

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUGENIO CATAN, ACCUSED-APPELLANT.

G.R. No. 92928. January 21, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Appellant herein was, in the same criminal prosecution, charged with and convicted of two (2) separate offenses of sale of a prohibited drug punished by Section 4 of the Dangerous Drugs Act (Rep. Act No. 6425, as amended), and of possession of a prohibited drug punished under Section 8 of the same law. The dispositive portion of the Court a quo's verdict reads:

"WHEREFORE, premises considered, the Court finds the accused Eugenio Catan y Gerona guilty beyond reasonable doubt of the crime of selling dried marijuana, a prohibited drug, defined and punished under Section 4, Article II, RA 6425, as amended, without any mitigating nor aggravating circumstance attendant thereto and sentences him to suffer life imprisonment (reclusion perpetua), and to pay a fine of Twenty Thousand (P20,000.00) Pesos, without subsidiary imprisonment, and to pay the costs.

"The Court further finds the same accused guilty beyond reasonable doubt in the same information of the crime of possession of marijuana, a prohibited drug, defined and punished under the second paragraph of Section 8, Article II, RA 6425, as amended, without any mitigating nor aggravating circumstance attendant thereto and sentences him to suffer imprisonment from eight (8) years and one (1) day to ten (10) years, and to pay a fine of Ten Thousand (P10,000.00) Pesos, without subsidiary imprisonment, and to pay the costs.

"In both cases the dried marijuana and one stick of marijuana cigarette subject of the offense are confiscated in favor of the government to be disposed of in accordance with law."

Challenging the above adjudication, Appellant is before us on appeal.

The facts follow: On 8 April 1989, the Special Action Team, NARCOM, headed by Lt. Maximo Valiente, decided to conduct a "buy-bust" operation at No. 49-A Madrigal Compound, Bgy. Corazon de Jesus, San Juan, Metro Manila. A team of operatives was dispatched to the place at around 10:30 to 11:45 a.m. on said date. Two (2) members of the team, C2C Crisostomo and C2C Bascuna, acting as poseur-buyers, sought out Appellant at the said address. Inside the latter's house, they negotiated for the purchase of 300 grams of marijuana worth P450.00. In the meantime, the other members of the team positioned themselves outside. Crisostomo and Bascuna gave the amount of P500.00 to Appellant consisting of five (5) marked P100.00 bills with serial numbers DG 664874, CN 548451, GS 003354, DR 757996 and HH 793977 (TSN, 7 Nov. 1989, p. 8) which numbers had been earlier recorded in the logbook of the NARCOM. Appellant then gave them the change of P50.00 and the 300 grams of marijuana (TSN, 7 Nov. 1989, pp. 3-5).

Soon after receiving the marijuana from Appellant, Crisostomo and Bascuna went out of the house and gave a pre-arranged signal to their companions who were waiting outside. The other team members rushed inside the house and arrested Appellant. Appellant, however, was able to pass the marked bills to a companion inside the

house who was able to escape during the commotion that ensued. The marked bills were never recovered.

Immediately thereafter, the NARCOM team conducted a search of the premises (TSN, 7 Nov. 1989, pp. 7-10) in the presence of barangay official, Jess Abundo, a certain Mrs. Catan, the house owner, and Appellant. The search yielded the following: a) 3.6287 kilos of dried marijuana fruiting tops in four separate bundles wrapped in newspaper and transparent plastic all placed in a carton box marked "Windmill Wrappers;" b) 0.9407 kilos of dried marijuana flowering tops inside a plastic bag marked "5 & Up Textile Mart." c) one (1) stick of marijuana cigarette; d) 23.49 grams of dried marijuana flowering tops wrapped in newspaper with markings and placed in a transparent plastic bag, and e) 189.71 grams of marijuana seeds wrapped in a pink plastic bag and placed inside another plastic bag marked "Bakers Fair." All the above were confirmed as marijuana after a laboratory examination.

For his part, Appellant denies both charges although he admits that he was inside the house on 8 April 1989. He claims, though, that he was sick at the time. He testified that Crisostomo and Bascuna arrested him without a warrant and conducted a search of the premises without any search warrant. He denied that a buy-bust operation took place, much less having received P450.00 as payment for marijuana. He further alleged that the search yielded nothing and that he saw the marijuana, which was presented in Court, for the first time inside a box in a van in which he rode when he was taken by the operatives to Camp Karingal.

The Trial Court, finding no reason to doubt the veracity of the buy-bust operation conducted by the NARCOM operatives, found Appellant guilty as charged. His present appeal hinges on the following allegations:

"I

"That the lower court erred in convicting accused appellant for an alleged violation of Sec. 4 and 8, Art. II, Rep. Act 6425 as amended, beyond reasonable doubt.

"II

"That the lower court erred in giving too much emphasis on the testimonies of prosecution witness rather than the testimonies of the defense.

"III

"That the lower court erred in admitting as evidence the marijuana fruiting top and the like which were illegally searched by the Capcom allegedly taken from the residence of accused-appellant.

IV

"That the lower court erred in not acquitting accused-appellant beyond reasonable doubt."

The foregoing assignments of error are far from impressive. Basically, the appeal revolves around the issue of credibility of the prosecution witnesses vis-a-vis Appellant's own testimony. Pertinent to this point, it is well-settled that Appellate Courts will generally not disturb the factual findings of the Trial Court, as the latter is in a better position to decide the same, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case (*People v. Sabado*, L-76952, 22 December 1988, 168 SCRA 681). A thorough review of the records of this case does not reveal any flaw in the assessment by the Trial Court of the evidence before it. We, therefore, apply the time-honored rule that the findings of the Trial Court are to be given great weight and the highest degree of respect by Appellate Courts (*People v. Alpetche*, L-76149-50, 22 December 1988).

Appellant was correctly convicted of selling marijuana in violation of Section 4, Rep. Act No. 6425. The element of sale was unequivocally established. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction (*People v. Dekingko*, L-87685, 13 September 1990, 189 SCRA 512). In a "buy-bust" operation, such as in the case at bar, what is important is the fact that the poseur-buyer received the marijuana from the Appellant and that the same was presented as evidence in Court. Proof of the transaction suffices (*People v. Mariano*, L-86656, 31 October 1990, 191 SCRA 136). Tested by the foregoing criteria, Appellant's culpability has been sufficiently established. He had sold, delivered and given away to two (2) undercover agents approximately 300 grams of marijuana in exchange for P450.00.

Prosecution witness C2C Jesus Bascuna positively identified Appellant as the person who sold the prohibited drug during the "buy-bust" operation (TSN, 6 November 1989, pp. 16-18). His testimony was corroborated by another poseur-buyer, C2C Francisco Crisostomo, who likewise narrated to the Trial Court the circumstances relating to the "buy-bust" operation involving Appellant as the seller of marijuana (TSN, 7 November 1989, pp. 27-30). The other members of the team testified on the manner Appellant was arrested and the accompanying search conducted in his premises (TSN, 6 November 1989, pp. 2-5, 7 November 1989, pp. 32-34). All these testimonies point to Appellant as the seller of marijuana during the "buy-bust" operation. Whatever discrepancies there may have been in their testimonies, such as the number of bills and their denominations, will not detract from their credibility since their declarations dovetailed on all material points.

The mere fact that Appellant denied that a "buy-bust" operation ever took place does not render the testimonies of the prosecution witnesses less credible. As between the positive declaration of prosecution witnesses and the negative statements of Appellant, the former deserves more credence and weight (*People v. Adap*, L-66237, 12 September 1990, 189 SCRA 413). The prosecution witnesses are law enforcers, hence, presumed to have regularly performed their duties in the absence of proof to the contrary (*People v. Mariano*, *supra*). Even Appellant himself testified that he knew of no reason why he would be charged falsely by the members of the team that arrested him (TSN, 22 December 1989, p. 68).

Appellant's assertion that he was illegally arrested and that the search of his premises was likewise illegal is not well taken. Appellant was arrested in *flagrante delicto* in the act of selling and delivering marijuana to the poseur-buyers. His case therefore falls under the category of a valid warrantless arrest (Sec. 5, Rule 113, 1985 Rules on Criminal Procedure). The subsequent search of his house which immediately followed yielding other incriminating evidence, and which became the basis of his conviction for possession of a prohibited drug, was a search contemporaneously made and as an incident to a valid warrantless arrest in the immediate vicinity where the arrest was made (*Nolasco v. Paño*, G.R. 69803, 30 January 1987, 147 SCRA 509). That is a recognized exception to the general rule that any search and seizure must be supported by a valid warrant (*Manipon v. Sandiganbayan*, G.R. No. 58889, 31 July 1986, 143 SCRA 267). The inclusion of the seized items, therefore, as evidence for the prosecution, was in conformity with the provision on lawful searches (*People vs. Castiller*, G.R. No. 87783, 8 August 1990, 188 SCRA 376).

Appellant also faults the Trial Court for having convicted him of selling marijuana under Section 4, Rep. Act No. 6425, as amended^[1] and of possession of marijuana under Section 8 of the same law.^[2] He postulates that the possession of marijuana is absorbed in the act of selling thereof, hence, he cannot be charged with two separate offenses, one for selling, and the other for possession of marijuana. Indeed, this Court has held that possession of marijuana is generally inherent in the crime of selling them and that conviction for both offenses is not feasible (*People v. Dekingko*, L-87685, 13 September 13, 1990, 189 SCRA 512). However, as held also in *People v. Manalansan*, L-76369-70, 14 September 1990, 189 SCRA 619), the rule that the possession of marijuana is

absorbed in the sale thereof is true only with respect to the marijuana delivered to the poseur-buyer and not to the marijuana found in the seller's possession, not covered by the sale and probably intended for a different purpose like another sale, or its direct use by the possessor. Consequently, Appellant can be convicted separately of the offense of selling a prohibited drug in connection with the marijuana sold by him to the poseur-buyers under Section 4 of Rep. Act No. 6425, as amended, and of the crime of possession of marijuana under Section 8 of the same law, with respect to the marijuana found in his premises after this arrest.

The fact that Appellant was charged with the two offenses in one Information does not alter the conclusion arrived at. Firstly, Appellant was not denied his right to be informed of the nature and cause of the accusation against him and to fully defend himself. The Information filed against him clearly and distinctly charged two separate offenses, thus:

"That on or about the 8th day of April, 1989, in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to another 221.57 grams of dried marijuana fruiting tops which is a prohibited drug, in violation of the above-cited law; that on the same occasion, the accused had in his possession, and under his control the following to wit:

- 1) 3.6287 kilos of dried marijuana fruiting tops into four (4) separate bundles wrapped with newspaper, transparent plastics and placed in a cartoon box marked. 'WINDMILL WRAPPERS' with markings respectively;
- 2) 0.9407 kilos of dried marijuana flowering tops with markings placed in a plastic bag marked '5 & UP TEXTILE MART';
- 3) One (1) stick of marijuana cigarette;
- 4) 23.49 grams of dried marijuana flowering tops wrapped with newspaper with markings and placed in a transparent plastic bag; which are prohibited drugs, and
- 5) Eight (8) bundles of rolling paper wrapped with pink papers and placed into two (2) separate wrappers marked 'CAPITOL'."

Secondly, the general rule is that an Information must charge only one offense. However, "when two (2) or more offenses are charged in a single Information and the accused fails to object to it before trial, the Court may convict him of as many offenses as are charged and proved, and Impose on him the penalty for each and every one of them setting out separately the findings or fact and law in each case" (Rule 120, Section 3, 1985 Rules on Criminal Procedure). In the proceedings at bar, the records do not show that Appellant seasonably objected to the two offenses charged in a single Information. On the contrary, he merely pleaded not guilty thereto during arraignment. Under the circumstances, possession of marijuana, other than that which was the object of the sale, having been also charged and proved, his additional conviction therefor can withstand any challenge from the defense. It should also be noted that the Trial Court had set out separately the findings of fact and the law in each case, as required (ibid.).

In sum, the Court finds that Appellant's guilt of selling and possessing marijuana has been proven beyond reasonable doubt. The penalty for selling marijuana, however, of "life imprisonment (reclusion perpetua)" imposed by the Trial Court is erroneous and is hereby changed to "life imprisonment" only plus the fine. The penalty for possession of marijuana is sustained.

WHEREFORE, the judgment appealed from is AFFIRMED in toto.

SO ORDERED.

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

[1] SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon 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. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed. (As amended by PD No. 1675, February 17, 1980.

[2] SEC. 8. Possession or Use of Prohibited Drugs. - The penalty of imprisonment ranging from twelve years and one day to twenty years and a fine ranging from twelve thousand to twenty thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug, except Indian hemp in regard to which the next following paragraph shall apply.

The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use Indian hemp. (As amended by BP Blg. 179, March 2, 1982.

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