

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EPIFANIO ARMENTANO, ACCUSED-APPELLANT.*G.R. No. 90803. July 03, 1992*

Ponente: CRUZ, J.

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For violation of Article 2, Section 4 of the Dangerous Drugs Act, the accused-appellant has been sentenced to life imprisonment plus a fine of P20,000.00 and costs.[1] He is now in the National Penitentiary awaiting the outcome of this appeal. We shall keep him there.

We are convinced with the trial court that he is guilty of the crime as charged. It has been sufficiently established by the prosecution that on November 21, 1987, at about eight o'clock in the evening, Epifanio Armentano, Jr. was apprehended while in the act of selling marijuana to a member of a buy-bust team created to entrap him. The operation was held at the corner of Cervantes and Colon Ext. streets in Dumaguete City. Armentano was seated outside the shoe repair shop where his family was residing. Pat. Wenefredo Noble, one of the team members, posed as the buyer and approached Armentano to inquire where he could buy marijuana cigarettes. Armentano said he had some for sale. Noble asked for two sticks and handed Armentano a previously marked five-peso bill in payment. In exchange therefor, Armentano took two sticks of marijuana cigarettes from the plastic bag which was handed to him by his wife. Noble then identified himself as a NARCOM agent and placed Armentano under arrest. The other team members approached the two. They searched Armentano and retrieved the five-peso bill. They also found twenty-five grams of dried marijuana leaves in his right pants pocket. Upon demand, Armentano's wife, Cynthia Paghasi-an, surrendered the plastic bag from which Armentano had gotten the cigarettes he had given Noble. Armentano and his wife were then taken to police headquarters for investigation.

At the trial, Noble and two of his team-mates, namely Sgt. Ruben Laddaran and Pat. Nelson Exito, testified on the execution of the buy-bust operation. Noble was the principal witness as the poser-buyer.[2] Exito said he searched the accused-appellant and confiscated the marijuana leaves contained in a plastic bag and the marked bill found on his person. The bill had previously been marked with the initials of Laddaran's name on the left cheek of the picture of Emilio Aguinaldo and its serial number had been noted down as DY 804206.[3] Laddaran declared that he made a field test of the suspected narcotics and found them to be positive for marijuana. It was he who personally took them to the PC Crime Laboratory in Cebu City for examination.[4] His preliminary findings were later confirmed on the stand by Myrna P. Areola, forensic analyst of the said laboratory, who also submitted two Chemistry Reports that were offered as exhibits for the prosecution.[5]

Armentano had a different tale to tell, and tale it was. He claimed that on the evening in question he was at a store about three meters from his house and waiting for his wife to call him for supper when a friend approached him and invited him to go for a walk. As he stood up to do so, Pat. Noble and Pfc. Arthur Alcoran came and said his wife wanted to talk to him. They forced him to board a waiting pedicab where he found his wife, who handed him a plastic bag and a five-peso bill which she said the policemen had asked her to give him. He refused to accept them, but Pat. Exito threw them on his lap. He and his wife were then taken to police headquarters, where they

were confronted with the contents of the plastic bag, which appeared to be marijuana cigarettes. The two of them were manhandled and forced to sign a piece of paper which they were not allowed to read. His wife was released later, but he was detained.

His wife confirmed his testimony and declared that, prior to being taken to the pedicab, she was in their house when Sgt. Laddaran, Pfc. Alcoran and Pat. Noble barged in and conducted a search without warrant. She averred that the plastic bag and the five peso bill she was asked to give her husband came from Pfc. Alcoran himself and not from her or her husband. A third defense witness, Lester Andaya, said he was the friend who had invited the accused-appellant for a walk before the policemen arrived and took Armentano to the waiting pedicab.[6]

In his brief, the accused-appellant submits that the trial judge erred in giving credence to the prosecution evidence without considering the contradictions of the policemen who described the buy-bust operation. The failure of the prosecution to include Paghasi-an as his co-accused bolsters her testimony that the marijuana came not from them but from Pfc. Alcoran, who "planted" it on them. Moreover, the non-presentation of Pfc. Alcoran by the prosecution amounted to suppression of evidence favorable to the accused-appellant. All told, the constitutional presumption of innocence in his favor had not been overcome and he is therefore entitled to an acquittal.

Not so.

We shall sustain the trial court, which had the opportunity to directly observe the witnesses as they testified and to assess their credibility under oath. The discrepancies in the declarations of the policemen -- for example, as to who of them searched Armentano -- are minor inconsistencies that do not vitiate the essential thrust of their common assertion that Armentano was searched and found to be in possession of the prohibited narcotics and the marked bill. Who actually effected such search and confiscation does not really matter; what does is that the search and confiscation were made, resulting in the real and telling evidence of the marijuana and the marked bill. Besides, a witness is not likely to remember every minute detail of an incident, especially where, as in this case, there were a number of protagonists participating in the same act of apprehending and searching the accused-appellant. Not a little confusion or imperfection may be expected in the recollection more than 8 months later of how such an incident happened.*

The non-inclusion of Cynthia Paghasi-an as co-accused with Armentano is irrelevant to this case. The prosecution may have any number of reasons for not prosecuting her; in any event, her non-inclusion is not the issue here. Neither may it be considered conclusive of the claim that the confiscated marijuana came from the police and not from her or the accused-appellant, for there is more convincing evidence to the contrary. That evidence is decidedly more plausible and credible, especially because it came from witnesses without any known or apparent motive to perjure themselves against a person they hardly knew.

The decision not to present Pfc. Alcoran was another prerogative of the prosecution that the defense has no right to question. The prosecution is entitled to conduct its own case and to decide what witnesses to call to support its charges. The defense posture that the non-presentation of Pfc. Alcoran constitutes suppression of evidence favorable to Armentano is nothing short of ridiculous. If it felt that Pfc. Alcoran would admit to having planted the marijuana and the marked bill, what it could, and should, have done was call him to the stand as its own witness. One of the constitutional rights of the accused is "to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf." [7] It could easily have Pfc. Alcoran subpoenaed. It did not do so. For what reason, it does not say now.

Finally, the argument that the accused-appellant was illegally arrested and searched must also be rejected. He was arrested in flagrante delicto and thus came under Rule 113, Section 5(a) authorizing a warrantless arrest where a crime is actually being committed in the presence of the person making the arrest. The arrest being lawful, the

search incidental thereto was also lawful, in accordance with settled jurisprudence on this matter[8] and specifically Rule 126, Section 12, of the Rules of Court reading as follows:

Sec. 12. Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

The constitutional presumption of innocence has been overcome in this case by the evidence submitted against the accused-appellant that points unmistakably to his guilt of the crime imputed to him. It is a despicable offense that feeds on the weaknesses of hundreds of thousands of our people, especially the youth, whose lives have been damaged - many irreparably - because of the greed of drug pushers like him. He deserves in full the heavy penalties imposed upon him.

WHEREFORE, the appealed judgment is AFFIRMED and the appeal DISMISSED, with costs against the accused-appellant. It is so ordered.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Rollo, p. 30; Decision penned by Judge Jesus L. Tabilon, of the Regional Trial Court of Dumaguete City, Branch 44.

[2] TSN, September 16, 1988, p. 8.

[3] Ibid., pp. 25-26.

[4] Id., pp. 28-31.

[5] TSN, November 14, 1988, pp. 11-17.

[6] TSN, June 5, 1989, pp. 4-5, and 7.

* Exito testified on July 18, and August 12, 1988; Noble and Laddaran on September 16, 1988, and February 6, 1989.

[7] 1987 Constitution, Article III, Sec. 14(2).

[8] *People v. Sucro*, 195 SCRA 388 (1991); *Manipon, Jr. v. Sandiganbayan*, 143 SCRA 267 (1986); *People v. Castiller*, 188 SCRA 376 (1990).

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