

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANDY DE JESUS, ACCUSED-APPELLANT.*G.R. No. 93852. January 24, 1992*

Ponente: REGALADO, J.

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Having been convicted by the Regional Trial Court, Branch 170 in Malabon, Metro Manila, of violating Section 4, Article II, Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, accused-appellant seeks the reversal thereof in this appeal.

The information filed against appellant alleges that on or about September 26, 1989, in the Municipality of Navotas, Metro Manila, he wilfully, unlawfully, and feloniously sold, delivered and gave away three (3) tea bags of dried marijuana leaves, a prohibited drug.[1] Upon being duly arraigned, he pleaded not guilty to the charge.

At the trial, the prosecution presented Pfc. Efren Arevalo and Pat. Nemesio Ira, both of the Navotas Police Station, as its witnesses. Their testimony proved, and the trial court found, that at around three o'clock in the afternoon of September 26, 1989, they were at the Navotas police headquarters. While they were standing by for possible assignment, a confidential informant arrived and told them that a person was selling marijuana at Interior Gov. Pascual St., San Jose, Navotas. They immediately proceeded to the said area where Pat. Ira positioned himself about ten (10) meters away from the point where the alleged sale took place. Pfc. Arevalo, accompanied by the confidential informant, acted as the poseur buyer.[2]

After having been approached by Pfc. Arevalo and the confidential informant, appellant, who was later identified as Dandy de Jesus, left for a while, after which he returned and handed three (3) tea bags of marijuana to Pfc. Arevalo. Upon seeing Pfc. Arevalo handing something and return to appellant, which actually was the marked money, Pat. Ira approached them and arrested the latter.[3]

The policemen brought appellant to their headquarters and arranged for the dried leaves to be examined by the National Bureau of Investigation. The findings of the Forensic Chemistry Section of the Bureau showed that they are positive for marijuana.[4] The three (3) tea bags of dried marijuana leaves were presented and admitted as Exhibit "E" for the prosecution.[5] The request for examination and the certification issued by the NBI were marked as prosecution Exhibits "C" and "D", respectively.[6] The police officers retrieved the marked money used in the buy-bust operation worth P30.00, which was in two denominations of P10.00 and P20.00, from appellant and these were presented as Exhibits "A" and "B". The buy-bust money, with serial numbers GM54416 and JS985778, respectively, bore the initials of Pfc. Efren Arevalo (EA) as markings (Exhibits "A-1" and "B-2").[7]

The evidence for the defense, on the other hand, expectedly an entirely different version. Appellant and a certain Roberto Anas testified that they were neighbors. They were allegedly taking a bath together at around four o'clock in the afternoon of September 26, 1989 within the premises of the latter's aunt at 388 Int. Gov. Pascual, San Jose, Navotas when four (4) policemen arrived. These policemen were identified by them as Arevalo, Ira, Rizalito

Francisco and Rolando Mabbun. They talked to appellant and told him that his "Uncle Rolly", also a Navotas policeman, was calling him. Appellant asked them why but, instead of answering, they brought him outside and loaded him into an owner type jeep.[8]

Appellant claims that he was then brought to the Navotas police station where he was made to admit that he was selling marijuana. When he refused, Rolando Mabbun hit him with a bamboo stick which caused bruises on his body. The police officers gave appellant a piece of paper which they made him sign. When he asked what the paper was all about, appellant learned that it was a complaint against him for selling marijuana. He was thereafter confined in jail.[9]

On February 6, 1990, the mother of appellant filed administrative charges against the policemen with the National Police Commission, which complaint was supposedly supported by statements of Roberto Anas and of appellant. These statements were presented as Exhibits "1" and "2" for the defense.[10] The trial court, however, observed that although the incident in question took place on September 26, 1989, the statements were made more than four (4) months later, and that there was no proof that said statements were actually filed with the National Police Commission.[11]

In a decision penned by Judge Marina L. Buzon on April 23, 1990, the trial court found appellant guilty beyond reasonable doubt of the charge against him and sentenced him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 and the costs.[12] He has now come before us and, in his assignment of errors, he contends that the court a quo erred (1) in giving credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense; and (2) in finding appellant guilty of violation of Section 4, Article II, Republic Act No. 6425, as amended.[13]

It is evident, therefore, that the resolution of this case hinges on the issue of credibility. On this score, it is a well-settled rule in our jurisdiction that the findings of the trial court regarding the issue of credibility of witnesses and their testimonies are entitled to great respect and are accorded the highest consideration by appellate courts.[14] Deviation from the rule is allowed only when the circumstances of the case show that the trial court has overlooked facts which will substantially alter the results of its adjudication. Corollary to this, it has likewise been consistently ruled that credibility is a matter that is peculiarly within the province of the trial judge, who had first-hand opportunity to watch and observe the demeanor and behavior of witnesses, both for the prosecution and the defense, at the time of their testimony.[15]

Further, we have ruled that credence shall be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, there being evidence to the contrary.[16] In fact, the court below noted the admission of appellant that his uncle, Rolly Domingo, is a policeman of Navotas; hence it is unlikely that the prosecution witnesses would falsely charge a relative of their co-policeman with a serious offense.[17]

Appellant contends that the trial court overlooked the fact that he knows well that the two prosecution witnesses are police officers. Appellant claims that to arrive at the conclusion that he would enter into a transaction to sell marijuana to Arevalo, whom he knows to be a policeman, is incredible and improbable.[18]

We are not impressed with this argument. Aside from its lack of corroboration, it is a matter that can be so easily contrived, for all that the malefactor has to do is to affect such supposed knowledge of the identity of the peace officer and seek refuge in that self-serving contention. Furthermore, as we have heretofore stressed, the liability of appellant lies not on the existing familiarity between the buyer and the seller but on their agreement and the acts constituting the sale and delivery of the marijuana leaves.[19]

Even assuming *arguendo* that appellant knows the poseur buyer to be a police officer, the fact that he still returned with three (3) tea bags of marijuana leaves after having been offered a certain amount by the police officer shows his willingness to enter into a transaction with him. And that willingness, in turn, showed that he opted to take the risk of being brought into the folds of the law. As ruled in *People vs. Odicta*,^[20] in real life, pushers, especially small-quantity or retail pushers, sell their prohibited wares to customers, be they strangers or not, who have the price of the drug.

Turning to another aspect, appellant further insists that the procedure followed by the police officers in apprehending him is insidious, much more reprehensible than the crime sought to be curtailed, for the public allegedly knows how many injustices have been committed in the name of buy-bust operations.^[21]

Contrary to the submission of appellant, we cannot see how the procedure adopted by the police officers in this case can nullify the results obtained from said buy-bust operation or defeat the application of the presumption of regularity in the performance of official duties as earlier stated. The situation in the case at bar is one where a person commits a crime in the presence of a peace officer, hence the latter may validly arrest the offender even without first obtaining a warrant of arrest.^[22]

It is clear from the testimony of the prosecution witnesses that their superior officers were not around when the confidential informant arrived. The urgency of the situation and the immediate reaction of the police officers being to take the alleged pusher into the custody of the law, they did not wait anymore for their superiors to arrive but they decided to take appropriate action by themselves.

Moreover, as established by Pfc. Efren Arevalo, in his testimony, they had already been given the buy-bust money in advance in anticipation of circumstances such as those in the case at bar. Thus:

x x x

"Q Did I get you right all the members of the Narcotics Unit of the Navotas Police Station will be given money for buy-bust operation even if there is no existing operation?

A (Interrupted)

Fiscal: No basis.

Court: The answer was it was given to him a few days earlier. Witness may answer

Witness: Because the money were (sic) already given to us because sometimes he is not around, sir.

x x x

Court (Witness)

Q Are you saying you did not seek any clearance from your superior officer before you conducted the buy bust operation?

A We have (sic) it blotted before we left.

Q You did not try to contact Mabbun or the Station Commander to give you authority to conduct the buy bust operation?

A We did not contact anymore Mabbun because was already in the official blotter, your honor.

Q How about the Station Commander?

A We did not inform our Station Commander anymore.

Q Are you not required to inform at least the superior officer before conducting any form of operation?

A Not anymore. We just proceeded to our mission because it was already in the official blotter, your

honor."[23]

x x x

Appellant likewise challenges the failure of the prosecution to present the confidential informant as a witness. His main contention in this regard was that said failure was tantamount to suppression of evidence and that evidence suppressed is deemed evidence adverse, if produced.[24] We disagree.

This Court has repeatedly ruled that the prosecution may decide on who should be presented as witnesses.[25] More-over, the adverse presumption from suppression of evidence is not applicable when (1) the suppression is not wilful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege.[26]

In this case, the failure of the prosecution to present the confidential informant was not willfully unjustified. As the Solicitor General puts it, police informants work incognito; to parade them in court would destroy their usefulness.[27] Therefore, his identity may remain confidential. There are strong practical reasons for such continued secrecy, including the continued health and safety of the informer and the encouragement of others to report wrongdoings to the police authorities.[28]

Also, the testimony of the confidential informant was merely corroborative. The prosecution deemed it unnecessary to present his testimony because there was sufficient evidence to establish its case. Appellant was caught in flagrante delicto by the police officers and his conviction does not depend on the informer's testimony.

Consonant with the foregoing, the Court has consistently ruled that if a lesser number of witnesses is sufficient to prove the facts relied on, no unfavorable presumption will arise against the party for not placing the witness on the stand.[29] As a matter of fact, the court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive.[30]

Finally, the defense of appellant constitutes a combination of an alibi and denial, definitely the weakest defense. Trite as it may appear to be, we repeat all over that to serve as a basis for acquittal, the defense of alibi must be established by clear and convincing evidence. The requisites of time and place must be strictly met. It must affirmatively appear not only that the accused was at some other place at the time of the perpetration of the offense but also that the circumstances are such as logically to generate the conclusion that it was physically impossible for him to be present at the scene of the crime at the time of its commission.[31]

The testimony of appellant, even if corroborated by another witness, is intrinsically effete and implausible. The presumption of innocence in his favor was overcome by the evidence presented by the prosecution. Moreover, the defense of alibi cannot prevail over his positive identification by the prosecution witnesses as the perpetrator of the crime.[32] In the case at bar, the prosecution witnesses specifically and categorically pointed to appellant as the one who committed the offense charged.[33]

This case is another regrettable episodic event in the continuing campaign against the illicit trade in drugs. Appellant, it is true, is but a mere cog in the wheel for the supply of drugs, from the initial producer to the ultimate consumer. His comparatively limited role, however, is not as inconsequential as it may appear. Undeniably, the pusher personally and directly reaches out to each individual end-user who, without the criminal agency of the former, would otherwise not have been enticed into the dangers of drug use which usually culminate in the tragedy of drug addiction. For serving as that nefarious conduit, the pusher deserves the heavy hand of retributive justice.

ACCORDINGLY, the assailed judgment of the court a quo is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Nocon, JJ., concur.

- [1] Original Record, 1.
- [2] TSN, January 23, 1990, 3-8; January 30, 1990, 2-5.
- [3] Ibid., id.; ibid., id.
- [4] Ibid., February 6, 1990, 1-2.
- [5] Original Record, 30.
- [6] Ibid., 27-28.
- [7] Ibid., 26.
- [8] TSN, February 20, 2-13; February 27, 1990, 2-3.
- [9] Ibid., id., 4.
- [10] Original Record, 36, 37.
- [11] Rollo, 16.
- [12] Ibid., 14-16.
- [13] Brief for the Accused-Appellant, 1; Rollo, 24.
- [14] People vs. Carido, 167 SCRA 462 (1988); People vs. Tejada, 170 SCRA 497 (1989).
- [15] People vs. Turla, 167 SCRA 278 (1988).
- [16] People vs. Napat-a, 179 SCRA 403 (1989).
- [17] Rollo, 15.
- [18] Brief for the Accused-Appellant, 8; Rollo, 33.
- [19] People vs. Tejada, supra; People vs. Rodriguez, 172 SCRA 742 (1989).
- [20] G.R. No. 93708, May 15, 1991.
- [21] Brief for the Accused-Appellant, 7; Rollo, 32.
- [22] Sec. 3, Rule 113, Rules of Court.
- [23] TSN, February 6, 1990, 6, 11.
- [24] Brief for the Accused-Appellant, 9; Rollo, 34.
- [25] People vs. Orita, 184 SCRA 105 (1990); People vs. Alerta, Jr., G.R. No. 85250, July 1, 1991.
- [26] 6 Moran, Comments on the Rules of Court, 41 (1980 ed.).
- [27] Brief for the Appellee, 7; Rollo, 57.
- [28] People vs. Odicta, supra.

[29] *Modesto vs. Leyva*, 6 Phil. 186 (1906); *People vs. Caragao*, 30 SCRA 993 (1969).

[30] Sec. 6, Rule 133, Rules of Court.

[31] *People vs. Abaya*, 170 SCRA 691 (1989); *People vs. Ruedas*, 194 SCRA 553 (1991).

[32] *People vs. Almenario, et al.*, 172 SCRA 268 (1989); *People vs. Glinogo*, 172 SCRA 893 (1989).

[33] TSN, January 23, 1990, 4; January 30, 1990, 3.

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