

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIRZO CELIZ AND JULIUS BANGERO, ACCUSED-APPELLANTS.*G.R. No. 92849. October 20, 1992*

Ponente: PADILLA, J.

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Accused-appellants seek a reversal of the decision, dated 31 January 1990,[1] of the Regional Trial Court, Branch 28, of Iloilo City, finding them guilty beyond reasonable doubt of violating Section 4, Article II, Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and sentencing them to suffer life imprisonment, to pay a fine of P20,000.00, jointly and severally, and to pay the costs.

The information filed by Acting Iloilo Provincial Fiscal Enrique M. Gumban reads as follows:

"The undersigned Provincial Fiscal accused (sic) TIRZO CELIZ y Cerbo alias 'Nick'; and JULIUS BANGERO y Banas alias 'Totong' of a Violation of Sec. 4, Art. II, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972 committed as follows:

That on or about May 24, 1986, in the Municipality of San Enrique, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused, conspiring, confederating and working together to better realize their purpose, without any justifiable motive and with deliberate intent did then and there wilfully, unlawfully and feloniously sell, cede, deliver and/or give away one (1) match box, marked 'Sunset' of dried marijuana flowering tops placed inside an evidence plastic bag to DANILO LAYAO for the amount of THIRTY (P30.00) PESOS, Philippine Currency, a source of prohibited drugs, without the authority to deliver and/or sell the same to any buyer or buyers." [2]

Upon arraignment, both accused pleaded not guilty.

The prosecution presented three (3) witnesses, namely: PC Lt. Zenaida Sinfuego, a Forensic Chemist of the Philippine Constabulary, Iloilo City; Danilo Layao, a civilian agent of the NARCOM, Region VI; and PC C1C Raul Labramonte of the Special Operation Unit of NARCOM Region VI in Iloilo City. Their testimonies may be summarized as follows:

After being informed that there was a person selling prohibited drugs in San Enrique, Iloilo, Col. Jesus Senador, Commanding Officer of the Narcotics Command, Region VI (NARCOM VI, for short), directed his subordinates to conduct a buy-bust operation in the said area. After conducting a two-day surveillance of the area, on 24 May 1986, during the town fiesta of San Enrique, NARCOM agent C1C Raul Labramonte, together with Capt. Salde, Sgt. Benito Bonete, Sgt. Agado and their civilian agent, Danilo Layao, arrived at the town plaza of San Enrique. After reconnoitering around, they saw the two (2) accused who were pointed out to them by Layao's friend, a certain Roel. C1C Labramonte then directed Danilo Layao to follow the two (2) accused and inquire from them if they were selling marijuana. Earlier, while still at the NARCOM VI office, C1C Labramonte handed over to Layao marked peso bills to be used in buying the marijuana - one (1) P20.00 bill and two (2) P5.00 bills.

Layao then approached the two (2) accused and inquired if they had marijuana to sell and was told by the accused

that they would sell him a match box of dried marijuana leaves for thirty pesos (P30.00). Meanwhile, the two (2) NARCOM agents, C1C Labramonte and Sgt. Bonete, in civilian clothes, stationed themselves at a discreet distance to observe the transaction between Layao and the two (2) accused. Upon receipt from Danilo Layao of the marked money, the two (2) accused went to a corner of the public market and returned after about twenty-five (25) to thirty (30) minutes and handed over to Danilo Layao a match box. Upon seeing Tirzo Celiz hand over to Layao the match box, Labramonte, who was then about a meter away from the three, immediately approached and got the match box from Layao and arrested the two (2) accused who were about to run away. He introduced himself to the two as a NARCOM agent and the latter submitted themselves peacefully to the former who brought them to the police station of San Enrique, Iloilo.

At the police station, Labramonte searched the two (2) accused in the presence of the local policemen and recovered the marked money, namely: the P20.00 bill from Tirso Celiz and the two (2) P5.00 bills from Julius Bangero from their respective wallets. Later, together with the rest of his team, he brought the two (2) accused to the NARCOM VI headquarters at General Luna St., Iloilo City, where he turned over to the NARCOM investigator the two (2) accused, and the match box full of dried marijuana leaves. The marked bills which were duly initialed by the two (2) accused upon order of Labramonte were turned over to the NARCOM property custodian, Sgt. Rodrigo Cabasa. The corresponding receipt (Exh. "E") was issued by Labramonte to the two (2) accused who acknowledged receipt thereof by signing it. It was at this point when C1C Labramonte discovered that Tirzo Celiz signed as Tirzo Cerbo, using his mother's surname, while Julius Bangero tried to use a fictitious name so as to hide his identity because he had a pending case in Passi, Iloilo.

The contents of the match box were submitted to the Philippine Constabulary Crime Laboratory (PCCL) for testing. Lt. Zenaida Sinfuego testified on the conduct of her examination to determine whether the specimens contained in the match box were positive for marijuana. Her examination revealed that the samples taken from the match box were positive for marijuana and she submitted a report (Exh. "C") to this effect.

On the other hand, the defense presented the two (2) accused and Gonzalo Arcosa, the Barangay Captain of Kompo, San Enrique, Iloilo, as witnesses.

Accused Julius Bangero testified that he was arrested together with Tirzo Celiz at the public plaza of San Enrique, Iloilo. He said that he and Celiz first met during the celebration of the fiesta of Brgy. Kompo, San Enrique, Iloilo, on 28 April 1986 and met again during the fiesta celebration of San Enrique, Iloilo, on 24 May 1986. He claims that while they were walking "hand in hand" around the plaza watching the games being played at the plaza, a person suddenly came from behind, accosted them, placed his hands on their shoulders and grasped both of them. According to Bangero, the man (who turned out to be C1C Labramonte) asked each of them if they were the person he was looking for and gave a certain name. When they answered in the negative, the man said they were lying and brought them to the Municipal Hall of San Enrique, Iloilo, where they were separately investigated for possession of marijuana contained in a match box. When both of them denied possessing the marijuana, they were brought to the INP city jail at Gen. Luna St., Iloilo City. He stated that he was forced to sign a document while inside the jail after he was threatened, boxed and hit with the butt of an armalite rifle by an unknown person. He vehemently denied having peddled illegal drugs and insisted that he must have been mistaken for another person by the arresting officer.

The other accused, Tirzo Celiz, in most aspects corroborated Bangero's testimony. He also denied having been caught in the act of handing over to a person (Layao) the match box containing marijuana leaves and receiving money in return from the latter. Neither was money taken from him while being investigated by the arresting officer at the San Enrique Municipal Jail. He repeated Bangero's claim that he was arrested due to mistaken identity. He avers that he signed Exhibit "E-2" under duress while at the NARCOM VI headquarters in Iloilo City.

The other defense witness, Gonzalo Arcosa, Barangay Captain of Brgy. Kompo, San Enrique, Iloilo, testified that he knew very well the accused Tirzo Celiz as the latter used to work at his parents' farm after school; that as a barangay captain, he had not heard or known that Tirzo Celiz was involved in any trouble of any kind. He claims that he has not heard that marijuana was being peddled in their barangay, although he admitted that he could not have known the habits of each of the one thousand three hundred (1,300) residents of Brgy. Kompo.

The accused assail the decision of the court a quo convicting them by contending that -

I

THE LOWER COURT ERRED IN NOT DISMISSING THE CASE ON THE GROUND THAT THE INFORMATION DOES NOT CHARGE AN OFFENSE.

II

ASSUMING THAT THE INFORMATION CHARGES AN OFFENSE, THE LOWER COURT ERRED IN NOT DISMISSING THE INFORMATION ON THE GROUND OF INSUFFICIENCY OF EVIDENCE.

Accused-appellants argue that the information does not charge an offense because it failed to allege the essential element that the dried marijuana flowering tops taken from the accused produce "the physiological effects of a narcotic or a hallucinogenic drug." They further aver that a substantial defect in the information cannot be cured by evidence for, otherwise, the defendant is denied his constitutional right to be informed of the nature and cause of the accusation against him.

This deluding argument of appellants fails in the light of the express provisions of R.A. No. 6425 which penalize "any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions." [3] The same act defines prohibited drugs as follows:

"(e) 'Dangerous Drugs' -- refers to either:

(1) 'Prohibited drug,' which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and beta eucaine; hallucinogenic drugs, such as mescaline, lysergic acid diethylamide (LSD) and other substances producing similar effects; Indian hemp and its derivatives; all preparations made from any of the foregoing; and other drugs, preparations, whether natural or synthetic, with the physiological effects of a narcotic or hallucinogenic drug." (underscoring supplied). [4]

Section 2(i), Article I of R.A. 6425 defines Indian Hemp as:

(i) 'Indian Hemp' - otherwise known as 'marijuana,' embraces every kind, class, genus or specie of the plant *cannabis sativa* L., including *cannabis americana*, hashish, bhang, guaza, churrus and ganjab, and embraces every kind, class and character thereof, whether dried or fresh and flowering or fruiting tops or any parts or portions of the plant, seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever;"

As correctly averred by the Solicitor General, an allegation that marijuana produces the physiological effects of a narcotic or hallucinogenic drug is not essential in the information. It is merely descriptive of what a "prohibited drug" is, but it does not form part of the definition or description of the offense penalized by Republic Act No. 6425.

The second assigned error is likewise without merit.

Accused-appellant contend that even assuming that the information charges an offense, while the evidence for the prosecution merely shows that the contents of the match box are positive for marijuana; it is however silent as to what class or variety of marijuana said contents of the match box belong; and appellants proceed to explicate on the different pharmacological effects produced by a "male marijuana" and a "female marijuana," the latter allegedly containing the chemical (tetrahydrocannabinol) most active in producing the physiological effects of marijuana, and that possession of a "male marijuana", something innocuous, is not penalized by law.

The "sex" of Indian hemp or marijuana is irrelevant for a conviction for the sale thereof. As defined in Section 2(i) of Article I of R.A. 6925 (supra), Indian hemp, or marijuana, "embraces every kind, class, genus or specie of the plant *cannabis sativa* L., x x x and embraces every kind, class and character thereof, whether dried or fresh and flowering or fruiting tops or any parts or portions of the plant, seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever;"

The chemistry report (Exh. "C") of Lt. Zenaida Sinfuego of the PCCL proved that the contents of the match box were marijuana leaves. The records do not show that the findings of the PCCL were objected to by the defense. Hence, the corpus delicti of the crime had been proved with certainty and conclusiveness.[5]

Accused-appellants further contend that the evidence for the prosecution is incoherent and contradictory. They call attention to certain portions of the testimonies of Danilo Layao and C1C Raul Labramonte.

It is noted that said witnesses were put on the witness stand after two (2) years from the occurrence of the incident on 24 May 1986. In two (2) years, some minor details could have already skipped the mind of the witnesses, such as the alleged inconsistencies in the testimonies of Danilo Layao and C1C Labramonte on the delivery of, and payment for the marijuana. As pointed out by the Solicitor General, however, the prosecution was able to establish that the accused-appellants sold the prohibited drug or marijuana to Danilo Layao; that Danilo Layao had handed over the pre-marked money - two (2) P5.00 bills and one (1) P20.00 bill to the two (2) accused who, in turn, gave the former a match box containing marijuana. Whether the transaction happened at the plaza or at the public market was clearly explained by the rebuttal evidence where in answer to the question of the fiscal, Layao replied that he saw the two (2) accused at the public market but approached them and the sale of the marijuana was done at the plaza. The fact therefore is that the accused delivered the match box full of marijuana to Danilo Layao who gave the pre-marked peso bills to Bangero. The sale of the marijuana by the two (2) accused is invariably borne out by the evidence presented by the prosecution.

The Court has decided not to discuss at length the alleged discrepancies in some portions of the testimonies of Danilo Layao and C1C Raul Labramonte. It is settled doctrine that the trial court's findings are accorded the highest respect and are entitled to great weight[6] on appeal and should not be disturbed unless for clear and cogent reasons, because the trial court is in a better position to examine real evidence as well as to observe the demeanor of witnesses while testifying in the case.[7]

WHEREFORE, finding that no reversible error has been committed by the court a quo, the appealed decision is hereby AFFIRMED in toto. Costs Against the accused?appellants.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Penned by Judge Edgardo D. Gustilo in Criminal Case No. 20575, entitled "People vs. Tirzo Celiz and Julius Bangero"

[2] Rollo, p. 11

[3] Section 4, Article II, R.A. No. 6425

[4] Section 2(e), Article I, *ibid*

[5] *People vs. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329

[6] *People vs. Patog*, G.R. No. 69620, September 24, 1986, 144 SCRA 429; *People vs. Egas*, G.R. No. 65676, June 24, 1985, 137 SCRA 188

[7] *Chase vs. Buencamino, Sr.*, G.R. No. L-20395, May 13, 1985, 136 SCRA 365; *People vs. Fernandez*, G.R. No., L-49601, August 30, 1983, 124 SCRA 319

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