

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER MAPA Y DE GULA, ACCUSED-APPELLANT.

G.R. No. 91014. March 31, 1993

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellant Elmer Mapa y de Gula and Serapio de Gula y Tongco were both charged with violation of Section 4, Article 11 of Republic Act 6425, otherwise known as the Dangerous Drugs Act, under an information[1] which reads:

"That on or about the 16th day of July 1986, in the Municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without authority of the law, conspiring with each other, did then and there, willfully, unlawfully, and feloniously possessed and sell and gave away twelve (12) sticks of marijuana treated cigarettes, thereby violating Section 4, Article II, in relation to Section 21, Article IV of R.A. 6425, as amended."

Upon arraignment, both accused pleaded not guilty to the crime charged.

After a trial on the merits, Serapio de Gula was acquitted on reasonable doubt while accused Elmer Mapa was found guilty of the crime charged and was sentenced accordingly to suffer the penalty of reclusion perpetua. The dispositive portion of the decision[2] reads:

"WHEREFORE, finding the accused Elmer Mapa y de Gula Guilty beyond reasonable doubt of the crime of selling and delivering prohibited drug, consisting of twelve (12) sticks of marijuana cigarettes (Indian Hemp) as defined and penalized under Section 4, Article II of Republic Act 6425, as amended, he is hereby sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalties prescribed by law and to pay a fine of Twenty Thousand Pesos (P20,000.00) with the corresponding subsidiary imprisonment in case of insolvency and the costs of suit.

On ground of reasonable doubt, the Court hereby ACQUITS the accused Serapio de Gula y Tongco of the crime charged. Costs de officio.

The twelve (12) sticks of marijuana cigarettes are hereby confiscated in favor of the Government to be turned over to the Dangerous Drugs Board for proper disposition."[3]

The People's version of the facts is as follows:

Acting upon a confidential information that a certain "Elmer" was engaged in drug pushing at T. de Gula St., Marulas Valenzuela, Major Elias Casimiro, Chief of the Valenzuela Police Anti-Narcotics Unit dispatched a team composed of Valenzuela policemen, namely: Cpt. Romeo Martin, Pfc. Pedro Protestante, Patrolmen Eduardo Pabalan, Wilfredo Lucero and a certain Pat. Garcia to conduct a surveillance operation in the area.

On July 16, 1986, at around 8 o'clock in the evening, the team launched a buy-bust operation against accused-appellant at T. de Gula St., Marulas Valenzuela using two (2) P10.00 marked bills.[4] Pat. Mario

Capangyarihan, who then acted as a poseur-buyer together with the confidential informant proceeded to appellant's address at T. de Gula Street. Upon reaching the place, the confidential informant introduced Pat. Capangyarihan to accused-appellant as a "scorer" of "damo." Pat. Capangyarihan asked for P20.00 worth of marijuana and then handed to appellant the two (2) marked P10.00 bills. After receipt of the money, appellant left for a while to get the "marijuana." Later, appellant entered the yard of the house with a wooden fence and talked briefly to a certain person (later identified as accused Serapio de Gula) who was seen by Pat. Capangyarihan handing over something to appellant. Thereafter, accused-appellant returned and handed over to the poseur-buyer a plastic bag containing twelve (12) sticks of marijuana cigarettes. Pat. Capangyarihan identified himself as a policeman and grabbed appellant by the arms. Pat. Capangyarihan then signalled his companions to come and help him Subdue the suspect. At this juncture, Serapio de Gula approached the police team and told them that appellant is his nephew. The policemen told Serapio that appellant was placed under arrest for selling "marijuana". Since Pat. Capangyarihan recognized Serapio as the person with whom appellant talked after receiving the marked bills, Serapio was also arrested. The two (2) marked bills were retrieved from the accused-appellant. Appellant and Serapio were brought to the Valenzuela Police Headquarters for further investigation. The plastic bag containing the twelve (12) sticks of suspected marijuana were forwarded to the NBI for examination. Microscopic, chemical and chromatographic tests was conducted on the seized articles and all yielded "positive results" for "marijuana".

Accused-appellant Elmer Mapa however, disputes the foregoing facts. Instead, the defense maintains that the facts are as follows:

At around 8 o'clock in the evening of July 16, 1986, while accused Elmer Mapa was inside their house with his co-accused/uncle Serapio de Gula and their chess club members playing chess, two men with drawn guns entered the premises of the accused's house without permission, calling for accused Elmer Mapa, prompting accused Serapio de Gula to tell them, "pare, anong problema, trespassing kayo." [5] In answer, the men identified themselves as policemen and told Serapio not to interfere. However, Serapio de Gula insisted that even if they were police officers they should nevertheless ask permission from the owner of the house before entering. In reply the police officers allegedly manhandled him while one of them entered the house where accused Elmer Mapa was, pulled him out and brought him to a waiting jeep. Serapio further testified that the four police officers who manhandled him were Patrolman Puchero, Patrolman Inciong, Patrolman Capangyarihan and Patrolman Protestante. [6] Serapio threatened to file charges against these police officers for mauling him so much so that said officers likewise arrested him. Serapio's testimony is as follows:

"Q. Now, after Elmer was pulled outside, how about you, what was done to you?

A. The policemen left, I was left behind, then afterwards, the person who manhandled me, when he was leaving, I was able to remember him and I told him that I was going to file a case against him with the Napolcom, then that said policeman returned and he told me, 'Kami pala ang isasabit mo, sama ka na rin'. That was what he told me." [7]

This was corroborated by a defense witness, Antonio Trinidad. In his testimony, Antonio revealed that one unidentified man entered the house and when questioned by Serapio de Gula, the man hit the latter with his gun. He could not do anything, much less the other chess players present because guns were poked at them. [8]

Both the accused were brought to the sub-station where they were mauled and forced to admit the charges against them.

Serapio remembered Patrolman Inciong going to his cell and showing (14) tea bags and jestingly said, "Never will you be able to get out of this jail because we will charge you with drug pushing and we will use these as evidence

against you."[9]

Tarried in jail during the early months of their apprehension, Elmer Mapa learned that a policeman talked to a certain Dueñas who was earlier detained for illegal possession of marijuana, that if he wanted to be released, he must give a substitute or "palit-ulo" in jail lingo. That upon his apprehension, he learned that Eduardo Dueñas was later released by the police.

From the foregoing facts, We hold the accused-appellant innocent. The conflicting and contradictory evidence of the prosecution affirms the weakness of its case thereby creating reasonable doubt as to his guilt.

We find several glaring inconsistencies and contradictions in the testimonies of the prosecution witnesses as to engender doubt on the moral certainty of accused-appellant's guilt.

The prosecution presented only two of the members of the buy-bust operation, whose testimonies unfortunately did not impress this Court. On the contrary, it weakens the prosecution's case.

Take for instance the testimony of Pat. Capangyarihan who testified that Serapio was arrested some 9 to 10 meters away from where Elmer Mapa was standing and that he was not present during the arrest of Serapio de Gula. Contrary to his testimony however, Pat. Lucero testified that when Serapio was apprehended by him Pat. Capangyarihan was present and saw him effect the arrest. Thus -

Pat. Capangyarihan:

"Q. Do you know who was that person?

A. Later on, I came to know the name of that person and it appears that his name is Serapio de Gula.

Q. And how far were you from them when they talked with each other?

A. From the witness stand up to that wall, sir (Which was estimated to be 9 to 10 meters).[10]

x x x x x x x x

Q. Mr. Witness, when you accosted Elmer Mapa, you actually were not aware what happened to Serapio de Gula since you were not present when he was accosted by Pat. Lucero?

A. It was Elmer Mapa who was first accosted and after he was arrested, my other police companions ran.

Q. And they ran towards what direction?

A. Towards the place where Serapio de Gula was standing.

Q. And when you said the place where he was standing, it is the place where he was talking with Elmer Mapa?

A. Yes, Ma'am.

Q. And when Pat. Lucero effected the arrest, you were not actually present?

A. I was not there, but I saw that it was Pat. Lucero who first took hold of Serapio de Gula.

Q. Now, since you were not with the team who accosted de Gula, you were not sure that the alleged marked money was recovered from de Gula?

A. I am sure about that, Ma'am.[11]

Patrolman Lucero on the other hand, testified differently on this matter:

"Q. After you approached Pat. Capangyarihan, what happen next?

A. Subsequently a person pulled Elmer Mapa.

Q. Who was this person who arrived and pulled Emer Mapa?

A. Serapio de Gula, Sir.

Q. Did Serapio de Gula succeed in pulling out Elmer Mapa from the hands of Pat. Capangyarihan?

A. No, sir.

Q. What happened after that?

A. We got hold of Serafin de Gula and asked him why he is interfering."

Q. Was there any answer from him?

A. He told us that Elmer Mapa is his nephew.

x x x x x x x x

Q. What did you do after you were informed about that?

A. We also got hold of Serapio de Gula and frisked him."[12]

Another glaring inconsistency lies in the seized articles. Pat. Capangyarihan testifies:

"Q. And after Elmer had approached you, what did he do?

A. He handed me a plastic container containing twelve (12) handrolled suspected marijuana cigarettes.

Q. And what did you do?

A. After Emer handed to me that suspected handrolled marijuana cigarettes, I introduced myself to him and then I arrested him."[13]

On the other hand, Pat. Lucero testified that what Elmer was holding is a tea bag of marijuana and not a plastic container containing twelve (12) handrolled marijuana cigarettes.

"Q. When you saw Elmer Mapa being held by Pat. Capangyarihan, did you see him holding the money, referring to accused Elmer Mapa?

A. Yes, sir.

Q. What was that?

A. One tea bag of marijuana.

x x x x x x x x

Q. What happened to the tea bag being held by Elmer Mapa and two peso bills found in possession of Serapio de Gula?

A. The tea bag of marijuana was brought to the NBI for laboratory examination.[14]

Realizing probably his mistake. Pat. Capangyarihan later on changed his testimony by stating that he could not remember whether it was a plastic container that was given to him or not. Thus -

"Q. Mr. Witness, it appears that this alleged marijuana handrolled cigarettes is contained in an envelope with the marking DDM, etc. Is this also the same container when you received the marijuana from the accused?

A. I cannot recall if this was the same thing wherein these 12 sticks of marijuana were placed.

x x x x x x x x

Q. But you don't recall, Mr. witness, at the time you apprehended the accused where was this marijuana cigarettes?

A. After having taken these marijuana cigarettes from Mapa, I took hold of them.

A. Meaning this was not contained in any container?

A. I cannot remember anymore if it was contained in any container or not.[15]

The trial court observed the strange testimony of Pat. Lucero on a material point on cross-examination wherein he admitted that a tea bag cannot be cigarette sticks. This shows that the prosecution cannot even determine what was really taken from accused-appellant, a tea bag or cigarettes sticks. Thus, the Court inquired:

"Q. Now, Mr. Witness, who was in custody of the alleged tea bag which was recovered by the team from Elmer Mapa, who was in possession from the time Elmer Mapa was already arrested up to the time he was brought to the police station?

A. It was Pat. Mario Capangyarihan, sir.

Q. But you admitted that you have occasion to look at the tea bag?

A. Yes, sir.

Q. What is the difference between the tea bag and the suspected marijuana? What is the difference?

A. Tea bag is like a tea bag, it is square contained like cigarette.

Q. You will agree with me that as far as I know a roach is like what we will call "upos", a cigarette wrapped in a paper. I am referring to the paper wrapper, rolling paper?

A. Yes, ma'am.

Q. And also you will agree with me that a tea bag cannot be a cigarette stick.

A. Yes, Ma'am.[16]

Not only are there inconsistencies as to what was recovered but also on who requested for the seized articles to be examined by the NBI. Pat. Capangyarihan testified that it was police aide Carreon who brought the seized articles to the NBI for examination, whereas Pat. Lucero testified that it was he who forwarded the marijuana to the NBI. Thus -

Pat. Capangyarihan:

Q. By the way who submitted this alleged marijuana handrolled cigarettes to the NBI?

A. As far as I could remember, it was police aide Carreon who brought it to the NBI.[17]

Pat. Lucero however testified:

"Q. You said you forwarded this to the NBI for laboratory examination. Did you come to know the result of the examination?

A. Yes, sir.

Q. How did you come to know the result?

A. There was a request to bring to the NBI and I waited for the result and upon reaching the headquarters, we submit them to the investigating Fiscal.[18]

The foregoing contradictory testimony of two prosecution witnesses on who brought the marijuana to the NBI for laboratory examination is significant. Is it police aide Carreon or Pat. Lucero?

Carreon never testified on the matter or that the specimen submitted to the NBI for examination was the same specimen allegedly taken from the accused.

Neither was Pat. Lucero's testimony clear on the matter. Obviously, one of them is lying, Pat. Capangyarihan or Pat. Lucero. On such kind of shaky testimony conviction cannot be had.

The inconsistencies were never explained by the prosecution. Irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the culpability of the appellant and his guilt for the crime charged.[19]

As it is, the bungled testimonies of the police officers cannot be given credence. We are more inclined to believe the testimony of accused-appellant that he was a "target" to be arrested not for selling marijuana but as a replacement for Eduardo Dueñas who was at the time detained in the Municipal Jail, with accused--appellant as the substitute or "palit-ulo" in jail lingo, so that the detainee could be released.

It would be noteworthy to mention though, that accused-appellant was subjected to a drug test to find out whether he was likewise a drug user. It is often observed that a drug pusher usually, if not all the time is also a drug user. The act of pushing drugs is a means to support his being a drug dependent. For whatever its worth, accused-appellant was found to be drug free. In the NBI Toxicology Report No. TDD-86-646,[20] blood and urine specimens of Elmer Mapa showed negative results for the presence of prohibited and or regulated drugs. Though this report was not presented during trial, such is made part of the records.

The evident falsehood spread on the records before Us creates a nagging doubt on the culpability of the accused-appellant. It is sad to state that many innocent people become victims of physical violence and/or harassment from police officers who are supposed to be the protectors of the citizenry. We cannot condone such practices to continue in a civilized society.

While this Court commends the efforts of law enforcement agencies who are engaged in the difficult and dangerous task of apprehending and prosecuting drug-traffickers, it cannot, however, close its eyes nor ignore the many reports of false arrests of innocent persons for extortion purposes and blackmail, or to satisfy some hidden personal resentment of the "informer" or law enforcer against the accused. Courts should be vigilant and alert to recognize trumped up drug charges lest an innocent man, on the basis of planted evidence, be made to suffer the unusually severe penalties for drug offenses.[21]

WHEREFORE, the decision appealed herefrom is hereby REVERSED, and the accused-appellant, Elmer Mapa y de Gula, is hereby ACQUITTED on reasonable doubt of the crime charged. Costs de officio.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] Rollo, p. 1.

[2] Rollo, pp. 149-163.

- [3] Id., at p. 163.
- [4] Exhibits "A", "A-1".
- [5] T.S.N., February 17, 1988, p.8.
- [6] Id., at p. 15.
- [7] Id., at p. 13.
- [8] T.S.N., July 8, 1988, p. 7-11.
- [9] Id., at p. 17.
- [10] T.S.N., January 23, 1987, pp. 9-10.
- [11] Id., at pp. 19-20.
- [12] T.S.N., February 9, 1987, pp. 5-6.
- [13] T.S.N., January 23, 1987, pp. 10-11.
- [14] T.S.N., February 9, 1987, p. 7.
- [15] T.S.N., June 5, 1987, pp. 5-9.
- [16] T.S.N., February 9, 1987, p. 13.
- [17] T.S.N., June 5, 1987, p. 7.
- [18] T.S.N., February 9, 1987, p. 8.
- [19] People vs. Canela, G.R. No. 97086, 208 SCRA 842 (1992).
- [20] Records, p. 19.
- [21] People vs. Garcia, G.R. No. 64867-68, 172 SCRA 262 (1989).

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