

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX FULGARILLAS Y DURAN @ “KOLOT”; ACCUSED-APPELLANT.

G.R. No. 91160. August 04, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal from the Decision of the Regional Trial Court, 7th Judicial Region, Tagbilaran City, Bohol, where appellant Felix Fulgarillas was found guilty for violation of Section 4, Article II of Republic Act No. 6425, as amended, otherwise known as the "Dangerous Drug Act", under an information which reads:

"That, on or about the 21st day of August, 1987, in the City of, Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without having been authorized by law, did then and there willfully, unlawfully, feloniously and knowingly, without any legal purpose, sell, transfer, deliver and give away six (6) pieces hand-rolled marijuana cigarettes to a NARCOM Confidential informant for and in consideration of the sum of ten (10) Pesos in two (2) pieces of marked Five Pesos paper bills bearing Serial Number EH 953679 and AF 377979, Philippine Currency, without having been licensed nor authorized by law.

"Acts committed contrary to the provisions of Section 4 of Republic Act No. 6425 (Dangerous Drugs Act of 1972) as amended."[1]

Upon arraignment, accused-appellant pleaded not guilty to the crime charged against him.

As borne out from the records, the facts of the case are as follows:

On August 21, 1987, the Narcotics Command (NARCOM) Team of Tagbilaran City, composed of Sgt. Renato M. Remetiera, Sgt. Alejandro Biñan, Patrolman Luisito Redulla and other civilian agents, upon receipt of confidential information and after months of surveillance conducted on herein appellant, hurriedly called for a briefing for a buy-bust operation. The team prepared marked money consisting of two (2) P5.00 bills to be used in buying sticks of marijuana from the appellant. The marked money bills were entrusted to a civilian agent who would act as a poseur-buyer.[2]

At about 7:00 o'clock in the evening of the same day, the NARCOM team proceeded to the designated place located at the corner of Torralba and Visarra Streets, Tagbilaran City. The subject was Felix Fulgarillas, an alleged pusher of marijuana. Upon arrival thereat, the team members positioned themselves within the vicinity and there they saw Fulgarillas. The purchase of marijuana took place inside a carinderia located at the corner of Torralba and Visarra streets. Sgt. Remetiera was at Torralba Street, while Pat. Redulla was at Visarra Street. Both of them were five meters away from the carinderia as the transaction was going on. The poseur-buyer then approached the suspect and after a brief conversation, the accused-appellant left. A few minutes later, accused-appellant returned and handed the "stuff" over to the poseur-buyer. The NARCOM operatives immediately rushed in, identified themselves, and arrested the suspected pusher, identified as appellant Felix

Fulgarillas.[3]

The NARCOM agents brought appellant together with the six (6) sticks of marijuana taken from him to the police station for investigation. During the interview, appellant admitted having engaged in selling drugs.[4]

Sgt. Remetiera conducted a field test on the six (6) hand-rolled marijuana sticks and found the same definitely to be MARIJUANA. He likewise indorsed the subject marijuana to the PC Crime Laboratory, Cebu City, for laboratory examination.[5]

Myrna Arreola, a Forensic Analyst of the PC-INP Crime Laboratory in Cebu City, who conducted a laboratory examination on the six (6) marijuana sticks submitted by the Local Narcom Office of Tagbilaran City, found the six (6) hand-rolled sticks positive for marijuana.[6]

The defense however, presented a different set of facts:

On the evening of August 21, 1987, the accused-appellant was invited by a friend by the name of Samuel Lagumbay for a drink. Together with them are Lagumbay's father and the latter's co-worker. They had a drinking spree inside Peping's store which was along Torralba Street. An hour later, accused Fulgarillas was requested by Lagumbay to buy caldereta from a carinderia owned by Librada Umali located at the corner of Torralba and Visarra Streets which is approximately seventy meters away from Peping's store. Lagumbay gave the accused ten pesos for that purpose.[7]

At the carinderia, Fulgarillas was told by Umali that she had no caldereta because there was no delivery of goat that day. He then checked all the food containers lined up in the counter of the carinderia to see if there could be a "pulutan" substitute for caldereta. As there was none, accused-appellant left.

About six feet away from the carinderia, Mark Amistoso and Mike Manique suddenly rushed to him. Manique pulled him while Amistoso boxed him in the stomach and poked a gun on his right side. Fulgarillas then was made to lie down and was handcuffed causing injury to his right wrist. He was then dragged to the police station at the Municipal Hall. On the way to the police station he was continually being mauled by Manique and Amistoso together with four other persons one of whom he recognized as Luisito Redulla.

At the police station, he was undressed and slapped on the face with Amistoso poking a gun at him with warning that if he would kick back, he would be shot.

He was further shown his wallet and six (6) sticks of marijuana as well as two (2) marked five-peso bills. He was forced to admit possession of the two (2) five-peso bills and of having sold the sticks of marijuana.

From the police station, Fulgarillas was brought to the NARCOM Office where he was again mauled and forced to admit receiving the marked bills in exchange for his delivery of the six (6) sticks of marijuana. When he refused, three drops of melted wax from a burning candle were made to drop on his lips.

After trial, the lower court rendered judgment finding accused-appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused GUILTY as charged and he is hereby sentence, pursuant to Section 4 of the Dangerous Drugs Act to undergo the penalty of life imprisonment, to pay a fine of P20,000.00 and to pay the costs."

SO ORDERED."[8]

Hence, this appeal.

The trial court gave much weight to the testimonies of the police members of the buy-bust operation. However, the prosecution did not present as witness the supposed poseur-buyer. Such omission casts serious doubt on appellant's guilt because without the testimony of the poseur-buyer, there is no convincing evidence to show that appellant sold marijuana. The testimonies of the rest of the buy-bust operation are hearsay in view of the fact that the poseur-buyer was never presented at the trial.[9] There was even no testimony that when the accused-appellant handed the stuff to the poseur-buyer that the latter in turn handed the marked money. The failure of the prosecution to present the alleged buyer of the marijuana was a fatal flaw in the case against the accused.[10]

The incriminating evidence presented by the prosecution, aside from the testimonial, consisted only of the two (2) marked five-peso bills and six (6) handrolled sticks of marijuana. These could be easily fabricated.

Witnesses Biñan, Remetiera and Redulla were members of the Tagbilaran NARCOM detachment. Records do not show that the markings on the two (2) five peso bills were previously blotted. This definitely weakens the case of the prosecution. The act of blotting is the correct and regular procedure by which the regularity of the preparation of marked money may be established. Without such blotter, all attempts at establishing regularity remains dubious.

The evidence against the accused rests mainly on the oral testimonies of the three members of the raiding team, namely: Alejandro Biñan, Renato Remetiera and Luisito Redulla. These witnesses contradicted each other on material and substantial points.

The scene of the buy-bust operation was sketched by the prosecution with labels indicating the respective positions of the members of the raiding team. The sketch was marked as Exhibit "B" and the respective positions of the raiding team as Exhibits "B-2", "B-3" and "B-4". Sgt. Biñan testified that Exhibit "B-2" denoted the position of Sgt. Remetiera.[11]

This was contradicted by Pat. Redulla in his testimony:

"Q - This Exhibit "B-2" who is this Rex?

A - That is Remetiera.

Q - Exhibit "B-3" marked as E.M. what is this?

A - I made a mistake in my former statement this AM B-3 is the place where Remetiera was positioned.

Q - Exh. "B-2"?

A - The place where Allan Biñan was positioning this Allan Biñan.[12]

At another instance, all three policemen stubbornly insisted that there was no investigation conducted at the police station. This, was however, denied by Sgt. Remetiera when he was recalled to testify:

"Q - Now, after that you brought the accused to the station?

A - Yes, sir.

Q - And then investigated him?

A - Yes, sir, we investigated him.

Q - Did you not ask him to sign a receipt of the six sticks of marijuana you took from him?

A - Not yet he denied does not belong to him.

Q - Right in that investigation?

A - Yes, sir."[13]

This was corroborated by one of the defenses' witness, Leocadio Suacillo, a fireman, who testified that while he was at the fire station, his attention was caught by a commotion in the nearby police station. He went to the police station and saw the accused being undressed, slapped, and threatened by Mark Amistoso.[14]

The unreliability of Sgt. Remetiera's statement that the accused did not resist arrest but instead went peacefully with them to the police station becomes more apparent in the face of the testimony of Librada Umali, the owner of the carinderia, that accused-appellant came to her carinderia to look for caldereta and that shortly after he left her counter and only at a distance of about six feet, some people rushed unto him and a commotion ensued.[15] This, corroborates the testimony of the accused.[16]

The most revealing testimony of the prosecution witnesses is that which pertains to the confiscation of the marijuana sticks. While the prosecution witnesses maintain in their joint affidavit that the six sticks of marijuana were turned over to them by the poseur-buyer, Sgt. Remetiera impliedly admitted in his testimony that the six handrolled marijuana cigarettes were taken from the body of the accused:

"Q - How about the six handrolled marijuana cigarettes according to you was taken from the body of the accused where is it now?

A - We have indorsed to the PC Crime Laboratory for laboratory examination I brought myself [sic] the receipt I have here the files copies of the receipt of the indorsement."[17]

Inconsistencies and material discrepancies in the testimony of a witness engenders serious doubt as to its reliability and veracity.[18] Thus, no conviction can be had on the basis of contradictory statements.[19]

Samuel Lagumbay, another defense witness, corroborated the testimony of the accused that the latter was with him immediately prior to the alleged buy-bust operation,[20] thereby belying the assertion of Sgt. Remetiera that when their poseur-buyer approached the accused-appellant for the purchase of marijuana at the corner of Torralba and Visarra Street, the accused went home and came back about ten minutes later with the six sticks of marijuana.[21]

The saddening detail of this case is that when the mother of the accused-appellant went to see his son, she saw accused-appellant all bruised up. She requested that her son be brought to a doctor but her request was disregarded.

According to the accused-appellant, Amistoso and Manique had a grudge against him because on one occasion, when both of them invited him to share with them a stick of marijuana being passed around in the company of other people, he refused. Instead, accused--appellant chided them for smoking marijuana when they are NARCOM agents.[22]

The evidence of the prosecution is sorely wanting to justify conviction. Settled is the rule that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[23]

Considering the harshness of the penalty for criminal violations of the Dangerous Drugs Law this Court had occasion to state in *People vs. Ale* as follows:

"At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the

secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalty for drug offenses." [24]

Incidentally, the Ale Case treats of incidents taking place in the same locality (Tagbilaran City) and involving the same police agency (NARCOM detachment at Tagbilaran City). There is great possibility that members of the Tagbilaran NARCOM detachment have the propensity of hiding behind the mantle of regularity of official functions in the pursuit of dubious personal motives of their own.

WHEREFORE, the guilt of the accused not having been proved beyond reasonable doubt, accused Felix Fulgarillas is hereby ACQUITTED for the crime charged against him.

SO ORDERED.

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

[1] Records, p. 1.

[2] T.S.N., April 12, 1988, pp. 1-12; T.S.N., August 8, 1988, pp. 2-3.

[3] T.S.N., April 22, 1988, pp. 2-3.; T.S.N., August 8, 1988, pp. 3-4.

[4] T.S.N., April 22, 1988, pp. 5-7.; T.S.N., October 5, 1988, p. 4.

[5] Exhibit "C", Records, p. 4.

[6] Exhibit "G", Folder of Exhibits; T.S.N., October 12, 1988, pp. 2-4.

[7] T.S.N., December 14, 1988, pp. 5-6.

[8] Records, p. 56.

[9] People vs. de Luna, G.R. No. 82180, 179 SCRA 245, (1989).

[10] People vs. Rojo, G.R. No. 82737, 175 SCRA 119, (1989).

[11] T.S.N., August 8, 1988, p. 4.

[12] T.S.N., October 5, 1988, p. 3.

[13] T.S.N., October 12, 1988, p. 5.

[14] T.S.N., December 15, 1988, p. 3.

[15] T.S.N., October 28, 1988, p. 2, 5.

[16] T.S.N., December 15, 1988, p. 11.

[17] T.S.N., April 22, 1988, p. 6.

[18] People vs. Flores, No. L-65647, 165 SCRA 71, (1988).

[19] People vs. Albior, No. L-75134, 163 SCRA 332, (1988).

[20] T.S.N., December 14, 1988, pp. 2-3.

[21] T.S.N., April 22, 1988, p. 8.

[22] T.S.N., April 3, 1989, pp. 8-9.

[23] *People vs. Domingo*, No. L-68993, 165 SCRA 620, (1988).

[24] No. L-70998, 145 SCRA 50, (1986).

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