

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO ENRIQUE, JR., ACCUSED-APPELLANT.

G.R. No. 90738. December 09, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Antonio Enrique, Jr. was charged before the Regional Trial Court of Aparri, Cagayan, Branch VII, with violation of Section 4, Art. II in relation to Section 2, par. (e), No. 1 and par. (1), Article I of RA No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972. The information filed against him reads:

"That on or about May 9, 1988, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Antonio Enrique, Jr., y Gumtang, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there wilfully, unlawfully and feloniously sell and deliver five (5) sticks of marijuana cigarettes, as prohibited drug, to one Patrolman Danilo Natividad, a member of the Integrated National Police (INP) and assigned with the 2nd Narcotics Regional Unit, Narcotics Command, who was then posing as a buyer of the said prohibited drug for the consideration of TEN (P10.00) PESOS.

"Contrary to law." (Rollo, p. 11)

Upon arraignment, the accused entered a plea of not guilty to the crime charged (Records, p. 67). After trial on the merits, the court rendered its decision on September 14, 1989, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused Antonio Enrique, Jr. GUILTY beyond reasonable doubt of the crime charged. Accordingly, the accused Antonio Enrique, Jr. is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay a fine of P20,000.00. The marijuana cigarettes subject of this case is (sic) hereby forfeited in favor of the government.

"SO ORDERED." (Rollo, p. 17)

Hence, this appeal with the following assignment of errors:

ASSIGNMENT OF ERRORS

I

THE HONORABLE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGE BASING ITS FINDINGS ON INADMISSABLE EVIDENCE;

II

THE HONORABLE TRIAL COURT ERRED IN ADMITTING PROOF OF EXISTENCE OF THE TEN PESOS BILL WHOSE SERIAL NUMBER IS NOT EVEN ALLEGED IN THE INFORMATION;

III

THE HONORABLE TRIAL COURT ERRED IN NOT REQUIRING THE PROSECUTION THE SUPPOSED INFORMER TO TESTIFY IN COURT AND IN SO DOING THE ACCUSED WAS NOT GIVEN THE OPPORTUNITY TO CROSS EXAMINE HIM AND WAS DENIED DUE PROCESS OF LAW; (Rollo, p. 26)

The antecedent facts as found by the trial court are as follows:

"From the records, briefly stated, the court finds the following facts: From the information supplied by the civilian informer whose identity cannot be divulged for security reason that one alias Bong of Aparri, Cagayan was engaged in selling marijuana cigarettes, a team composed of Pat. Alejandro Quebalayan and Danilo Natividad, both of the 2nd Narcotic Unit, Regional Command, Tuguegarao, Cagayan and Pat. Porfirio Divina of the INP Aparri, Cagayan was organized. Pat Danilo Natividad acted as poser buyer; A marked P10.00 bill with Serial No. CN-741017 was provided him as the buy money. At 2:45 P.M. on May 9, 1988, the suspect Alias Bong was approached by Pat. Natividad. Bong handed something to Pat. Natividad who in turn handed the marked P10.00 bill; After confirming that the thing handed was a marijuana cigarette, Pat. Natividad gave the pre-arranged signal to the team headed by Pat. Quebalayan to close-in and effect his arrest.

"The items, Exhibit 'B-1' to 'B-5' (rolled cigarettes) after a field test was found positive of marijuana. In like manner, Pol./Capt. Benjamin Rubio, Bio-Chemist, Chief of the PC/INP Crime Laboratory Service based at Echague, Isabela, after conducting a qualitative examination on the five sticks of suspected marijuana cigarettes gave positive report to the test for marijuana, a prohibited drug." (Rollo, p. 16)

In this appeal, the accused-appellant vigorously insists in his innocence. He asserts that the arresting officers did not confiscate sticks of marijuana or any marked money from him; that exhibits "A" (ten peso bill; "A-1" (serial number of the money); "A-2" (initial of the witness above the serial number); "B" (the first pack which is fully opened); "B-1" to "B-5" (another pack confiscated from the suspect); "D" (certificate of Field Testing); "D-1" (signature of Maj. Geary Barias; "E" (laboratory result); "E-1" (qualitative result of the laboratory test); and "E-2" (signature of Capt. Rubio) should have not been admitted by the trial court since there was no confiscation receipt shown; that the admission of exhibits "A" - "A-2," "B" TO "B-5" and "C," was erroneous because the same were taken during custodial investigation and therefore, violative of the constitution; and that exhibit "A" should have been rejected because its serial number was neither alleged nor mentioned in the information. (Rollo, pp. 26-29)

We affirm.

Appellant completely misses the whole point of his prosecution and ultimate conviction under RA 6425. He was caught in flagrante delicto selling marijuana cigarettes to a poseur-buyer in exchange for money. The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction (*People v. Macuto*, G.R. No. 80112, August 25, 1989, 176 SCRA 762). The serial number of the marked money need not even be stated in the information. In one case, We held that the non-presentation of the marked money at the trial is not indispensable to the conviction of the accused-appellant (see *People v. Recedas*, G.R. No. 83372, February 27, 1991). What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the said cigarettes were presented in court as evidence (see *Macuto* case, *ibid*). Having been caught in the act of selling a prohibited drug, appellant's arrest was lawful under Rule 113 of the Rules of Court, Section 5(a), thereof. The marked money and the marijuana cigarettes were immediately seized by the arresting officers contrary to appellant's allegation that the same were taken during the custodial investigation. In fact, there was a receipt of the property seized from the accused-appellant signed by the arresting officers and a copy thereof was furnished him. The warrantless search being an incident to a lawful arrest is in itself lawful (*People v. Claudio*, G.R. No. 72564, April 15, 1988, 160 SCRA 646). Hence, whatever is found in the accused--appellant's possession or in his control

may be seized and used in evidence against him (see *Alvero v. Dizon*, 76 Phil. 637). Apart from the seized items, the NARCOM officer, in a clear and categorical manner, testified to the circumstances of the appellant's entrapment and arrest which was corroborated by the testimony of his companion officer, to wit:

"PROSECUTOR UNCIANO:

As of May 9, 1988, what position of responsibility were you holding in the government service, if any?

"PAT. DANILO P. NATIVIDAD

"A. I was detailed at the Narcotics Intelligence/Operative and at the same time investigator which covers the whole Region 02, sir.

"Q. And on May 9, 1988, at around 2:45 in the afternoon, do you remember where were you (sic)?

"A. Yes, your Honor, I was at Valdez Restaurant at Macanaya Street, Aparri, Cagayan.

"Q. Were you alone then?

"A. No, your Honor, I have my members of the Narcotics Intelligence Operative to conduct narcotics operation in that area.

"Q. Who were the members who were with you?

"A. I myself, Pat. Porfirio Divina, Pat. Quebalayan and Sgt. Dabbay, sir.

"Q. And while at the Valdez Restaurant, at that time at Aparri, Cagayan, what happened thereat?

"A. I met a certain Bong, alias bong, who sold to me five marijuana sticks and as a consequence I paid the same in the amount of P10.00 previously marked money, sir.

"Q. What happened next?

"A. Then I gave the pre-arranged signal to the members who were there to make the arrest, sir.

"Q. If that Antonio Enrique, Jr, is in court, can you point to him?

"A. Yes, sir.

"Q. Please point to him.

(The witness pointed to a person sitting in one of the benches of the court and when asked his name, he gave the name of Antonio Enrique, Jr.)

"Q. You said that you paid P10.00 for the cigarettes to the accused, can you still recognize that P10.00 bill if presented to you?

"A. Yes, sir.

"Q. Showing to you Exhibit 'A', What relation has this P10.00 bill to that which you said you used in paying for the marijuana cigarettes?

"A. This is the same P10.00 bill which I paid to the accused for the purchase of marijuana cigarettes, sir.

"Q. From whom did you take that money?

"A. It was given to me by Pat. Quebalayan as team leader, sir.

"Q. Why do you say that that (sic) is the same?

"A. It was initialed by our team leader, Pat. Quebalayan, sir.

"Q. Show to the Honorable Court the initial that you alleged?

(The witness pointed to a portion in the P10.00 bill which was previously marked as Exhibit 'A-2')

"Q. And you said that you bought five marijuana sticks. If those five marijuana cigarettes will be presented to you, can you still recognize the same?

"A. Yes, your Honor.

"Q. Showing to you this pack marked as Exhibit 'B' which contained Exhibit 'B-1' for the first roll, Exhibit 'B-2' for the second roll, Exhibit 'B-3' for the third roll, Exhibit 'B-4' for the fourth roll, Exhibit 'B-5' for the fifth roll. Tell the Honorable Court what are those?

"A. These are the same marijuana cigarettes which I bought from Antonio Enrique, Jr., sir." (TSN, July 6, 1989, pp. 26-29)

"x x x

"Prosecutor Unciano

"Q For what purpose were you sent here at Aparri, Cagayan?

"Patrolman Alejandro Quebalayan

"A We were sent here purposely to effect and (sic) arrest the activities of a certain alias Bong which is engaged in selling marijuana cigarettes, sir, in Aparri, Cagayan.

"Q On that date, May 9, 1988, at around 2:45 in the afternoon, where were you particularly?

"A We were here particularly at Macanaya Street, in front of Valdez Restaurant, Aparri, Cagayan, sir.

"Q You said we, who were your companions, if any?

"A My companions were Pat. Danilo Natividad, Pat. Profirio Divina and PO3 Ellie Dabbay, sir.

"Q And when at the Valdez Restaurant at that time 2:45 in the afternoon, what if anything happened thereafter?

"A At Valdez Restaurant, we saw the suspect approaching Pat. Danilo Natividad then (sic) they had a conversation with each other. After a few minutes, we saw the suspect handing something to Pat. Danilo Natividad and upon return, Pat. Danilo Natividad gave a P10.00 bill previously marked money to the suspect as payment then Pat. Danilo Natividad inspected the contents which suspect Bong gave to him and indeed it was marijuana cigarettes. Pat. Natividad gave us the pre-arranged signal to the members of the raiding team to close-in, sir.

"Q And what happened when they closed-in?

"A Upon close-in we made the arrest of alias Bong, sir.

"Q Who is this alias Bong in relation to the accused Antonio Enrique?

"A He gave us his true name as Antonio Enrique, sir." (ibid, pp. 11-13)

There was no showing that the arresting officers knew the accused-appellant before his arrest. There was likewise no evidence of any ill-motive which would have impelled these officers to accuse the appellant of the crime. On the Other hand, the entrapment and arrest of the appellant were done at Valdez Restaurant at past two o'clock in the afternoon. At that time, there must have been eyewitnesses to the incident. Yet, appellant has not presented

anyone who could have bolstered his defense that he is not the owner of the contraband items and that the charges against him are fabricated. In the absence of any controverting evidence, the testimonies of these officers are given full faith and credence as they are presumed to be in the regular performance of their official duties.

We note however that, during the investigation, the accused-appellant, unassisted by counsel, wrote his name on the rolled marijuana cigarettes. Pat. Quebalayan testified that the accused affixed his name thereon voluntarily and that this gesture was intended as a security against substitution (TSN, July 6, 1989, p. 24). Yet, he and the other arresting officers exerted no efforts to inform the accused-appellant of his rights under custodial investigation. In effect, appellant's act amounted to an admission of his culpability in violation of the constitution. Such admission is therefore inadmissible as evidence (see *People v. Peralta*, G.R. No. 86172, March 4, 1991 and *People v. delas Marinas*, G.R. No. 87215, April 30, 1991). Notwithstanding this setback for the prosecution, appellant cannot be acquitted because his conviction did not rest solely on his admission. He has completely failed to rebut by contrary evidence the testimonies and documentary evidence presented by the prosecution.

Appellant then complains about the delayed laboratory examination on the alleged marijuana cigarettes. He contends that the actual chemical examination was made on July 7, 1989 when the alleged confiscation of the contraband items took place on May 9, 1988. He voices out his apprehension about the possibility of substitution as the marijuana cigarettes brought to the chemist of the PC Narcotics Command were placed in a brown envelop and only stapled (Rollo, pp. 32-33).

It is true that the marijuana cigarettes were brought to the laboratory of the P.C. Narcotics Command at Echague for examination much later from the time of its confiscation. Nonetheless, an immediate field testing was conducted by Major Barias on the cigarettes (Exh. D, Records, p. 5), as follows:

"Q. Did you investigate that pusher in your office?

"A. Yes, sir. We arrested him and brought (sic) to my office on May 9, 1988, and investigated or conducted (sic) but we released the suspect after the initial investigation, sir.

"Q. And was there any specimen submitted to you as a result of the arrest?

"A. Yes, sir.

"Q. And what did you do with those specimen?

"A. These specimen which consist of dried marijuana leaves and (sic) I conduct (sic) a field testing in my office to make sure that this evidence was in deed a marijuana and the result the field testing wherein I used NARCOTEST DISPOSAKIT 9 and it indicated that the liquid inside turned red which is an indication that the specimen is indeed a marijuana, sir.

"Q. By the way, you said marijuana did you have to go (sic) under gone any training?

"A. Yes, sir I under went training and this was one of the subject that we had during the said training.

"Q. And in the specimen that you said you tested, please describe to this Honorable Court?

"A. Yes, sir from a marijuana sticks that was (sic) presented to me. These dried leaves that I did only some and I placed inside the disposakit and which we acted (sic) inside and it proved that these specimen is indeed a marijuana, sir." (TSN, July, 19, 1989, pp. 44-46)

This kind of test is judicially admissible. We have held that a chemical analysis is not an indispensable prerequisite to establish whether a certain substance offered in evidence is a prohibited drug or not and that the ability to recognize these drugs can be acquired without a knowledge of chemistry to such an extent that the

testimony of a witness on the point may be entitled to great weight (*United States v. Sy Liongco*, 33 Phil. 54). On the basis of the positive result of the test and the marked money, the arresting officers filed a summary of the information at the Municipal Trial Court of Aparri, Cagayan, on May 19, 1988. Thereafter, the Biochemist of the PC Crime Laboratory, Regional Unit 2 (Exh. E, p. 82) confirmed the presence of marijuana in the confiscated cigarettes. Thus, appellant's other fear that the cigarettes taken from him may have been changed just because these cigarettes were belatedly brought to the chemist in a brown mailing envelope duly stapled cannot be entertained. This envelope was not carelessly entrusted to anyone but a courier from the Narcotics Command headed by Major Barias. Besides, appellant's apprehension was not accompanied by any substantial and strong evidence to convince Us of the possibility of foul play in transporting the package to the P.C. Crime Laboratory.

Lastly, appellant impugns the non-presentation of the NARCOM informer at the trial. He claims that he was denied the opportunity to cross examine the alleged informer and that he concludes that such failure to present the informer as a witness is proof of the prosecution's weak evidence (Rollo, p. 35).

Appellant's contention is unmeritorious. There was no need to present the testimony of the NARCOM informer as the same would merely be corroborative and cumulative. In *People v. Sanchez* (G.R. No. 77588, May 12, 1989, 173 SCRA 305, 313), We declared that:

"x x x. Since the testimony of the police informer was similarly not essential for conviction of the accused, his identity may remain confidential: there are strong practical reasons for such continued secrecy, including the continued health and safety of the informer and the encouragement of others to report wrong doing to the police authorities. x x x."

In the light of the foregoing, We hold that the trial court did not err in convicting the accused-appellant. The evidence on record has fully established his guilt beyond reasonable doubt. However, the trial court imposed upon the accused-appellant the penalty of reclusion perpetua and a fine of P20,000.00. Under Section 4 of RA 6425 as amended by PD No. 1675, the penalty for the sale, administration, delivery, distribution and transportation of prohibited drugs is life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos. Conformably with law, the penalty that should be imposed for the crime committed by the accused-appellant should instead be life imprisonment and a fine in the amount of P20,000.00.

ACCORDINGLY, the decision appealed from is AFFIRMED subject to the modification as above-indicated.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, Feliciano, and Griño-Aquino, JJ., concur.

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