

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY FRANCISCO Y AQUINO, ACCUSED-APPELLANT.

G.R. No. 91159. September 11, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Appellant Larry Francisco y Aquino was charged before the Regional Trial Court (RTC) of Valenzuela, Metro Manila on 20 September 1987 with the violation of Section 4, Article II of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, in an information[1] which reads:

"That on or about the 20th day of September, 1987, in the municipality of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused Larry Francisco y Aquino, without authority of law, did then and there wilfully, unlawfully and feloniously sell, deliver, dispatch in transit and transport five (5) sticks of rolled marijuana cigarettes, which is (sic) prohibited drug (sic).

Contrary to Law."

The case was docketed as Criminal Case No. 8280-V-87.

Upon his arraignment on 7 October 1987, appellant, assisted by Citizens' Legal Assistance Office (CLAO) lawyer Atty. Restituto Viernes, pleaded not guilty to the offense charged.[2]

At the trial on the merits, the prosecution presented NBI Forensic Chemist Resurreccion Ramos Bajado and the arresting officer/poseur-buyer Pat. Eduardo Fajardo. Appellant, testifying on his own behalf, merely denied the accusation and claimed that the marijuana recovered from him was planted by Pat. Fajardo.

On 4 November 1988, the trial court promulgated its decision, the dispositive portion of which reads:

"WHEREFORE, finding the accused Larry Francisco y Aquino, Guilty beyond reasonable doubt of the crime of selling and delivering prohibited stuffs consisting of five (5) marijuana cigarette sticks weighing 1.6091 grams, defined and punished under Section 4, Article II of Republic Act No. 6425, as amended, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay a fine of Twenty Thousand Pesos (P20,000.00) and the costs of suit. x x x." [3]

Appellant filed a notice of appeal on 4 December 1988.[4] Subsequently, the trial court forwarded, albeit erroneously, the records of the case to the Court of Appeals; the latter then transmitted the same to this Court on 24 November 1989.[5] On 19 March 1990, this Court resolved to accept the appeal.[6]

The facts of the case as summarized by the trial court are as follows:[7]

"EVIDENCE FOR THE PROSECUTION:

The circumstances of his apprehension, as testified to by the arresting officer Valenzuela Patrolman Eduardo Fajardo is (sic) substantially as follows: In the morning of September 20, 1987, Cpl. Martin of the Valenzuela Police Anti-Narcotics Unit ordered him and Pat. Albao to conduct buy/bust operations with the help of a

civilian informer (CI) at Gen. T. de Leon Street, Valenzuela, Metro Manila. The operation's target was a certain pusher, Boy Hapon. Arriving the (sic) place, he was introduced by the CI to Boy Hapon, the herein accused. Posing as buyer (sic), he handed a marked P10.00 bill to the accused and the latter put it inside his pocket. The accused told him to wait and went (sic) to a house besides (sic) the road about ten meters away to get the merchandise. Minutes later, the accused returned and handed to him the merchandise consisting of five (5) marijuana cigarette sticks wrapped in a (sic) plastic (Exhibits A, A-1 to A-4). He identified himself to the accused as a police officer. He placed the accused under arrest and retrieved from the latter the P10.00 bill he paid (Exhibit E) with his initials on it (Exh. E-1). That (sic) they brought the accused to their headquarters for investigation; that he gave a written statement in connection with the incident (Exh. F, F-1).

On cross-examinations (sic), he testified that they rode the private vehicle owned by Pat. Albao in going to Gen T. de Leon St.; that he has been in the place twice; that the residents of Gen. T. de Leon do not know him as a policeman; that he was in civilian clothes; that he placed his initials on the P10.00 bill before leaving their office.

NBI forensic chemist Resurreccion Ramos affirmed that the seized five (5) cigarette sticks (Exhs. A, A-1 to A-4) submitted for examinations were positive for marijuana (Exh. B, B-1). Microscopic, chemical and chromatographic tests were conducted yielding (sic) the same result (Exhs. C, C-1 to C-4).

On cross-examinations, (sic) she testified that P/Aide Ludwig Lee brought the specimens to their office with the written request for examination from the Valenzuela Police Station (Exh. D).

EVIDENCE FOR THE DEFENSE

Accused denied selling marijuana cigarettes to Pat. Fajardo. He knows Fajardo to be a policeman for more than five years. He knows Fajardo because he used to see him in the house of a policeman living in their place at Gen. T. de Leon; that he is (sic) a truck helper of gravel and sand for about ten years; that on September 20, 1987 at around 11:30 in the morning, he was in front of the house of his aunt at Gen. T. de Leon washing the truck when Pat. Fajardo arrived and (sic) holding something wrapped in a (sic) plastic; that Pat. Fajardo suddenly pulled him at the waistline at the back of his pants and asked him if he has marijuana. He replied that he is not selling marijuana. Fajardo pushed him and asked him to go with them. Pat. Fajardo had two other companions; that the marijuana came from them (Pat. Fajardo and companions); that he replied that he cannot go with them because he has not done anything wrong. He was hit by a gun in the head. He was brought to the Polo Emergency Hospital on the same day.

On cross-examinations (sic), he said that he do (sic) not have any misunderstanding/ill feeling with Pat. Fajardo before the incident; that Pat. Fajardo failed to locate the person whom they were intending to arrest and turned his ire on him; that Pat. Fajardo asked him to point to the person that was selling marijuana; that he do (sic) not know the person and he has no relation with him; that three (3) days before he was arrested, Pat. Fajardo had already asked him to point the (sic) person selling marijuana in the place."

Appellant assigns the following errors committed by the trial court:[8]

"I. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE CONFLICTING AND UNCORROBORATED TESTIMONY OF PAT. EDUARDO FAJARDO.

II. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

Discussing these jointly for the sake of brevity, appellant states that the uncorroborated testimony of Pat. Fajardo should be examined and scrutinized carefully considering that it is the only basis for his conviction; he claims that it is doubtful whether the buy-bust operation itself was actually conducted because Pat. Fajardo's testimony reveals that there was virtually a one man show wherein he acted as poseur-buyer and arresting officer at the same

time. Appellant finds it odd that Fajardo's alleged companion during the buy-bust operation, Pat. Aldao, had no participation at all therein. Accordingly, it is suggested that the entire operation was highly suspect.

Appellant further contends that the testimony of Pat. Fajardo is full of inconsistencies, to wit: a) Initially, during direct examination, Fajardo testified that when the appellant asked for payment, he waited first for the latter to bring back the marijuana before giving the money; on further examination, Fajardo stated that he paid at once; b) During direct examination, he testified that he met the accused "on the road where there was (sic) a bridge;" during cross examination, he said that he met the accused beside a house under construction which is located beyond the bridge; c) On direct examination he stated that he waited for the appellant for sometime before the latter came back, while on cross examination, he claimed that he only waited for two (2) minutes before the latter returned; and d) During direct examination, he failed to mention that he had marked the buy-bust money before leaving the office, while on cross examination, he testified that he made a marking on the bill before leaving the office.[9] While admitting that these inconsistencies refer to minor details, he asserts, however, that since the prosecution's case is anchored solely on Pat. Fajardo's testimony, said inconsistencies affect the latter's credibility.

Finally, appellant declares that the amount of P10.00 is inadequate for the five (5) sticks of marijuana he allegedly sold and it is improbable that he would risk his life and liberty for the measly sum of P10.00; besides, he knew that at that time, Pat. Fajardo had been a policeman in their place for five (5) years. Thus, it is inconceivable that he would sell marijuana to the latter.

The primal issue then is the credibility of Pat. Fajardo's testimony.

The factual findings of the trial court are generally accorded great respect by appellate courts particularly on matters of credibility of witnesses, since the trial judge is given the opportunity to observe the attitude and deportment of the witnesses while listening to them speak.[10] An exception to this rule obtains when certain facts of substance and value have been overlooked which, if considered, would affect the result of the case.[11] In the case at bar, the trial court, after evaluating the evidence before it, found the testimony of Pat. Fajardo credible and convincing. It said:

"The Court has very closely examined the evidence of the contending sides, including the deportment and demeanor of those who took the witness stand and it is convinced that herein accused is guilty of transgressing the Dangerous Drugs Act. The testimony of the arresting officer, Valenzuela Patrolman Eduardo Fajardo was clear, positive and credible. He testified that after being introduced to the accused as buyer, he handed the marked P10.00 bill to the accused. That the accused asked him to wait and upon his (accused) return from a house located near the road about 10 meters away, the accused handed to him the prohibited stuffs, consisting of five (5) marijuana cigarette sticks wrapped in a (sic) plastic (Exhibits A, A-1 to A-4). That he recovered from the accused the P10.00 bill he paid (Exh. E) with his initials on it (Exh. E-1); that the prohibited stuffs were found positive for marijuana (Exhs. C, C-1 to C-4)."[12]

We find no compelling reason to overturn such findings. A meticulous review and a careful evaluation of the records of this case show that the same are firmly supported by the evidence.

That Pat. Fajardo's testimony is uncorroborated is of no moment for settled is the rule that the testimony of a lone prosecution eyewitness, as long as credible and positive, can prove beyond reasonable doubt the guilt of the accused.[13]

The alleged inconsistencies in Pat. Fajardo's testimony either do not exist or are merely exaggerated. The first alleged inconsistency is based on the following exchange:

"FISCAL VICENTE:

x x x

Q After you told the accused that you want to 'Iiskor kami', what happened next?

A He told me 'May I have your money then'.

Q And what did you do after he asked for your money?

A I just waited because he left for some time and he circled around a house that was for rent.”[14]

Upon further examination, he stated that:

"Q When you were asked a while ago what did you do when the accused asked for the money and you said he left you, you mentioned about the payment?

A After I have (sic) remarked 'Iiskor kami', he replied, 'Akina ang pera'.

Q And what did you do when the accused asked for the money?

A At that time, I handed him P10.00 (sic) bill.

Q And what did the accused do (sic) with the money which you gave to him?

A He placed it in his pocket and after that, he left us.”[15]

We find no inconsistency in the abovequoted testimony. It seems that when Pat. Fajardo was initially asked what he did when the appellant asked for the payment, he failed to answer the question directly; instead, Pat. Fajardo said that the appellant left to get the marijuana. He, however, never mentioned that he gave the money to the appellant only upon the latter's return. When further examined, it becomes apparent that Pat. Fajardo actually gave the P10.00 bill at once, before the appellant left to get the marijuana.

Another inconsistency, as claimed by the appellant, may be observed from Pat. Fajardo's account of how he met the appellant. Upon direct examination, Pat. Fajardo declared:

"FISCAL VICENTE:

Q By the way, in what exact place in T. de Leon did you have contact with the accused?

A On the road where there was (sic) a bridge.”[16]

On cross examination, he testified thus:

"ATTY. VIERNES:

Q Now, when you went to T. de Leon on September 20, 1987, you said you have (sic) met this Boy Hapon, where did you meet him?

A If this is the road, ahead is the bridge and after that, there was a house that is under construction. And this house which is under construction is also near a four-door apartment and that is where I met or saw this Boy Hapon.

Q You mean in front of the house under construction?

A At the side.”[17]

Pat. Fajardo's initial statement does not establish that he met the appellant on the bridge itself but rather on the road leading to the bridge. Hence, there is no real inconsistency when Fajardo later declared that he actually met the appellant at the side of a house under construction because said house stands beside that same road.

The claim -- that Pat. Fajardo's failure to state during the direct examination that he marked the buy-bust money with his initials before leaving the office is inconsistent with his later statement during cross examination that he in fact marked the buy-bust money before leaving the office -- is preposterous and absurd. Such failure was due to the fact that the prosecuting fiscal did not ask the proper question. It was only during cross examination that such a question was posed, thereby eliciting the said response. Appellant's counsel clarified the matter and merely provided the witness an opportunity to furnish the details.

The last inconsistency adverted to by the appellant involves the statements during (a) direct examination of Pat. Fajardo that he waited for sometime for the appellant to return after leaving to get the marijuana, and (b) cross examination where he stated that he only waited for about two (2) minutes before the appellant returned with the marijuana. What needs to be determined here, in order to establish an inconsistency, is the import of the word "sometime". Concededly, "sometime" is a relative term. Nevertheless, whether it could mean thirty (30) minutes, one (1) hour or even two (2) minutes, the inconsistency, if any, is very minor and not substantial. In any event, the cross examination merely allowed the witness to elucidate and explain what he meant when he used such a term.

Even assuming *arguendo* that discrepancies existed in Pat. Fajardo's testimony, they were discrepancies concerning minor details which do not impair his credibility.[18] The most candid of witnesses oftentimes makes mistakes but such honest lapses do not necessarily impair his testimony's intrinsic credibility.[19] In *People vs. Reception*,[20] We held:

"In the course of a prolonged direct examination, more so, during cross-examination, the witness is usually subjected to unfriendly questioning. As a result, it is usually the case that the witness, uncomfortable and fidgety in a courtroom scene, may often fall into lapses. It is not infrequent for a witness to make minor mistakes in his narration of facts; the intimidating presence of the opposing counsel coupled by the verbose and misleading manner of questioning are factors determinant of these inconsistencies."

The failure of Pat. Fajardo to mention the role of Pat. Aldao in the buy-bust operation is inconsequential; moreover, Pat. Fajardo's acting as the poseur-buyer and arresting officer at the same time is not at all odd. As a matter of fact, in buy-bust operations where the poseur-buyer is also a member of the buy-bust team, it would be even more convenient and effective for said poseur-buyer to arrest the drug pusher after the latter gives him the prohibited drug.

Neither is there merit in the appellant's claim that it is improbable that he would risk his life and liberty for the measly sum of P10.00. The commission of the offense of illegal sale of marijuana requires merely the consummation of the transaction where the poseur-buyer receives the marijuana from the seller.[21] The monetary consideration agreed upon by the parties is immaterial in establishing the fact of sale of prohibited drugs. The question as to whether appellant would risk his life and liberty for the measly sum of P10.00 is obviously to be answered in the positive. Drug pushers, especially small quantity or retail pushers, sell their prohibited wares to anyone who can pay for the same, be they strangers or not.[22]

Equally untenable is the appellant's claim that it was impossible for him to have sold marijuana to Pat. Fajardo since he knew the latter to be a policeman. Even assuming *arguendo* that said statement is true, what matters in drug pushing cases is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the marijuana leaves.[23]

The defense of frame up claimed by the appellant was correctly dismissed by the trial court as follows:[24]

"The Court finds the accused' (sic) story that he was brought in on trump-up (sic) charge is without merit. There was definite information/report that he was engaged in the sale and distribution of prohibited stuffs. A plan of a buy/bust operation was set up for his apprehension. He handed the prohibited stuffs to the witness,

Pat. Fajardo and the money used in the operation was recovered from him (accused) bears (sic) the initials of the arresting officer. He, therefore, could not just have been framed up as claimed by him. His claim that he was charged because he did not point to the arresting officer the person who was selling the prohibited stuffs in the place is not convincing. He testified that he has no misunderstanding with the arresting officer Pat. Fajardo prior to the incident. He said that he has not associated nor have (sic) any relation with the person sought by the police officers for selling prohibited stuffs in the place and he did not even know the person, why was he singled out to point to the person? Of significance was his unexplained failure or omission to give his statement denouncing the alleged actuations of the apprehending officer and to show that he was indicted for a crime he did not commit, which is the natural reaction of one who is being falsely charged of an offense as an act of self-preservation. The version of the arresting officer was more convincing. There appears no compelling reason why his testimony should not be believed or discarded. The accused has not shown any convincing facts or circumstances from which it could be reasonably inferred that this witness falsely testified or was actuated by improper motives.[25]”

Furthermore, the defense of frame up requires stronger proof because of the presumption that public officers acted in the regular performance of their official duties.[26] Since no ill motive on the part of Pat. Fajardo was proven by the appellant, this presumption was not overthrown.[27]

Thus, the affirmance of the trial court's decision is in order. However, the penalty imposed, which is reclusion perpetua, is incorrect because the penalty provided in Section 4, Article II of Republic Act No. 6425, as amended, is life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00. Reclusion Perpetua, a penalty provided for in appropriate cases under the Revised Penal Code and which carries accessory penalties, is completely different from life imprisonment.[28]

PREMISES CONSIDERED, the decision appealed from is hereby **AFFIRMED** subject to the modification above indicated changing the penalty of reclusion perpetua to life imprisonment.

Costs against the appellant.

SO ORDERED.

Bidin and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

Melo, J., no part.

[1] Original Records, 1.

[2] Original Records, 5.

[3] Id., 60; Decision, 4.

[4] Id., 65.

[5] Rollo, 1.

[6] Id., 20.

[7] Original Records, 57-58; Decision, 1-2.

[8] Appellant's Brief, 1; Rollo, 27.

[9] Appellant's Brief, 6-7; Rollo, 27.

[10] *People vs. Babac*, 204 SCRA 968 [1991]; *People vs. Mercado*, 97 SCRA 232 [1980]; *People vs. Espejo*, 36 SCRA 400 [1970]; *People vs. Carandang*, 52 SCRA 259 [1973].

[11] *People vs. Gonzaga*, 77 SCRA 140 [1977]; *People vs. Oñate*, 78 SCRA 43 [1977]; *People vs. Ramos*, 167 SCRA 476 [1988]; *People vs. Payumo*, 187 SCRA 64 [1990]; *People vs. Vocente*, 188 SCRA 100 [1990].

[12] Original Records, 59.

[13] *People vs. Melicor*, 160 SCRA 580 [1988]; *People vs. Javier*, 182 SCRA 830 [1990]; *People vs. Sorio*, 190 SCRA 548 [1990]; *People vs. Rumeral*, 200 SCRA 194 [1991].

[14] TSN, 25 May 1988, 3.

[15] *Id.*, 4.

[16] TSN, 25 May 1988, 3.

[17] *Id.*, 7.

[18] *People vs. Resayaga*, 54 SCRA 350 [1973]; *People vs. Oquiño*, 122 SCRA 797 [1983]; *People vs. Demeterio*, 124 SCRA 914 [1983].

[19] *People vs. Belibet*, 199 SCRA 587 [1991]; *People vs. Arroyo*, 201 SCRA 616 [1991].

[20] 198 SCRA 670, 675 [1991].

[21] *People vs. Fabian*, 204 SCRA 730 [1991]; *People vs. Del Pilar*, 188 SCRA 37 [1990]; *People vs. Rumeral*, *supra*.

[22] *People vs. Babac*, *supra.*; *People vs. Atilano*, 204 SCRA 278 [1991]; *People vs. Sanchez*, 173 SCRA 305 [1989]; *People vs. Rodriguez*, 172 SCRA 742 [1989].

[23] *People vs. Tejada*, 170 SCRA 497 [1989]; *People vs. Rodriguez*, *supra.*; *People vs. Macuto*, 176 SCRA 762 [1989]; *People vs. Borja*, 182 SCRA 581 [1990].

[24] Original Records, 59; Decision, 3.

[25] Citing *People vs. Vegayan*, 91 SCRA 572 [1979].

[26] *People vs. Macuto*, *supra.*; *People vs. Umali*, 193 SCRA 493 [1991]; *People vs. Como*, 202 SCRA 200 [1991].

[27] *People vs. Tejada*, *supra.*

[28] *People vs. Dekingco*, 189 SCRA 512 [1990]; *People vs. Baguio*, 196 SCRA 459 [1991]; *People vs. Fernandez*, G.R. No. 86495, 13 May 1992.

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