

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ALVINO ANCIANO AND SAMUEL ALMARIO, ACCUSED-APPELLANTS.

G.R. No. 88937. September 13, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Court affirms this conviction rendered by the trial court[1] sentencing the two accused to life imprisonment for violation of the Dangerous Drugs law.

The records show that on September 24, 1988, the Narcotics Command (NARCOM) of Cebu City received information that the two accused were peddling marijuana along Nichols Heights, V. Rama Avenue, in Guadalupe, Cebu City. Forthwith, PS/Lt. Emmanuel Ughoc, Deputy Executive Officer and Chief of Operations Division thereof, formed a team to entrap the duo. He designated SSgt. Hermes Recla as team leader, and certain PO3 Gomez and about seven civilian agents as back-up. Thereupon, they motored to Nichols Heights.

SSgt. Recla approached the targetted area whereupon two persons accosted him. Recla informed them that he was looking for a certain Sammy (the accused Samuel Almario) from whom to buy marijuana. Almario then introduced himself as the "Sammy", and asked for the money. Recla handed him a marked twenty-peso bill. The accused Almario produced nine marijuana cigarettes which he handed to Recla. The latter then tapped his head as a cue to his back-up, who waited in the distance. Shortly, the team swooped down on the two and announced a bust.

Lt. Ughoc recovered the marked twenty-peso bill from Almario, together with six more sticks of marijuana.

The effects were then submitted for laboratory examination, where Myrna Areola, forensic analyst, positively identified them as marijuana.

On September 27, 1988, Asst. City Fiscal Virginia Palanca-Santiago filed an information, formally accusing Anciano and Almario of marketing prohibited substances (marijuana) in violation of Section 4, Article II, in relation to Section 21, Article IV, of the Dangerous Drugs Act of 1972.

On arraignment, the two entered pleas of "not guilty".

Both accused denied the charges and alleged that at about 5:00 in the afternoon of September 24, 1988, they were playing basketball at Nichols Heights after which they rested under a tamarind tree. All of a sudden, a three-wheel motorcycle arrived, where two armed persons dismounted, pointed their firearms at them, and warned: "This is an arrest, don't run." [2]

They were allegedly bodily searched and later handcuffed. That notwithstanding, they allegedly found nothing in their persons. They were later brought to the police headquarters.

The two also claimed that they had in fact worked for Lt. Ughoc and SSgt. Recla as informers, and were responsible for successful drug busts in the past.

The accused Almario added that in 1986, he informed Sgt. Recla that he was quitting as an informer. That allegedly marked Recla, who warned him: "If I see you again, you better watch out." [3]

On rebuttal, Lt. Ughoc denied that the two accused ever worked as informers because he had enough men to perform intelligence work for NARCOM. He admitted, however, having known Almario.

As indicated at the outset, the court convicted the two accused.

The two now urge a reversal, alleging that the trial court erred, in the main, in its appreciation of the evidence.

We have repeatedly held that the matter of appreciating evidence and assessing the credibility of witnesses is an undertaking that rests primarily with the trial court. [4]

Moreover, the defense has not convincingly shown why Lt. Ughoc or SSgt. Recla should testify falsely against them, unless otherwise, they said the truth.

The fact that the accused Almario was known to Lt. Ughoc and SSgt. Recla does not discount the possibility of marijuana pushing on the part of both accused. Almario insists that they could not have so confidently passed the illegal plant to SSgt. Recla because they knew that he was a NARCOM agent is not only contradicted by hard evidence that marijuana was in fact found in their persons, it is not, in addition, inconsistent with the NARCOM's claims that the two were in fact peddlers of marijuana. Indeed, the accused could have precisely, and so self-assuredly, handed the nine marijuana cigarettes to the sergeant because they knew him.

We can not accept pretensions that the "bust" was the mere handiwork of SSgt. Recla, who had resented the accused Almario's quitting work for NARCOM two years before. We find it inconceivable why SSgt. Recla could have so recklessly contrived a false bust for that reason alone, especially when the Cebu NARCOM has been shown to have enough men to assist it in gathering intelligence.

The arrest of the accused without a warrant is incidentally sanctioned by the Rules, "[w]hen, in [the peace officer's] presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." [5] The arrests in question fall within "is actually committing", the second mode, and in that case, police action was justified. To be sure, Lt. Ughoc, et al. could have easily procured a judicial warrant since he was aware of the accused's operations days before, instead of resorting to entrapment, but the question is not why he did not secure one. The question is whether or not his men acted legally in effecting a warrantless arrest. As we said, we find it justified in the circumstances.

WHEREFORE, the Decision, dated May 30, 1989, is AFFIRMED. With costs against both appellants.

SO ORDERED.

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

Paras, J., on leave.

[1] Regional Trial Court, Branch 10, Cebu City; Hon. Cañares, Leonardo, presiding Judge.

[2] Original Record, 80.

[3] Id., 81.

[4] See, e.g., *People v. Solares*, No. L-82363, May 5, 1989, 173 SCRA 203, and hosts of cases mentioned therein.

[5] RULES OF COURT, Rule 113, sec. 5.

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