

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELSON MENDOZA Y LOPEZ, ACCUSED-APPELLANT.

G.R. No. 92387. December 18, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Nelson Mendoza was charged with the crime of violation of Section 4, Article II, Republic Act No. 6425 as amended. The information dated June 14, 1989, read:

That on or about June 14, 1989, in the Municipality of Navotas, Metro Manila, 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 two (2) small transparent plastic bags containing marijuana dried flowering tops and also found in his possession thirty (30) small transparent plastic bags containing dried marijuana flowering tops, which are prohibited drugs, in violation of the above-cited law.

After arraignment and trial, he was found guilty and sentenced as follows:

WHEREFORE, judgment is hereby rendered finding accused Nelson Mendoza y Lopez guilty beyond reasonable doubt of Violation of Section 4, Article II, Republic Act No. 6425 as amended, sentencing him to suffer the penalty of life imprisonment, and to pay a fine of P20,000.00 and the costs.[1]

The prosecution presented Pat. Emmanuel Mendoza as its lone witness. He testified that on June 14, 1989, at seven o'clock in the morning, a confidential informant reported to P/Cpl. Rolando Mabbun of the Navotas Police Station that a man wearing denim shorts and an undershirt was selling marijuana at Leongson Street, San Roque, Navotas. A buy-bust team was immediately organized with P/Cpl. Mabbun as team leader and Pfc. Rolando Domingo, Pat. Emmanuel Mendoza, and Pat. Conrado Evangelista as members. Pat. Mendoza was designated as the poseur-buyer. Two ten-peso bills to be used for the operation were marked by P/Cpl. Mabbun and Pat. Mendoza with their initials.[2]

The team, accompanied by the informant, arrived in the area at nine o'clock in the morning. Pat. Mendoza approached Nelson Mendoza, who fitted the description given by the informant, and asked him if he was selling marijuana. Nelson said he was and Pat. Mendoza gave him the marked ten-peso bills in exchange for two teabags of marijuana, which the latter took from a plastic container kept in his back pocket. Pat. Mendoza then identified himself as a policeman and retrieved the marked bills from his quarry. His other teammates, who had been watching from a distance of about ten meters, approached and arrested Nelson. The marked money was retrieved from him. He consented to a body search, resulting in the discovery of thirty more teabags from the back pocket of his shorts by Mabbun. The accused-appellant was then taken to police headquarters for investigation. The thirty-two teabags seized from him were initialed and sent for examination to the National Bureau of Investigation where they were found to be positive for marijuana. These teabags were later presented in evidence.

Taking the stand in his defense, Nelson testified that on June 14, 1989, he reported for work in a construction

firm, where he had been employed for three months. He was not able to work that day because there were no materials available. He then proceeded to Leongson Street to look for a tricycle that he could drive but did not find any. It was in that place that an owner-type jeep suddenly stopped in front of him and three persons in civilian clothes arrested him. He identified two of them as "Sir Mabbun" and "Sir Mendoza." He asked them why he was being arrested and they replied, "Huli ka na. Huwag ka na kikilos ng masama." He was then taken to the municipal building for questioning, after which he was locked up and charged with drug-pushing.

The defense did not present any other witness.

In this appeal, the conviction is faulted with the following errors:

I. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT THE CONFIDENTIAL INFORMANT WAS NOT PRESENTED AS A WITNESS IN COURT.

II. THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF DRUG-PUSHING.

The accused-appellant contends that the failure of the prosecution to put the confidential informant on the witness stand has given rise to the presumption that evidence willfully suppressed would be adverse if produced. He cites Sec. 3 (e), Rule 131, Rules of Court, in this regard. He also says that it was improbable that he would have sold marijuana to a person whom he had only met for the first time, and just a few meters away from his house at that. A careful person would not sell marijuana openly, in the early morning on a busy street, when passers-by are all potential witnesses for the prosecution.

It is further contended that the presumption of regularity of performance of duty upon which the trial court rested its conviction must yield to the rule that the guilt of the accused must be proved beyond reasonable doubt. The accused-appellant also points to certain inconsistencies in Pat. Mendoza's testimony, particularly with regard to how he was able to determine that one teabag of marijuana would cost P10.00.

The appeal is devoid of merit.

As correctly pointed out by the Solicitor General, the testimony of the informant was not indispensable to the successful prosecution of the offense charged.[3] Pat. Mendoza testified in detail on the sale of the marijuana to the accused-appellant. The marijuana actually sold was submitted in evidence and properly identified without objection from the defense. The non-presentation of the informant, whose testimony would have been merely corroborative or cumulative, did not impair the cause of the prosecution.[4]

The allegation that the accused met Pat. Mendoza for the first time only on that fateful day is immaterial because familiarity between the seller and the buyer is not an essential element of drug - pushing. When the police officer went through the motions by buying the prohibited drug and his offer to buy was accepted by the seller, the crime was consummated by mere delivery of the drug purchased.[5]

We have repeatedly held that the fact that the parties are in a public place and in the presence of other people does not necessarily discourage drug pushers from plying their trade, as these circumstances may even serve to camouflage their illicit operations.[6] This Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall, in front of a store, at a basketball court, in a bus terminal, in broad daylight in the car of a stranger, along a busy street at 1:45 in the afternoon, and near the house of the accused.[7] Drug pushing, when done on a small scale, as in this case, belongs to that class of crimes that may be committed at any time and at any place.[8]

Lastly, the inconsistencies in the testimony of the prosecution witness cited by the appellant are not substantial

enough to impair his credibility. There is also nothing in the record to suggest that the police officers were compelled by any motive other than to pursue their campaign against the distribution and use of dangerous drugs. It is a settled rule that greater weight is given to the positive identification of the accused by the prosecution witness than the mere denial by the accused of his participation in the commission of the crime.[9]

We are satisfied that the evidence of the prosecution has overturned the constitutional presumption of innocence in favor of the accused-appellant, who must therefore be denied the relief he seeks. His guilt beyond reasonable doubt having been proved, he must be prepared to suffer the consequences of his unlawful act.

WHEREFORE, the appealed judgment of the trial court is AFFIRMED in toto, with costs against the accused-appellant.

SO ORDERED.

Padilla, Griño-Aquino, and Bellosillo, JJ., concur.

[1] Decision penned by Judge Marina L. Buzon, Regional Trial Court, Branch 170, Malabon, Metro Manila; Rollo, pp. 13-15.

[2] T.S.N., November 28, 1989, pp. 2-3.

[3] *People vs. Como*, 202 SCRA 200.

[4] *Ibid.*,

[5] *Ibid.*, *People vs. Fabian*, 204 SCRA 730.

[6] *People vs. Hilario*, 196 SCRA 716; *People vs. Paco*, 170 SCRA 681; *People vs. Kalubiran*, 196 SCRA 644.

[7] *People vs. Rubio*, 142 SCRA 329; *People vs. Khan*, 161 SCRA 406; *People vs. Paco*, *supra*; *People vs. Garcia*, 198 SCRA 603; *People vs. Arceo*, 202 SCRA 170; *People vs. Toledo*, 140 SCRA 259; *People vs. Hilario*, *supra*.

[8] *People vs. Arceo*, *supra*.

[9] *People vs. Bausing*, 199 SCRA 355; *People vs. Bocatcat, Sr.*, 188 SCRA 175; *People vs. Delavin*, 148 SCRA 257.

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