

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO SANTOS Y CONCEPCION, ACCUSED-APPELLANT.*G.R. No. 93520. December 01, 1994*

Ponente: BELLOSILLO, J.

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FOR DELIVERING to another 75.1 kilograms of dried marijuana flowering tops, Virgilio Santos y Concepcion was charged and subsequently convicted of violating Sec. 4, Art. II, of The Dangerous Drugs Act of 1972.[1] Sentenced to life imprisonment, Virgilio Santos appeals his conviction and prays for acquittal.

On 27 September 1987, a team composed of Pfc. Danilo Cruz, Pfc. Celestino de la Cruz, Pfc. Pedro Hernandez, Pfc. Edgar Arimbuyutan and a certain Pfc. Maliwat conducted a surveillance at Sadie Street, Angeles City, following reports of a huge delivery of marijuana at the house of a certain Tatang Biling by individuals coming from the Mountain Province. The surveillance, which started in the evening, continued until eleven o'clock the following morning when the team caught accused-appellant, who is also known as Tatang Biling, transferring three boxes and two pieces of luggage from his house to that of his next-door neighbor Marciana Karganilla. When accused-appellant finished with the delivery, the team tried to apprehend him but the latter successfully evaded arrest. However, the team seized the boxes and luggage from Karganilla's house and found them stuffed with dried marijuana flowering tops the total weight of which was confirmed to be 75.1 kilograms.[2]

Accused-appellant denied the foregoing account. Instead, he claimed that he saw the boxes and pieces of luggage for the first time when he went to work in his motor shop (located in front of his house at Sadie Street) in the early morning of 28 September 1987. When he inquired about the boxes, his welder Vicente Camat told him that five persons came the previous day and left the boxes and luggage but promised to return for them the following morning when they would come back to have their Fiera fixed. They never did. Seeing a "kuwitis" through an opening in one of the boxes, accused-appellant instructed Vicente Camat to move them away from the welding equipment and transfer them to a safer location. Camat obeyed and transferred the boxes and luggage to the house of Marciana Karganilla with the help of Renato Villanueva, another welder. Accused-appellant then went to see Major Dizon, Chief of the City Fire Department, to solicit his help in verifying whether the boxes really contained firecrackers. However, by the time they arrived at the motorshop, the police had already seized the boxes and luggage and brought them to the precinct.

On 23 April 1990, the Regional Trial Court of Angeles City, Br. 58, declared accused-appellant guilty as charged[3] and sentenced him to life imprisonment and to pay a fine of P20,000.00.[4] In rejecting the defense offered, the trial judge opined that five individuals would not just leave 75.1 kilograms of sought-after marijuana at a motorshop unless they knew the owner thereof (accused-appellant herein) and were in cahoots with him. Thus, he found the version narrated by the arresting team more credible especially when no improper motive for implicating accused-appellant was alluded to, much less attributed to the team.[5]

Hence this appeal where accused-appellant moves for his acquittal on three grounds, which we shall discuss

separately hereunder.

First. Accused-appellant contends that he cannot be held liable for unlawfully delivering marijuana since he was not the one who delivered the boxes and luggage at the house of Marciana Karganilla as the latter herself had testified. Although the surveillance team claimed to have seen him making the delivery, Marciana Karganilla's testimony (for the prosecution) that it was some other person who did so ought to have been given more weight by the court *quo* because when a witness gives testimony favorable to both plaintiff and defendant, that testimony favorable to the plaintiff shall be deemed to have been given on direct examination which cannot prevail over that given on cross-examination, as his testimony favorable to the defendant shall be presumed.

The argument lacks merit. Aside from the fact that nowhere in the case cited by accused-appellant[6] is the statement being offered by him mentioned as a veritable principle of evidence, it would not matter at all whether it was indeed he who delivered the boxes and luggage (as claimed by the surveillance team)[7] or some other person at his behest (as allegedly testified by Marciana Karganilla). The act of "delivering" prohibited drugs penalized by Sec. 4, Art. II, of R. A. No. 6425, and defined in Sec. 2 thereof,[8] is not limited to deliveries made personally by the accused but covers those effected through other means as well. Therefore, assuming that it was indeed another person, not accused-appellant, who delivered the marijuana, such fact will not make the latter less liable since the delivery was at his behest. What is material is that the giving of the prohibited drug was pursuant to the instruction of the accused even if he did not himself personally deliver the same.[9] Besides, while accused-appellant claims that he did not know that his helper would transfer the boxes and luggage to Marciana Karganilla's house, we find such pretension unbelievable because Vicente Camat, on his own, had no reason to consider Karganilla's house as an ideal location for the transfer. Aside from the fact that his employer's house is nearer to the motor shop where the boxes and luggage were placed, accused-appellant had no special relationship with Karganilla, apart from being her neighbor, for Camat to suppose that accused-appellant would want him to transfer the boxes and luggage to that house. Moreover, Marciana Karganilla did not state that it was not accused-appellant who delivered the boxes and luggage, as claimed by the surveillance team. Instead, she only testified that a woman living in the house of accused-appellant approached her in the early morning of 28 September 1987 with a message from Tatang Biliong requesting that several packages containing firecrackers be stored in her house for safekeeping.[10] She did not see who actually delivered the boxes and luggage since after acceding to the request she went on with her household chore, i.e., washing clothes.[11]

Second. Accused-appellant further contends that even if he did in fact personally deliver the boxes and luggage, he did so merely for safekeeping as Marciana Karganilla herself testified. Hence, since he did not "deliver" nor "give away" but merely entrusted the marijuana, he cannot be convicted of violating Sec. 4, Art. II of The Dangerous Drugs Act of 1972 as charged.

As the Solicitor General correctly points out, whether the boxes and luggage were really entrusted to Marciana Karganilla for safekeeping will not make a difference. Section 4, Art. II, of The Dangerous Drugs Act of 1972 makes the delivery of prohibited drugs an offense regardless of the reason therefor. Mere delivery is enough to constitute the offense.[12] And we should not distinguish where the law does not.[13]

Third. Accused-appellant denies knowledge of the contents of the boxes and pieces of luggage claiming that he mistakenly thought that they contained firecrackers, not marijuana. He argues that if he really knew that the packages left in his motorshop contained marijuana as insisted by the prosecution, he would not have been so stupid as to make the delivery at eleven o'clock in the morning, as claimed by the surveillance team, since a person planning a heinous offense would not reveal his criminal plans publicly and in broad daylight.

Accused-appellant cannot successfully claim the foregoing in his favor since both nocturnity and daylight can be

sought to camouflage illegal activities. While crimes are usually committed at night when the possibility of detection is minimal, it does not discount the fact that criminals may, with the same degree of success, alternately choose daylight as an ideal time to transform their evil designs into concrete reality by merely hiding behind the mass of humanity, or even if there are not that many people around, by just taking advantage of the lowered defenses often induced by the false feeling of security that no crime can possibly be committed at daytime. In the case at bench, the scheme would have worked in favor of appellant and he would have succeeded in delivering the marijuana undetected had it not been for the fact that prior information had already been received by Capt. Eden Reyes of the NARCOM.

Thus, finding the arguments presented by the accused to be without merit, affirmance of his conviction must follow. Aside from being a mere rehash of the defenses put up before the trial court, well-settled is the rule that findings of the trial court on matters of credibility are conclusive upon this Court in the absence of any showing that some fact or circumstance of weight and substance have been overlooked, misunderstood or misapplied by the trial court that would have affected the result of the case.[14] As already discussed, we find nothing in the records to justify the application of the exception to the general rule on the conclusiveness of factual findings of the trial court.

A word on the penalty imposed. On 28 September 1987 when the offense was committed, violation of Sec.4, Art II of The Dangerous Drugs Act of 1972 was punished with life imprisonment and a fine of P20,000.00. Accordingly, the accused-appellant was so sentenced. However, the law has since been amended by R. A. 7659 making the offense punishable with reclusion perpetua and a fine ranging from P500,000.00 to P10,000,000.00.[15] Nonetheless, finding that a retroactive application of the new penalties would be clearly unfavorable to accused-appellant, we can only affirm and adopt the penalty imposed by the court a quo. Obviously, the increased fine of P500,000.00 to P10,000,000.00 cannot be imposed since the accused was ordered to pay a fine of only P20,000.00. A similar retroactive application of the penalty of reclusion perpetua is not likewise warranted. Although the duration of reclusion perpetua is fixed at twenty years and one day to forty years,[16] unlike life imprisonment which has no definite duration,[17] reclusion perpetua is nevertheless attended with certain accessory penalties, namely, civil interdiction and perpetual absolute disqualification,[18] which under the circumstances the accused-appellant cannot justifiably be made to suffer, for no crime can be punishable with a penalty not prescribed by law prior to its commission unless favorable to him who is not a habitual delinquent.[19]

WHEREFORE, the Decision of the court a quo finding accused-appellant VIRGILIO SANTOS Y CONCEPCION guilty beyond reasonable doubt of violating Sec. 4, Art. II, of The Dangerous Drugs Act of 1972 and sentencing him to life imprisonment, and to pay a fine of P20,000.00 is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

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

[1] Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of x x x 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 transaction.

[2] Exh. "G," Technical Report No. NB-529-87, Original Records, pp. 206-207.

[3] “The information alleged that ‘on or about the 28th day of September 1987, in the City of Angeles x x x the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously deliver or give away to another, dried marijuana flowering tops x x x”

[4] Decision penned by Judge Reynaldo B. Daway, Regional Trial Court, Angeles City, Br. 58, Rollo, pp. 7-12; Original Records, pp. 189-194.

[5] Id., p. 10; Id., p. 192.

[6] Castillo v. Court of Appeals, No. L-48290, 29 September 1983, 124 SCRA 808.

[7] TSN, 28 February 1989, p. 4; 24 May 1989, pp. 4-5.

[8] The word “deliver” refers to a person’s act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration (par. [f]).

[9] People v. Querrer, G.R. No. 97147, 15 July 1992, 211 SCRA 502, 508.

[10] TSN, 9 October 1990, pp. 4-6.

[11] Id., p.5

[12] People v. Hoble, G.R. No. 96091, 22 July 1992, 211 SCRA 675, 683, citing People v. de la Cruz, G. R. No. 83260, 18 April 1990, 184 SCRA 416.

[13] Philippine British Assurance, Co., Inc. v. Intermediate Appellate Court, G.R. No. 72005, 29 May 1987, 150 SCRA 520, 527 citing Colgate-Palmolive Phil., Inc. v. Gimenez, No. L-14787, 28 January 1961, 1 SCRA 267; Guevarra v. Inocentes, No. L-25577, 15 March 1966, 16 SCRA 379; Libudan v. Gil, No. L-21163, 17 May 1972, 45 SCRA 17; Alfato v. Commission on Elections, G.R. No. 52749, 31 March 1981, 103 SCRA 741 and Agpalo, Ruben E., Statutory Construction, 1986 Ed., pp. 143-144.

[14] People v. Yap, G.R. No. 103517, 9 February 1994, 229 SCRA 787, 792-793; People v. Sencil, G.R. Nos. 105959-60, 12 October 1993, 227 SCRA 180, 185; People v. Nimo, G.R. No. 92533, 5 October 1993, 227 SCRA 69, 83; People v. Domingo, G.R. No. 97921, 8 September 1993, 226 SCRA 156, 165-166; People v. Tidong, G.R. No. 101583, 13 August 1993, 225 SCRA 324, 332; People v. Arnan, G.R. No. 72608, 30 June 1993, 224 SCRA 37, 40-41.

[15] See Sec. 13, R. A. 7659.

[16] See Sec. 21, id.

[17] People v. Baguio, G.R. No. 76585, 30 April 1991, 196 SCRA 459, 469.

[18] Art. 41, The Revised Penal Code.

[19] Art. 21, in relation to Art. 22, id.

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