abovequoted testimony of Pat. de Villa was corroborated by his companions during the buy-bust operation, Pats. Casiño and De Castro. Moreover, P/Lt. Tita Advincula, the forensic chemist who examined the contents of the three (3) tea bags obtained from the accused, testified that after she conducted a microscopic examination, a chemical test and a tin layer examination thereon, she reached the conclusion that the same were positive for marijuana.[15]

The contention of the accused that the policemen used xerox copies of the ten-peso bills in the buy-bust operation is completely misleading. Actual and genuine ten-peso bills were used; only the machine copies thereof were offered in evidence. Thus, in his direct testimony, Pat. de Villa said:[16]

"Q You said you paid three-ten peso bills. Do you have that?

A In (sic) our investigator, sir.

COURT: Who is that?

A Pat. Domingo Casiño, sir.

FISCAL: Do you remember if those three-ten peso bills were marked?

A Yes, sir.

Q What are the markings?

A The serial number (sic) of the three-ten peso bills, sir.

Q Do you remember?

A I have my note, sir. One is FK920246, Two is EK440768 and Three is FH627267, sir.

Q If you are shown a photocopy of that (sic) three-ten peso bills, will you be able to tell the Court whether those are the three-ten peso bills you used in the buy-bust operation?

A Yes, sir.

Q I am showing to you the machine copy of the three-ten peso bills. Will you go over it and tell the Court whether that is the faithful reproduction of the three-ten peso bills you used in that buy-bust operation?

A Yes, sir. That is the same. (emphasis supplied)"

Furthermore, it is settled that the presentation in evidence of the "buy-bust" money is not indispensable for the conviction of an accused provided that the sale of marijuana is adequately proven by the prosecution.[17]

2. The last issue raised by accused is the alleged violation of his constitutional rights against warrantless arrests and unreasonable searches and seizure. He claims that when he was arrested and searched on 28 May 1988, he was not committing any offense; hence, the same is illegal and violates his constitutional rights.

This contention is likewise unmeritorious. Accused was arrested while in the act of selling marijuana to Pat. de Villa; he was caught in flagrante delicto. Section 5(a), Rule 113 of the Rules of Court provides that:

"SECTION 5. Arrest without a warrant; when lawful. -- A peace officer or a 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;"

x x x

Moreover, Section 12, Rule 126 provides:

"SECTION 12. Search incidental to lawful arrest. -- A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

Based on the foregoing provisions, it is clear that the constitutional guarantee against warrantless arrest, as well as unreasonable searches and seizure, was not violated.

We therefore affirm the finding of the trial court that accused is guilty of the crime charged. However, as to the penalty of reclusion perpetua imposed by the trial court, the same is improper as this is not the penalty provided for the offense charged. Section 4, Article II of Republic Act. No. 6425, as amended, provides the penalty of life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00. The penalty of reclusion perpetua, a penalty provided for in appropriate cases under the Revised Penal Code and which carries accessory penalties, is completely different from life imprisonment.[18]

PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED subject to the modification above indicated changing the penalty of reclusion perpetua to life imprisonment.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Original Records, 1.

[2] Original Records, 5.

[3] Id., 14, 16.

[4] Id., 111-113.

[5] Original Records, 111-113.

[6] Original Records, 113-114.

[7] Original Records, 117.

[8] Rollo, 31-34.

[9] Rollo, 33-34.

[10] Rule 15.05, Canon 15, Code of Professional Responsibility.

[11] People vs. Mercado, 97 SCRA 232 [1980], and the numerous cases cited therein.

[12] Section 3 (m) Rule 131, Rules of Court; People vs. Gamayon 121 SCRA 642 [1983]; People vs. Paco, 170 SCRA 681 [1989] People vs. Santiago, G.R. No. 94472, 3 March 1992, citing People vs. Mariano, 191 SCRA 136 [1990] and People vs. Catan, G.R. No. 92928, 21 January 1992.

[13] TSN-Lozada, 11 November 1988, 2.

[14] TSN-Lozada, 11 November 1988, 6.

[15] Id., 10-11.

[16] TSN-Lozada, 11 November 1988, 3.

[17] People vs. Sanchez, 173 SCRA 305 [1989]; People vs. De la Cruz, 191 SCRA 160 [1990].

[18] People vs. Baguio, 196 SCRA 459 [1991].

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