

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO FERNANDEZ Y BISCO, ACCUSED-APPELLANT.

*G.R. No. 90019. December 08, 1993*

Ponente: BELLOSILLO, J.

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### **BELLOSILLO, J.:**

WILFREDO FERNANDEZ Y BISCO was charged before the Regional Trial Court of Manila with violation of Sec. 4 of R.A. No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, for having sold and delivered to a poseur-buyer on 10 February 1987 five (5) sticks of marijuana cigarettes for P20.00 without being authorized by law, well-knowing that marijuana is a prohibited drug.[1]

After trial, the court a quo rendered judgment[2] finding the accused guilty beyond reasonable doubt of violation of Sec. 4 of R.A. 6425, as amended, and sentencing him to life imprisonment and to pay a fine of P20,000.00.

In his appeal, the accused prays for acquittal asserting that the trial court erred (a) in convicting him solely on the testimonies of prosecution witnesses who were neither privies to the sale nor heard the subject of sale and without the testimonies of the poseur-buyer and the informant who were principal parties to the alleged transaction; (b) in giving full faith and credit to the evidence adduced by the prosecution notwithstanding its inherent incredibility; and, (c) in not giving exculpatory value and weight to the evidence of the accused.[3]

Clearly, the pivotal issue in this appeal is the credibility of the prosecution witnesses.

The evidence of the prosecution shows that for about a week prior to 10 February 1987 the Narcotics Control and Investigation Service of the Western Police District (NCIS-WPD) had been receiving reports from concerned citizens and from drug users who were apprehended by the police about the drug-pushing activities of a certain "Willy" in the vicinity of a house situated at 1941 Maria Orosa St., Malate, Manila.[4] Pursuant thereto, a team of police operatives of the NCIS-WPD headed by Lt. Gaudencio B. Quibuyen conducted a surveillance of the place. As a result, the team learned that the accused, who occupied the house at 1941 Maria Orosa St., Malate, Manila, was the drug-pusher.

On 10 February 1987, at around 5:00 o'clock in the afternoon, the NCIS-WPD organized a buy-bust operation led by Lt. Gaudencio Quibuyen, with Pat. Melchor Borlongan, Pfc. Edgar Lopez, Pat. Jose Collantes, Jr., and Pat. Alfredo Sobrevilla as members.[5] Pat. Sobrevilla was designated poseur-buyer with the use of a marked P20-bill bearing the initials of Police Investigator P/Cpl. Jaime Gatchalian, and that the confidential informant would accompany Pat. Sobrevilla in his negotiation with the accused.

The team then proceeded to the given address and found the accused standing in front of the designated house. As Pat. Sobrevilla and the confidential informant approached the accused, the other members of the team who were in civilian clothes strategically positioned themselves to get a clear view of the impending transaction. Then the negotiation for the purchase of five (5) sticks of hand-rolled marijuana cigarettes between Pat. Sobrevilla, accompanied by the informant, and the accused began. After receiving the marked P20-bill from Pat. Sobrevilla,

the accused left only to return after a few minutes to give to the former five (5) sticks of hand-rolled marijuana cigarettes. Upon receipt thereof, Pat. Sobrevilla immediately apprehended the accused.[6] The other members of the buy-bust team closed in to assist Pat. Sobrevilla as the accused resisted his arrest. They found the marked money inside the pocket of the accused.

The police operatives thereafter brought the accused to NCIS-WPD Headquarters where he was turned over for investigation to Cpl. Jaime Gatchalian. Cpl. Gatchalian then apprised the accused of his constitutional rights before booking him for illegally selling marijuana.

In the meantime, the five (5) sticks of hand-rolled marijuana cigarettes were brought to the NBI Laboratory. Shortly after, NBI Senior Forensic Chemist, Felisa V. Borcelis, certified that her preliminary examination yielded positive results for marijuana.[7] She later confirmed her findings in a Final Report dated 11 February 1987, which was approved by Leonora C. Vallado, Officer-in-Charge of the Forensic Section, and duly noted by NBI Deputy Director for Technical Services, Manuel C. Roura.[8]

On the other hand, the accused presented a different version of the incident. He claims that after he arrived from his carpentry work, he rested inside his house for thirty (30) minutes; that he was surprised when two policemen pulled him up, frisked him and brought him to the police station; that a search on his person yielded nothing; that he was investigated for selling marijuana which he denied; that the policemen demanded P3,000.00 from him in exchange for his release without any charges; and, that upon his failure to give said amount he was charged with the crime of selling marijuana.[9]

As a general rule, We accord the utmost respect to the factual findings of the trial court unless it is clearly shown that it had overlooked certain facts of substance, which if considered, would affect the result of the case, or arbitrarily disregarded facts and circumstances of significance in its appraisal.[10]

A thorough study of the records reveals that none of the exceptions exists in the case at bar. Consequently, we have no alternative but to affirm the judgment of conviction by the trial court.

Appellant maintains that absent the testimonies of the poseur-buyer and the confidential informant, his guilt has not been proved beyond reasonable doubt. He points out that the testimonies of Lt. Quibuyen, Pat. Jose Collantes and Pat. Melchor Borlongan are insufficient because they did not see what was going on in the negotiation and did not hear the subject of the sale. Also, he claims that there are irreconcilable and unexplained contradictions in the testimonies of Lt. Quibuyen and Pat. Borlongan: Lt. Quibuyen declared that after receipt of the marked money, the appellant left to go to the interior of an alley and then came back to give marijuana cigarettes to Pat. Sobrevilla, whereas Pat. Borlongan testified that after receiving the marked money, the appellant immediately got something from his pocket and gave it to Pat. Sobrevilla.[11]

Aforesaid arguments are far from being persuasive. The apprehension of appellant was not done in a haphazard way. For a week prior to his arrest, the NCIS-WPD conducted a surveillance in the vicinity of a house located at 1941 Maria Orosa St., Manila, upon reports of a widespread drug-pushing in that area by a certain "Willy." Finding the reports true, the NCIS-WPD organized a buy-bust operation.

Appellant would make much of the fact that the police operatives were not able to hear the negotiation between him and the poseur-buyer for the sale of marijuana. But this circumstance alone is not fatal to the cause of the prosecution. The police officers were engaged in a buy-bust operation. Necessarily, they already had foreknowledge of the transaction which the poseur-buyer would enter into with appellant. The important aspect in their modus operandi is not the hearing but seeing the appellant selling the prohibited drugs to the poseur-buyer. The fact of appellant's drug-pushing was positively attested to by the police officers thus -

Atty. Tagarda (counsel de oficio for appellant):

Q: From Exh. '1-B', was the buy-bust operation at the corner of Maria Orosa and the alley marked '1-B', (sic) how far was the buy-bust operation in Exh. '1-B' from Maria Orosa?

Lt. Quibuyen

A: 5-6 meters, sir.

Q: And the accused when he got that five sticks of marijuana cigarettes, he was standing on the place where he was pointed to by the informer.

A: Yes, sir."[12]

Pat. Jose R. Collantes

Atty. Tagarda

Q: You said you saw Wilfredo Fernandez and Sobrevilla talking.

A: Yes, sir.

x x x x

Q: And after that what happened?

A: Thereafter the subject received the marked money from Sobrevilla, sir.

Q: In other words, at a distance of 10 to 15 meters away they were having conversation was it low pitch or above pitch?

A: Low pitch, sir.

Q: When you say low pitch you cannot hear what was the subject matter they were talking about?

A: Yes, sir.

Q: Since you were not able to hear what they were conversing, you would not know what actually transpired between Wilfredo Fernandez and Sobrevilla?

A: I did not hear the transaction but I am sure that it was intended to purchase marijuana sir.

Q: What made you sure that the money was intended to purchase marijuana.

A: It was a buy-bust operation, sir.

Q: Sobrevilla delivered the money to Wilfredo correct?

A: Yes, sir.

Q: And it took one minute?

A: Yes, sir.

Q: Your only personal knowledge of the transaction was that Sobrevilla delivered the P20-bill to Wilfredo Ferandez, is that what you mean?

A: Sobrevilla was introduced by the confidential informant and he handed the money.

Court

Q: What was handed and who handed?

A: Sobrevilla handed over the marked money to subject Wilfredo Fernandez sir.

Q: What else?

A: After which in return Wilfredo Fernandez handed over a marijuana cigarette sir.”[13]

Against such positive declarations, the testimony of the poseur-buyer or the confidential informant is no longer material as the same would merely be corroborative. It would have been different if the police officers were unable to see the actual sale of the marijuana; then the poseur-buyer and the confidential informant should have been presented as witnesses.[14] As regards the inconsistencies cited by appellant in the testimonies of Lt. Quibuyen and Pat. Borlongan, we find that these refer to trivial matters which do not affect the integrity of the prosecution evidence. The question of whether appellant went into the interior of the alley to get the marijuana sticks or simply produced them upon receipt of the marked money is beside the point. The important fact is that he was caught in flagrante delicto selling marijuana as a result of a buy-bust operation. In *People v. Fernandez*,[15] we stated -

"The inconsistencies (on minor matters) may be caused by the natural fickleness of memory which even tends to strengthen rather than weaken the credibility of the prosecution witnesses because they erase any suspicion of rehearsed testimony. What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole."

Appellant's testimony that he was in his house resting when police operatives frisked him although finding nothing and then arresting him just the same, cannot be given credence. If these accounts were true, he or his mother who corroborated his testimony could have filed counter-charges against the police operatives, or either of them could have called the attention of the Fiscal regarding the irregularity of his arrest. But they did not.

Additionally, in his "Sinumpaang Salaysay" (Sworn Statement) dated 12 March 1987 which he signed and submitted to the Fiscal, appellant related a different story of the incident. He stated that on 10 February 1987, at about 5:45 in the afternoon, he was arrested in front of his house after a person exchanged a P20-bill with his two (2) P10-bills.[16] However, he repudiated his "Sinumpaang Salaysay" before the trial court, claiming that his lawyer, whose name he cannot recall, and his 19-year old sister prepared it.[17]

Appellant's belated action militates against his credibility. If he really felt then that the statements contained in his "Sinumpaang Salaysay" were not true, he should not have signed the same. Appellant did not even present his sister to substantiate his allegations.

Significantly, in his testimony, appellant admitted that he did not even know the arresting officers before then and that he could not think of any reason why they would charge him for drug-pushing.[18]

Ironically, appellant's declaration boosts the position of the prosecution case. The lack of any ill-motive on the part of police officers to testify falsely and impute to appellant a grave offense is of considerable evidentiary weight in assessing the credibility of witnesses.[19] Absent any proof of improper motives, the prosecution witnesses who are law enforcers are presumed to have regularly performed their duty in arresting appellant. Their testimonies are thus entitled to full faith and credit.

We find that the evidence on record has clearly and fully established the guilt of appellant beyond reasonable doubt. The trial court was therefore correct in convicting appellant for violation of Sec. 4, Art. II, of RA 6425, as amended.

WHEREFORE, the decision of the court a quo finding accused-appellant WILFREDO FERNANDEZ Y BISCO guilty of violation of Sec. 4, R.A. 6425, as amended, and sentencing him to life imprisonment and to pay a fine of P20,000.00 being in accord with law and the evidence is affirmed, with costs.

**SO ORDERED.**

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

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- [1] Records, p. 1.
- [2] Rollo, p. 23.
- [3] Rollo, p. 33.
- [4] TSN, 4 December 1987, p. 104.
- [5] TSN, 4 December 1987, p. 105.
- [6] TSN, 15 January 1988, p. 138.
- [7] Exh. D, Index of Exhibits.
- [8] Exh. E, Ibid.
- [9] TSN, 10 March 1989, pp. 17-20.
- [10] People v. Roldan, et al., G.R. No. 98398, 6 July 1993.
- [11] Rollo, pp. 34-36.
- [12] TSN, 28 October 1988, pp. 48-49.
- [13] TSN, 23 March 1988, pp. 93-95.
- [14] See People v. San Andres, G.R. Nos. 101189-90, 27 May 1993.
- [15] G.R. No. 86495, 13 May 1992, 209 SCRA 1, 11.
- [16] Exh. H, Index of Exhibits.
- [17] TSN, 10 March 1989, pp. 22-23.
- [18] TSN, 10 March 1989, pp. 23-24.
- [19] People v. San Andres, supra.

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