

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN RAMOS, JR., Y YABUT, ACCUSED-APPELLANTS.

G.R. No. 88301. October 28, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

On the basis of a "buy-bust" operation, led by Cabanatuan City NARCOM District Commander, Capt. Maximo Dilla, appellant Benjamin Ramos, Jr. was arrested and charged with violation of the Dangerous Drugs Act (RA 6245, Art. II, Sec. 4) in Criminal Case No. 5128, before the Regional Trial Court[1], Third Judicial Region, Branch 29, Cabanatuan City, in an information filed by the City Fiscal, as follows:

"that on or about the 17th day of May, 1986, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously deliver and sell to another 2.5 grams of dried marijuana leaves or Indian hemp." (p. 16, Rollo)

Upon arraignment, appellant Ramos pleaded "not guilty." After trial, the court rendered its decision on March 3, 1989, the dispositive portion of which reads as follows:

"IN VIEW OF ALL the foregoing, judgment is hereby rendered finding the accused, BENJAMIN RAMOS, JR. y YABUT, guilty beyond reasonable doubt (sic) of the crime of violation of Section 4, of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, to suffer imprisonment of reclusion perpetua or life imprisonment, and to pay a fine of TWENTY THOUSAND (P20,000.00) PESOS, together with the costs of these proceedings, without subsidiary imprisonment in case of insolvency.

"Let this be a stern warning and serve as a deterrent to others (sic) who, in the future, may trifle with our dangerous drug law.

"SO ORDERED." (p. 20, Rollo)

From the judgment of conviction, Ramos appealed, assigning a single error:

"THE COURT ERRED IN RULING THAT THE ACCUSED IS GUILTY OF VIOLATION OF SEC. 4 OF R.A. 6425 AS AMENDED, OTHERWISE, KNOWN AS THE DANGEROUS (DRUGS) ACT OF 1972." (p. 1, Appellant's Brief, p. 26, Rollo)

The Solicitor General summarized the People's version thus:

"On May 17, 1986 at about 9:00 o'clock in the evening, a civilian informant (whose identity was not divulged for tactical and security reasons) went to the NARCOM Office in Bitas, Cabanatuan City, Nueva Ecija, with the information that there was a person selling marijuana leaves or Indian Hemp at the 'Hang Out' restaurant located at the diversion road in Cabanatuan City. Upon hearing such information, Capt. Maximo Dilla, the NARCOM District Commander, organized a team of operation consisting of himself, Sgt. Danilo Maulon, AIC Francisco Cabiao and the said informant. (TSN, p. 4, Dec. 9, 1986; p. 4, Dec. 3, 1986)

"The team, as planned, would proceed to the place indicated by the informant for surveillance. Sgt. Maulon was designated by Capt. Dilla to pose as a buyer and was accordingly given a marked P10.00 bill. Sgt. Maulon was directed to light a cigarette once a purchase was made.

"The group proceeded to the 'Hang Out' restaurant. Sgt. Maulon, together with the informant, went inside, while Capt. Dilla and AIC Cabiao positioned themselves in a strategic place where they could not be seen. While inside the restaurant, the informant approached appellant, whispering to the latter that he had with him a man who wanted to buy marijuana leaves, indicating Sgt. Maulon to be the buyer. After a brief conversation, appellant left for a while and thereafter returned with a plastic teabag containing marijuana which he gave to Sgt. Maulon. Sgt. Maulon, after ascertaining that what was given him was indeed marijuana leaves, gave the marked 10-peso bill to the appellant. Sgt. Maulon then lighted a cigarette to alert his teammates. Thereupon, Capt. Dilla and AIC Cabiao rushed toward the appellant, arrested him and brought him to the NARCOM District Office for booking and investigation. (TSN, pp. 4-7, Dec. 9, 1986; pp. 5-7, Dec. 3, 1986)

"The plastic teabag containing the marijuana leaves purchased by Sgt. Maulon was marked and sent to the Phil. Constabulary Crime Laboratory at Camp Olivas, San Fernando, Pampanga for analysis. A chemical analysis of the specimen conducted by Forensic Analyst Captain Marlene Salangad showed that the specimen (Exhibit 'C,' contents of the plastic teabag) was positive for marijuana. (TSN, pp. 2-4, July 28, 1987)." (pp. 49-51, Rollo)

Before Us, Ramos denies any "buy-bust" operation, claiming that the marijuana leaves were planted evidence, that he was arrested because of a heated argument with the restaurant owner, Dr. Melvin Garcia, over an alleged P30.00-unpaid account.

We find the prosecution's version more credible. The prosecution was able to establish the "buy-bust" operation through the testimonies of the arresting officers, Sgt. Danilo Maulon and Airman First Class Francisco Cabiao, then members of the Narcotics Command stationed at Cabanatuan City, who, as rightly pointed out by the Solicitor General, are entitled to full faith and credence, as they are presumed to have acted in the regular performance of official duty (People v. Policarpio, G.R. No. 69844, February 23, 1988, 158 SCRA 85; People v. Andiza, G.R. Nos. 71986-87, August 19, 1988, 164 SCRA 642).

Thus, Sgt. Maulon testified that he acted as the poseur-buyer to whom Ramos sold marijuana leaves, which were placed in a plastic teabag, after which he handed over to the latter a marked P10.00 bill (Exh. 'A') which he subsequently identified, with serial number TX824409 (Exh. 'A-1') and the signature thereon of Capt. M. Dilla (Exh. 'A-2') (TSN, pp. 5-6, Dec. 3, 1986).

AFC Cabiao testified that he witnessed the delivery by Ramos to Sgt. Maulon of the plastic teabag containing the marijuana leaves after which the latter handed the P10.00-marked bill to Ramos. (TSN, pp. 6-7, December 9, 1986).

Capt. Marlene Salangad, a forensic chemist at the PC Crime Laboratory at Camp Olivas, San Fernando, Pampanga, testified that the contents of the plastic teabag were positively found to be "marijuana, a prohibited drug," identifying in the course of her testimony the request for Laboratory Examination (Exh. "D"), signed by Capt. Dilla, and the Technical Report HB-167-8 (not Exh. "C," Initial Laboratory Examination Report, as erroneously stated in the RTC decision) (TSN, pp. 2-3, July 28, 1987).

The defense did not present Dr. Melvin Garcia, the restaurant owner, or Boyet Corpuz (TSN, p. 5, November 12, 1987) (not Boy Sanchez, as stated in the RTC decision), the alleged companion of Ramos at the restaurant/beerhouse to corroborate Ramos' contention that he was arrested because of a heated argument he had with Dr. Garcia. Neither did he present Danilo Martin whom Ramos had stated on cross-examination, to be the owner of the mini-component allegedly confiscated by the arresting officers (TSN, p. 3, December 9, 1987). Instead, the defense presented Samuel Ancheta, Danilo Martin's brother-in-law, who had testified as the "owner"

of the mini-component, and who claimed to have redeemed the same from Sgt. Maulon, upon payment of P1,000.00 (TSN, p. 5, April 27, 1988).

The absence of these corroborative witnesses leads Us to conclude that the defense version was simply a concoction devoid of any credibility. Thus, We note the trial court's observation of "the direct and straight forward testimonies of the prosecution witnesses" (People v. Aset, G.R. No. L-35781, January 28, 1980, 95 SCRA 553) as against the mere denials by the accused" (People v. Alharico, et al., G.R. Nos. L-38339, L-38340, L-38341, October 10, 1980, 100 SCRA 280) (RTC decision, p. 9, Rollo).

The case of the prosecution is clear and positive. Ramos was caught in flagranti selling marijuana. As correctly pointed out by the trial court, the "buy-bust operation" or entrapment, resorted to by the Narcotics agents has long been recognized as an effective means of apprehending drug peddlers. It is a procedure or operation sanctioned by the Revised Penal Code, (People v. Valmores, et al., G.R. No. 58635, June 28, 1983, 122 SCRA 922.) In the case of People v. Y. Gatong-o, et al., G.R. No. 78698, December 29, 1988, 168 SCRA 716, We defined entrapment as the "employment of such ways and means for the purpose of trapping or capturing a lawbreaker" (also People v. Valmores, et al.).

"In entrapment, the idea to commit the crime originates from the accused. Nobody induces or prods him into committing the offense. This act is distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal." (Ibid)

The fact that government witnesses made the purchase of marijuana do not make them accomplices, for their only purpose is to secure evidence to convict the violator. Their testimonies stand on the same footing as that of any other witnesses in the case (U.S. v. Chiong-Chuico, et al., 11 Phil. 106).

Moreover, the Solicitor General has pointed out that the arresting officers were not shown to have had any ulterior motive to falsely accuse Ramos with a serious offense, but that they were simply bent on apprehending violators of the law. The presumption has always been that Narcom agents are performing their functions when they conduct buy-bust operations and entrap and arrest violators (People v. E. Ansing, G.R. No. 86641, April 26, 1991). The conviction of accused Ramos is therefore in order.

The defense attacks the prosecution's failure to present as witness, Capt. Maximo Dilla. Suffice it to say that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of its necessity (People v. M. Ruedas, G.R. No. 83372, February 27, 1991; Tugbang v. CA, et al., G.R. No. 56679, June 29, 1989, 174 SCRA 424; People v. Somera, G.R. No. 65589, May 31, 1989, 173 SCRA 684; People v. Orita, G.R. No. 88724, April 3, 1990, 184 SCRA 105).

The defense has also claimed that Ramos was maltreated by Sgt. Maulon. This issue, as well as the alleged confiscation of a mini-component/stereo cassette by Sgt. Maulon are irrelevant to the offense of which Ramos was convicted.

Likewise, the defense claims that Tirso Y. Reyes did not hear the case, but Judge Nathanael Gorospe (now Associate Justice of Sandiganbayan), and therefore did not see the demeanor of the witnesses. We have ruled that "the fact that the Judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of witnesses during the trial, but merely relied on the records of the case does not render the judgment erroneous (Co Tan v. CA, et al., 101 Phil. 188).

One last observation, the penalty of "reclusion perpetua or life imprisonment," among others, imposed by the trial

court (p. 20, Rollo) is improper as it is not the penalty provided by law for the offense. Under Section 4 of RA 6425, as amended by PD 1675, which become effective on February 17, 1980, the penalty for the sale, delivery or giving away to another of a prohibited drug is life imprisonment to death, and a fine ranging from P20,000.00 to P30,000.00. The penalty of reclusion perpetua, a penalty provided in the Revised Penal Code which carries accessory penalties, is-completely different from life imprisonment (People v. Ruedas, supra; People v. Valmores, et al., supra; People v. Nillos, G.R. No. 66161, January 30, 1984, 127 SCRA 207).

ACCORDINGLY, the appealed decision of the Regional Trial Court of Cabanatuan City is AFFIRMED insofar as it imposed "a fine of P20,000.00 together with the costs of these proceedings, without subsidiary imprisonment in case of insolvency," but MODIFIED with respect to the main penalty of "reclusion perpetua or life imprisonment," which is changed to life imprisonment solely.

SO ORDERED.

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

[1] Presided over by Judge Tirso Y. Reyes.

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