

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEROME HONRADA Y JOBEN, ACCUSED-APPELLANT.

G.R. No. 91161. December 17, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Accused-appellant, Jerome Honrada y Joben, a.k.a. "Surot," was charged with the crime of violation of Section 4, Article 11, Republic Act No. 6425, as amended. The information dated August 18, 1988, reads:

"That on or about the 17th day of August 1988, in the Municipality of Pasig, Metro Manila, 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 and feloniously sell, deliver and give away to another 2.55 grams of dried marijuana fruiting tops wrapped with newspaper, a prohibited drug, in violation of the above-cited law."

"CONTRARY TO LAW." (p. 5, Rollo)

Upon arraignment, accused-appellant, assisted by counsel, entered a plea of "not guilty" (p. 12, Record).

Trial ensued, after which, a decision (pp. 14-20, Rollo) was rendered finding him guilty of the offense charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the Court finds the accused Jerome Honrada y Joben alias 'Surot' guilty beyond reasonable doubt of the crime of violation of Section 4, Article II, R.A. 6425, as amended, and sentences him to suffer life imprisonment and to pay a fine of Twenty Thousand (P20,000.00) pesos, and the costs." (p. 19, Rollo)

According to the prosecution, the accused?appellant was caught while in the act of selling marijuana fruiting tops by a three (3) man team of the Pasig Police Force. The prosecution presented three (3) witnesses, namely: Benny Iglesias and Donato Jead,* both members of the Pasig Police Force and Lina Sarmiento, Forensic Chemist of the PC/INP Crime Laboratory in Camp Crame, Quezon City. The trial court summarized the facts as presented by the prosecution, as follows:

"x x x, Pfc. Iglesias, Pat. Jose Apruebo and Cpl. Romulo Bautista conducted a surveillance for one (1) week and thereafter an operation was undertaken on August 17, 1988. Pfc. Iglesias acted as poseur buyer and his companions were to assist him in effecting the arrest. Pfc. Iglesias had with him a marked ten peso bill with serial no. FF 158546 (Exh. 'E') with his initials thereon (Exhs. 'E-1' and 'E-2') which was earlier recorded in the police blotter (Exh. 'F').

"At about 4:35 in the afternoon of August 17, 1988 the anti-narcotics team arrived at Bgy. Bambang, Pasig, Metro Manila. They proceeded to the pool house, Pfc. Iglesias asked the accused who was standing near the pool table, 'Pare mayroon ba tayo diyan? Bibiyahe ako'. (Pare do you have any? I want to have a trip). The accused replied 'Just a minute, Wait for me'. Pfc. Iglesias, gave the accused the marked ten peso bill and the latter left the place.

"After more or less 5 minutes the accused was back and handed to Pfc. Iglesias something wrapped in a newspaper. After ascertaining that the contents were suspected dried marijuana leaves Pfc. Iglesias gave the pre-arranged signal, introduced himself as a policeman and arrested the accused. He frisked the accused and recovered the marked ten peso bill from the right pocket. The accused was brought to the police headquarters for questioning."

"x x x.

"Pursuant to a letter request for Laboratory examination dated August 17, 1988 (Exh. 'B') P/Capt. Lina S. Sarmiento of the PC Crime Laboratory examined some suspected dried marijuana fruiting tops wrapped in a newspaper and found the same positive for marijuana. Chemistry Report No. D-770-88 which she submitted was marked Exh. 'C' and the specimen wrapped in a newspaper was marked Exh. 'D.'" (pp. 15-16, Rollo)

The accused-appellant denied the charges against him. The trial court summarized his defense as follows:

"The version of the accused is that at about 4:30 in the afternoon on (sic) August 17, 1988, he was in front of the store of a certain Totoy Tumaming, at E. Jacinto St., Bambang, Pasig, Metro Manila taking a snack after coming out of a movie house.

"Two policemen, Bennie Iglesias and Jose Apruebo, riding on a tricycle arrived and approached the accused. They told the latter that he was being called by Maj. Montefalcon, the Police Station Commander. The accused inquired (why) and the policemen answered that he would know the reason from Maj. Montefalcon himself.

"The accused said he was not able to finish his snack because the policemen held and told him that they were in a hurry. The accused boarded on the tricycle and brought to the Pasig Police Station but he was not presented to Maj. Montefalcon.

"Instead, Pfc. Iglesias took out dried marijuana leaves wrapped in a newspaper from his wallet and told the accused to admit possession thereof which the accused denied. Because of his denial the accused was placed inside the jail.

"The accused-admitted that he was not manhandled by the policemen nor was any form of physical violence applied on him. He said that he learned on that same day that he was being charged for selling marijuana.

"The accused further admitted that prior to the incident there was no quarrel between him and Pat. Iglesias; or Pat. Apruebo whom he met for the first time only that day. (pp. 16-19, Rollo)

From the judgment of conviction, accused-appellant interposed this appeal raising the following assignment of errors allegedly committed by the court a quo:

I. The trial court erred in giving weight and credence to the contradicting and improbable testimony of prosecution witness Pfc. Benny Iglesias and disregarding the defense of the accused.

II. The lower court erred in admitting in evidence the dried marijuana fruiting tops wrapped in a newspaper (Exh. "D") which was obtained in violation of the accused's constitutional rights.

III. The trial court erred in not holding that the prosecution miserably failed to prove the guilt of the accused beyond a reasonable doubt.

According to the accused-appellant, self-contradiction tainted the testimony of the prosecution witness Benny Iglesias. On direct examination, he testified that he did not know yet the name of the person whom he approached to buy the prohibited stuff but that his informer pointed to the accused as the person from whom he can buy the same. When asked by the court, however, he said that nobody pointed to the accused as a pusher of marijuana. Appellant's brief also pointed out the contradicting testimonies of the prosecution witnesses. On cross-examination, Benny Iglesias testified that the initials on the P10.00 bill used as buy-bust money was placed

after the arrest. His testimony, however, was contradicted by Donato Jaeda, the "officer-in-the-case," who testified also on cross-examination that the initials and other markings on the same P10.00 bill was placed before the operation.

The Solicitor General, in his brief, opined that when Benny Iglesias said he did not know the subject of their buy-bust, he actually meant that he did not know his name yet but knew him to be appellant because of the way he was dressed; that his confidential informer was able to describe him before the buy-bust but was not able to tell his name and that neither was the informer at the scene where the buy bust operation was conducted to point accused-appellant to him.

The issue before Us boils down to the credibility of witnesses.

It is a well-settled rule that findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by appellate courts (*People v. Lati*, G.R. No. 70393, April 17, 1990, 184 SCRA 336 citing *People v. Tejada*, G.R. No. 81520, February 21, 1989). This rule however, is not without exceptions, as when: 1) the conclusion is a finding grounded entirely on speculations, surmises and conjectures; 2) the inference made is manifestly mistaken, absurd or impossible; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; and 5) the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and the appellee (*Gomez v. IAC*, 135 SCRA 620; *Republic v. CA*, 132 SCRA 514; *Carolina Industries Inc. v. CMS Stock Brokerage, Inc.* 97 SCRA 734, *People v. Ale*, G.R. No. L-70998, Oct. 14, 1986, 145 SCRA 50).

We have gone through the record and the transcript of stenographic notes of the trial court and We believe that the prosecution on failed to establish the guilt of the accused-appellant beyond reasonable doubt.

The conviction of the accused-appellant by the trial court was based mainly on the testimony of Benny Iglesias, the alleged poseur buyer. The other members of the buy-bust team were not presented to corroborate the testimony of Iglesias.

Quoted hereunder is the testimony of Iglesias on the alleged arrest of the accused-appellant in a buy-bust.

"x x x

Q. On October 17, 1988, ** more or less 4:35 in the afternoon, can you recall where were you then?

A. We were at Bgy. Bambang to conduct a surveillance on the suspect pusher, sir.

Q. You said 'we,' how many were you then?

A. We were three, sir.

Q. And who were your companions?

A. Cpl. Romulo Bautista, Chief of Anti-Narcotics Unit and Pat. Jose Apronobo, sir.

Q. Now, what happened, if there were any while you were conducting the surveillance at Bambang, Pasig?

A. We arrested the person by the name of Jerome Honrada, sir.

Q. How did you come to arrest the person of Jerome Honrada?

A. Before we arrested Jerome Honrada, we conducted more or less one (1) week surveillance which was ordered to me by our District Commander, sir.

Q. Is this one (1) week before October 17, 1988?

A. Yes, sir.

Q. Now, will you tell the court the circumstances surrounding the arrest of the person of the accused Jerome Honrada?

A. We were ordered by our District Commander and we formed a team and I was asked to act as poseur buyer, sir.

Q. Now, as poseur buyer, on October 17, 1988, at around 4:35 in the afternoon upon arrival at said place, Bambang, Pasig, Metro Manila, what did you do?

A. We went to the place where many people are playing pool and accosted a man who was wearing sleeveless T-shirt and maong short pants and I asked him if there is any stuff and he answered 'Yes,' so I gave him P10.00 marked bill and he said to me 'wait for a minute.'

x x x

COURT:

Q. Who was that person whom you asked if he has some stuff?

A. I do not know yet his name, your Honor.

FISCAL:

Q. You said you did not know his name, will you tell the court why you approached this person and asked him for some stuff?

A. I talked to the confidential informer from whom among those roaming around the pool can we buy some marijuana, sir.

x x x."

On cross-examination Benny Iglesias testified:

"x x x

Q. And did I get you right when you said earlier that when you conducted the buy-bust operation in the afternoon of August 17, 1988 at Bambang, you did not know yet the person to whom you intend to buy the marijuana, is that correct?

A. Yes, sir.

Q. And when you formed the team to conduct the buy bust operation, you do not know yet the person whom you intend to arrest?

A. Yes, sir.

x x x."

COURT:

Q. Will you tell the court what particular reason you have for picking particularly on the accused among the many persons at the pool house to asked (sic) if he has some stuff?

A. Because the suspect is in rugged attire wearing sleeveless T-shirt and short maong pants, Your Honor.

Q. Nobody pointed to the suspect to you as the pusher of marijuana?

A. None, your Honor.

Q. How are the other persons in the vicinity of the pool house attired?

"x x x." (TSN, pp. 1-6)

While Benny Iglesias testified that they conducted a surveillance a week before they actually conducted the buy bust operation, they had not identified any body as their subject. In his direct testimony, he said that he did not yet know from whom they were going to buy marijuana and it was his informer who pointed to the accused-appellant as a pusher of marijuana. On cross-examination, however, Benny Iglesias testified that the only reason why he picked on the accused-appellant was because he was the only person in the hall wearing maong pants and sleeveless T-shirt.

There was no indication nor information that prior to the arrest of the accused-appellant he was a known drug-pusher. Likewise, there was no indication that after a surveillance of the target area was conducted by the police officers, the accused was already identified and marked as a person peddling marijuana and whose arrest was sought. In buy-bust operations, a surveillance is usually conducted to identify a drug-pusher who would be the subject of the entrapment. In other cases of buy-bust operations, the police team who conducts the operation does so after a reliable informant point to a particular place where the sale of the prohibited drugs by notorious drug pusher is rampant. In this case, the police team who allegedly entrapped the accused-appellant went to the billiard hall and accosted the latter because of the clothes he was wearing and as an afterthought, because he was allegedly pointed to by a police informer as being a drug pusher.

The Court is aware that the commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction. What is important that the poseur-buyer received the marijuana from the accused (*People v. Dekingco*, G.R. No. 87685, Sept. 13, 1990, 189 SCRA 512, *People v. Fernandez, et al.*, G.R. No. 80481, June 27, 1990; *People v. De la Cruz and Beltran*, G.R. No. 83260, April 18, 1990, 184 SCRA 416). However, courts should not accept hookline and sinker, the testimony of the alleged poseur-buyer that he was able to buy the prohibited drug from the accused. 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 heroine 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 (*People v. Ale*, G.R. No. L-70998, October 14, 1986, 145 SCRA 50). Considering the gravity of the penalty for this offense, courts should be careful in receiving and believing the testimony of the alleged poseur-buyer especially when none of his teammates were presented to corroborate his story. We have in many cases (*People v. Fernanda*, 145 SCRA 151; *People v. Lati*, G.R. No. 70393, April 17, 1990, 184 SCRA 336; *People v. Yatuc*, 188 SCRA 1) expressed Our reservations on the propriety of buy-bust operations. We held in these cases that the common *modus operandi* of [anti]-narcotic agents of utilizing poseur-buyers does not always commend itself as the most reliable way to go after violators of the Dangerous Drugs Act as it is susceptible to mistake, harassment, extortion and abuse.

It is also worthy to note that on direct examination Benny Iglesias testified that the markings on the ten peso (P10.00) bill were written by the officer-on-the case, Donato Jeadra (TSN, p. 18), after the arrest of the accused-appellant (TSN, p. 19). However, Donato Jeadra, testified on direct examination that the markings on the bill were written by the arresting officer, Benny Iglesias (TSN, p. 24) before the buy-bust operations (TSN, p. 25). The inconsistency in the testimony of two (2) principal prosecution witnesses had not been explained. The testimony of Jeadra is important to corroborate Iglesias testimony, at least, to confirm the latter's claim that the Pasig Police Force had in fact planned and set out the details of the buy-bust operation where the accused-appellant was allegedly caught in *flagrante delicto*. As it turned out however, Jeadra's testimony tended to

cast a cloud on the veracity of the material witness' testimony.

In several cases, We held that the testimony of a single witness, if credible and positive and if it satisfies the court as to the guilt of the accused beyond reasonable doubt is sufficient to convict (*People v. Consuelo*, 184 SCRA 406; *People v. Javier*, G.R. No. 70997, February 28, 1990). In this case, however, We are not convinced of the veracity of the testimony of Benny Iglesias that the accused-appellant was caught in flagrante. His testimony was characterized by inconsistencies, indirectness and sometimes uncertainties.

On the other hand, the defense witnesses were more direct and straight-forward. Accused-appellant testified that on that same afternoon, he was in a store about 70-80 meters away from their house, taking a snack. A tricycle ridden by two (2) policemen arrived. When they alighted, they approached the accused-appellant and asked him to go with them because a certain Major Montefalcon of the Pasig Police would like to talk to him. He was brought to the police station but he was not presented to Major Montefalcon. Instead, Benny Iglesias took out marijuana from his wallet, presented it to the accused and asked him to admit ownership of the same. Of course, he did not admit ownership of the marijuana. He further testified that he was not allowed to go home but instead, he was locked up in jail at the third floor of the police building. He was not investigated until the next day, August 18, 1988 before Fiscal Franchito Diamante. He was able to identify one of the policemen who brought him to the police station as Jose Apruebo because the latter was once a "standby" in their place.

The testimony of the accused that he was merely taking a snack in a sari-sari store when the police officers invited him to the police station was corroborated by the store owner, Gregorio Tumaming, also the Kagawad ng Lupong Tagapamayapa in the place (TSN, p. 56). Tumaming also testified that he did not see that the police officer search the body of the accused.

“Q. And, did you learned (sic) why Jerome was there? Did you come to know the reason why he was detained in the municipal jail of Pasig Police on August 17, 1988?

A. It was also from the police at the gate of the jail who told me that Jerome Honrada was really detained because of marijuana, sir.

Q. Why? Was there anything recovered from Jerome Honrada during that time that the two (2) policemen approached him at your store on August 17, 1988 while the accused Jerome Honrada was taking his snack at your store?

A. Up to now, I am still asking myself why the police would detain him. Because why (sic) they approached Jerome Honrada at my store, they did not search his body and they did not tell to Jerome that he was being arrested for any violation of law and that is what I also tell (sic) to the wife of Jerome Honrada upon reaching back home from the police station, sir.

Q. You mean to say, at the time the police approached him, nothing was said to him except that Major Montefalcon was inviting him and he also wanted to see and talk to Jerome?

A. Yes, sir.

Q. And, did they show Jerome any warrant of arrest or search warrant?

A. Nothing was shown to him, sir. They never searched his body, the meeting was very casual." (p. 57, TSN)

There is a common presumption applied in cases involving violations of the Dangerous Drugs Act of regular performance of duty by police officers conducting buy-bust operations. When the police officers had no motive in testifying falsely against the accused or when no physical violence or harm was applied to the accused, courts are bent on upholding the presumption of regularity of performance of duty by police officers. However, We also

held in *People v. Ale*, G.R. No. 708998, October 14, 1986, 145 SCRA 60 that the presumption that official duty (is) regularly performed cannot, by itself, prevail against the constitutional presumption of innocence accorded an accused person.

In this case, the lone testimony of Benny Iglesias as regards what actually happened during the alleged buy-bust was belied not only by the accused but also by the owner of the store where the accused was, according to both of them (accused and storeowner), taking a snack. The store owner who was also a Lupon ng Tagapamayapa had no reason to favor the accused or perjure himself to shield an alleged drug-pusher, if it were true.

ACCORDINGLY, the decision of the court a quo is REVERSED. The accused-appellant, Jerome Honrada is ACQUITTED of the crime charged on grounds of reasonable doubt.

SO ORDERED.

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

* The name also appears as Donato Jedda in the record.

** Note: The information alleged that the accused-appellant committed the crime on August 17, 1988.

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