

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESMENIO DE LA PEÑA Y BEDRIO, ACCUSED-APPELLANT.*G.R. No. 92534. July 09, 1991*

Ponente: MELENCIO-HERRERA, J.

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Condemned to a life in prison[1] for peddling marijuana,[2] Esmenio dela Peña reiterates his plea of innocence before this Court.

Records show that Appellant was arrested on 24 March 1988 for selling marijuana in a "buy-bust operation" conducted by the officers of the Narcotics Command of Region VI, Iloilo City. On 7 April 1988, Appellant executed a counter-affidavit before a CLAO Attorney, vehemently denying culpability (Exh. D). After preliminary investigation, the Third Assistant City Prosecutor recommended dismissal of the case on the ground that appellant was instigated to commit the crime by the Narcom officers (Exh. Y). This recommendation, however, was reversed by the City Prosecutor, who ordered another prosecutor to file the necessary Information (Exh. I). A petition for review of said reversal was denied by the Department of Justice, which ruled that there was sufficient evidence to establish probable cause against Appellant and that the question of instigation or entrapment is for the Court, and not for the Investigating Fiscal, to determine (Exh. E).

The corresponding Information having been filed, upon arraignment, Appellant entered a plea of not guilty.

Through its witnesses, the principal one being Sgt. Allaga, a team member, the prosecution wrapped up its evidence thus:

On 24 March 1988, at about 2:00 o'clock P.M., Lt. Eleuterio Salde of the Narcotics Command, Region VI, Iloilo City, received a telephone call from a concerned citizen informing him that a certain "Esmie," later identified as Appellant Esmenio de la Peña, was selling marijuana at Punta Baluarte, Molo, Iloilo City. Immediately, he organized and led a team composed of six (6) persons to conduct a "buy-bust operation" (tsn., 17 April 1989, pp. 4-5).

Arriving at the directed place at about 5:00 o'clock that same day, Sgt. Francisco Allaga, the designated poseur-buyer and principal prosecution witness, proceeded to a sari-sari store (ibid., p. 6) and inquired, from a child therein, about one "Esmie" (ibid., p. 7). The child pointed to the Appellant who was seated under a waiting shade about ten (10) meters away (ibid.). Sgt. Allaga then approached and asked Appellant if he (the latter) could "score" (lingo for marijuana users). Reacting, Appellant asked "how much do you want" to which Sgt. Allaga replied "worth P30.00" (ibid., p. 8). Asked to wait (ibid.), Sgt. Allaga then gave the amount to Appellant, who left and returned after five (5) minutes with a parcel wrapped in a "Camel" cigarette pack (ibid., pp. 17-18). Appellant handed the parcel to Sgt. Allaga, who opened it, and upon seeing that it contained marijuana, arrested Appellant (ibid., pp. 10-11).

At the Narcom headquarters, Lt. Salde placed identifying marks on the package which he kept in a padlocked

steel cabinet for safekeeping (ibid., p. 14). Lt. Salde also issued a receipt for the property seized (Exh. C) consisting of fifteen (15) sticks of marijuana wrapped in a "Camel" cigarette pack (Exh. C-1), which was witnessed by Sgt. Allaga (Exh. C-2), and signed by Appellant (Exh. C-3). Tests conducted at the PC crime laboratory yielded positive results for marijuana (Exh. B).

On 29 May 1989, after the prosecution had rested its case, Appellant, with leave of Court, filed a "Demurrer to Evidence" on the ground of insufficiency of evidence to produce conviction (Orig. Record, p. 53). Ruling that the arguments advanced did not appear indubitable, the Trial Court denied dismissal and ordered the reception of evidence for the accused (ibid., p. 68).

Denying any and all culpability, Appellant's narration is that on the date and time in question, as he was washing clothes at his aunt's house (tsn., 21 August 1989, p. 2), a man, whom he later came to know as Sgt. Francisco Allaga, arrived and inquired from him where marijuana could be bought (ibid., p. 3). Appellant replied that he did not know. When Sgt. Allaga insisted, saying that he needed it as medication for a patient (ibid.), Appellant again disowned any knowledge. At that moment, one Aris Magarse and a certain Angeles Octavio passed by and Appellant informed them that the man needed marijuana but that he did not know where the item could be bought (ibid., p. 4). Aris volunteered to look for marijuana (ibid.). She was given money by Sgt. Allaga (ibid.). Ten minutes later, Aris returned and handed the marijuana to Appellant which he, in turn, gave to Sgt. Allaga (ibid., p. 5). No sooner had the Sgt. taken hold of it when the latter identified himself as a Narcom agent and apprehended him (ibid.).

Angeles Octavio, a neighbor and close friend of Appellant, corroborated the latter's testimony.

After assessing the evidence before it, the Trial Court rejected Appellant's version for being replete with inconsistencies and improbabilities, gave more credence to the testimony of the prosecution's main witness, Sgt. Allaga, and adjudged Appellant "to suffer the penalty of Reclusion Perpetua; to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs."

Unable to accept the verdict, Appellant contends that the Trial Court erred (1) in giving credence to the prosecution evidence rather than to his corroborated testimony; (2) in not finding that the circumstances leading to his apprehension constitute instigation rather than a valid entrapment; and, overall, in not acquitting him in the face of the weak prosecution evidence.

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

The Court a quo can not be faulted for giving credence to the testimony of Sgt. Allaga. Although uncorroborated, it is positive and credible and is sufficient to support conviction. He has convincingly established the details of the crime. He was present when information was received at Narcom headquarters about Appellant's illegal activities. He was the principal actor, the designated poseur-buyer, in the "buy-bust" operation. It was he who arrested Appellant after determining that the parcel delivered to him contained marijuana. He witnessed the issuance of a receipt for the seized marijuana, which Appellant had signed. He was also with Lt. Salde when the marijuana was delivered to the PC crime laboratory for examination. More, absent is any showing that Sgt. Allaga was motivated by any improper motive other than to perform his mandated duty. He is also presumed to have regularly performed his official duty in the absence of any opposite evidence.

Contrary to Appellant's contention, the marijuana identified by Sgt. Allaga during trial was the same item seized from Appellant. Said witness was present when Lt. Salde made identifying marks on the parcel in question and when was handed to the police custodian for safekeeping. Proper safeguards were taken to protect the identity of the exhibit. After appropriate labelling, it was kept in a padlocked steel cabinet until it was taken to the laboratory

for examination four (4) days later.

Appellant's story pointing to another individual, one Aris Magarse, as the supplier of the prohibited drug, is far from credible notwithstanding its corroboration by defense witness Angeles Octavio. For, as found by the Trial Court, Appellant had involved himself in inconsistencies. In his Counter-Affidavit, the authenticity of which he had acknowledged, he stated that when he was approached by a man, who turned out later to be a Narcom poseur buyer, he was watching his friends playing mahjong (Exh. D). His testimony in Court, however, was that he was washing clothes in the house of his aunt when so approached. Contradicting both statements is the testimony of defense witness, Angeles Octavio, that he was with Aris Magarse when they passed by Appellant in a "footpath" conversing with Sgt. Allaga. Besides, if Aris were, indeed, the marijuana supplier she would surely have been arrested also.

Further, in his Counter-Affidavit, Appellant stated that "I left him and some few minutes later I returned with fifteen (15) sticks of marijuana cigarettes for him." In open Court, however, he was attributing sole fault to Aris Magarse in an effort to shift culpability from him.

These inconsistencies cast a heavy pall of doubt on Appellant's version of the incident. Of significance, too, is the fact that instant rapport was established between Appellant and Sgt. Allaga when the latter asked for a "score," a term apparently used by addicts and pushers. If Appellant, in fact, had not been engaged in such nefarious activity, the term would have been alien to him, but it was not.

The Trial Court aptly characterized the circumstances surrounding Appellant's apprehension as "entrapment" and not "instigation." Firstly, Appellant's story that he had consistently denied to Sgt. Allaga having marijuana but that because of the latter's insistence, he was induced to look for and produce marijuana, can not be given credence, his testimony having been found to be unworthy of belief, as already expounded. The prosecution version, being more credible, the operation was, in fact, an entrapment not an instigation, the underlying difference being in the origin of the criminal intent. In entrapment, mens rea originates from the mind of the criminal. The idea and resolve to commit the crime comes from him. In instigation, the law officers conceive the commission of the crime and suggest it to the accused, who adopts the idea and carries it into execution (*Araneta v. Court of Appeals*, G.R. No. L-46638, 9 July 1986, 142 SCRA 534). Entrapment is sanctioned by the Revised Penal Code. Instigation is tabooed.

In this case, Sgt. Allaga's inquiry addressed to Appellant was far from a suggestion. It was a query to which Appellant immediately responded by asking how much was needed, requesting the Sgt. to wait, and returning after a few minutes with the "goods" in hand. Appellant needed no prodding, no inducement, and much less, instigation. His reaction was natural to one who was already engaged in the illicit trade of marijuana and all that Narcom did was to catch him in the act.

Under the circumstances, Appellant does not deserve acquittal.

It needs stressing, however, that Appellant's signature on the receipt of the property seized (Exh. C-1), a procedural step after arrest, is not a factor in his conviction. That signature is inadmissible in evidence against him. It was obtained in violation of Appellant's right as a person under custodial investigation for the commission of an offense, there being nothing in the records to show that he was then assisted by counsel. (*People v. Bagano*, G.R. No. 77777, 5 February 1990, 181 SCRA 747). Appellant's guilt has been adequately established by other evidence of record.

WHEREFORE, the judgment appealed from is AFFIRMED, except that the penalty should be life imprisonment (Pres. Decree No. 1675, Section 4) and not "reclusion perpetua" as imposed by the Trial Court. Costs against

accused-appellant, Esmenio de la Peña.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] By the Regional Trial Court, Branch XXIII, Iloilo City, Judge Tito G. Gustilo, presiding.

[2] Art. II, Sec. 4, Rep. Act No. 6425, as amended by Pres. Decree No. 1675, Sec. 1.

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