

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO JAYMALIN, DEFENDANT-APPELLANT.

G.R. No. 90452. October 19, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

This was not an ordinary buy-bust operation because a man was shot to death in the process. But that killing is not now before us. What concerns us here is the conviction of the accused-appellant for violation of the Dangerous Drugs Act.

The information against him read as follows:

INFORMATION

Undersigned accuses MARIO JAYMALIN of Kiangnan, Ifugao, of the crime of DRUG PUSHING defined and penalized by RA 6425, known as Dangerous Drugs Act of 1972, as amended successively by PD Nos. 44, 1675, 1683, 1708 and Batas Pambansa Blg. 179, committed as follows:

That on or about 8:30 o'clock, evening of October 20, 1983, at Brgy Pindongan, Municipality of Kiangnan, Province of Ifugao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, DID then and there wilfully, unlawfully and feloniously have under his possession and control, for the purpose of dealing, selling, disposing or pushing, eight (8) bunches of marijuana buds of more or less seven and one-half (7 1/2) kilos, from which dangerous and prohibited drugs can be manufactured.

At the trial, the prosecution sought to establish that on October 20, 1983, the INP Ifugao Command in Lagawe was informed of a planned sale of marijuana at Kiangnan, Ifugao. A team composed of Lt. Pedro Dulnuan, Lt. Edgar Danao, Cpl. Herman Kimmayong, Cpl. Daniel Kinakin and Patrolmen Catanglan, Binuhe and Talasig, was immediately organized to conduct surveillance of the place and to arrest the marijuana dealers.

At about 7:30 that evening, Lt. Dulnuan and his group met at Kiangnan Central School for briefing. The civilian informer, a certain Max, reported that the marijuana seller had agreed to meet the buyers at the St. Joseph School's compound at 9:00 p.m. It was decided that Danao and Kimmayong were to pose as the buyers while the rest were to back them up.

Danao and Kimmayong posted themselves in front of a store near the gate of the St. Joseph School. It was drizzling. At around 8:30 p.m., a man with an umbrella (later established as the accused Mario Jaymalin) approached them and asked, "Are you Max?" Kimmayong said no. Then the man asked, "Are you the contacted buyer of marijuana?" The answer this time was yes. The man then invited them into the SJS compound. They proceeded to the High School Boy's Department where he showed them a box containing marijuana.

Danao and Kimmayong inspected the contents of the box and, satisfied that they were marijuana, negotiated with the accused on the price. While they were haggling, Mario's younger brother, Francisco Jaymalin, who was wearing a long black overcoat and had a rifle slung over his shoulder, approached them. It was then that Danao

announced to the Jaymalin brothers that they were being arrested.

Francisco immediately ran and fired his gun. Ironically, it was Mario he hit in the arm. Hearing the gunshot, Dulnuan rushed to the scene and called on Francisco to stop. Francisco's reaction was to fire at him, hitting him in the stomach. The other team members then shot back at Francisco, hitting him in several parts of his body. Francisco surrendered. Two days later, he died.

The box produced by Mario was taken to the Ifugao INP headquarters for safekeeping. It was marked with the words "Champion" and "Magno." [1] Major Esteban initially inspected its contents and found them to be marijuana. This finding was confirmed by Captain Benjamin Rubio, a forensic chemist, after a laboratory examination he conducted at Camp de la Cruz, in Soyung, Isabela. [2]

As might be expected, the accused had a different story. His testimony was that in the evening in question, he arrived home in Kiangnan, Ifugao, and found that his young daughter was still out. After taking his supper, he went to his parent's house thinking that she would be there. To reach the place, he took a short cut through the grounds of the St. Joseph School. When he was near the main entrance of the school, he met two persons, one of whom asked him if he knew where Francisco Jaymalin lived. He said he did and even offered to lead them to his brother's house, which was near his parent's house.

The three entered the school compound and crossed the playground. As they approached one of the buildings, a man in a dark overcoat and carrying a box came towards them. One of the two men asked the stranger to identify himself but he did not answer. The question was repeated. Still the man did not answer but started to move back. At that point, Mario heard somebody shout, "Saan ka nga agtaray," meaning "Don't run away." Then, a shot rang out, followed by a rapid exchange of fire. The accused felt something hit his arm. More confusion followed and then someone cried out that he was surrendering. It was then that Mario recognized the man in the black coat as his brother, Francisco.

After trial, Judge Nicasio A. Baguilat of the Regional Trial Court, Lagawe, Ifugao, rendered a decision the dispositive portion of which declared:

In the light of all the foregoing, this Court finds the accused, Mario Jaymalin guilty beyond reasonable doubt of the crime charged and sentenced to suffer the penalty of RECLUSION PERPETUA OR LIFE IMPRISONMENT AND A FINE OF P20, 000.00.

The accused-appellant now assails that decision. He insists that the trial court erred in accepting the evidence for the prosecution, which he says is vitiated with inconsistencies and contradictions that "are far too numerous to be merely ignored as trivial."

According to the accused-appellant, the testimony of Kimmayong, who was supposedly one of the buyers in the "buy-bust" operation, varies on some points with his previous sworn statements. Thus, while initially declaring that he was not the one who prepared the rough and final sketch of the scene of the crime, he later recanted and admitted that he in fact prepared the two sketches.

The accused-appellant also points to conflicting statements and discrepancies in the testimonies of the prosecution witnesses, specifically on:

- (1) the clothes the "poseur-buyers" wore on the night of the operation;
- (2) the source, amount and the handling of the entrapment money;
- (3) the participation of the civilian informer identified only as Max; and

(4) the person who warned the Jaymalin brothers about the police.

His point is that their dissimilarities reflect on the credibility of the prosecution evidence, which should therefore have been totally rejected by the trial court.

The Court has examined these inconsistencies and finds that they relate to minor matters and do not impair the essential integrity of the evidence for the prosecution. Differences among witnesses in the recollection of details relating to the same incident may be expected, especially after more than a year has elapsed from the occurrence of the incident. Nevertheless, their respective declarations may not be rejected as totally untrue as long as there is basic agreement among them on the main points of the incident.

As we said in *People v. Ansing*:^[3]

This Court has stated time and again that minor inconsistencies in the narration of a witness do not detract from its essential credibility as long as it is on the whole coherent and intrinsically believable. Inaccuracies may in fact suggest that the witness is telling the truth and has not been rehearsed as it is not to be expected that he will be able to remember every single detail of an incident with perfect or total recall.

The accused-appellant also argues that he would not have been so reckless as to simply approach strangers and ask them outright if they were the contacted buyer as such conduct would not have been consistent with human behavior and experience.

The argument must also be rejected.

The Court has held that "what matters is not an existing familiarity between the buyer and the seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves."^[4] We have also observed that drug pushers have become increasingly casual about their activities, especially in isolated transactions like the one at bar, and have grown practically defiant, if not scornful, of the law they are violating.^[5]

As for the accused-appellant's doubt on the identity of the marijuana presented in evidence against him, we sustain the following observations of the Solicitor General:

x x x from the time said substance was seized from the Jaymalins, it never left official custody of the Police and PC offices concerned. There is thus here the presumption established by the Rules of Court that official duty has been regularly performed; in this instance, that indeed the sample tested came from the evidence seized and kept in official custody. (Rule 131, Sec. [m])

Appellant, who seeks to dispute this presumption, has the burden of proving his contrary contention. But this, appellant has failed to do, relying merely on his self-serving and bare contention. Thus, it has not been proved at all that there is anything amiss or irregular in the procedure followed by the authorities herein, and the presumption remains that the marijuana tested was part of the evidence seized and kept by the authorities.

Moreover, if indeed appellant had serious and substantial ground to support this contention, then it was incumbent upon him or his counsel to summon T/Sgt. Yadang, the evidence custodian herein, to testify concerning the case. That this was not done casts serious doubt on the veracity of appellant's claim. It is a rule that non-presentation by the prosecution of certain witnesses is not sufficient defense. (*People v. Laureta, Jr.*, 159 SCRA 256)

Furthermore, it is on record that even before the laboratory testing done on the seized marijuana, the same have been identified as such by the police officers-witnesses. This is no trifling matter, since these officers were exposed to drug-busting operations for years, as proved by their testimony, and were totally acquainted with the look and the odor of marijuana. (TSN, November 26, 1986, pp. 17 to 22; TSN, August 26, 1986, pp. 5 to 7)

It is true that the judge who ultimately decided the case had not heard the controversy at all, the trial having been

conducted by then Judge Emilio L. Polig, who was indefinitely suspended by this Court. Nonetheless, the transcripts of stenographic notes taken during the trial were complete and were presumably examined and studied by Judge Baguilat before he rendered his decision. It is not unusual for a judge who did not try a case to decide it on the basis of the record. The fact that he did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the transcript of their testimonies does not for that reason alone render the judgment erroneous.[6]

In asking us to believe that he was merely looking for his daughter when he was arrested without cause, the accused-appellant is straining our credulity. He seems to be suggesting that he was simply picked up although he was in fact helping the policemen locate his brother. The officers who conducted the buy-bust operation had not known him before that night and had no reason to concoct the drug-pushing charges against him. His version of the disputed incident, including his failure to recognize his own brother, is palpably inventive, not to say too loosely put together, as to induce only disbelief.

The Court sustains the findings of the trial court on what actually happened that evening of October 20, 1983, when the accused-appellant was arrested for possessing and selling marijuana. His own version of the disputed incident cannot stand against the positive evidence adduced by the prosecution, which has clearly overcome the constitutional presumption of innocence.

The judgment must nevertheless be rectified insofar as it sentenced the accused-appellant to “reclusion perpetua or life imprisonment.” We have held that the two penalties are not synonymous or interchangeable as reclusion perpetua carries accessory penalties that do not attach to life imprisonment.[7] Under the Dangerous Drugs Act, the proper penalty for the crime committed by the accused-appellant is life imprisonment plus the P20,000.00 fine,[8] and it is here so imposed.

WHEREFORE, the challenged decision as above modified is AFFIRMED and the appeal is DISMISSED. It is so ordered.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.
Padilla, J., on leave.

[1] TSN, October 8, 1985, p. 7.

[2] TSN, November 26, 1986, p. 6.

[3] 196 SCRA 374.

[4] *People v. Rodriguez y Teves*, 172 SCRA 742.

[5] *People v. Bernardino*, 193 SCRA 448; *People v. Peñero y Tagawa*, G.R. 91284, September 3, 1992.

[6] *Co Tao v. Court of Appeals*, 101 Phil. 188.

[7] *People v. Peñero y Tagawa*, supra; *People v. del Pilar*, 188 SCRA 37.

[8] Section 4 of Republic Act No. 6425 as amended by P.D. No. 1675.

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