

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.CESAR LACBANES, ACCUSED-APPELLANT.*G.R. No. 88684. March 20, 1997*

Ponente: ROMERO, J.

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For selling marijuana, accused-appellant Cesar Lacbanes was arrested and charged with violating Section 4, Article II of Republic Act 6425 or the Dangerous Drugs Act. He was convicted by the Regional Trial Court of Palo, Leyte and sentenced to thirty years' imprisonment.[1] In his appeal before this Court, he assails his conviction on the ground that entrapment was never clearly established by the prosecution's evidence.

The prosecution relied on the testimony of PFC Ricardo Rosales, a member of the Narcotics Section of the Tacloban Police Station who testified that his command received information that accused-appellant had been peddling marijuana cigarettes in Tacloban City. A buy-bust operation was then set up after conducting surveillance on the accused-appellant. At around 4:15 p.m. of October 3, 1986 at the corner of Burgos and Tarcela Streets, Tacloban City, their confidential agent informed PFC Rosales and his team, composed of Patrolmen Arpon and Buena, Sgt. Madriaga and Lt. Saranza, that the former made contact with accused-appellant. Thereafter, the team deployed themselves in the area in such a way as to see clearly the transaction.

According to PFC Rosales, after the conversation of their confidential agent with accused-appellant, the former handed the latter two P5.00 bills with serial numbers MU80883 and MU840129. In return, the latter handed sticks of suspected marijuana cigarettes to the former. Thereupon, the team approached accused-appellant, introduced themselves as members of the Narcotics Section and arrested him. They found the two P5.00 bills in his possession and recovered three sticks of suspected marijuana cigarettes. Accused-appellant was brought to the police station where upon investigation, he allegedly admitted that the marijuana in his possession was for sale and that a friend of his named Francing was the source of the prohibited drug. The witness testified that they informed accused-appellant about his constitutional rights before the investigation and that the latter understood them. However, they allegedly forgot to put down in writing accused-appellant's admission of guilt.[2]

The only other witness for the prosecution was Lt. Liza Madeja-Sabong, a forensic chemist of the PC Crime Laboratory, who affirmed her own findings and declared in Chemistry Report No. NB-134-86[3] that the three suspected marijuana cigarettes were positive for marijuana, a prohibited drug.[4]

Accused-appellant flatly denied selling the three sticks of marijuana cigarettes. He testified that on said date, he was asleep in his house from two o'clock until past four o'clock in the afternoon. He was awakened by his father who told him that a certain Lieutenant Boy Saranza, together with Patrolmen Arpon and Buena, would like to take him to the police station to answer some questions. He denied knowing PFC Rosales and stated that the latter was not with the arresting group.

At the police station, when asked if he knew the whereabouts of one Cresencio de la Cruz, he answered in the negative. He also testified that the investigators forced him to affix his signature on a piece of paper, the contents

of which he did not know at the time but which turned out to be a receipt for property seized. The said receipt showed that the three sticks of marijuana cigarettes and the two marked P5.00 bills were seized from his possession. He claimed that the policemen filed this case against him when he could not give any information about NPAs.

He asserted that he had never been charged or convicted of any crime and that he was also a confidential agent of the Regional Security Unit, as well as a barangay tanod.[5]

Another witness, Cpl. Felix Dacut, corroborated accused-appellant's claim that he was a confidential agent or a civilian informer of the Regional Security Unit.[6] Capt. Manuel Abuda of the INP, Tacloban City, likewise testified that he knows the accused-appellant to be of good moral character and that the latter was used in the past as an agent both in buy-bust and sell-bust operations.[7]

On the issue of credibility, Judge Pedro S. Espina held that as between the positive identification and assertion of the arresting officers and the mere unsubstantiated denial by the accused-appellant, the former is more worthy of credence. The trial court found the prosecution's evidence weightier inasmuch as the arresting officers enjoy the presumption of regularity in the performance of their public functions which has not been rebutted by the defense. Coupled with the presumption is the lack of any proof of improper motives on their part.

The trial court also found the defense's version of the incident inherently incredible stating it was hard to believe that accused-appellant, a barangay tanod and a confidential agent of the military who reached second year high school, would readily sign a blank sheet of paper presented to him by the authorities without any protest or objection. Neither did accused-appellant's introduction of evidence of good character convince the trial court of his innocence as he was unable to overcome the evidence for the prosecution.[8]

In this appeal, accused-appellant contends that the failure of the prosecution to present the confidential informant-turned poseur-buyer is a violation of his constitutional right to know the witnesses against him and meet them in court. He also contended that since the testimony of PFC Rosales revolves around the confidential informant who cannot corroborate the same, said testimony would be plain hearsay and unworthy of credence. Therefore, the prosecution failed to establish clearly the fact of entrapment. Moreover, the defense pointed out that although PFC Rosales, the prosecution's star witness, was within earshot, he did not testify as to the conversation between the confidential informant and the accused-appellant.

This Court is not persuaded. PFC Rosales did testify that he saw the poseur-buyer and accused-appellant exchange the two P5.00 bills and the three marijuana sticks.[9] The P5.00 bills were presented as evidence[10] and a photocopy of the same, the faithful reproduction of which was admitted by the defense, was likewise proffered in the trial court.[11] The three sticks of marijuana cigarettes were also presented before the trial court and identified by PFC Rosales as the ones recovered from the poseur-buyer.[12] This Court held in *People v. Vocente*[13] that:

"The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction whereby as in this case, the accused handed over the tea bag of marijuana upon the agreement with the poseur-buyer to exchange it for money. x x x What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices. The identity of the tea bag of marijuana which constitutes the corpus delicti was established before the court." (Emphasis supplied)

In other words, accused-appellant was caught in flagrante delicto. In every prosecution for illegal sale of dangerous drugs, what is material and indispensable is the submission of proof that the sale of illicit drug took place between the seller and the poseur-buyer.[14]

There was no need to present the poseur-buyer as PFC Rosales witnessed the whole transaction where the marked money was exchanged for three sticks of marijuana cigarettes. The settled rule is that the testimony of a lone prosecution witness, as long as it is positive and clear and not arising from an improper motive to impute a serious offense to the accused, deserves full credit.[15] This Court has ruled in several cases that non-presentation of the informer, where his testimony would be merely corroborative or cumulative, is not fatal to the prosecution's case.[16]

Accused-appellant, on his part, merely denied that he sold the three sticks of marijuana cigarettes. If he tried to use alibi as defense, he should have presented his father in court to corroborate his version that he was in the latter's house when he was apprehended.

Accused-appellant, through his statements implied that he was a victim of a "frameup." However, x x x like alibi, frameup is a defense that has been invariably viewed by the Court with disfavor as it is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. Clear and convincing evidence are required to prove the defense of "frameup" which, unfortunately, are inexistent here.[17]

Accused-appellant's claim of a "frameup" is not credible as he gave conflicting motives of the police authorities therefor. In his direct examination, he claimed that he was framed up by the policemen because he did not supply them with information regarding NPAs.[18] In the cross-examination conducted by the prosecution, however, he alleged that the policemen were retaliating against him for working for the Regional Security Unit instead of for them.[19] Such failure on the part of the accused-appellant to muster convincing proof of a frameup lends credence to the version of the prosecution.

In *People v. Velasco*,[20] this Court held that in the absence of proof of any intent on the part of police authorities to falsely impute such a serious crime against appellant, as in this case, the presumption of regularity in the performance of official duty, as well as the doctrine that findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the self-serving and uncorroborated claim of appellant that she had been framed. Time and again, this Court has ruled that the findings of the lower court with regard to the credibility of witnesses are accorded great weight and respect since it had the opportunity to observe the demeanor of the witnesses as they testified before the court. Unless substantial facts and circumstances have been overlooked or misunderstood by the latter which, if considered, would materially affect the result of the case, this Court will undauntedly sustain the findings of the lower court.[21]

The accused-appellant tried to argue on his behalf that no surveillance was conducted before the buy-bust operation. In *People v. Ganguso*,[22] it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*,[23] that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.

Additionally, accused-appellant alleged that the marked money was not presented as proof before the trial court. Contrary to said submission, however, the marked money was presented as proof during the direct examination of PFC Rosales.[24] The defense even admitted that the photocopy of the marked money was a faithful reproduction of the ones found in the person of accused-appellant.[25] Nonetheless, this Court held that the absence of the marked money does not create a hiatus in the evidence for the prosecution as long as the sale of the dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.[26]

This Court cannot, however, accept as evidence the receipt for property seized purportedly signed by

accused-appellant as proof that the three sticks of marijuana cigarettes, as well as the two P5.00 bills, were seized from him, for the prosecution failed to prove that he was assisted by counsel at the time. Neither does this Court condone such practice for this is tantamount to an extra-judicial confession for the commission of the offense.

In *People v. Ang Chun Kit*,^[27] this Court held that "conforme to these documents are declarations against interest and tacit admissions of the crime charged, since merely unexplained possession of prohibited drugs is punished by law. They have been obtained in violation of his right as a person under custodial investigation for the commission of an offense, there being nothing in the records to show that he was assisted by counsel."

This Court also declared in *People v. De Las Marinas*,^[28] that it is the police officers who confiscated the same who should have signed such receipt. Undoubtedly, this is a violation of the constitutional right of appellant to remain silent. Here he was, in effect, made to admit the commission of the offense without informing him of his right. Such a confession obtained in violation of the Constitution is inadmissible in evidence.

Nevertheless, while said receipt of property seized is inadmissible in evidence, it was sufficiently established by the categorical and positive assertions of witnesses as shown in the records, that indeed accused-appellant committed the offense of selling the three sticks of marijuana cigarettes.

Accordingly, this Court finds accused-appellant Cesar Lacbanes guilty beyond reasonable doubt of violating Sec. 4, Art. II, of R.A. 6425, as amended. Under the said provision, the penalty should have been reclusion perpetua to death and a fine of five hundred thousand pesos to ten million pesos. With the passage of R.A. 7659, particularly Sec. 13 amending Sec. 4 of R.A. 6425, the penalty to be imposed shall now depend on the quantity. Since the offense was committed in 1986, the quantity of prohibited drugs involved was immaterial. Inasmuch as the amendatory provisions are, however, favorable to accused-appellant, they should be given retroactive effect.

Under the provisions of Section 20, Republic Act No. 6425 as last amended by R.A. 7659, which became effective on December 31, 1993, and as interpreted by this court in the case of *People v. Simon*^[29] and *People v. De Lara*,^[30] if the quantity of the marijuana involved is less than 750 grams, the imposable penalty, in the event that the conviction should be affirmed, shall be within the range of prision correccional (from six [6] months and one [1] day to six [6] years) to reclusion temporal depending upon the quantity of marijuana involved.

As in *People v. De Lara*,^[31] there was no evidence of the weight of the three sticks of marijuana cigarettes seized in the case at bar. Nevertheless, adhering to the doctrine in the earlier case, this Court resolved the doubt in favor of accused-appellant and concluded that the quantity involved was: (i) below 750 grams; and (ii) not less than 250 but not more than 499 grams. Hence, the maximum imposable penalty should be prision mayor and the minimum, prision correccional.

WHEREFORE, the Decision appealed from is AFFIRMED with the MODIFICATION that accused-appellant should suffer an indeterminate penalty of FOUR (4) years and TWO (2) days of prision correccional, as minimum, to EIGHT (8) years and ONE (1) day of prision mayor, as maximum.

Since accused-appellant has already served ten years, two months and seventeen days, which is beyond the maximum penalty imposed for his offense, he is hereby ordered RELEASED immediately, unless he is being held for some other legal grounds.

SO ORDERED.

Regalado, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Decision, p. 154, Records.

- [2] TSN, July 8, 1987, pp. 4-8.
- [3] Records, p. 55.
- [4] TSN, July 8, 1987, pp. 1-4.
- [5] TSN, August 4, 1988, pp. 4-11.
- [6] TSN, August 4, 1988, pp. 4-11.
- [7] TSN, July 18, 1988, pp. 2-11.
- [8] Decision, Records, p. 152.
- [9] TSN, July 8, 1987, pp. 6-7.
- [10] TSN, July 8, 1987, p. 6.
- [11] Records, pp. 20-22.
- [12] Records, p. 53.
- [13] 188 SCRA 100 (1990) citing *People v. Macuto*, 176 SCRA 762 (1989).
- [14] *People v. Ang Chun Kit*, 251 SCRA 660 (1995).
- [15] *Garcia v. CA*, 254 SCRA 542 (1996).
- [16] *People v. Abelita*, 210 SCRA (1992).
- [17] *People v. Velasco*, 252 SCRA 135 (1996).
- [18] Appellant's Brief, p. 2.
- [19] TSN, August 4, 1988, p. 22.
- [20] *Supra*.
- [21] *People v. Lua*, G.R. Nos. 114224-25, April 26, 1996.

[22] 250 SCRA 268 (1995).

[23] 235 SCRA 455 (1994).

- [24] TSN, July 8, 1987, p. 6.
- [25] Records, pp. 20-22.
- [26] *People v. Ganguso*, 250 SCRA 268 (1995).

[27] 251 SCRA 660 (1995).

[28] 196 SCRA 5104 (1991).

[29]234 SCRA 555 (1994).

[30] 236 SCRA 291 (1994).

[31]Supra.

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