

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR SEGWABEN Y CARLIN, ACCUSED-APPELLANT.

G.R. No. 88401. February 19, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the February 22, 1989 decision[*] of the Regional Trial Court, National Capital Judicial Region, Branch CLVI, Pasig, Metro Manila, convicting herein appellant Cesar Segwaben y Carlin in Criminal Case No. 704-D for Violation of Sec. 4, Article II of Republic Act 6425, as amended. The dispositive part of said decision reads as follows:

“WHEREFORE, finding the accused CESAR SEGWABEN y CARLIN 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 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.

Pursuant to Section 20, Article IV of Republic Act 6425, as amended, let the 78.06 grams of Hashish Oil subject matter of the offense charged be turned over to the Dangerous Drugs Board Custodian, NBI, to be disposed of according to law.

SO ORDERED." (Rollo, Decision, p. 23).

Appellant Segwaben was charged with the aforementioned crime in an information filed by Assistant Fiscal Lucila A. Tiongson quoted hereunder:

“That on or about the 30th day of June 1988, in the Municipality of Pasig, 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 deliver and transfer to one Sgt. Marino F. Gumabay 78.06 grams of Hashish Oil which is a prohibited drug.

Contrary to law.

Pasig, Metro, Manila, July 1, 1988."

(Rollo, p. 9).

With the assistance of his counsel, Attys. Cesar Soliven and Geoffrey Andawi, appellant Segwaben entered a plea of not guilty upon arraignment on July 22, 1988 (Original Records, p. 8). Trial ensued.

The prosecution presented the following witnesses: CIC Gregorio Elegado, P/Capt. Luena Layador, Capt. Albino Sablayan, Jr. and Sgt. Marino Gumabay.

Capt. Albino Sablayan, Jr. - testified that on June 29, 1988, he was assigned as the deputy chief of staff of operations of the Narcotics Command and at the same time, the leader of the operation team with CIC Gregorio

Elegado and Sgt. Marino Gumabay as security officers and operatives. On said date, a confidential informant reported that a certain Cesar of Brent School was engaged in illegal sale of prohibited drugs in the said school. The following day, Sgt. Gumabay was tasked to act as poseur-buyer to negotiate for the sale of the prohibited drug (TSN, September 29, 1988, pp. 55-56). At around noon, Sgt. Gumabay reported that he was able to arrange for the sale of about 100 grams of Hashish Oil for P2,500.00 to be delivered at around 3:00 in the afternoon (Ibid., p. 58). From the operational funds of the Operation Division, flash money in the amount of P2,500.00 was given by Maj. Logronio to Sgt. Gumabay (Ibid., p. 57).

At about 2:30 p.m. they proceeded to the canteen of the University of Life and strategically positioned themselves to be able to see the transaction between their poseur-buyer and appellant Segwaben (Ibid., p. 58). About forty-five minutes later, the latter arrived and briefly talked with Sgt. Gumabay. Thereafter, he proceeded towards the door while Sgt. Gumabay pretended to go to the restroom after giving a signal to CIC Elegado to follow him (Ibid., p. 59). At the restroom, Sgt. Gumabay informed CIC, Elegado that the Hashish Oil will be delivered at the parking lot in front of the University of Life as appellant Segwaben sensed the presence of operatives in the canteen (Ibid., p. 60).

At the parking lot, he saw appellant Segwaben hand over to Sgt. Gumabay a package wrapped in a white plastic bag. After inspecting the said package, Sgt. Gumabay gave the pre-arranged signal and appellant Segwaben was placed under arrest. However, when the latter noticed the approaching operatives, he grabbed the package from Sgt. Gumabay and threw it towards a 40 meter deep cliff (Ibid.). At this juncture, Sablayan boarded his vehicle and proceeded to recover the package which was brought to the headquarters of the Narcotics Command, Camp Crame with appellant Segwaben. The Hashish Oil was placed in a green condom and further placed in a plastic bag (Ibid., p. 61). He positively identified Exhibit "B-1" as the evidence he recovered on June 30, 1988 (Ibid., p. 62).

On cross examination, he testified that the flash money was shown inside the canteen when Sgt. Gumabay and appellant Segwaben first met (Ibid., p. 69).

CIC Gregorio Elegado - member of the Special Operation Team, Narcotics Command, testified that sometime in June, 1988, they conducted a buy-bust operation in Brent School (TSN, August 19, 1988, pp. 25-26) and upon the instructions of Capt. Sablayan, he was to act as the arresting officer (Ibid., p. 27). Inside the restaurant, Sgt. Gumabay gave the signal to him to follow him to the restroom where he was informed that there will be a change in the plans as appellant Segwaben sensed the presence of the military inside the restaurant (Ibid., p. 28). He arrested appellant Segwaben outside the restaurant where he saw him throw a package in a condom about four (4) inches long. It was Capt. Sablayan who recovered the package (Ibid., 29). He testified executing a Joint Affidavit of Arrest with Capt. Sablayan (Exhibit "A") (Ibid., p. 32.).

Sgt. Marino Gumabay - testified that on June 29, 1988, a confidential informant reported to the Chief of Staff of Operation that a certain Cesar Segwaben was engaged in the sale of Hashish Oil and that he (witness) was chosen by the informant to act as poseur-buyer (TSN, September 29, 1988, p. 72). At about 9:30 a.m. the following day, he, together with the informant, proceeded to the canteen of the University of Life to contact the suspect. Appellant Segwaben came thirty minutes later and a deal was made that 100 grams of Hashish Oil will be delivered for P2,500.00 at 3:00 in the afternoon at the same place (Ibid., p. 73). As they were not able to raise the amount, flash money was used, that is some money bills were genuine, some were not (Ibid., p. 74).

At the designated time, he and the informant positioned themselves inside the canteen for the arrival of appellant Segwaben while Capt. Sablayan and CIC Elegado occupied another table. However, appellant Segwaben altered the original plan so that instead of delivering the Hashish Oil inside the canteen as previously agreed upon, he

would hand it over at the parking lot. Sgt. Gumabay thereafter excused himself to go to the restroom, at the same time giving a signal to CIC Elegado to follow him so that he could be informed of the change in plans (Ibid., p. 76).

At the parking lot, appellant Segwaben took a small plastic bag from his waist and handed it to Sgt. Gumabay. After inspecting it and being convinced that the contents thereof were Hashish Oil, he executed the pre-arranged signal of wiping his face. Thereafter, appellant Segwaben was placed under arrest. However, the latter was able to grab back the package from Sgt. Gumabay and to throw it to a creek before the operatives could get hold of him. Sgt. Gumabay testified that it was he, together with Capt. Sablayan, who retrieved the package (Ibid., p. 77). He identified Exhibit "B-1" as the same package of Hashish Oil that they recovered by his initial on the bag (Ibid., p. 78). He further testified that he was not able to show the flash money as appellant Segwaben did not ask for it (Ibid., p. 80).

P/Capt. Luena Layador - Assistant Chief of the PC-INP Chemistry Branch, PCCL, Camp Crame, Quezon City, testified that by a written request for laboratory examination dated June 30, 1988 (Exhibit "B", Original Records, p. 45) signed by PC/Maj. Ruperto Remetre, she examined the suspected Hashish Oil specimen (Exhibit "B-1") (See un-attached envelop) and submitted Chemistry Report No. D-614-88 (Exhibit "C", Original Records, p. 46) and declared therein that the specimen gave "positive result to the tests for Tetrahydrocanomabinol, an active ingredient of marijuana (Hashish), a prohibited drug."

On the other hand, the defense presented the accused and Esteban Degay as defense witnesses.

Appellant Cesar Segwaben y Carlin denied the material allegations of Sgt. Gumabay and CIC Elegado (TSN, January 19, 1989, pp. 7-10) and testified that he was a janitor of Brent School and that at around 3:00 p.m. of June 30, 1988, while he was bringing in some hollow blocks to the basement of the building, somebody approached him, whom he later identified as Sgt. Gumabay, and asked if he was Bert. When he replied in the negative, an identification card was demanded from him. When he could not show any, he was grabbed on the shoulders and told to go with the sergeant (Ibid., p. 9). When he resisted, two persons from behind the restaurant, whom he later identified as CIC Elegado and Capt. Sablayan, came in (Ibid., p. 10). He further testified that it was the first time he saw these NARCOM men (Ibid., p. 9). It was on their way to Camp Crame that he was informed of the offense for which he was being arrested (Ibid., p. 11) and it was in Camp Crame that he saw the package containing the Hashish Oil for the first time (Ibid., p. 12).

At the latter place, he was asked to admit ownership of the package containing Hashish Oil but he refused (Ibid., p. 13). He was made to sign a piece of paper (Exhibit "1", Original Records, p. 169) which he was not allowed to read because Sgt. Gumabay boxed him at the neck (Ibid., p. 14). In the evening, he was made to sign another piece of paper which he read before signing but could not recall the contents thereof. He identified this paper in court but the same was not offered in evidence. He also testified that at the time he signed these papers, no relative of his nor any lawyer was present. Neither was he allowed to get in touch with any of them (Ibid., pp. 15-16). The following day, he was allowed to use the telephone to get in touch with Alonzo Cariaga, an officemate of his wife (Ibid., p. 17).

On cross examination, he testified that he did not have any quarrel with any of the officers (Ibid., p. 22).

Mr. Estaban Degay - Electrical Maintenance Supervisor of Brent School, testified that appellant Segwaben has been under his supervision for four (4) years and that he does not know of any incident in which he had brushes with the law (TSN, January 12, 1989, p. 4). He corroborated the testimony of appellant Segwaben that they were working at the basement of the school when appellant Segwaben was arrested. It was when the latter failed to bring in more hollow blocks that he inquired about his whereabouts and was told of the arrest (Ibid., p.

3).

On February 22, 1989, the trial court rendered its decision, convicting the accused Segwaben of the crime charged (Rollo, pp. 16-23). A motion for reconsideration was filed on March 3, 1989 (Original Records, pp. 189-195) but the same was denied by the lower court on April 5, 1989 (Ibid., p. 207). A motion for reconsideration of this latter order of the lower court was filed later but again denied. (Ibid., pp. 214-215). A motion to be allowed to plead guilty of a lesser offense was subsequently denied. (Ibid., p. 242).

Hence, this appeal.

Appellant Segwaben contends that there are several inconsistencies and contradictions in the Affidavit of Arrest of CIC Elegado and Capt. Sablayan (Exhibit "A", Original Records, p. 61) and the Affidavit of Sgt. Gumabay (Exhibit "D", Original Records, p. 62) and their testimonies in court, namely: 1) the grabbing incident was not mentioned in either affidavit; 2) in the Affidavits of CIC Elegado and Capt. Sablayan, they stated that appellant Segwaben walked out of the canteen together with Sgt. Gumabay, while in court, they testified that Sgt. Gumabay went to the restroom first; 3) Capt. Sablayan testified that Sgt. Gumabay was alone in the table while waiting for appellant Segwaben (TSN, September 29, 1988, p. 59) while Sgt. Gumabay testified that he was with the confidential informant (Ibid., p. 73); 4) Capt. Sablayan testified that the flash money was shown inside the canteen (Ibid., p. 69) while Sgt. Gumabay testified that he did not have the chance to show the flash money (Ibid., p. 76); and 5) CIC Elegado testified that appellant Segwaben threw the package at the time he placed his hand around appellant Segwaben's shoulder (TSN, August 19, 1988, p. 35) while Sgt. Gumabay testified that CIC Elegado placed his arm on the shoulder of appellant Segwaben and handcuffed him after he had thrown the package (TSN, September 29, 1989, p. 83). These inconsistencies, it is claimed, cast serious doubts on the integrity of the prosecution witnesses (Rollo, Appellant's Brief, pp. 39-41).

The Solicitor General, on the other hand, attributes these inconsistencies to the "treachery of the human memory and the rigor of examination during trial" (Rollo, Appellee's Brief, p. 75).

The principal issue in the case at bar, is the credibility of the witnesses.

The petition is bereft of merit.

It is well-settled in our jurisdiction that where the issue is one of credibility of witnesses, appellate courts give great weight to the findings of fact by the trial courts as they are in a better position to examine real evidence, as well as observe the demeanor of the witnesses (People v. Rodriguez, 172 SCRA 742 [1989]; People v. Tejada, 170 SCRA 497 [1989]; People v. Bantac, 167 SCRA 109 [1988]).

Findings of the trial court on matters concerning credibility of witnesses are accorded the highest degree of respect and are generally affirmed on appeal (People vs. Carinal, 176 SCRA 404 [1989]).

As regards the inconsistencies in the affidavits and the testimony in court by the prosecution witnesses, this Court has held that affidavits are usually deficient. Being taken ex parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for the connection of the first suggestions of his first memory and for his accurate recollection of all that belongs to the subject (People v. Jutie, 171 SCRA 586; 593 [1989]). As such, they do not really affect the credibility of the witness.

The other inconsistencies pointed out by the appellant are immaterial to the case at bar. As correctly ruled by the trial court:

"Section 4, Article II of Republic Act 6425, as amended, considers it a criminal offense for any unauthorized person who would sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug or would act as broker for any such transaction. The mere act of selling, delivering, or giving away of any prohibited drug to another is a consummated criminal offense regardless of whether or not the accused profited or derived any pecuniary benefit from the sales transaction or was in actual physical possession of the drug at the time of his arrest (See *People vs. Mandarang*, 147 SCRA 123, 132; *People vs. Sarmiento*, 147 SCRA 252, 256). As long as there is an evidence of the transfer of possession of the prohibited drug, the suspected pusher cannot evade criminal responsibility." (RTC Decision, pp. 5-6-; Rollo, pp. 20-21).

Although there may be some inconsistencies in the testimonies of said prosecution witnesses, such inconsistencies relate to minor details and the fact remains that there is no disagreement among them as to the identities of the malefactors. Such inconsistencies, if at all demonstrate that their testimonies are spontaneous and unrehearsed (*People v. Aliocod, et al.*, 167 SCRA 665 [1988]). Inconsistencies in the testimony of witnesses pertaining only to minor inconsequential details do not affect the credibility of said witnesses, and in fact they are fail-safe against memorized perjury (*People vs. Roa*, 167 SCRA 161 [1988]; *People vs. Barranco*, 177 SCRA 103 [1989]).

Appellant Segwaben alleges that he is a frame-up victim. He points out that police officers go out of bounds on what is required by law from them, thus, they resort to illegal tactics, like maltreatment, coerced confessions and entrapment just to secure arrest and eventual conviction of their suspects (Appellant's Brief, p. 10; Rollo, p. 43).

The trial court, which had the opportunity to observe the detailed demeanor of the prosecution witnesses and of the accused on the witness stand, and to listen to their respective testimonies, gave more credence to the statements of the arresting officers. They had no known motive or reason falsely to impute a serious and unfounded charge against accused (*People vs. Sanchez*, 173 SCRA 305 [1989]). This fact was testified to by the appellant himself:

"Q:

These three law officers whom you identified, you have no quarrel with them, haven't you?

A:

None, sir.

Q:

Do you know if they have anything against you?

ATTY. SOLIVEN:

We object to that, Your Honor. Because the witness testified that it (sic) was only at the time of the arrest.

COURT:

Overruled, may answer.

A:

None, sir.

Q:

Because you have seen them for the first time on that day?

A;

Yes, sir.

FISCAL BAYANI:

That's all, Your Honor."

(TSN, January 19, 1989, pp. 17-18).

Furthermore, credence is accorded to the testimonies of prosecution witnesses who are law enforcers for it is presumed that they have regularly performed their duty in the absence of convincing proof to the contrary (*People v. Sariol*, 174 SCRA 237 [1989]; *People v. Claudio*, 160 SCRA 646 [1988]; *People v. Khan*, 161 SCRA 406 [1988]).

Appellant Segwaben likewise assails the validity of his arrest. He alleges that the arresting officers were not armed with a warrant of arrest, neither was he committing a crime at the time of his arrest (*Rollo*, Appellant's Brief, p. 43).

Rule 113, Section 5(a) of the Rules of Court provides, that:

"Sec. 5. Arrest without 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 x x x x x."

Having caught appellant in flagrante as a result of a buy-bust operation, the policemen were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest (*People v. Paco*, 170 SCRA 681 [1989]; *People v. Rodriguez*, 172 SCRA 742 [1989]).

As above-mentioned, on April 25, 1989, appellant Segwaben filed a Motion to Allow Accused to Plead Guilty to a Lesser Offense. Said plea of guilty, although to a lesser offense, was made with the assistance of his counsel and after an exhaustive deliberation with the latter (*Original Records*, p. 221). This step taken by Segwaben only

confirms the findings of the lower court that he indeed committed an offense since a plea of guilty constitutes an admission of the crime and the antecedent circumstances in the information (People v. Enciso, 160 SCRA 728 [1988]). Although the Rules of Court allows an accused to plead guilty to a lesser offense (Sec. 4, Rule 118, Rules of Court), the same must be made before trial and not after the accused has been sentenced as in the case at bar.

PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

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

[*] Rendered by Judge Martin S. Villarama, Jr.

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