

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANOLO CARPIO Y SUBARAN, ACCUSED-APPELLANT.

G.R. No. 88942. March 25, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant was a store owner but it appeared he was selling not only the usual sari-sari goods from bread to bubble gum. Among his stocks was marijuana, although this was of course not displayed. The police got wind of his clandestine business and laid a trap for him. Ensnared as planned, he was arrested and charged with violation of Section 4, Article II, of the Dangerous Drugs Act.

According to the prosecution, Manolo Carpio was reported by several informers to be selling marijuana at Marcela Street in Maypajo. Acting on this information, the Anti-Narcotics Unit of the Caloocan City Police Station organized a "buy-bust" team on December 15, 1988, for the purpose of apprehending him.

The team was composed of Patrolmen Angel Lumabas, Manuel Valdoz, Jose Marte, Edgardo Adawag, and Eliseo Gargaritano. Gargaritano was to pose as the buyer and for this role was provided with two five-peso bills to be used in the sham purchase. The serial numbers of the bills were recorded in the police blotter by Sgt. Manuel Buenaobra, as KH695187 and KC842177.

Upon arrival at the target area, the team dispersed, with Gargaritano proceeding to Carpio's store in search of their quarry. The other agents posted themselves in various places where they could covertly witness the sham transaction.

Gargaritano stood outside the store and asked Carpio for marijuana, offering the marked bills in payment. Carpio took the money through the steel grill that separated them and went inside his house. He returned after a few minutes with a piece of folded pad paper which he handed to Gargaritano. The paper contained marijuana flowering tops. Gargaritano complained that the quantity was not worth P10.00 and asked Carpio to come outside to see for himself. As Carpio opened the gate of the store, Gargaritano grabbed his arm and the other policemen emerged from their respective vantage points and pounced upon him. Gargaritano retrieved the marked money from Carpio. The team then took their captive to the police station for investigation and detention.[1]

At the station, Gargaritano turned over the marked money and the marijuana to Buenaobra. The latter wrapped the marijuana in a sheet of bond paper and labeled it with his initials (M.R.B.) and those of Carpio (M.C.S.), after which he had it hand-carried by Adawag to the National Bureau of Investigation with a referral slip for its examination. Buenaobra also attached the marked bills to a sheet of bond paper, noting their serial numbers as KH695187 and KC842177, the same numbers he had previously jotted down in his logbook.[2]

It was also Buenaobra who took the joint sworn statement of Lumabas, Marte, and Valdoz[3] and the separate sworn statement of Gargaritano,[4] both describing the buy-bust operation. Gargaritano, Valdoz and Buenaobra were later to affirm their statements in separate testimonies at the trial.

Another prosecution witness was Felicisima Francisco, a forensic chemist of the NBI, who subjected the specimen sent by Buenaobra to chemical, microscopic and chromatographic examinations and found it positive for marijuana. She embodied her findings in a Certification[5] and a Dangerous Drugs Report,[6] which she later affirmed on the stand.

The marijuana was identified by Francisco[7] as well as by Gargaritano and Buenaobra, who also both identified the marked money.[8]

In his own defense, Carpio testified that in the morning of December 15, 1988, he was tending his store when Gargaritano, who was pretending to buy some cigarettes, suddenly grabbed him by the waist and pulled him outside. He was thrown into a bicycle sidecar and there handcuffed. His wife and his mother protested and asked why he was being arrested but Gargaritano simply asked them to go to the police headquarters if they liked. He was then taken in a Ford Fiera to the Caloocan City Police Station, where he was confined in a cell until evening. During his investigation by the inquest fiscal later that night, he denied ownership of the marijuana and the two five-peso bills.[9]

Carpio was corroborated by his wife, Magdalena Carpio, his mother, Muriel Carpio, and a neighbor, Tessie Veguilla. His mother admitted having called a congressman and the vice-mayor of Caloocan City for help[10] but both, officials apparently declined to intervene.

After trial, the Regional Trial Court of Caloocan City[11] rendered a decision disposing as follows:

WHEREFORE, in view of all the foregoing, this Court finds the accused MANOLO CARPIO Y SUBARAN guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425, as amended (Pusher), and hereby sentences said accused to suffer imprisonment of Reclusion Perpetua, to pay a fine of P20,000.00 and to pay the costs.

The marijuana flowering tops, subject matter of this criminal case, are forfeited in favor of the Government and the Deputy Sheriff of this Court is hereby directed to turn over the aforesaid marijuana flowering tops to the Dangerous Drugs Board for their disposition.

The accused shall be credited in the service of his sentence with the full time he has undergone preventive imprisonment, pursuant to the provisions of Article 29 of the Revised Penal Code, as amended.

Carpio then came to this Court on appeal. He subsequently filed a petition for bail pending appeal which we denied.

At the outset, let it be stated that questions of fact, including the assessment of the credibility of witnesses, are best resolved by the trial court, and such resolution is received by the appellate court with much respect, if not indeed as conclusive, in the absence of the established exceptions calling for its reversal. As this Court said in *People v. De Guzman*: [12]

In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an

informed and reasoned verdict.

With the above considerations in mind, we now proceed to examine the arguments of the defense for the reversal of the judgment of conviction.

The defense questions the credibility of Gargaritano for certain alleged inconsistencies, as when he said he gave Carpio a ten-peso bill when the exhibits offered consisted of two five-peso bills; gave the serial numbers of these bills as KH845177 and KC592187 when they were actually KH695187 and KC842177; and testified that he wrote an "X" inside the letter "O" in the word PISO on the said bills when the mark thereon was not an "X" but a dot.

The record shows that all these inconsistencies were satisfactorily explained by Gargaritano.

He said that when he spoke of the ten-peso bill, he was actually referring to the amount of the purchase price, which consisted of 2 five-peso bills.[13] He did mis-state the serial numbers earlier, but as he testified on re-direct examination, this was because he gave these figures from memory only and without consulting his records.[14] Significantly, the serial numbers of the bills submitted in evidence did coincide with the numbers Buenaobra said he noted in the police blotter. Gargaritano also said that it was his practice to use either a cross or a dot in marking bills for buy-bust operations and that in this particular case he thought he had used a cross when in fact he had dotted the bills. He said that the number of operations in which he had participated was the cause of this confusion.[15]

As to his seeming self-contradiction when he first testified that there was only one informer and later said there were eight, the record shows that there was only one informer who was present at their briefing prior to the buy-bust operation.[16] Before that, however, they had received information from no less than eight persons that Carpio was engaged in drug-pushing in the vicinity of Marcela street.[17]

The defense also contends that the joint affidavit[18] of Lumabas, Valdoz and Marte should not have been admitted in evidence because it was not signed by Marte. The Court notes, however, that it was signed by Valdoz, who identified and affirmed it on the stand. The document was therefore admissible as part of his own testimony even if the other signatories were not presented at the trial.

We do not agree that the non-submission of the police blotter where the serial numbers of the marked bills were recorded was fatal to the prosecution. If the defense felt that the bills were not the best evidence of the money used for the operation, there is no reason why it should not have objected to their admission on that ground. Not having done so, it is deemed to have waived this objection and cannot now raise it at this late hour. At any rate, if the defense felt that the logbook was vital to its cause, what it should have done was demand its production at the trial through a subpoena duces tecum for use as its own evidence.

We also find untenable the argument of the defense that the prosecution should have presented Adawag to testify on his part in the buy-bust operation. The defense cannot dictate on the prosecution the choice of the latter's witnesses. It is the prerogative of each party to determine which evidence to submit and, if it so pleases, to dispense with persons who will give merely corroborative testimony, as in the case of Adawag. After all, Gargaritano, Valdoz and Buenaobra had already testified on the details of the arrest of the accused-appellant. If the defense felt that Adawag's version of the operation was vital, it should itself have called him to the stand as its own witness to refute the statements of his team-mates.

The argument that the conviction should be reversed because of the failure of the prosecution to present the informer should also be rejected. *People v. Rojo*,[19] which the defense cites, is not in point for in that case the informant who was not presented was alleged to have been also the poseur-buyer. As such, he was in the best position to testify on the details of the purported sale of the marijuana by the accused-appellant and so should

have been presented by the prosecution. Moreover, the Court doubted in that case if there was any entrapment at all. By contrast, there is no doubt in the case at bar that the buy-bust operation was actually conducted, and the principal witness to this operation was the poseur-buyer himself in the person of Gargaritano. Gargaritano testified. The informer did not have to because he was not a participant in that operation and would have been incompetent to narrate it.

The invocation by the defense of *Stonehill v. Diokno*[20] deserves only a brief reminder of an elementary Principle of law. There is no need to obtain a search warrant or a warrant of arrest where the culprit is caught red-handed like Carpio. Under Rule 113, Section 5 of the Rules of Court, a person may be arrested without warrant if he is actually committing an offense, and a lawful search may also be made on his person, also without warrant, as an incident of the lawful arrest.[21] This was what was done to the accused-appellant in the morning of December 5, 1988.

The defense complains that the trial court did not give credence to the accused-appellant's denial, as if such denial were enough to raise the reasonable doubt that would forestall his conviction. It was not. The evidence adduced by the prosecution was strong enough to overcome the constitutional presumption of his innocence and the burden thus fell on him to offer more convincing evidence than a mere denial.

The corroboration of Carpio's testimony by his wife, his mother and his neighbor who, was also his mother's lessee, was correctly received with suspicion of bias by the trial court. On the other hand, the witnesses who testified against him had no known or established motive to perjure themselves, let alone the presumption of regularity in the performance of their official functions. Carpio himself admitted that he did not know any of the prosecution witnesses and thus impliedly negated any evil purpose behind their respective testimonies. The Court itself sees no reason why the police officers herein involved should single out an apparently innocent store-owner and charge him with a severe offense calling for no less than imprisonment for life. No reason, that is, except his guilt.

As for the theory that Carpio would not have been so careless as to sell marijuana to Gargaritano, whom he had never met before, we note with not a little concern the growing casualness of drug pushers in the pursuit of their illicit trade, as if it were a perfectly legitimate operation involving no particular caution or qualm of conscience. The Court observed this heedless attitude in *People v. Tandoy*[22] thus:

Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billard hall (*People v. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329; *People v. Sarmiento*, G.R. No. 72141, January 12, 1987, 147 SCRA 252), in front of a store (*People vs. Khan*, supra) along a street at 1:45 p.m. (*People v. Toledo*, G.R. No. 67609, November 22, 1985, 140 SCRA 259), and in front of a house (*People vs. Policarpio*, G.R. No. 69844, February 23, 1988).

The other arguments of the defense are so insubstantial as to merit nothing more than short shrift. If anything, they only prove the desperation of the accused-appellant to prove innocence where there is none and to resist the proof of guilt that has been established against him beyond the whisper of a doubt.

The Solicitor General recommends affirmance of the decision in toto, forgetting that the penalty prescribed by Section 4, Article II, of Rep. Act No. 6425 is "life imprisonment to death," not reclusion perpetua. Life imprisonment is not exactly synonymous with reclusion perpetua, which carries with it the accessory penalties prescribed in Article 41 of the Revised Penal Code. Life imprisonment does not.[23] As this Court has earlier

advised, trial courts should be careful in using the correct designation of the penalties prescribed by the Revised Penal Code or by special laws, to avoid misunderstanding as to their scope and consequences.[24] In the case before us, the penalty of "reclusion perpetua" should be changed to "life imprisonment," conformably to the above-mentioned section.

WHEREFORE, as above modified, the decision of the trial court is AFFIRMED and, accordingly, the appeal is DISMISSED, with costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Griño-Aquino, and Medialdea, JJ., concur.
Bellosillo, J., on leave.

[1] TSN, May 4, 1989, pp. 7, 19.

[2] Ibid., May 5, 1989, pp. 5-7.

[3] Exhibit "H."

[4] Exhibit "F."

[5] Exhibit "B."

[6] Exhibit "E."

[7] TSN, April 20, 1989, pp. 9-10.

[8] Ibid., May 4, 1989, p. 11; May 5, 1989, pp. 6-8; May 11, 1989, p. 3.

[9] Id., May 18, 1989, pp. 2-9.

[10] id., May 17, 1989, p. 35.

[11] Thru Judge Rene Victoriano.

[12] 188 SCRA 407.

[13] TSN, May 4, 1989, p. 8.

[14] Ibid., May 11, 1989, pp. 8-9.

[15] Id., p. 7.

[16] id., May 4, 1989, p. 5.

[17] id., p. 13.

[18] Exhibit "H."

[19] 175 SCRA 119.

[20] 20 SCRA 383.

[21] Cruz, Constitutional Law, 1991 Ed., p. 150 citing Adams vs. Williams, 47 U.S. 143.

[22] 192 SCRA 28.

[23] People vs. Del Pilar, 188 SCRA 37.

[24] People vs. Ansing, 196 SCRA 374; People vs. Dekingko, 189 SCRA 512; People vs. Manlansan, 189 SCRA 619.

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