

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS MIRANTES, ACCUSED-APPELLANT.

G.R. No. 92706. May 21, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Jesus Mirantes was convicted by Branch I of the Regional Trial Court of Lanao del Norte for violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, in a decision rendered on November 2, 1989 and which imposed upon him the penalty of reclusion perpetua and a fine of P20,000.00, without subsidiary imprisonment in case of insolvency.[1]

Appellant and a certain Guarberto Balolong were charged in an information, dated September 27, 1988, with having conspired and confederated in wilfully and feloniously selling, transporting and delivering two (2) sticks of marijuana cigarettes in Iligan City on September 13, 1988.[2]

At the arraignment, appellant Mirantes pleaded not guilty to the charge against him. Curiously, the records do not disclose the specific participation of accused Guarberto Balolong, except as hereinafter noted in the testimonies of the prosecution witnesses, and the certification in said information merely states that "accused Guarberto Balolong y Chin could not be contacted and his whereabouts(s) could not be ascertained." No warrant for his arrest appears to have been issued and it was only at the penultimate hearing of the case that the trial court ordered the issuance of a warrant of arrest upon being informed by the trial fiscal that said accused was still at large.[3]

The prosecution witnesses testified that appellant had long been the subject of their surveillance prior to his arrest on September 13, 1988.[4] On the same day, at around 9:00 o'clock in the evening, the Narcotics Command (NARCOM) agents, headed by Pat. Edgardo Englatiera (or "Englatierra" as indicated in other parts of the records) conducted a buy-bust operation in Purok I, Saray, Iligan City. Among the members of the buy-bust team were Guarberto Balolong and Celso Engkig, the poseur-buyer. Engkig was given a five-peso bill which was first photocopied and subscribed before the assistant provincial fiscal. [5]

The members of the team proceeded to the place where appellant could be found and positioned themselves ten (10) meters away from where the transaction was to take place. Engkig approached appellant who also came near him and asked Engkig if he wanted to smoke marijuana. Engkig agreed and he gave appellant the five-peso bill as payment for two (2) sticks of marijuana leaves.[6]

Upon the consummation of the alleged transaction, the NARCOM agents approached the two and arrested both of them. The agents then seized the marijuana sticks and the five-peso bill for which they issued a seizure receipt which was later on signed by appellant upon orders of the NARCOM agents.[7] The marijuana sticks were submitted to and examined by the crime laboratory and were found positive of marijuana, a prohibited drug.[8]

Appellant, on the other hand, testified that on September 13, 1988, at around 9:00 o'clock in the evening, he was at Saray, Iligan City, trying to catch bats with a certain Nonong Labitad. While there, a group of NARCOM

agents, only one of whom he recognized as Pat. Englatiera, arrived and told him to go with them to the NARCOM office for investigation. Appellant resented the proposition but the NARCOM agents prevailed. After the investigation, the NARCOM agents took out something from a drawer. They showed it to appellant and asked him if he owns the same. When appellant denied ownership thereof, the NARCOM agents told him that it was owned by Guarberto Balolong, his co-accused in this case. He was also made to sign a receipt and some documents without the assistance of a counsel.[9]

The testimony of appellant was corroborated by Joy Obtella who testified that the former was also with a certain Rene Medello on that particular night while he was trying to catch bats in Saray, Iligan City. She further testified that they had been neighbors for five (5) years already and she did not know of any crime having been attributed to appellant.[10]

After trial, appellant was found guilty as charged by the court a quo which rendered the assailed judgment. He now comes to this Court for the reversal of said verdict, contending that the trial court erred in (1) giving absolute credence to the testimony of the prosecution witnesses which are inherently improbable, inconsistent and unbelievable; (2) appreciating the seizure receipt of property signed by him without the assistance of counsel during custodial investigation; and (3) convicting him despite the existence of overwhelming doubts.[11]

Prefatorily, this Court has consistently ruled that in the matter of credibility of witnesses, the findings of the trial court are given weight and respect by appellate courts and, generally, will not be disturbed on appeal.[12] Deviation from this rule will only be allowed if there is any showing that the trial judge overlooked some material or substantial facts which if given consideration will alter the assailed decision.[13] Consequently, appellate courts will not be bound by the findings of facts of the trial court if there are inconsistencies on material and substantial matters constituting the testimony of witnesses presented during the trial.[14]

In the case at bar, the court below failed to take note of substantial inconsistencies in the testimony of the prosecution witnesses. These contradictions and inconsistencies refer not only to minor details but even to the facts constituting important aspects of the case.

Pat. Edgardo Englatiera, who appears to be the star witness of the prosecution, declared on direct examination as follows:

“Q Please tell this Honorable Court your procedure in conducting your vigor operation.

A On September 13, 1988 at 9:00 in the evening I was together with buy-bust operation intelligent. (sic)

Q Who were the persons included in the buy-bust operation?

A Guarberto Balolong.

FISCAL LAGCAO:

Q Who else were the members of the NARCOM?

A Nonoy Engkig.”[15]

On cross-examination, he testified:

“Q You said that you arrived five minutes before 9:00 o'clock in the evening, do (sic) you have companions?

A Yes, sir.

Q Who were your companions?

A Sgt. Generales.

Q Who else?

A Our cooperatives.

Q You said cooperatives, kindly discuss it.

A Our cooperatives the pusher(sic)-buyer, Nonoy Engkig.

Q Is this Nonoy Engkig who is the pusher (sic) buyer a member of the cooperatives?

A Yes sir."[16]

When Celso Engkig testified, this transcript of his testimony appears of record:

"Q On that particular operation which you participated (in), do (sic) you have any companion?

A Yes, sir.

Q Who were they?

A Our apprehending officers.

Q Who are they?

A Sgt. Gonzales, Pat. Englatierra and other companion."[17]

It must be noted that Guarberto Balolong is the co-accused of appellant Mirantes in this case. The mere fact that his name was mentioned by witness Englatierra as one of the members of the buy-bust team raises serious doubts on the veracity of the prosecution's cause against appellant Mirantes. Englatierra's testimony was, in fact, adopted by the trial court in its findings of fact as having been established by the evidence for the prosecution, thus: "x x x that on September 13, 1988 at around 9:00 o'clock in the evening the prosecution witness Edgardo Englatierra was with the buy-bust operation with his companions Guarberto Balolong and Nonoy Engkig; x x x"[18] But this perplexing circumstance was never explained by the prosecution either in the course of the trial or even in its brief. Moreover, had the prosecution witnesses really been honest and accurate in their contentions, there is no reason why they should differ in their testimonies regarding such a simple matter as the composition of the buy-bust team.

It will further be observed that when appellant Mirantes denied ownership of the marijuana sticks and attributed the same to his co-accused Balolong, the prosecution witnesses failed to refute this allegation. Considering that Balolong was a part of the alleged buy-bust team, it becomes imperative for the prosecution to explain his complicity vel non in the crime being attributed to appellant Mirantes. This assumes added significance with the testimony of witness Engkig that accused Guarberto Balolong was at the scene of the buy-bust operation and witnessed what transpired, but allegedly left before the witness gave the money to appellant.[19]

The Public Attorney's Office, for the defense, also invites the attention of this Court to apparent vacillations of Pat. Englatierra in his testimony on vital considerations in this case, to wit.:

"In the recital of his testimony during the direct examination, Patrolman Edgardo Englatierra was reverberatingly consistent in saying that the two (2) sticks of marijuana that was (sic) taken during that NARCOM operation in the night of September 13, 1988, in Saray, Iligan City was (sic) from the person of Jesus Mirantes. Also included in the seizure was the marked five peso bill. (TSN, p. 5, 6, 7, 8 and 9, dated December 4, 1988).

"During the cross-examination, Patrolman Edgardo Englatierra readily affirmed the same testimony that indeed the two sticks of marijuana were seized from accused-appellant Jesus Mirantes. (TSN, p. 11, dated December 17, 1988).

"When the Court pronounced clarificatory questions, Patrolman Englatierra attempted to correct his previous testimony by saying that the same marijuana were recovered from their pusher (sic) buyer but it came from the suspect (TSN, p. 11, December 17, 1988).

"However, when the cross-examination proceeded, Englatierra reaffirmed his previous recital that the two sticks of marijuana and the five peso bill were recovered from the pocket of accused-appellant Jesus Mirantes. (TSN, p. 11 and 12, dated December 17, 1988)." [20]

Indeed, the confusing answers of Pat. Englatiera were apparent to the Court as confirmed by its examination of the transcripts of his testimony. These observations cannot just be so lightly dismissed by the prosecution as mere "nitpicking" or "carping" on the part of the defense since the facts involved go into the very acts in the alleged commission of the offense. We see no reason for any "mistakes" or bewilderment on the part of Pat. Englatiera if, as he says, he was an eyewitness to the transaction and an actual participant in the recovery of the instruments and proceeds of the offense aborted in flagrante delicto. Add to this his experience as a member of the police department for the preceding three (3) years and of the NARCOM for one and a half (1-1/2) years[21] and we cannot but entertain puzzlement and incredulity over his oscillating statements. Granting that said witness had no intent to prevaricate, his pendulous testimony, at the very least, sorely inveighs against the reliability of his powers of observation and recall and must perforce adversely reflect on his credibility as a consequence thereof.

We agree with appellant on the matter of the inadmissibility of the seizure receipt allegedly signed by him. This Court has ruled in a similar situation[22] that, obviously, therein appellant was a victim of a clever ruse to make him sign the alleged receipts which in effect are extrajudicial confessions of the commission of the offense. Indeed, it is unusual for appellant to sign receipts for items allegedly taken from him; on the contrary, the police officers who confiscated the same should have signed them. Undoubtedly, this is a violation of the constitutional rights of herein appellant to remain silent and to counsel whereby he was made to admit the commission of the offense without being informed of his rights. Such a confession obtained in violation of the Constitution is inadmissible in evidence. Accordingly, the seizure receipt in question cannot be made the basis of appellant's conviction.[23]

Finally, the case for the prosecution assumes further dubiety from the testimony of its witness Engkig, the alleged poseur-buyer. While Pat. Englatiera testified that Engkig went near the post in Purok 1, Saray, Iligan City and appellant was in front of him,[24] Engkig claimed that he saw appellant inside the house of one Willy Bagatan. Then Engkig continues, "when I got near Jesus Mirantes, he came near to me and ask (sic) me if I am going to smoke marijuana and I said yes." [25]

Aside from the contradicting testimony on where appellant was at the time, the version of Engkig is also an assault on credulity as being contrary to human nature and experience. Our judicial experience is that when police operatives conduct a buy-bust operation, the poseur-buyer approaches the suspected drug dealer and inquires if the latter has some prohibited drugs with him. This is not the situation in the instant case. What we have here is the suspected drug dealer openly taking the initiative like a sidewalk hawker plying legitimate wares and asking the poseur-buyer, whom he does not even know, if he wants to smoke marijuana.

While it is true that the essence of a buy-bust operation lies not on existing familiarity between the poseur-buyer and the suspect but on the consummation of the alleged transaction,[26] it is just as true that any alleged conduct out of the ordinary is suspect. It is hard to believe that a suspected drug dealer, no matter how notorious, would indiscriminately and insouciantly accost anyone he meets, unless perhaps the latter is a regular customer, and ask

him if he wants marijuana. In the case of appellant, he was definitely aware of the consequences of such illicit traffic in drugs, since his own brother, Hercules Mirantes, had been previously apprehended as a drug pusher by the same police team.[27]

Admittedly, the prosecution presented as its principal witness a police officer who is therefore, presumed to have regularly performed his duty.[28] Nonetheless, we have heretofore held that inconsistencies and material discrepancies in the testimony of a witness engenders serious doubts as to its reliability and veracity.[29] Irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the guilt of appellant,[30] and, we may add, such contradictory statements will not sustain a judgment of conviction.

The defense interposed by an appellant, although constitutive of alibi, is far more worthy of credence than the testimonies of prosecution witnesses which are replete with contradictions and tainted with inaccuracies. Such defense may be inherently weak,[31] so goes the jurisprudential measure, but it is likewise a jurisprudential mandate that to sustain a conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[32] Moreover, misgivings over an alibi is not and cannot alone be the basis of conviction,[33] and it does not relieve the prosecution of the required burden of proof.[34]

The oft-cited presumption of regularity in the performance of official functions cannot by itself affect the constitutional presumption of innocence enjoyed by an accused, particularly when the prosecution's evidence is weak.[35] The evidence of the prosecution must be strong enough to pierce the shield of this presumptive innocence and to establish the guilt of the accused beyond reasonable doubt.[36] And where the evidence of the prosecution is insufficient to overcome this presumption, necessarily, the judgment of conviction of the court a quo must be set aside.[37] The onus probandi on the prosecution is not discharged by casting doubts upon the innocence of an accused, but by eliminating all reasonable doubts as to his guilt.

WHEREFORE, the judgment appealed from is REVERSED and SET ASIDE and accused-appellant Jesus Mirantes is hereby ACQUITTED on the ground of reasonable doubt, with costs de officio.

SO ORDERED.

Narvasa, C.J., (Chairman), Paras, Padilla, and Nocon, JJ., concur.

[1] Judge Mamindiara P. Mangotara, presiding; Original Record, 66-71. The proper term for the penalty, as the Court has repeatedly pointed out, is "life imprisonment" as specified in the law, and not "reclusion perpetua" which is a penalty with a specific duration and accessory penalties.

[2] Original Record, 1.

[3] TSN, May 8, 1989, 28.

[4] Ibid., December 14, 1988, 3.

[5] Ibid., id., 3-5.

[6] Ibid., id., 6; March 13, 1989, 4.

[7] Ibid., March 13, 1989, 4.

[8] Ibid., December 27, 1988, 21-22; Exhibit "D," Original Record, 38.

[9] Ibid., May 8, 1989, 4-28.

- [10] Ibid., August 10, 1989, 3-12.
- [11] Brief for the Appellant, 4.
- [12] People vs. Villamala, 78 SCRA 145 (1977); People vs. Bantac, 167 SCRA 109 (1988); People vs. Yagong, 181 SCRA 479 (1990).
- [13] People vs. Oñate, 78 SCRA 43 (1977); People vs. Ramos, 167 SCRA 476 (1988); People vs. Payumo, 187 SCRA 64 (1990).
- [14] See People vs. Flores, 165 SCRA 71 (1988); People vs. Macabenta, 170 SCRA 298 (1989).
- [15] TSN, December 14, 1988, 4-5.
- [16] Ibid., December 17, 1988, 4-5.
- [17] Ibid., March 13, 1989, 2.
- [18] Decision, 5; Original Record, 70.
- [19] TSN, March 13, 1989, 6.
- [20] Brief for the Appellant, 9; Rollo, 47.
- [21] TSN, December 17, 1988, 2-3.
- [22] People vs. Policarpio, 158 SCRA 85 (1988).
- [23] People vs. De las Marinas, 196 SCRA 504 (1991).
- [24] TSN, December 17, 1988, 6.
- [25] TSN, March 13, 1989, 4.
- [26] People vs. Rodriguez, 172 SCRA 742 (1989); People vs. Borja, 182 SCRA 581 (1990).
- [27] TSN, March 13, 1989, 2.
- [28] People vs. Napat-a, 179 SCRA 403 (1989); People vs. Vilorio, Jr., 191 SCRA 777 (1990).
- [29] People vs. Flores, *supra*, Fn. 14.
- [30] People vs. Caboverde, 160 SCRA 550 (1988).
- [31] People vs. Hora, 153 SCRA 21 (1987); People vs. Bocatcat, Sr., et al., 188 SCRA 175 (1990).
- [32] People vs. Magallanes, 147 SCRA 92 (1987).
- [33] People vs. Boneo, et al., 174 SCRA 612 (1989).
- [34] People vs. Mendoza, 174 SCRA 432 (1989).
- [35] People vs. Taruc, 157 SCRA 178 (1988); People vs. Yutuc, 188 SCRA 1 (1990).
- [36] People vs. CFI-Rizal, Br. IV, Quezon City, et al., 161 SCRA 249 (1988).
- [37] Peoples vs. Ramos, et al., 162 SCRA 794 (1988).

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