

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN MALAKAS, ACCUSED-APPELLANT.

G.R. No. 92150. December 08, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is one of those cases prosecuted under the Dangerous Drugs Act where a buy-bust operation leading to the arrest of the accused does not withstand the requisite proof beyond reasonable doubt to put the accused justifiably behind bars.

The version of the prosecution is that on 21 April 1989, at about 11:00 o'clock in the morning, a civilian informer went to the headquarters of the Narcotics Command (NARCOM), Region IV, stationed in Lucena City, and reported that a certain Efren Malakas was selling prohibited drugs in Bgy. Guadalupe, Phase Two, San Pablo City. Immediately, a team composed of 2Lt. Rodolfo Ricomono, T/Sgt. Iluminado Evangelista, Sgts. Elpidio Anasta, Dominador Cruz and Rico Atienza, and Pfc. Felipe Maderazo was organized and dispatched to effect the arrest of the reported drug pusher. Sgt. Anasta, who was given a marked P50-bill by Lt. Ricomono, was designated as the poseur-buyer who was to approach the suspected pusher, pretend to buy marijuana from the latter, then raise his left hand to indicate that the illegal sale had already been consummated.[1]

The team left Lucena City about 12:00 noon. At around 3:00 o'clock that afternoon, the buy-bust team, together with the informant, arrived in Guadalupe, Phase Two, San Pablo City where a basketball game was in progress. Sgt. Anasta alighted from their service jeep and proceeded to the small store beside the basketball court where the confidential informer pointed to the accused who was among the many spectators of the game while the other agents observed from a distance. Sgt. Anasta then approached the accused saying: "Pare, mayroon ba tayo diyan, may kumpromiso ako sa aking barkada?"[2] Without uttering a word, the accused left and returned to Sgt. Anasta after two minutes, and thereupon handed to him a plastic bag containing forty (40) sticks of marijuana cigarettes with inscription "Super Langka." [3] Sgt. Anasta gave the P50-bill and casually raised his left hand.[4] After around two minutes, the NARCOM agents moved in and arrested the accused who just stood in front of Sgt. Anasta.[5] The accused was then brought to the NARCOM Headquarters in Lucena City[6] and later back to the San Pablo Police Headquarters.

Lt. Ricomono transmitted the seized marijuana to the Philippine Constabulary Crime Laboratory in Camp Crame, Quezon City, where the Forensic Chemist confirmed the specimen to be marijuana.

The accused however totally denies the accusation and points to a certain Virgilio "JR" Villamin, allegedly a known drug pusher in their area, as the one who was actually approached by the NARCOM agents. The accused avers that on 21 April 1989 he, together with basketball teammates Menandro de Silva, Edilberto Salcedo and others, was in Guadalupe Subdivision for a basketball game scheduled at 4:00'clock that afternoon.[7] At around 3:00 o'clock, while watching the game scheduled ahead of theirs, he noticed Virgilio "JR" Villamin in conversation with two persons unknown to him (accused). After one of them handed money to Villamin, the latter

left. Immediately thereafter, however, someone shouted: "PC! PC!" This triggered a commotion causing people around to flee, including the accused.[8] However, the two unidentified persons, who later turned out to be NARCOM agents, got hold of him. As one of them frisked him, the other tried to give him something wrapped in plastic. The accused then pleaded to the agents to spare him: "Huwag ninyo akong subuan, hindi naman ako pusher," but the agents nevertheless persisted and dragged him. He was able to extricate himself and escape but only to trip and fall down after running several meters, whereupon his pursuers overtook him. He was beaten up, made to board a tricycle, blind-folded, transferred to a waiting jeep, and brought to Lucena City.[9] The following day, he was brought back to the Police Headquarters in San Pablo where he was detained.

Accused likewise claims that it was not Sgt. Anasta who arrested him as he saw the latter only after he was brought to Lucena City.[10] He also asseverates that while he was under detention, Pfc. Maderazo told him: "Pasensiya ka na, at ikaw ang nahuli. The PC will not go home without any apprehension." [11]

On 14 December 1989, the court a quo,[12] giving more credence and respect to the version of the prosecution, found Efren Malakas guilty beyond reasonable doubt of violating Sec. 4 of R.A. 6425, as amended, and "sentenced him to suffer the penalty of reclusion perpetua (life imprisonment) and to pay a fine of P20,000.00 x x x"[13]

In this appeal, the accused maintains that he was never the subject of any buy-bust operation. In fact, he asserts that the testimonies of the prosecution witnesses hardly show that an entrapment ever took place. There was barely any conversation between the poseur-buyer and the suspected drug pusher, if the version of the prosecution were to be believed. He also cites the failure of the poseur-buyer to respond to the prosecutor during the direct examination on how much was paid for the prohibited drugs and other improbabilities and inconsistencies which put the credibility of the apprehending officers in serious doubt.

We agree with the accused. If we were to believe the account of the prosecution, it would seem that there was no agreement whatsoever as to the sum of money to be paid and the amount of prohibited drugs to be purchased. The alleged poseur-buyer testified that he merely asked the suspected drug peddler: "Pare, mayroon ba tayo diyan, may kumpromiso ako sa aking barkada," and the accused, without saying a word, left and returned with forty sticks of marijuana cigarettes, for which the poseur-buyer paid with a P50-bill. This is highly unlikely. Even regular buyers and users inform, impliedly or expressly, the drug merchant on the quantity they are buying so that he will know how much to deliver. Although the actual negotiation need not be lengthy nor is there a need for haggling on the price, the drug peddler should be given the slightest hint at least on the quantity and the cost of the drug being purchased. Thus, in *People v. Uson*, [14] where the Court acquitted the appellant, we said: "Furthermore, the matter of the monetary consideration for the drug was never taken up during the meeting x x x They never discussed that Casino was to purchase P100.00 worth of 'shabu' from appellant, as Casino would have this Court believe otherwise in his affidavit." And in *People v. Quetua*, [15] we ruled: "The evidence for the prosecution appears confined merely to buyer-told-seller-of-intention-to-buy-marijuana, and seller-handed-over-stuff-while-buyer-gave-P100.00-as-payment. But how could appellant, as seller, have known what quantity to bring when from the testimony he did not even have the slightest idea of how much marijuana Sgt. Reyno, as buyer, was interested in purchasing?"

Indeed, the seller has first to be apprised of how much is being purchased before he could deliver. The poseur-buyer could do this by expressly disclosing how much he is buying or by simply giving the marked money for the seller to have a hint of how much worth the buyer is interested to acquire. A survey of cases where a buy-bust actually transpired shows that the poseur-buyer would either first ask, "[t]iene ba quita alli?" (Do you have anything there?), and the suspected pusher would answer, "[t]iene acqui valor de P5.00 lang de marijuana" (I have here worth only P5.00 of marijuana), after which the poseur-buyer would reply, "[s]aca yo se, compra yo

conose" (I will take that, I will buy it);[16] or the poseur-buyer would simply hand to the suspected pusher the marked money and wait;[17] or the poseur-buyer would casually approach the suspected pusher and tell the latter "[t]atlong piso lang, pare," meaning, in their peculiar lingo, P300.00 worth of "shabu;"[18] or conversations of similar import, the bottom-line being that the suspected pusher is informed of how much worth of prohibited drugs is being purchased before he actually delivers the goods.

In the instant case, the prosecution tries to impress upon the Court that no negotiation whatsoever took place but a mere exchange of goods and money. The accused merely delivered the prohibited goods in an amount he thought best the poseur-buyer needed, for which a P50-bill was automatically paid. This is precisely what prosecution witness Pfc. Maderazo, a member of the buy-bust team who allegedly observed the consummation of the illicit transaction, said: "[i]t was Efren Malakas who handed (at) first; when it was verified by Sgt. Anasta, that was the time he handed the P50.00, sir."[19]

How could the accused have known the quantity of the prohibited drug Sgt. Anasta was going to buy, and conversely, how could the latter have known how much worth the accused was going to deliver? In one case[20] where we said that "[u]nlike in other buy-bust operations where the apprehending team is unaware of the exact value of the illegal drug the suspected pusher would be going to sell and thus has to play it by ear, it appears here that the entrapment team had already pre-determined the worth of the goods to be sold by preparing beforehand the precise amount it had to pay," this Court acquitted the accused.

Furthermore, Sgt. Anasta's testimony that it took the apprehending officers two whole minutes from the time he raised his left hand, the pre-arranged signal indicating that the transaction has been consummated, to move in and arrest the accused who was just standing in front of him,[21] is highly unnatural and improbable considering that they were allegedly only ten (10) meters[22] more or less away from where the transaction took place. Actual buy-bust operations are conducted swiftly and expeditiously, to prevent the escape of the suspect. The dillydallying of the arresting officers negates the existence of a bona fide buy-bust operation.

Even the testimony of Pfc. Maderazo, one of the two officers alleged to have first responded to the signal of Sgt. Anasta, is not totally undoubtful. During his direct examination, he said that he did not see the actual exchange, but only the signal given by Sgt. Anasta.[23] On cross-examination, however, he asserted that he actually saw the accused first hand the plastic bag of marijuana after which Sgt. Anasta paid with the P50-bill.[24] This puts into serious doubt whether an actual sale indeed took place.

What is more perplexing is the claim of Sgt. Anasta that he could not recall how much he paid the accused for the forty (40) sticks of marijuana cigarettes he had purchased.[25] Considering that he is the star witness, having supposedly acted as the poseur-buyer, it puzzles us no end that in such a short span of time, from 21 April 1989 when the alleged buy-bust operation took place, until he took the witness stand on 13 July 1989, he had already forgotten the incident which led to the arrest of the accused. This to our mind belies the actual occurrence of a buy-bust operation.[26]

We take exception to the finding and rationale of the trial court, thus –

The accused further claims that if the military officers arrested him, it was because Pfc. Maderazo told him that the PC officers would not want to return to their camp without catching somebody. We refuse to swallow this. We cannot believe that public officers like the military officers in this case who are sworn to perform their duties in accordance with law would be so callous and insensitive to the rights of the accused as to accuse him of so grave an offense on the basis of their fabricated evidence. Let it be remembered that the accused is not known to the apprehending officers. That was the first time they saw him. There is no reason whatsoever shown to show that they were motivated by any evil or sinister design in arresting the accused. On the contrary, it can be said that they were in lawful pursuit of their own duties and the presumption is that they

have discharged their duties faithfully and regularly (underscoring ours).[27]

A cursory reading of the transcript of stenographic notes reveals that, contrary to the finding of the trial court, the accused was known to Pfc. Maderazo, a member of the buy-bust team that arrested the accused. The following dialogue between counsel for the accused and Pfc. Maderazo is enlightening -

(ATTY. ALCANTARA:)

Q According to you, you are personally known to Efren Malakas for quite a long time?

(PFC. MADERAZO:)

A Yes, sir.

Q How long?

A Two (2) years before I was assigned at Lucena City, sir.

Q In your own knowledge, do you have personal intervention where Efren Malakas has been charged for possession of prohibited drugs aside from this?

A I cannot recall but I used to see him in the capitol building, sir, in some cases filed against him but not marijuana, sir.[28]

From the foregoing, it is quite obvious that the premise of the trial court that the accused was not known to the apprehending officers is erroneous. In fact, from the testimony of Pfc. Maderazo it can be inferred that he even knew that the accused had a criminal record. For, indeed, the accused has a criminal record[29] which, contrary to the view of the prosecution, does not signify anything, much less imply habituality in committing crimes. It does not necessarily mean that because the accused was previously convicted of various offenses, he should likewise answer for the present charge. This is a fallacy; it is non-sequitur.

Consequently, oftentimes it is said that the defense of the accused assumes importance when faced with the uncertainties and inconsistencies in the prosecution's evidence.[30] The defense then of the accused that he was arrested after the real pusher slipped away merits serious consideration. Indeed, he was a convenient fall guy the NARCOM agents could easily frame-up due to his previous criminal cases. For even if we consider the defense to be weak, the prosecution is even weaker as its evidence is laden with inconsistencies and improbabilities. Accordingly, we cannot presume that official duty was regularly performed by the apprehending officers, for it cannot by itself prevail over the constitutional presumption of innocence accorded the accused.[31]

However, the argument of the accused that it would be highly improbable for him to sell marijuana to a complete stranger whom he has just met for the first time, and with so many people around, must be rejected. In *People v. Roldan*,[32] we said that it does not appear far-fetched at all that marijuana and other drugs would be brought and sold by spectators at a municipal or barangay basketball court. In that case, we cited *People v. Paco*[33] where we said -

"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. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. 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. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall (*People v. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329; *People v. Sarmiento*, G.R. No. 72141, January 12 1987, 147 SCRA 252), in front of a store (*People v. Khan*, supra), along a street at 1:45 p.m. (*People v. Toledo*, G.R. No. 67609, November 22, 1985, 140 SCRA 259) and in front of a house

(People v. Policarpio, G.R. No. 69844, February 23, 1988) (underscoring supplied)."

Likewise, the contention of the accused that the failure to put the confidential informer on the witness stand is fatal, must fail. What can be fatal is the non?presentation of the poseur-buyer if there is no other eyewitness to the illicit transaction,[34] not the non?presentation of the informant whose testimony under certain circumstances would be merely corroborative or cumulative.[35]

And, inasmuch as the prosecution has miserably failed to prove that a buy-bust operation which led to the arrest of the accused actually occurred, the Court deems it unnecessary to resolve the issue of whether the marijuana leaves examined by the Forensic Chemist were the ones bought and seized from the accused.

Finally, it should be emphasized, perhaps to the point of triteness, that life imprisonment is not synonymous with reclusion perpetua.[36] The penalty prescribed by the Dangerous Drugs Act, as amended, for the offense charged is life imprisonment, not reclusion perpetua as the trial court put it. Thus, Administrative Circular No. 6-A-92 issued 21 June 1993, amending Administrative Circular No. 6--92 dated 8 October 1992, ordains that -

"For the guidance of all concerned, the admonition by the Court on the subject in People v. Penillos, January 30, 1992 (205 SCRA 546), is reproduced hereunder:

'As noted from the dispositive portion of the challenged decision, the trial court imposed the penalty of reclusion perpetua or life imprisonment. Evidently, it considered the latter as the English translation of the former, which is not the case. Both are different and distinct penalties. In the recent case of People v. Baguio, (April 30, 1991, 196 SCRA 459), this Court held:

"The Code (Revised Penal Code) does not prescribe the penalty of life imprisonment for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special law. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as 'life imprisonment' which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration.'

'As early as 1948, in People vs. Mobe,[37] reiterated in PP vs. Pilones[38] and in the concurring opinion of Justice Ramon Aquino in People vs. Sumadic,[39] this Court already made it clear that reclusion perpetua is not the same as imprisonment for life or life imprisonment. Every judge should take note of the distinction and this Court expects that, henceforth, no trial judge should mistake one for the other. (Italics supplied).

"Strict compliance with this Administrative Circular is hereby enjoined."

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE. Accused EFREN MALAKAS y RAFAER is ACQUITTED of the crime charged, the prosecution failing to demonstrate his guilt beyond reasonable doubt.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

[1] TSN, 13 July 1989, pp. 4-5, 12.

[2] Id., pp. 5-7, 17-20.

[3] Id., pp. 7-8, 25-26.

- [4] Id., p. 28.
- [5] Id., pp. 29-31.
- [6] Id., pp. 10, 37.
- [7] Id., 20 October 1989, pp. 2-3.
- [8] Id., p. 4.
- [9] Id., pp. 5-7.
- [10] Id.
- [11] Id., p. 23.
- [12] Judge Bienvenido V. Reyes, presiding.
- [13] Decision of the court a quo, p. 7.
- [14] G.R. No. 101313, 5 July 1993.
- [15] G.R. No. 87667, 21 May 1993.
- [16] People v. Alejandro, G.R. No. 94644, 17 August 1993.
- [17] People v. Mortos, G.R. No. 103632, 1 September 1993.
- [18] People v. Salamat, G.R. No. 103295, 20 August 1993.
- [19] TSN, 25 July 1989, p. 27.
- [20] People v. Ambih, G.R. No. 101006, 3 September 1993.
- [21] TSN, 25 July 1989, pp. 28-30.
- [22] Id., p. 10; 3 August 1989, p. 4; 26 September 1989, p. 19.
- [23] Id., 25 July 1989, p. 12-13.
- [24] Id., pp. 23-27.
- [25] Id., 13 July 1989, p. 7.
- [26] People v. Martos, G.R. No. 91847, 24 July 1992, 211 SCRA 805.
- [27] Decision of the trial court, p. 5.
- [28] TSN, 25 July 1989, pp. 38-39.
- [29] The information recites that the accused has been previously convicted in Crim. Case No. 17782 for simple theft, in Crim. Case No. 17599 for vagrancy, in Crim. Case No. 18553 for evasion of service of sentence, and in Crim. Case No. 18554 for theft.
- [30] People v. Viray, G.R. Nos. 87184-85, 3 October 1991, 202 SCRA 320, citing People v. Padilla, G.R. No. 72709, 31 August 1989, 177 SCRA 129.
- [31] People v. Martos, *supra*; Note 26.
- [32] G.R. No. 98398, 6 July 1993.

[33] G.R. No. 76893, 27 February 1989, 170 SCRA 681.

[34] *People v. Polizon*, G.R. No. 84917, 18 September 1992, 214 SCRA 56.

[35] *People v. Li Wai Cheung*, G.R. Nos. 90440-42, 13 October 1992; *People v. Mendoza*, G.R. No. 92387, 18 December 1992, 216 SCRA 715.

[36] *People v. Marcelino*, G.R. No. 85247, 30 July 1993; *People v. Garcia*, G.R. No. 92269, 30 July 1993, and the litany of cases cited therein; *People v. Salamat*, G.R. No. 103295, 20 August 1993, to name a few cases.

[37] 81 Phil. 58.

[38] Nos. L-32754-5, 21 July 1978, 84 SCRA 167.

[39] No. L-38163, 27 April 1982, 113 SCRA 689.

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