

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REBECCA VENTURA Y AYROSO, ACCUSED-APPELLANT.

G.R. No. 88670. November 19, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

REBECCA VENTURA, a destitute housewife vending tocino and doing laundry on the side to support ten (10) children, was charged in the Regional Trial Court of Kalookan City for drug pushing penalized under Sec. 4, Art. II, R.A. 6425, as amended, otherwise known as "The Dangerous Drugs Act of 1972". The Information specifically alleges -

"That on or about the 21st day of April 1988 in Kalookan City x x x the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver to Pat. Reynaldo Lechido, poseur-buyer, for P150.00 two (2) plastic bags of marijuana flowering tops knowing the same to be prohibited drug x x x x"

After trial, the court a quo rendered a decision[1] finding accused Rebecca Ventura guilty beyond reasonable doubt of the crime charged and sentenced her to suffer the penalty of reclusion perpetua[2] and pay a fine of P20,000.00, plus the costs.

Accused appeals. Her thrust is that the evidence for the prosecution is incredible and inconsistent with human experience, hence, her guilt has not been proved beyond reasonable doubt. She claims that she was merely a victim of a frame-up to make her shell out grease money for her release.

The People's evidence as culled from the testimonies of Pat. Reynaldo Lechido, Pfc. Abner Castro and NBI Chemist George de Lara tends to establish that at about 1:00 o'clock in the afternoon of 21 April 1988 the Narcotics Section of the Kalookan City Police received a report from an informant that a woman named Rebecca was peddling marijuana at Tirad Pass St., Morning Breeze Subdivision, Kalookan City. Acting on such report, a police team was formed under Pfc. Abner Castro for a buy-bust operation with Pat. Reynaldo Lechido, who acted as poseur-buyer, Pat. Eduardo Adawag, Pat. Romeo Espiritu, Pat. Jose Marte and Pat. Angel Lumabas as members.[3]

Half an hour later, the police team accompanied by the informant went to the designated spot at Tirad Pass St., Morning Breeze Subdivision. They saw Rebecca. As she, Pat. Lechido and the informant huddled, the other members of the team stood by some twenty (20) meters away. When the three (3) agreed that the merchandise would be delivered near the Bonifacio Monument, corner EDSA, Pat. Lechido handed the marked money to the accused who then left to get the stuff from her source. Pat. Lechido then reported to his comrades that Rebecca would be returning in a few minutes with the prohibited drug.[4]

After some thirty (30) minutes, Rebecca arrived at their rendezvous. She handed him the stuff, which she took from her pocket. Then Pat. Lechido scratched his head, a pre-arranged signal that the transaction was already consummated. At this moment, Pfc. Castro appeared and Pat. Lechido showed him the two (2) plastic bags said to

contain marijuana, each being about 7 to 8 inches long and could contain a kilo of marijuana per bag.[5] Rebecca was immediately placed under arrest and brought to the Police Headquarters for questioning. No marked money was found in her possession. The plastic bags were turned over to Cpl. Wilfredo L. Tamondong who then wrote his initials "WLT" on the plastic bags for identification purposes.[6]

Forensic Chemist George de Lara of the NBI affirmed on the witness stand his report[7] that the contents of the plastic bags were marijuana flowering tops.[8]

Accused-appellant pleads innocence. She claims that at around 1:30 p.m. of 21 April 1988 she was in her house at 54 Tirad Pass St., Morning Breeze Subdivision, washing clothes and attending to her children. Then she prepared to go to Novaliches, Quezon City, to collect her receivables for the tocino she earlier sold on credit. She took a tricycle to Monumento where she was to take a bus to Novaliches. However, while waiting for a ride in front of Mercury Drug Store in Monumento, a black bag 1-1/2 feet long fell near her. She did not notice where it came from. She was surprised. Then two (2) persons, who turned out to be policemen, picked up the bag. They forced her to admit ownership of it but she refused. She vehemently denied she was the owner of the bag.

She was brought to the police station at Sangandaan, Kalookan City, where she was booked and interrogated. There she was told to produce P10,000.00 otherwise she would be charged for drug pushing. She cried and told her arresting officers she did not have that much money. She was then taken to the inquest fiscal who did not ask her any question but merely signed the papers presented by the policemen. She was not able to file charges against the policemen because she was already detained and had no means to hire a lawyer.[9]

After a careful assessment of the evidence, We find the case of the prosecution too frail to sustain a conviction. While this does not imply that the evidence for the defense is strong, yet, settled is the rule that to sustain a conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[10] Indeed, the evidence for the prosecution must be overwhelming to overcome the constitutional presumption of innocence enjoyed by the accused, such that his guilt must be proved beyond reasonable doubt.[11]

In the case before Us, there are substantial facts or circumstances which engender serious doubt as to the guilt of the accused.

We find it unlikely, indeed, that in effecting the alleged buy-bust operation, the poseur-buyer would hand the marked money to the drug pusher even without the prohibited drug in sight, and no explanation is offered why there was no simultaneous delivery of the money and the stuff being bought, under the so-called "kaliwaan" system. Here, the poseur-buyer allegedly gave the marked money to the accused at Tirad Pass St., who then left with the undertaking to bring the stuff to the designated place in thirty (30) minutes. This is contrary to human experience and the standard practice in buy-bust operations. Being unknown to each other, the poseur-buyer would not entrust P150.00 to a drug trafficker, an underworld character, who could have simply disappeared with the money in the bustling fringes of the Bonifacio Monument Center. It strains credulity that the government agents would be too trusting by giving P150.00 to a pusher, a total stranger, and expect her to resurface in thirty (30) minutes with the prohibited drug, without even pinpointing the source of the marijuana. Trafficking in dangerous drugs is always done in haste, for time is of the essence, to avoid detection by the authorities. And why did they not endeavor to locate that source and include the same in their buy-bust operation?

Strangely, as already adverted to, no marked money was found in the possession of the accused when she was arrested; not even her share in the clandestine transaction. While it is true that the absence of marked money does not create a hiatus in the prosecution evidence,[12] under the peculiar circumstances obtaining in this case, We find such fact sufficient to taint the veracity of the government's version. It is almost unthinkable that the accused,

if she was really a pusher, would be left with no money in her possession immediately after the consummation of the transaction. After all, a drug pusher is not in the trade for nothing. That no money was recovered from her only lends credence to her claim that she was on her way to Novaliches to collect for the tocino she earlier sold on credit.

We likewise find it difficult to accept that a pusher would deliver marijuana in two (2) plastic bags, said to contain approximately one (1) kilo each, for a measly sum of P150.00. Moreover, these plastic bags are different from the small tea bags used by "professional" pushers in wrapping marijuana. With their size and weight, these bags cannot easily be concealed; consequently, the difficulty of hiding the prohibited drugs from public view makes it highly incredible that such illicit trade could have been carried out in a busy section of the city.

WHEREFORE, her guilt not having been proved beyond reasonable doubt, the judgment convicting accused REBECCA VENTURA is REVERSED and SET ASIDE. She is ACQUITTED of the crime charged, and her immediate release from custody is ordered unless she is held for another cause.

Costs de officio.

SO ORDERED.

Cruz, (Chairman), Padilla, and Griño-Aquino, JJ., concur.

[1] Penned by Judge Rene Victoriano, RTC-Kalookan City, Br. 124.

[2] The penalty under Sec. 4, Art. II, R.A. 6425, as amended, is life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00. However, the death penalty having been reduced to life imprisonment under the 1987 Constitution, the correct penalty to be imposed should be "life imprisonment", not reclusion perpetua which carries accessory penalties. See *People v. Fernandez*, G.R. No. 86495, 13 May 1992.

[3] Tsn, 2 June 1988, pp. 3-5; Tsn, 3 June 1988, pp. 3-5.

[4] Tsn, 3 June 1988, pp. 5-7.

[5] Id., p. 10.

[6] Id., pp. 8-12.

[7] Exh. "C".

[8] Exhs. "D" and "E".

[9] Tsn, 13 April 1989, pp. 3-23.

[10] *People v. Magallanes*, G.R. No. 63936, 7 January 1987, 147 SCRA 92, 94; *People v. Olaes*, G.R. No. 76547, 30 July 1990, 188 SCRA 91.

[11] *People v. CFI-Rizal (Quezon City)*, Br. IV, G.R. No. 57280, 9 May 1988; 161 SCRA 249.

[12] *People v. De la Cruz*, G.R. No. 87607, 31 October 1990; 191 SCRA 160, 161.

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