

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIBRADO L. ARCEO AND PANCHE A. ZAPANTA, ACCUSED-APPELLANTS.

G.R. No. 92019. September 30, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In an information filed on August 31, 1987 with the Regional Trial Court of Angeles City, the accused-appellants, Librado Arceo and Pancho Zapanta, were charged with violating Article II, Section 4 (Sale of Prohibited Drugs) of R.A. 6425 as amended, otherwise known as "The Dangerous Drugs Act of 1972." [1]

That on or about the 7[th] day of August, 1987, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously sell and/or deliver dried marijuana fruiting tops to a poseur buyer, without any authority whatsoever.

ALL CONTRARY TO LAW.

Their arrest took place on August 7, 1987, at around 2:30 in the afternoon, when a composite team of Filipino and American drug enforcement officers conducted a "buy-bust" operation with Bob Reggio, an American citizen, a Special Agent of the Clark Air Base, Office of Special Investigation (OSI), and a member of the United States Air Force, acting as the poseur-buyer. [2] The targeted pusher was the accused-appellant Librado Arceo who had sold Bob prohibited drugs on two previous occasions, the first being suspected dried marijuana leaves contained in a plastic bag on July 13, 1987, and the next, two kilograms of suspected marijuana fruiting tops wrapped in newspaper and placed inside a white big plastic bag with the markings "REGO" (sic) Men's Wear and Jeans on July 18, 1987. [3]

Driving a car with a protected unnamed civilian informer, Bob Reggio met Librado at a pre-arranged spot, which was in front of the Baptist Church at Clarkview Subdivision, Angeles City. Librado had with him a plastic bag containing two kilos of dried marijuana leaves for which he was charging Bob U.S.\$200.00. Bob gave him two marked P100.00 bills instead. When the sale was completed, Bob blinked the car's headlights, signalling to OSI Agent Darrell Dye and NARCOM Operatives Pfc. Jose Vega, Cpl. Pedro Hernandez, and agent Edgar Arimbuyutan, who were earlier deployed about fifty meters away from the church building. Seeing the pre-arranged signal, the members of the back-up team swooped down on Bob's car and arrested Librado Arceo. [4]

Upon interrogation, Librado confessed that the marijuana leaves came from Pancho Zapanta, his marijuana supplier. Pancho, who was waiting for Librado at his (Librado's) apartment on Hizon Street, Lourdes, Angeles City, was thereafter arrested. A body search on Pancho yielded a PT&T telegram with the following message: "Come tomorrow bring two at Jun's Apt." [5] The prosecution interpreted "two" as the two kilos of marijuana leaves Librado had sold Bob, and "Jun's Apt." as Librado's apartment.

The confiscated marijuana and the two plastic bags containing allegedly prohibited drugs sold to Bob on two previous "test-buys" were submitted for chemical analysis. The chemist, Marlene Salangad, positively identified

the materials submitted as marijuana fruiting tops.

At the court hearing, Librado testified that at about past 2:00 o'clock in the afternoon of August 7, 1987, a friend of his and an American guy, invited him for a ride inside Clark Air Base. Before they reached the base, the car they were riding in stopped in front of the Assembly of God Church. Suddenly, NARCOM agents arrested him; his two companions, however, were able to get away. He averred that the arresting officers did not body search him, but he was transferred to a white car and brought to a parking space near the Friendship Gate at the base, where he was punched more than a hundred times, then to the NARCOM Office in Angeles City where he was again mauled so he would admit that he was pushing marijuana. He vehemently denied ownership of the two hundred pesos in two P100-peso bills that had been taken from him; he also denied that he had sold marijuana to Bob Reggio on two occasions in the past. It was at the NARCOM office that he saw his co-accused, Pancho Zapanta.

For his part, Pancho said that he was a dealer of fighting cocks in Laguna, and that on August 7, 1987, he was in Angeles City to deliver two fighting cocks to Federico "Jun" Tan, following his receipt of a telegram (Exhibit "G"). While he was waiting for the payment of the fighting cocks, he was arrested and taken to the NARCOM office where he was manhandled. He did not know if Librado was also mauled because they were in separate rooms. He denied knowledge of any complicity or involvement with drug trafficking.

The appellants assigned these two alleged errors:

1. The trial court erred in convicting the two accused of the crime charged in the information despite the existence of reasonable doubt.
2. The trial court erred in convicting Pancho Zapanta based on flimsy and speculative evidence presented by the prosecution.

After a careful review of the oral and documentary evidence, we rule as follows:

1. The trial court correctly meted the accused-appellant Librado Arceo life imprisonment for violation of Article II, Section 4 of R.A. 6425. His denial of guilt, uncorroborated by any reliable evidence, can not overthrow the clear and convincing testimonies of the four prosecution witnesses as to his culpability.

Bob Reggio, the American poseur-buyer, testified on November 12, 1987, that Librado Arceo was the "drug-pusher," and he narrated in detail the two previous "test-buy" operations and the transaction of August 7, 1987 during which Librado demanded \$200 for the marijuana seized from him, but for which he gave Librado two P100-bills with serial numbers NVO 3529 and GL905626, all marked with his initials "IAR." [6] Bob's testimony was confirmed by the other prosecution witnesses. His blow-by-blow personal account of the entrapment remained undisturbed.

One of the witnesses, Cpl. Pedro Hernandez, claimed that on August 7, 1987, he was stationed at Don Juico Street, Clarkview, Angeles City, about fifty meters away from the parked car. He may not have been within hearing distance of the suspect and the poseur buyer, but he was certainly near enough to observe Librado holding a plastic bag as he got inside Bob's car, where the "buy-bust" operation took place at around 2:30 in the afternoon. He and PFC. Jose Vega and agent Darrell Dye responded to the pre-arranged signal. They caught Librado in flagrante selling the prohibited drug. Hernandez then executed an affidavit on August 7, 1987, stating that he and PFC. Jose Vega arrested Librado Arceo for pushing marijuana. [7]

Another witness, PFC. Jose Vega, a NARCOM agent, stated that he prepared and signed the confiscation receipt for the two hundred-peso bills taken from Librado which were marked as Exhibit "H". [8] He wrote his initials "JTV" Exhibit "I" on the yellow plastic bag containing marijuana which was sold to the poseur-buyer. Likewise,

he affixed his initials to the yellow plastic bag marked Exhibit "I-1" containing marijuana which the accused Librado had sold Bob prior to August 7, 1987. These exhibits are real evidence to sustain the ruling of the trial court.

During the trial, Marlene Salangad, a police officer and forensic chemist at the PC Crime Laboratory in Camp Olivas, San Fernando, Pampanga, identified the same items she had examined and declared them as positive for marijuana on August 7, 1987.[9] She said the orange plastic bag contained 12.5 grams of marijuana, the red plastic bag, 1.93 kilograms, and the yellow plastic bag, 2 kilograms of the same. Proper safeguards were taken to protect the integrity of the exhibits which she kept in her padlocked locker.

To top it all, the principal prosecution witnesses are all law enforcers and are, therefore, presumed to have regularly performed their duty in the absence of proof to the contrary.[10]

On their part, the accused-appellants pointed to inconsistencies in the testimonies of the prosecution witnesses, such as in the testimonies of Bob Reggio and Cpl. Pedro Hernandez. Bob inadvertently forgot to mention in his testimony that the civilian informer was with him, while Cpl. Hernandez said he could "not remember if the informer was inside the car, but there were about three men in the car." [11]

We do not, however, find these inconsistencies substantial enough to impair the veracity of their narration. Such imperfection in fact indicate human fallibility. We can not expect Cpl. Hernandez to remember in every minute detail of the buy-bust operation of August 7, 1987. Whether or not three persons were involved in the shady deal when the entrapment was concluded is not fatal to the prosecution's case. The overwhelming exhibits and persuasive oral testimonies of the prosecution witnesses, as earlier adverted to, warrant a conviction beyond reasonable doubt.

In addition, the defense claimed Librado could not make the transaction in broad daylight and in the car of a stranger—situations over which he had no control. But it was not improbable for Librado to conduct the illegal sale so openly. First, the poseur-buyer was an old customer. Second, as we have ruled, drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at any time and at any place.[12] After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a matter of minutes.[13] The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same.[14] Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in the billiard hall,[15] along the road,[16] in the streets,[17] and in front of a house.[18]

It is inconceivable that Librado had been pummelled on the face and stomach for more than a hundred times in ten minutes until he almost lost consciousness, just to coerce him to admit the charges lodged against him. It was odd that Librado, 36, a business administration degree holder from Holy Angel University, and a trader of kitchen wares and home decorations, would be as silent as a lamb while he was being beaten up. He should have filed the necessary case, but he did not, nor did counsel, Atty. Oliver T. Villanueva, advise him to. And that's because, the Court believes, he was never mauled.

2. The court a quo gravely erred in convicting Pancho Zapanta under Article 17, paragraph 3 of the Revised Penal Code, as a principal who cooperated in the commission of the offense through another act without which the first act would not have been accomplished, in relation to Section 4, Article II of R.A. 6425, as amended. As against appellant Pancho Zapanta, the elements of the crime were not proven beyond reasonable doubt. Pancho, who is under pain of imprisonment, should be released from detention immediately.

The accused-appellant Pancho Zapanta's guilt was based haphazardly on the strength of Librado's unwritten

extra-judicial confession that he (Zapanta) was the supplier of marijuana. In addition, the trial court misconstrued the contents of the PT&T telegram taken from his possession by the police officers as referring to two kilos of marijuana.

Librado subsequently denied having pointed to Pancho as his supplier. Librado's confession was thus not only unfounded, but obtained in gross violation of his fundamental right to counsel.[19] He was never provided with a counsel at the preliminary stage of the investigation in which incriminatory questions were asked him. Hence, the confession is inadmissible as evidence of Pancho's guilt, or for any purpose.

As aptly noted by the Solicitor General, there was no other evidence presented to show Pancho's complicity in the crime charged. No illegal drugs were found in his person upon his arrest. The officers only discovered a PT and T telegram whose text, "Come tomorrow, bring two at Jun's Apt.", did not clearly mean a marijuana operation. The word "two" is equivocal and could refer to anything. As a matter of fact, Pancho testified that the "two" referred to two fighting cocks which he was selling to a certain "Jun Tan." As the Solicitor General puts it, "(A)t best, the evidence against accused-appellant Zapanta is circumstantial, splintered and unthinkable, and cannot therefore overturn the presumption of his innocence of the crime charged," he must, perforce, be acquitted.

WHEREFORE, the decision appealed from is MODIFIED, AFFIRMING Librado Arceo's penalty of life imprisonment, and ACQUITTING the other accused-appellant, Pancho A. Zapanta, whose immediate release from confinement is hereby ORDERED.

No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Regional Trial Court, Third Judicial Region, Branch 58, Angeles City; Hon. Reynaldo B. Daway, Presiding Judge.

[2] TSN, November 12, 1987, 2.

[3] Exhibit "E".

[4] Appellee's Brief, 3-4.

[5] Exhibit "G".

[6] TSN, November 12, 1987, 4-8.

[7] TSN, August 15, 1989, 15.

[8] TSN, October 2, 1989, 8.

[9] TSN, January 26, 1989, 3-6.

[10] People v. Andiza, G.R. Nos. 71986-87, August 19, 1988, 164 SCRA 642.

[11] TSN, August 15, 1989, 9.

[12] People v. Paco, G.R. No. 76893, February 27, 1989 170 SCRA 681.

[13] Id., 689.

[14] Id. 689.

[15] *People v. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329.

[16] *People v. Sanchez*, G.R. No. 89407, Dec. 21, 1990.

[17] *People v. Anciano*, G.R. No. 88937, Sept. 13, 1990, 189 SCRA 519.

[18] *People v. Andiza*, *supra*.

[19] 1987 Philippine Constitution, Article III, section 12(1) Any person under investigation for the commission of the offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. This right cannot be waived except in writing and in the presence of counsel.

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