

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMIL MARCOS Y ISIDRO, ACCUSED-APPELLANT.

G.R. No. 91646. August 21, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Appellant Romil Marcos y Isidro was charged with the crime of Violation of Section 4, Article II of Republic Act 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972 in an information filed by the Office of the City Fiscal of Zamboanga City with the Regional Trial Court of Zamboanga City. The information alleged:

“That on or about June 7, 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wilfully, unlawfully and feloniously sell to one SGT. AMADO ANI six (6) sticks of marijuana cigarettes, knowing same to be a prohibited drug.” (Rollo, p. 7)

When arraigned the appellant pleaded not guilty.

After trial on the merits, the appellant was found by the court guilty as charged and was sentenced to suffer imprisonment of reclusion perpetua at the San Ramon Penal Colony and to pay the costs.

The trial court gave credence to the buy-bust operation conducted by the prosecution witnesses, all of them Narcom agents, wherein the appellant sold six (6) sticks of marijuana to Sgt. Amado Ani, a member of the operation, who acted as the poseur-buyer. The other target of the operation, a certain Ballena eluded arrest and escaped.

The trial court summarized the buy-bust operation leading to the arrest of the appellant as follows:

“xxx The arrest of the accused was carefully planned. After receiving the information from the civilian informant named ‘Bobby’ that the accused and another person was selling marijuana at Talon-Talon more particularly at Lucy’s Store, the Narcom Agents conducted a surveillance in said place riding on two motorcycles a day before the raid. They saw the accused selling marijuana. The following day, again, the Narcom Agents held a conference and each of them was briefed by their team leader. One of them who was Sgt. Amado Ani was to act as poseur buyer while others, namely: Sgt. Jesus Belarga, Sgt. Bernardo Lego and Sgt. Julieta Vega as arresting officers. The following day, June 7, 1989, at about 11:00 a.m., said team consisting of Narcom Agents proceeded to the place. Three were left at a vulcanizing shop, namely, Sgts. Belarga, Lego, and Vega; while Sgt. Amado Ani, the poseur buyer, proceeded to the Lucy’s Store. There he met the accused Romil Marcos who asked said poseur buyer how much he was buying and the latter answered him P10.00 worth. The accused entered the store, gave the P10.00 marked money given by Sgt. Ani to his companion Ballena and the latter gave the accused Romil Marcos the six sticks of marijuana cigarettes which were wrapped. Sgt. Ani examined the same and upon verifying that it was marijuana, he proceeded to the street and made the pre-arranged signal by wiping his face with a handkerchief. The three Narcom Agents rushed to the place where Sgt. Amado Ani was. However, after Sgt. Ani gave the signal, he returned to where the accused Romil Marcos and alias Ballena were, introduced himself as Narcom Agent and grabbed the accused

Romil Marcos but the latter was able to escape. While escaping, the Narcom Agents saw him throw a stick of marijuana cigarette which Sgt. Belarga retrieved. Later, they apprehended Romil Marcos and brought him to their office at Upper Calarian, this City. He was turned over to the chief investigator Sgt. Mihasun together with the six sticks of marijuana cigarettes that were sold by the said accused Romil Marcos to the poseur buyer, Sgt. Ani. The six sticks were examined by the PCCI and found the same to be positive of marijuana.” (Rollo, p. 24)

The trial court rejected the appellant’s defense that he was not the object of the buy-bust operation and that he was arrested when he refused to testify against Ballena who was actually the target of the buy-bust operation. He testified as follows:

“xxx That on June 7, 1989, past 11:00 o’clock in the morning, he was at Lucy’s Store waiting for a jeep going to Sta. Catalina to find out when he was going to work at the Peninsula Construction Company because he was temporarily laid off. That while he was at the Lucy’s Store, a motorcycle stopped in the store. Immediately, the people on board said motorcycle chased a certain Ballena who is his neighbor. That Ballena’s complete name is Romeo Ballena who is known as Mimi or Mi. Then he heard a shot when they were chasing Ballena but does not know who fired the same. The people on board the motorcycle were not able to catch up with Ballena, so they returned to the store. Upon returning to the store, one of them pointed at him and said that he was a companion of Ballena at the same time handcuffing him. At that time there were many people at the Lucy’s Store numbering about thirty; that there were three CAFGUs who arrived in the place and one of them asked the people who were riding earlier in the motorcycle what were those shots for. One of them in the motorcycle answered that they must not interfere as they are Narcom Agents, and the CAFGU did not interfere. After that they placed him between the motorcycle driver and the other person and took him with them to Calarian; that the persons who took him were the same people who chased Ballena; that while on their way to Calarian, one of the two persons who chased Ballena in a motorcycle told him that he must act as witness against Ballena. However, said accused told them that he would not like to testify because he does not know what was that about. They said that they are going to place him in jail because he does not want to be a witness against Ballena.” (RTC Decision, p. 6, Rollo, p. 21)

In his appeal the appellant assigns the alleged errors of the trial court as follows:

“A. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BASED ON TESTIMONIES OF PROSECUTION WITNESSES WHICH WERE NOT PROPERLY OFFERED IN EVIDENCE AND ON REAL EVIDENCE CONSISTING OF SIX (6) STICKS OF MARIJUANA WHICH WERE NOT ALSO OFFERED IN EVIDENCE.

B. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BASED ON THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION WHICH WERE FRAUGHT WITH SERIOUS DOUBT, AND THEREFORE, CLEARLY APPEAR TO BE INCREDIBLE AND UNBELIEVABLE.

C. THE TRIAL COURT GRAVELY ERRED IN CONCLUDING THAT THE GUILT OF ACCUSED-APPELLANT HAS BEEN PROVED BEYOND REASONABLE DOUBT. (Appellant’s Brief, p. 20)

In the first assigned error, the appellant contends that the testimonies of prosecution witnesses Sgt. Jesus Belarga, Sgt. Amado Ani, Jr. and Mrs. Athena Elias Anderson were not formally offered, hence, the trial court erred in considering their testimonies. He cites sections 34 and 35, Rule 132 of the Rules of Court to prove his point, to wit:

“SEC. 34. Offer of Evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

SEC. 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the

witness is called to testify.”

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Contrary to the assertion of the appellant, Sgt. Amado Ani’s testimony was formally offered by the prosecution. Hence, when Sgt. Ani was called to testify for the prosecution, Prosecuting Fiscal Deogracias Avecilla said that Sgt. Amado Ani’s testimony was being offered “to the effect that he was the poseur-buyer of this case.” (TSN October 23, 1989, p. 15)

As regards the other mentioned prosecution witnesses, we agree with the appellant that their testimonies were not formally offered at the time the said witnesses were called to testify. However, the records reveal that the testimonies of the prosecution witnesses were offered during the formal offer of documentary evidence by the prosecuting Fiscal. The appellant did not object to such offer. In such a case, we rule that the appellant is now estopped from questioning the inclusion of the subject testimonies by the trial court in convicting him of the crime charged.

At any rate, the appellant was not deprived of any of his constitutional rights in the inclusion of the subject testimonies. The appellant was not deprived of his right to cross-examine all these prosecution witnesses.

The appellant also faults the trial court for considering the six (6) marijuana sticks as evidence for the prosecution despite the fact that they were not offered as evidence.

The record reveals that when the prosecuting Fiscal offered the prosecution’s documentary evidence among those offered was Exhibit “E” which was described as “the wrapper containing the six (6) sticks handrolled cigarette which were sold by the accused Romil Marcos to the poseur-buyer Sgt. Ani, and as part of the testimony of the Forensic Chemist Athena Anderson and Sgt. Belarga and also Sgt. Mihasun” Marcos alleges that nowhere in the offer of documentary evidence is there a mention as regards the six (6) sticks of marijuana sold by the appellant to Sgt. Ani during the buy-bust operation. Under these circumstances, the appellant argues that the appellant should be acquitted for failure of the prosecution to offer the six (6) sticks of marijuana sold by the appellant to Sgt. Ani.

This argument is not well taken.

We rule that Exhibit “E” does not refer to the wrapper alone but also refers to the six (6) marijuana sticks sold by the appellant to Sgt. Ani during the buy-bust operation. It is to be noted that Exhibit “E” was offered as evidence in relation to the testimonies of Sgt. Belarga, Forensic Chemist Athena Anderson and Sgt. Mihasun. The record is clear to the effect that in their testimonies, Sgt. Belarga, Forensic Chemist Athena Anderson and Sgt. Mihasun referred to Exhibit “E” as the six (6) sticks of marijuana sold by the appellant to Sgt. Ani during the buy-bust operation conducted by the Narcom agents led by Sgt. Belarga at Talon-Talon, Zamboanga City on June 7, 1989.

The second and third assigned errors raise the issue on credibility of witnesses. In this regard the appellant points out alleged circumstances of the prosecution witnesses which “render their testimonies lacking in probative weight or value.” The appellant focuses on the alleged inconsistent statements of the Narcom agents as regards how long they have known their informant named “Bobby” to the point that the appellant suggests that there was no informant and that the surveillance on June 6, 1989 and the buy-bust operation conducted on June 7, 1989 never took place at all.

Whether or not the prosecution witnesses, particularly the Narcom agents have known their informant Bobby for one year is not a material point in the crime of illegal sale of marijuana drug under Section 4, Art. II of the Dangerous Drugs Act. This crime requires merely the consummation of the selling transaction. (*People v. Dekingco*, 189 SCRA 512 [1990]; and *People v. Catan*, G.R. No. 92928, January 21, 1992) In case of a “buy-bust operation”, the crucial point is that the poseur-buyer received the marijuana from the appellant and the same was

presented as evidence in court. Proof of the transaction is sufficient. (People v. Catan, supra; and People v. Mariano, 191 SCRA 136 [1990])

In the case at bar, the transaction was established by the evidence on record. Prosecution witness Sgt. Ani who acted as poseur-buyer positively identified the appellant as the one who sold him six (6) sticks of marijuana for the amount of P10.00. He testified as follows:

“Q. On June 7, 1989, at 11:00 o’clock in the morning, who were those who proceeded to Bandariba, Talon-Talon, this City?

A. We were together with Sgt. Belarga, Sgt. Lago and Sgt. Vega.

Q. And from your headquarters to Talon-Talon, this City, how did you go?

A. We went there to Bandariba by using the motorcycle.

Q. What particular place at Bandariba, Talon-Talon, Zamboanga City, did your group go?

A. We stopped first at a little vulcanizing area near the road.

Q. What did you do there in that area of vulcanizing?

A. Our team leader, Sgt. Lego and Sgt. Vega left at the vulcanizing area.

Q. How about you?

A. I proceeded to the vicinity where the Lucy store is located.

Q. How far is this vulcanizing to Lucy store where you proceeded?

A. About 30 to 40 meters

Q. You were able to proceed to the Lucy store?

A. Yes, sir.

Q. What happened when you were at the Lucy Store?

A. In front of the store I was met by Romil Marcos and he asked me what I want.

Q. In what dialect did Romil Marcos ask to what you like for?

A. In Tagalog dialect.

Q. What did you say to this question of Romil Marcos?

A. I said ‘mayroon ba tayong stock?’

COURT:

Q. What do you mean by that?

A. ‘If you have marijuana stock.’

FISCAL AVECILLA:

Q. Did Romil answer you when you asked that question?

A. Yes, he answered.

Q. What did he say to you?

A. He asked me, 'How much?'

Q. What did you do when he asked 'How much?'

A. I handed the P10.00.

Q. When you handed that P10.00, what happened next?

A. He said 'you wait for me near the waiting shed.'

Q. What happened when you were told to wait in the waiting shed?

A. After a while, Romil Marcos left and went inside in a portion of the store.

Q. What happened there, if any?

A. When he came back, he brought a paper wrapper where the six (6) sticks of marijuana cigarettes were found inside.

Q. How did you know inside that wrapper are the six sticks of marijuana?

A. I opened the wrapper and I found these six sticks of marijuana cigarettes inside.

Q. Do you know where Romil got this wrapper in which you found the six sticks of marijuana cigarettes?

A. Yes, sir.

Q. Please tell the court.

A. Romil told me, 'you wait for a while'. I saw he approached a certain fellow whom we later came to know as Ballena. Then that person got the money from Romil Marcos, placed inside his pocket and he got inside from his pocket the paper wrapper containing several sticks of marijuana.

Q. You have been talking about this Romil Marcos. Would you be able to recognize if you see him again?

A. Yes, sir.

Q. Please look inside the courtroom and see around, and go down from the witness stand and tap him on his shoulder.

(Witness pointed to a man in court who identified himself as Romil Marcos when asked)" (TSN, October 23, 1989, pp. 18--19)

Second, the appellant points out the supposed inconsistency of the testimonies of Sgt. Ani, the poseur-buyer and prosecution witness Athena Elias Anderson, document examiner and forensic chemist of the PC/INP Crime Laboratory Service, Recom IX, Zamboanga City, who examined the six (6) marijuana sticks (Exhibit "E") submitted for analysis as regards the wrapper containing the six (6) marijuana sticks which were sold to the former by the appellant. Thus, while Sgt. Ani testified that the six (6) sticks of marijuana sold to him by the appellant were wrapped in a newspaper, Anderson declared that the wrapper used and submitted to her containing the six (6) sticks of marijuana was a primary ruled pad and not a newspaper. The appellant submits that what was obtained from the appellant is different from the one submitted for examination by Anderson.

We are not impressed.

The records show that when Sgt. Ani turned over the six (6) marijuana sticks wrapped in paper sold to him by the appellant, Sgt. Belarga placed his initial, the date, as well as the sign of a star on the six (6) sticks for

identification purposes. (TSN, p. 8, October 23, 1989) The records further reveal that the six (6) sticks of marijuana examined and analyzed by Anderson were identified in court by Sgt. Belarga as the same six (6) sticks of marijuana sold by the appellant to Sgt. Ani during the buy-bust operation conducted at Talon-Talon, Zamboanga City. (TSN, p. 6, October 25, 1989 in relation to TSN pp. 12-13, October 25, 1989)

In sum we find no compelling reason to disturb the findings of facts of the trial court. We give credence to the narration of the incident by the prosecution witnesses who are police officers and presumed to have performed their duties in a regular manner in the absence of any evidence to the contrary. (People v. Napat-a, 179 SCRA 403 [1989]; People v. Castillo y Martinez, G.R. No. 93408, April 10, 1992.) Moreover, the buy-bust operation was methodically executed with surveillance operations done one (1) day before the arrest of the appellant. We find the procedure adapted by the police officers in consonance with the application of regularity in the performance of official duties. (People v. De Jesus, G.R. No. 93852, January 24, 1992; People v. Castillo y Martinez, supra).

However, the trial court erred in sentencing the appellant to suffer imprisonment of reclusion perpetua. The proper penalty to be imposed on appellant should be life imprisonment, not reclusion perpetua and a fine of TWENTY THOUSAND PESOS (P20,000.00) in accordance with Sec. 4, Article II of Republic Act No. 6425, as amended. (People v. Catan, supra).

WHEREFORE, the judgment appealed from is AFFIRMED except for the MODIFICATION that the penalty shall be life imprisonment and a fine of TWENTY THOUSAND PESOS (P20,000.00) instead of reclusion perpetua, judgment appealed from is AFFIRMED.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., on official leave.

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