

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO GARCIA Y RODRIGUEZ, ACCUSED-APPELLANT.

G.R. No. 92270. June 27, 1991

Ponente: PARAS, J.

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PARAS, J.:

On the basis of a buy-bust operation conducted by the Tarlac Provincial Anti-Narcotics team, Alberto Garcia y Rodriguez was charged before the Regional Trial Court, Tarlac, Tarlac with violating Section 4, Article II of Republic Act No. 6425 otherwise known as "The Dangerous Drugs Act of 1972", as amended.

The crime was allegedly committed as follows:

"That on or about October 27, 1988 at around 3:05 o'clock in the afternoon, in the Municipality of Camiling, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, without being lawfully authorized, did then and there willfully, unlawfully and feloniously sell two (2) tea bags of marijuana dried leaves, which is in violation of the Dangerous Drugs Act of 1972, as amended.

"Contrary to law." (p. 9, Rollo)

When arraigned, the accused-appellant assisted by counsel pleaded "not guilty." (p. 17, Rollo)

During the pre-trial conference, the parties agreed on the following facts:

- "1. That the name of the accused as appearing in the complaint is the same person charged with the crime;
- "2. That the alleged incident happened on October 27, 1988, at 3:05 in the afternoon, at the Public Market of Camiling, Tarlac, as stated in the information;
- "3. That at the Police Station there was taken in the possession of the accused two (2) P5.00 bills Nos. MM-654664 and GJ-529801 to which the accused signed a receipt admitting that they have been taken from his possession; and
- "4. That the accused is a vendor of native cakes." (pp. 17-18, Rollo)

The facts for the prosecution are stated by the Solicitor General in his Brief for the Appellee as follows:

"The prosecution presented Major Samuelo Cruz, head of the Tarlac Provincial Anti-Narcotics team, Sgt. Jesus Felipe, Sgt. Vicente Ballesteros and the PC/INP forensic chemist Marlyn Salangad. Briefly, they testified to the following: that on October 27, 1988, the Provincial Anti-Narcotics team composed of Sgt. Felipe, Pat. Guillermo, Sgt. de Guzman, Pat. Gonzales and Sgt. Ballesteros were conducting a buy-bust operation in Camiling, Tarlac, based on an information from a C.I. (Civilian Informer) that accused-appellant was selling marijuana (TSN, pp. 28-29, April 30, 1989; TSN, pp. 4-5, April 20, 1989). Sgt. Ballesteros was assigned to act as the poseur-buyer. Sgt. Ballesteros paid P50.00 (marked money) for the marijuana he bought from the accused (TSN, p. 9, April 20, 1989). The buy-bust operation was witnessed by Sgt. Felipe and the other members of the team (TSN, pp. 29-30, April 30, 1989); that thereafter, they arrested accused and recovered

from his possession two (2) P5.00 marked bills; that two (2) P20.00 marked bills were not recovered (TSN, pp. 31-41, April 20, 1989). Major Cruz found that the two (2) tea bags of marijuana dried leaves which were submitted to him by his operatives were positive for marijuana; that Major Cruz sent the two (2) tea bags of marijuana leaves to the PC/INP Crime Laboratory for confirmation of his test (TSN, pp. 3-25, April 13, 1989). Marilyn Salangad, Forensic Chemist who conducted the laboratory test on the marijuana, testified that, the two (2) tea bags of marijuana dried leaves submitted to her were positive as marijuana (TSN, pp. 4--10, July 11, 1989). (pp. 2-3, Brief for the Appellee, p. 44, Rollo)

On the other hand, the accused-appellant has a different version of the facts, to wit:

"That on October 27, 1988, at around 3:25 o'clock in the afternoon, the accused while selling native cakes in front of the public market of Camiling, Tarlac, PC soldiers without any search warrant, searched the body of the accused and took from his pocket two five peso bills. He was brought to the INP Station at the municipal building of Camiling, Tarlac. While the accused was inside of the Police Station, without the benefit of counsel, he was made to sign a mimeographed paper already filled up showing that the PC soldiers took from his possession the two five peso bills." (pp. 27-28, Rollo)

As between these two versions, the trial court gave credence to that of the prosecution. The accused was, thus, found guilty beyond reasonable doubt of the crime charged and was sentenced to suffer reclusion perpetua and to pay a fine of Twenty Thousand (P20,000.00) Pesos.

The accused-appellant assails his conviction on the following grounds:

I

THAT THE TRIAL COURT ERRED IN CONCLUDING THAT THE MARIJUANA LEAVES ALLEGEDLY EXAMINED BY THE NBI CHEMIST WERE TAKEN FROM THE ACCUSED.

II

THAT THE TRIAL COURT ERRED IN GIVING FULL CREDIBILITY TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THAT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED IN THE INFORMATION." (p. 44, Rollo, p. 4 of Appellee's brief)

The foregoing issues raised by appellant bring Us to the question of - who is more credible, the prosecution or the defense? On credibility, it is an oft-repeated rule that this Court will not disturb the findings of the trial judge unless he has plainly overlooked certain facts of substance and value that, if considered might affect the result of the case. (People v. Javier, 183 SCRA 702)

Accused-appellant contends that "x x x the trial court erred in concluding that marijuana leaves allegedly examined by the Forensic Chemist were taken from the accused x x x." (p. 1, Appellant's brief)

This contention is simply not tenable. There is positive testimony that Sgt. Ballesteros was able to buy marijuana from the accused in a buy-bust operation in the presence of Sgt. Felipe. The prosecution was able to establish that notwithstanding appellant's denial, the latter was caught in flagrante as a result of the buy-bust operation. Sgt. Felipe corroborated Sgt. Ballesteros testimony. Sgt. Felipe testified as follows:

FISCAL BAUTISTA - continuing.

Q: Could you tell this person who told you that this person is selling marijuana?

A: The civilian informer, sir. (C.I.)

Q: Where was the place.

A: Central of the public market, sir.

Q: Who was your buy bust operator in the group?

A: C-2-C Ballesteros and De Guzman, sir.

Q: Were you personally present when Sgt. Ballesteros made the buy bust operation?

A: Yes, sir.

Q: How far were you from Sgt. Ballesteros and the accused when he was making a buy bust operation?

A: Three to five men (sic), sir.

Q: What happened when he was making a buy-bust operation?

A: When we made a buy-bust operation, C-2-C Ballesteros bought marijuana from the suspect, sir.

Q: Was he able to buy?

A: Yes, sir.

Q: After Sgt. Ballesteros bought marijuana from the accused, what did you do as member of the operatives, sir.

A: We arrested him and brought him to the Camiling Police Station for blotter (sic), sir.

Q: Immediately after you arrested him, did you conduct a search on his person?

A: Yes, sir.

Q: And did you recover anything from him?

A: Yes, sir.

Q: What did you recover from him?

A: We recovered from him two tea bags of marijuana, sir.

Q: The marijuana tea bags and the two five peso bills, do you mean that you recovered from him the two five peso bills because the two tea bags were already in the possession of Sgt. Ballesteros?

A: Yes, sir.

Q: Why did you take these two five - pesos bills from his possession?

A: We got the two five - peso bills so that we will have pieces of evidence that we gave the money to buy the two tea bags, sir.

Q: Do you mean to say that the two five - peso bills were marked money?

ATTY. ALCANTARA:

That is leading, Your Honor.

COURT:

Avoid leading questions.

PROS. BAUTISTA - continuing

Q: What made you say that these are marked money?

A: Because we got the serial numbers, sir.

Q: And what distinguishing marks did you make in order to connote that these are part of the money which you paid him?

A: Only the serial number, sir."

(TSN, pp. 29-31, April 13, 1989)

It was therefore clearly established that the two tea bags of marijuana that were sold by appellant to poseur-buyer agent Ballesteros were the same marijuana that were delivered to the Forensic Chemist which were found positive for marijuana. The contention of the accused that 'x x x the trial court erred in concluding that the marijuana leaves allegedly examined by the PC/INP Forensic Chemist were taken from the accused, is therefore belied by the records. Marilyn Salangad, a graduate of chemistry from the MAPUA University, a reputable school, former instructress of the Pampanga Provincial College before joining the PC/INP as Forensic chemist, testified thus:

Q: You received this Exhibit 'E' referring to the plastic bag now under the same condition as you presented it to the Court?

A: They are sealed, I opened them for examination, sir.

Q: How were they sealed?

A: By flame, sir.

Q: When did you actually receive them?

A: On November 7, 1988 at 11:35 a.m., sir.

Q: As a matter of fact you received several specimens on that date?

A: Yes, sir.

Q: And also as a matter of fact you conducted examination on this plastic bag marked Exhibit 'E' with other specimens you just mentioned awhile ago?

A: I examined one at a time, sir.

Q: But you conducted several examinations on the same day?

A: Yes, sir.

PROS. BAUTISTA:

Already explained, Your Honor.

ATTY. ALCANTARA:

Q: There is a label appearing on the plastic bag Exhibit 'E' NB-472-88, who placed this?

A: I was the one, sir.

Q: In other words when you received the plastic bag there was no identification whatsoever?

PROS. BAUTISTA

We object, Your Honor. According to the previous testimony of the witness there were submitted to her with the request.

ATTY. ALCANTARA

Q: Except with the request?

A: There were markings on the plastic bag but I do not know who placed them, sir.

Q: Are you referring to the small plastic bags inside the plastic bag?

A: Yes, sir.

Q: There is a marking on this one plastic bag, 1.24 with unreadable thing, who placed this marking?

A: My marking is in black ballpen, the weight is 1.24 and my initial is there, I received the same.

Q: In other words you personally placed this marking on that plastic bag?

A: Yes, sir, except those in blue pentel pen.

Q: Are your marking on blue pentel pen? I only see those in black ink?

A: On the first plastic bag what I can read is Alberto Garcia, second plastic bag also Alberto Garcia.

COURT

Q: These Alberto Garcia were written in?

A: Plastic Bag, sir.

(TSN pp. 11-13, July 11, 1989)

The above testimony corroborates that of Maj. Cruz, when the latter testified, thus:

Q: So, am I right if I would say that these two tea bags allegedly containing marijuana were not submitted personally by Ballesteros?

A: Sgt. Felipe submitted it to me and it was acknowledged by the suspect because he signed the plastic receipt of these two tea bags, sir." (stress supplied)

(TSN, p. 13, April 13, 1989)

(pp. 5-11, Appellee's brief, p. 44, Rollo)

With the foregoing testimonial evidence, We are constrained to give credence to the witnesses of the prosecution who had proven beyond reasonable doubt every essential element of the crime of which accused-appellant was charged. After all, "proof beyond reasonable doubt" is defined under Rule 133, section 2 of the Rules of Court as follows:

"x x x Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."

In the instant case, there is clear proof that accused-appellant was caught in flagrante delicto, - in the very act of selling two (2) tea bags of marijuana dried leaves. The prosecution witnesses competently narrated the pertinent details attendant to the crime. In the absence of any motive shown on the part of the Anti-narcotics team to

implicate the accused-appellant and considering the foregoing evidence for the prosecution, We agree with the trial court's assessment that the presumption of innocence in favor of the accused-appellant has been overcome. As aptly found by the trial court -

"With some relevant facts having been admitted and established during the pre-trial conference (p. 46, Record), the Court finds only two remaining issues to be resolved, to wit: firstly, the nature or essence of the two (2) tea bags of dried marijuana leaves; and secondly, the credibility of the witnesses.

"On the first issue: The Court finds incontrovertible the scientific determination of the two (2) tea bags of dried leaves as positive marijuana dried leaves. The field test preliminarily conducted by Maj. Samuelo Cruz indicated the questioned leaves as positive marijuana dried leaves. While such examination may be doubted as self-serving as Maj. Samuelo Cruz is the Chief of the Provincial Anti-Narcotics Team (TSN, p. 12, April 13, 1989), such doubt was completely resolved and settled by the professional and disinterested confirmation (Exh. 'C') of his field test by Marilyn Salangad, a Forensic Chemist of the PC-INP Laboratory.

"On the second issue: The prosecution witnesses point to the accused as the seller of the two (2) tea bags of marijuana dried leaves. The accusation was denied by the accused. Which side then is more credible? The prosecution witnesses, namely: Maj. Samuelo Cruz, Sgt. Jesus Felipe, Sgt. Jose Felipe and Cpl. Ballesteros.

"On the other hand, the accused merely denied the charge against him without even proving anything to show the improper motive or reason on the part of the witnesses for the prosecution by way of discrediting them. Further, the condition of the accused as a native cake vendor precludes any reasonable suspicion that a group of government agents/investigators will single him out to effect vengeance or gainful advantage.

"Accused-appellant has not also pointed to any evil or bad motive that prompted the police officers to testify against him and since these prosecution witnesses have no reason to impute falsely on the defendant the commission of so grave an offense, they deserve credence and belief." (People v. Borbano, 76 Phil. 702, People v. Albapara, 22 SCRA 1043).

"The foregoing considerations point to the guilt of the accused beyond reasonable doubt." (pp. 36-37, Rollo)

The argument x x x that considering the place of the alleged transaction of the sale of marijuana being a bus terminal and considering the time being 3:25 o'clock in the afternoon and there were many people around when the transaction took place x x x portrays an unbelievable situation wherein a person who was allegedly engaged as drug pusher, carries out his illegal trade openly x x x " (p. 28, Rollo) is likewise, untenable. In People v. Paco, (170 SCRA 681) We held -

"Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime 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]."

Finally, accused-appellant also assails the fact that the team confiscated the two P5.00 bills without a search warrant. This contention is also not tenable. Having caught the accused in flagrante as a result of the buy-bust operation, the policemen were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest. And since appellant's arrest was lawful, it follows that the search made incidental to the arrest was also valid. (People v. Paco, supra)

Drug addiction is one of the most pernicious evils that have ever crept into our society. More often than not it is the young who constitute the greater majority of the citizenry who are the victims. It is of common knowledge that drug addicts become useless if not dangerous members of society and in some instances turn up to be among the living dead. This is the reason why the courts and law enforcement agencies should continue in their relentless campaign not merely to minimize but to totally eradicate the evil before it is too late. And everyone must be involved in this drive if we are to succeed. The peddlers of drugs are actually agents of destruction. They deserve no less than the maximum penalty. (People v. Policarpio, 158 SCRA 851)

Premises considered, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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