

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE RAYRAY Y AREOLA, ACCUSED-APPELLANT.

G.R. No. 90628. February 01, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

After offering to sell 2.9452 grams of marijuana to a stranger in San Fernando, La Union, who turned out to be the Chief Administrative Officer of the Regional Integrated National Police (INP) Command stationed in Baguio City, accused-appellant Jose Rayray y Areola was arrested, tried and subsequently convicted of violation of Sec. 4, Art. II of R. A. No. 6425.

The antecedents as found by the trial court: At nine forty-five in the morning of 12 September 1986 P/Lt. Ramon Ancheta was at the Friendly Shop located at Ortega St., San Fernando, La Union, when accused-appellant Jose Rayray y Areola approached him offering to sell marijuana. Making the latter believe that he was interested in buying, Lt. Ancheta asked where the merchandise was and accused-appellant responded by taking marijuana wrapped in komiks from his pocket. Catching sight of the marijuana fruiting tops and marijuana cigarette being offered him, Lt. Ancheta immediately identified himself as a police officer, arrested accused-appellant and brought him to the San Fernando Police Station where he was turned over to the desk officer, Sgt. Carmelito Leyga, who entered the details of the arrest in the police blotter.

Accused-appellant denied making the offer to sell and instead testified that he was at Dodies' Fishing Supply at Ortega Street with his friend Bonifacio Chan to buy fish hooks when he was suddenly tapped on the shoulder by somebody who whispered, "Don't try to involve somebody." After being ordered to undress, he was made to face the stranger who was holding something wrapped in paper and which he tried to pass off as that of accused-appellant by saying, "You are selling marijuana." Afterwards, accused-appellant was forced into a tricycle, brought to the municipal jail and there incarcerated for no reason.

On 29 August 1989, rejecting the defense of frame-up and invoking the presumption of regularity in the performance of official duties in favor of the prosecution, Judge Benito A. Dacanay declared accused-appellant guilty of the offense charged and sentenced him to suffer life imprisonment and to pay a fine of P20,000.00. [1]

Hence, this recourse to us. But for reasons set forth below, the appeal should be denied.

Accused-appellant argues that his arrest was illegal because P/Lt. Ancheta had no authority to arrest persons in San Fernando, La Union, being then assigned at the Regional INP Command in Baguio City. [2]

We cannot yield to appellant's view that just because Lt. Ancheta was assigned in Baguio City he could not arrest persons caught in the act of committing a crime in some other place, especially so where he was the intended victim. A policeman cannot callously set aside his essential duty of apprehending criminal offenders and of keeping peace and order on the shallow excuse that he is not in his place of assignment. His responsibility to protect the public by apprehending violators of the law, especially one caught in flagrante delicto is not limited by

territorial constraints. It follows him wherever he goes. Moreover, Sec. 5, par. (a), Rule 113, of the Revised Rules on Criminal Procedure authorizes a warrantless arrest, otherwise called a citizen's arrest, "when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." Thus, although officially assigned in Baguio City, Lt. Ancheta's act of arresting accused-appellant (after the latter offered to sell him marijuana in San Fernando, La Union) is justified not only by his duty as a law enforcer but also by Sec. 5 of Rule 113, which authorizes instances of warrantless or citizens' arrests.

Second, accused-appellant takes exception to the fact that the trial judge accepted the uncorroborated testimony of P/Lt. Ancheta over his which was in fact corroborated by two other witnesses.

The argument is without merit. No rule exists which requires that a testimony has to be corroborated to be adjudged credible. [3] Witnesses are to be weighed, not numbered, [4] hence, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness and despite the lack of corroboration where such testimony is found positive and credible by the trial court. In such a case, the lone testimony is sufficient to produce a conviction. [5] For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number [6] and conviction can still be had on the basis of the credible and positive testimony of a single witness more so when such testimony proceeds from the positive narration of a police officer who, in addition, has to his credit the presumption of regularity in the performance of official duty and obedience to law. [7] Narration of an incident by prosecution witnesses who are police officers and who are presumed to have regularly performed their duties is credible. [8]

In the case at bench, while details of accused-appellant's offense came from the lone testimony of P/Lt. Ancheta, that of the defense is admittedly corroborated by the testimonies of witnesses Gabriel Galvez and Bonifacio Chan. However, such fact failed to render the version offered by the defense more credible and believable than that of the prosecution. Apart from the fact that both Galvez and Chan are not entirely disinterested witnesses, being a companion in the fishing business [9] and close friend or barkada of accused-appellant, [10] respectively, a review of their respective testimonies vis-a-vis that of accused-appellant reveals certain points which render their corroboration not so reliable, as correctly concluded by the court a quo.

Accused-appellant testified that in the morning of 12 September 1986 while packing fish in the house of Junior Galvez (also known as Gabriel Galvez), he suddenly remembered that somebody from Pangasinan requested him to buy fish hooks and that was why he asked permission from Galvez to go to Dodies Fishing Supply at Ortega Street. [11] However, Junior Galvez testified that it was he himself who asked accused-appellant to buy the fish hooks and that he did so in the same morning in question. [12] Secondly, Galvez testified that he was informed about the arrest of accused-appellant by the latter's grandmother, an old woman called Isten (not presented as a witness). [13] However, Bonifacio Chan claimed that it was from him that Gabriel Galvez learned of the incident. [14] Third, while Bonifacio Chan corroborated accused-appellant's defense by claiming to have witnessed the alleged frame-up, it is curious to note that Chan did not even lift a finger to help accused-appellant (his supposed close friend) while the latter was allegedly being ordered to undress and forced into a vehicle by an "unknown man" in civilian clothes for no apparent reason. Instead, Chan appeared unaffected by his friend's fate for he just went home after the incident [15] and did nothing except to inform Galvez (who even denied that he learned about the incident from Chan) about the arrest, who in the same manner, likewise did nothing by way of succor. [16] If the story about the alleged frame-up is true, a friend as Chan claims himself to be would do everything in his power to assist his friend and not abandon him as Chan practically did. It even appears from the records that Bonifacio Chan initially refused to testify for the defense (by refusing to receive the subpoena being served on him) and denied any knowledge about the incident, nay, even his close association with accused-appellant. [17]

Third, accused-appellant argues that there was misappreciation of evidence since the judge who decided the case

was not the one who conducted the trial. [18]

Again, we cannot ascribe any merit to the argument since it is now well recognized that the fact that the judge who heard the evidence is not himself the one who prepared, signed and promulgated the decision, but some other judge in his place, constitutes no compelling reason to jettison his findings and conclusions [19] and does not per se render it erroneous. [20] The trial judge's assessment of the credibility of a testimony is not to be anchored solely on how the witness conducted himself on the witness stand. Aside from the danger of being misled by appearances inherent in such a case, a judge is supposed to render a decision on the basis of the evidence before him, i. e., records and all. Although an undeniable tool in arriving at the correct decision, the failure of the trial judge to observe the witnesses testify on the stand in no way affects the validity of the judgment rendered or ipso facto condemns it as erroneous more so where the judgment appears to be fully supported by the evidence on record as in the case at bench.

Finally, with respect to accused-appellant's contention that his constitutional rights were violated during the custodial investigation conducted by the San Fernando Police, we can only say that although he was admittedly not informed of his constitutional rights, much less assisted by counsel during the interrogation, such did not paralyze the cause for the prosecution because the confession allegedly elicited from him that the subject marijuana was indeed confiscated from him [21] does not constitute the whole fabric of the evidence for the prosecution. It should be remembered that accused-appellant's attempt at selling marijuana was succinctly and clearly detailed by the positive testimony of P/Lt. Ancheta as earlier pointed out. Thus, although the alleged admission is inadmissible in evidence having been obtained from accused-appellant without the assistance of counsel, the act constituting the offense (offer to sell marijuana) was nevertheless credibly established by the prosecution coupled with the presentation of the corpus delicti [22] of the offense making accused-appellant's conviction inevitable.

But, a modification in the penalty imposed on accused-appellant is called for in view of the amendments introduced by R. A. No. 7659. [23] The court a quo sentenced accused-appellant to life imprisonment and to pay a fine of P20,000.00. However, under Sec. 20 of R. A. No. 6425 (The Dangerous Drugs Act of 1972) as amended by Sec. 17 of R. A. No. 7659, the illegal sale of marijuana is now penalized with reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00 if the marijuana unlawfully sold is 750 grams or more; otherwise, if the quantity is less than 750 grams, the penalty shall range from prision correccional to reclusion temporal [24] without fine. Since the amount of marijuana confiscated from accused-appellant is only 2.9452 grams, the proper imposable component penalty is prision correccional to be applied in its medium period in view of the absence of any mitigating or aggravating circumstance. Applying the Indeterminate Sentence Law, the maximum penalty shall be taken from the medium period of prision correccional, which is two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor the range of which is one (1) month and one (1) day to six (6) months.

WHEREFORE, the decision of the Regional Trial Court of San Fernando, La Union, Br. 28, declaring accused-appellant JOSE RAYRAY Y AREOLA guilty of violating Sec. 4, Art. II, of R. A. No. 6425 is **AFFIRMED** with the modification that he is sentenced to suffer an indeterminate prison term of six (6) months of arresto mayor maximum as minimum to four (4) years and two (2) months of prision correccional medium as maximum.

It appearing that accused-appellant has already been detained at the New Bilibid Prisons in Muntinlupa for more than seven (7) years, he is ordered immediately released from custody unless he is held for some other lawful cause.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Rollo, pp. 14-20; Original Records, pp. 115-122.

[2] Brief for the Accused-Appellant, pp. 4-5.

[3] *People v. Villalobos*, G. R. No. 71526, 27 May 1992, 209 SCRA 304, 315; *People v. Canada*, G. R. No. 63728, 15 September 1986, 144 SCRA 121, 126.

[4] *People v. Jumao-as*, G. R. No. 101334, 14 February 1994, 230 SCRA 70, 77.

[5] *People v. Abo*, G. R. No. 107235, 2 March 1994, 230 SCRA 612, 619; *People v. Gonzales*, G. R. No. 105689, 3 February 1994, 230 SCRA 291, 296; *People v. Amaguin*, G. R. Nos. 54344-45, 10 January 1994, 229 SCRA 166, 174; *People v. Cariño*, G. R. Nos. 92144-49, 18 December 1992, 216 SCRA 702, 713.

[6] Sec. 1, Rule 133, Rules of Court; See also *Sapu-an v. Court of Appeals*, G. R. No. 91869, 19 October 1992, 214 SCRA 701, 706.

[7] *People v. De Guzman*, G. R. No. 106025, 9 February 1994, 229 SCRA 795, 799; *People v. Simbulan*, G. R. No. 100754, 13 October 1992, 214 SCRA 537, 545; *People v. Tuboro*, G. R. No. 97306, 3 August 1992, 212 SCRA 33, 37; *People v. Pascual*, G. R. No. 88282, 6 May 1992, 208 SCRA 393, 400; *People v. Rumeral*, G. R. No. 86320, 5 August 1991, 200 SCRA 194, 201; *People v. Espallardo*, G. R. Nos. 88368-69, 19 June 1991, 198 SCRA 342, 348; *People v. Umali*, G. R. No. 84450, 4 February 1991, 193 SCRA 493, 503; *People v. De Jesus*, G. R. Nos. 71942-43, 13 November 1986, 145 SCRA 521, 528; *People v. Sumayo*, No. L-30713, 30 April 1976, 70 SCRA 488, 494.

[8] *People v. Patog*, G. R. No. 69620, 24 September 1986, 144 SCRA 429, 436.

[9] TSN, 10 August 1988, p. 1.

[10] TSN, 15 December 1988, pp. 25 & 28; Records, pp. 102 & 105.

[11] TSN, 20 July 1988, p. 1.

[12] TSN, 10 August 1988, p. 1.

[13] *Id.*, pp. 1 & 3.

[14] TSN, 15 December 1988, pp. 27-28; Records, pp. 104-105.

[15] *Id.*, pp. 32-33; *Id.*, pp. 109-110.

[16] TSN, 10 August 1988, p. 4.

[17] See Records, pp. 91, 94, 100 & 104.

[18] Brief for the Accused-Appellant, pp. 11-12.

[19] *People v. Fuertes*, G. R. No. 104067, 17 January 1994, 229 SCRA 289, 295.

[20] *People v. Jaymalin*, G. R. No. 90452, 19 October 1992, 214 SCRA 685, 692; *People v. De Paz*, G. R. No. 86436, 4 August 1992, 212 SCRA 56, 63; *People v. Collado*, G. R. No. 88631, 30 April 1991, 196 SCRA 519, 532; *Ayco v. Fernandez*, G. R. No. 84770, 18 March 1991, 195 SCRA 328, 333; *People v. Juanga*, G. R. No.

83903, 30 August 1990, 189 SCRA 226, 231; *People v. Diño*, No. L-41462, 15 April 1988, 160 SCRA 197, 206; *People v. Narajos*, G. R. No. 72814, 31 March 1987, 149 SCRA 99, 104; *Villanueva v. Estenzo*, No. L-30050, 27 June 1975, 64 SCRA 407, 413-417.

[21] TSN, 7 October 1988, p. 4; Original Records, p. 54.

[22] Exh. F-3.

[23] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for That Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and For Other Purposes.

[24] As explained in *People v. Simon*, G. R. No. 93028, 29 July 1994.

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