

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIXTO MORICO, ACCUSED-APPELLANT.

G.R. No. 92660. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court of Cavite, Branch 18, Tagaytay City in Criminal Case No. TG-1304-88, finding appellant guilty of violation of Sections 4 and 15, Article II of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended.

I

The information against appellant charging him of violation of Section 4, Article II of R.A. No. 6425, reads as follows:

"That on or about November 12, 1987 at Brgy. Sabutan, Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did, then and there, willfully, unlawfully and feloniously, sell, deliver, distribute and give away to another, three (3) hand rolled (sic) sticks of marijuana leaves which are legally considered prohibited drugs" (Rollo, p. 11).

Appellant, assisted by his counsel-de-oficio, asserted his innocence to the charge. Subsequently, another lawyer entered his appearance as counsel-de-parte. Trial then ensued.

On July 28, 1989, the trial court rendered its decision finding appellant guilty of violation of Sections 4 and 15 of R.A. No. 6425, the dispositive portion of which reads as follows:

"WHEREFORE, considering all the foregoing, judgment is hereby rendered, finding accused SIXTO MORICO, GUILTY beyond reasonable doubt of the crime of Violation of Sections 4 and 15, of RA 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by PD Nos. 44, 1675, 1683, 1708 and Batas Pambansa Blg. 179, and neither aggravating nor mitigating circumstances being present, hereby imposes upon him a straight penalty of RECLUSION PERPETUA and a FINE of TWENTY FIVE THOUSAND (P25,000.00) PESOS, with no subsidiary imprisonment in the event of insolvency, the penalty herein imposed being higher than prison correccional, pursuant to Art. 39, par. 3 of the Revised Penal Code" (Rollo, p. 17).

II

On November 12, 1987, at about 3:00 P.M., elements of the Anti-Narcotics Command (NARCOM) in Bacoar, Cavite received an information from their confidential informant that a certain "Sixto," a resident of Barangay Sabutan, Silang, Cavite, was engaged in the sale of marijuana leaves. A team, composed of Sgt. Rodrigo Espiritu, CIC Roberto Gelido and Pat. Allan Alcantara, was formed to conduct a buy-bust operation. A marked ten-peso bill was given to the informant, who was also tasked to act as the poseur-buyer. The poseur-buyer then went to the

house of appellant and engaged him in a conversation. Later, the poseur-buyer handed the marked ten-peso bill to appellant, who in turn, gave him a small package. It was at that instant that the poseur-buyer raised his t-shirt, the pre-arranged signal. The members of the team swooped down on appellant and arrested him. They recovered from him the marked ten-peso bill. Thereafter, appellant was brought to the district office of the NARCOM in Imus, Cavite.

The three hand-rolled sticks of marijuana leaves confiscated from appellant were found positive for marijuana by the National Bureau of Investigation.

Appellant claimed that he was working as a mason at Barangay Sabutan when he was arrested. When appellant asked why he was arrested, he was told that he was peddling marijuana. Appellant was then brought to the municipal building in Silang, Cavite. From Silang, appellant was brought to Imus. He related that he saw the sticks of marijuana presented in evidence against him for the first time in Imus. He also claimed that a policeman got the marked money from the pocket of Sgt. Espiritu and handed the same to him.

On the third day of his detention, he was manhandled and ordered to sign the "Receipt of Seized Property" without the assistance of counsel. He was threatened with bodily harm if he failed to sign the document.

Appellant also claimed that when he signed the Booking Sheet and Arrest Report (Exh. "D"), the same was never explained to him nor was he assisted by counsel.

On the fourth day of his detention, the policemen demanded money from him for his release. He refused.

III

In this appeal, appellant claims that the trial court erroneously convicted him of an offense which is not charged in the information.

Appellant's argument should be sustained.

The information only charged appellant with violating Section 4, Article II of R.A. No. 6425, as amended. However, he was convicted of violating Sections 4 and 15 of the same law. Section 4 and Section 15 are two separate and distinct offenses. Section 4 penalizes any person who, unless authorized by law sells, administers, delivers, distributes and transports any prohibited drugs. Section 15 penalizes any person who without authority of law, sells, administers, distributes and transports any regulated drugs.

An accused cannot be convicted of an offense not charged in the information. To do so would constitute a violation of his constitutional rights, i.e., to be informed of the charges against him and his right to due process (*People v. Guevarra*, 179 SCRA 740 [1989]).

Likewise, there is no evidence showing that he sold, administered, delivered, or distributed any regulated drug.

Appellant also avers that the trial court erred in lending credence to the testimonies of the prosecution's witnesses despite their irreconcilable and unexplained contradictions.

The inconsistencies in the testimonies of the prosecution witnesses refer to minor or trivial matters and incidents which do not detract us from the fact that appellant was caught in flagrante delicto as a result of the buy-bust operation.

Moreover, as long as the testimonies of the witnesses corroborate each other on material points, the minor inconsistencies therein cannot destroy their credibility. Such inconsistencies are but natural and even enhance their truthfulness as they wipe out any suspicion of a counseled testimony (*People v. Arcega*, 207 SCRA 681

[1992]).

Appellant also contends that the non-presentation of the informant is fatal to the case of the prosecution as there is no convincing evidence pointing to him as having sold marijuana.

We do not agree.

This Court has laid down the rule, in a long line of cases, that the matter of presentation of prosecution witnesses is not for the appellant or for the trial court to decide as it is the prerogative of the prosecutor (*People v. Eligino*, 216 SCRA 321 [1992]; *People v. Alerta Jr.*, 198 SCRA 656 [1991]). Apparently, the prosecution deemed it unnecessary to present their informant poseur-buyer as there was already sufficient evidence to pin down appellant (*People v. San Andres*, 222 SCRA 666 [1993]). Besides, if appellant believed that the testimony of the poseur-buyer could have exculpated him, he could have availed of the compulsory process to have the latter produced as his witness (*People v. Nabunat*, 182 SCRA 52 [1990]).

Hence, the presumption - that the testimony of the poseur-buyer was suppressed as it would be fatal to the prosecution's case if presented - cannot arise.

In this case, the testimony of the poseur-buyer would only be corroborative (*People v. Fernandez*, 209 SCRA 1 [1992]) as the members of the buy-bust team: namely, Sgt. Espiritu and CIC Gelido sufficiently established the consummation of the transaction (TSN, June 14, 1988, pp. 4-9, 26-27).

Sgt. Espiritu's testimony was further corroborated by CIC Roberto Gelido, another member of the buy-bust team. Sgt. Espiritu and CIC Gelido are both law enforcers and as such they have in their favor the presumption of regularity in the performance of their duties (*People v. Juma*, 220 SCRA 432 [1993]). Likewise, appellant failed to impute any false motive to the policemen who arrested him.

Appellant also claims that his signatures on the Receipt of Property Seized from him (Exh. "C"), the Booking Sheet and Arrest Report (Exh. "D") and the "Pansamantalang Pagtalikod sa mga Karapatan sa Artikulo 125" (Exh. "F") were obtained in violation of his constitutional right to counsel during custodial investigation.

With regard to the Booking Sheet and Arrest Report, we ruled in *People v. Bandin*, 226 SCRA 299 (1993):

"xxx [t]he Court reiterates its ruling in *People v. Rualo*, 152 SCRA 635, that when an arrested person signs a Booking Sheet and Arrest Report at a police station, he does not admit the commission of an offense nor confess to any incriminating circumstance. The Booking Sheet is merely a statement of the accused's being booked and of the date which accompanies the fact of an arrest. It is a police report and maybe useful in charges of arbitrary detention against the police themselves. It is not an extra-judicial statement and cannot be the basis of a judgment of conviction" (at p. 303).

However, we sustain appellant's contention that his signature on the Receipt of Property Seized (Exh. "C") is inadmissible as evidence, as it was given without the assistance of counsel. In *People v. Mauyao*, 207 SCRA 732 (1992), we stated that appellant's signature on this document is a declaration against his interest and a tacit admission of the crime charged. Any admission taken from appellant, as a result of a violation of his constitutional right, is inadmissible in evidence against him. But even disregarding this exhibit, the remaining evidence on record is sufficient to sustain appellant's conviction.

IV

The trial court sentenced appellant to suffer the penalty of reclusion perpetua and to pay a fine of P20,000.00 under Section 4, Article II of the Dangerous Drugs Act of 1972, as amended by B.P. Blg. 179. However, this law was further amended by R.A. No. 7659.

Section 4, Article II of the old law provides a penalty of imprisonment ranging from 12 years and one day to 20 years and a fine ranging from P12,000.00 to P20,000.00 to any person who, unless authorized by law, shall sell, administer, deliver, distribute or transport prohibited drugs.

Under the new law, where the quantity of the prohibited drugs involved is less than that for which the law imposes a fine together with the penalty of imprisonment, the penalty to be imposed shall be imprisonment ranging from prision correccional to reclusion perpetua without any fine.

In *People v. De Lara*, G.R. No. 94953, September 5, 1994, we ruled that if the quantity of marijuana involved is below 250 grams, the penalty to be imposed under R.A. No. 7659 is prision correccional.

Considering that the provisions of R.A. No. 7659 with regard to the penalty imposed for violation of Section 4, Article II of the Dangerous Drugs Act favor appellant, we shall apply it retroactively in his favor (Revised Penal Code, Article 22).

Hence, the maximum penalty that can be imposed when the offense charged involves not more than 10.0161 grams of dried marijuana, is prision correccional. Applying the Indeterminate Sentence Law, the minimum penalty which this Court can impose on appellant is arresto mayor (*People v. Simon*, G.R. No. 93028, July 29, 1994).

WHEREFORE, the decision appealed from is AFFIRMED with the following MODIFICATIONS: (1) that appellant shall suffer an indeterminate penalty of SIX (6) MONTHS of arresto mayor, as minimum, to SIX (6) YEARS of prision correccional, as maximum; and (2) that the fine of P25,000.00 imposed by the trial court is deleted.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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