

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL HILARIO Y GARCIA, ACCUSED-APPELLANT.

G.R. No. 94037. May 06, 1991

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Before us is an appeal from the Decision[*] of the Regional Trial Court, National Capital Region, Manila, Branch 28, convicting Appellant Ariel Hilario y Garcia of drug pushing in violation of Section 4, Article II, in relation to Section 21, Article IV of Rep. Act No. 6425, as amended by Pres. Decrees Nos. 44 and 1675, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00.

The prosecution evidence narrates that about three (3) to four (4) days prior to 12 January 1988, undercover operative Patrolman Tomasito Corpuz and some other members of the Anti-Narcotics Unit of Police Station No. 3, Western Police District, together with a confidential informant, conducted a "test-buy" operation (tsn, 20 April 1988, pp. 3-4) to verify reports received of marijuana selling along Anacleto Street and Bambang Street in Sta. Cruz, Manila (tsn, 19 April 1988, pp. 10-11; tsn, 25 July 1989, p. 10). Patrolman Corpuz, as the poseur-buyer, was able to buy a tea bag of marijuana from Appellant Ariel Hilario. The "test-buy" operation was repeated and, this time, another tea bag of marijuana was sold by the Appellant. Each tea bag cost P10.00. The "test-buy" operations were purely surveillance in nature. No apprehension was made as the operatives were trying to gain the confidence of Appellant prior to the actual arrest (tsn, 20 April 1988, pp. 3-5).

On 12 January 1988, at about 7:35 in the evening, the "buy-bust" operation, leading to the apprehension of Appellant, was conducted by a police team composed of Pfc. Roberto Ruiz, Patrolmen Lahong, Saulog, Valdez and Tomasito Corpuz. All belong to the Anti-Narcotics Unit, Police Station No. 3 of the Western Police District (tsn, 19 April 1988, pp. 2-3). They were all in civilian clothes (ibid, p. 14).

Because Patrolman Corpuz was already able to gain the confidence of Appellant, he again acted as the poseur-buyer. The rest of the policemen, meanwhile, posted themselves in strategic places where they could witness the transaction which was to take place in front of Appellant's house located at Anacleto Street, Sta. Cruz, Manila (ibid, p. 3).

The team, as in the past two (2) "test-buy" operations, was with their confidential informant. As planned, two (2) marked ten-peso bills (10.00) were handed over by Patrolman Corpuz to Appellant who, after putting the same in his right pants pocket, entered his house and got the marijuana from behind the statue of a "Sto. Nazareno" which was encased in glass. Appellant returned outside to where Patrolman Corpuz was waiting and handed to the latter two (2) tea bags of marijuana. It was at this point that Patrolman Corpuz introduced himself as a policeman to the Appellant (ibid, pp. 5-6; tsn, 5 May 1988, p. 4) and thereafter apprehended him, but not without some resistance from the latter. The marking consisted of "P.S. No. 3" just below the serial numbers of the bills (Exhs. E-1-a & E-2-a).

The entire operation was witnessed by Pfc. Roberto Ruiz, who was about four (4) to five (5) meters away sitting on a small bench. Appellant's sala was small and had its window open. Movements inside the house could be seen even if one were standing outside (tsn, 19 April 1988, p. 17). Thus, Pfc. Ruiz witnessed the Appellant receiving the marked money from Patrolman Corpuz and subsequently retrieving the marijuana from behind the altar (ibid, p.4).

After the apprehension, Pfc. Ruiz took the two (2) marked ten-peso (P10.00) bills from Appellant's right pants pocket (ibid, p. 18). The latter was then taken to the police station for investigation (ibid, p. 5), where he was asked to sign the ten-peso (P10.00) bills and apprised of his constitutional rights (ibid, p. 19; tsn, 5 May 1988, pp. 6-7). Appellant refused to give any written statement.

The arrest effected and the Booking Sheet, Arrest Report and Crime Report accomplished, Patrolman Corpuz delivered the plastid tea bags said to contain marijuana to the National Bureau of Investigation for examination (tsn, 20 April 1988, p. 7). Microscopic, chemical and chromatographic examination yielded positive results for marijuana (Exhibit C).

In his defense, Appellant, 21 years old, a second year high school student, denied having sold marijuana, his version of the circumstances leading to his arrest being as follows:

At around 7:00 P.M. in the evening of 12 January 1988, he and Angelito Flores were sewing upholstery materials at 1339 Rizal Avenue (in contrast to the prosecution's given address which is 1339 Anacleto Street, Sta. Cruz, Manila). Suddenly, five (5) policemen barged through the door and proceeded to search the first and the second floors of the house without a search warrant. Startled, Appellant and Flores just stood by the sewing machine as the policemen conducted the search. Thereafter, they were instructed to go with the policemen to the police station. Thereat, Pfc. Ruiz investigated Appellant without apprising him of his constitutional rights. Appellant was told that he was being charged with pushing marijuana and was even threatened with subjection to electric shock. He narrated that he was carrying three (3) ten-peso bills at that time; that the policemen asked for them and made him sign them allegedly to establish the fact that they belonged to him. He denied the "test-buy" operations prior to his arrest or having met Patrolman Corpuz before. He said that he was not the pusher whom the police was after, that individual's real identity being one Roland Palencia. In fact, he was asked to indicate the location of Palencia's house on a blackboard, which he did, but said individual had gone into hiding (Appellant's Brief, pp. 3-4).

After evaluating the conflicting versions, the Trial Court accorded more credence to the prosecution evidence and sentenced Appellant to life imprisonment. Before us now is Appellant's plea for acquittal, premised on the following submissions:

"1. The Court a quo gravely erred in admitting the peso bills and tea bags of marijuana adduced in evidence by the prosecution.

"2. The Court a quo gravely erred in finding that the guilt of the accused-appellant for the crime charged has been established beyond reasonable doubt."

The defense questions the legality of Appellant's arrest contending that he was neither pushing nor in possession of any prohibited drug at the time of his apprehension and that the two (2) tea bags, said to contain marijuana, surfaced for the first time only at the police precinct where Appellant was informed that they had been taken from his house. Appellant stoutly states that it was planted evidence. Regarding the allegedly marked ten-peso bills, Appellant avers that they actually belong to him but was tricked into signing them after having been told that it was merely to prove his ownership thereof. Ergo, it is claimed, the Trial Court erred in admitting the said peso bills and tea bags of marijuana as evidence against him.

The foregoing argumentation hardly deserves attention.

Appellant's arrest was legal. He was apprehended while selling marijuana, a prohibited drug, and was, therefore, validly arrested under Rule 113, Section 5(a) of the 1985 Rules on Criminal Procedure:

“Section 5 - Arrest without warrant; when lawful. - A peace officer may, without a warrant, arrest a person:

"(a) Where, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

"....."

Having caught Appellant in flagrante delicto as a result of the "buy-bust" operation, Appellant's arrest, even without a warrant, was lawful. It follows that the search made incidental to the arrest was also valid (*People v. Paco*, G.R. No. 76893, 27 February 1989, 170 SCRA 681).

Entrapment of Appellant by the arresting officers, it may have been. But this is no bar to prosecution and conviction. The legal effects thereof do not exculpate Appellant from criminal liability (*People v. Marcos*, G.R. No. 83325, 8 May 1990, 185 SCRA 154).

In attempting to discredit the prosecution evidence, Appellant further contends that it is most improbable that an illicit transaction, for which the law imposes a penalty of life imprisonment, could have been consummated in a busy sidewalk or alley, in full view of passersby and onlookers, for a measly amount of P20.00.

The contention does not persuade.

Small level drug-pushing may be committed at any place and at any time. It is completed clandestinely and swiftly after the offer to buy is accepted and the exchange made. The fact that the parties are in a public place and in the presence of other people does not necessarily discourage drug pushers from plying their trade as these may even serve to camouflage their illicit operations. Hence, the Court has sustained convictions of drug-pushers caught selling illegal drugs at a basketball court (*People v. Paco*, supra), in billiard halls (*People v. Rubio*, G.R. No. 66875, 19 June 1986, 142 SCRA 329; *People v. Sarmiento*, G.R. No. 72141, 12 January 1987, 147 SCRA 252), in front of a store (*People v. Khan*, G.R. No. 71863, 23 May 1988, 161 SCRA 406), along a street at 1:45 P.M. (*People v. Toledo*, G.R. No. 67609, 22 November 1985, 140 SCRA 259), and in front of a house (*People v. Policarpio*, G.R. No. 29844, 23 February 1988, 158 SCRA 85; all cited in *People v. Paco*, supra).

In the final analysis, it is the credibility of witnesses that is put to the test. In this regard, the Trial Court had pointedly remarked that the police officers testified “in an honest and straight-forward manner. On the other hand, the demeanor of the accused on the witness stand left much to be desired: he was evasive in his manner of answering the question asked of him. The defense witness, Angelito Flores, on the other hand, admitted on cross-examination that he really had no intention to testify in favor of the accused and that he would not have done so until the mother of the accused requested him to testify.”

Indeed, Appellant had involved himself in inconsistencies. When asked whether he had been apprised of his constitutional rights, he answered affirmatively at the outset only to deny it later stating that he was threatened with electric shock if he did not admit the charge (tsn., 16 August 1988, p. 7).

Appellant also gave conflicting accounts regarding the simple matter of his address. At the hearing of 16 August 1988, he gave his address at 1339 Rizal Avenue, Sta. Cruz, Manila, only to contradict himself later when he said that his real address was 536-Interior 10, West Avenue, Greenpark, Caloocan City (tsn., 16 August 1988, pp. 2-3), and that he seldom went to Sta. Cruz, Manila, except only when there is a work-order in the upholstery business managed by his brother-in-law (tsn., 5 October 1988, pp. 12-13).

Again, testifying on 16 August 1988, Appellant stated that he was at his house (in Sta. Cruz) the whole day on 12 January 1988, sewing (tsn., 16 August 1988, p. 4). But, in his testimony on 5 October 1988, he narrated that on said date, he arrived in Sta. Cruz before noon, ate lunch, rested for an hour, then went to a customer's house, and went back to his house at 3:30 in the afternoon (tsn., 5 October 1988, pp. 24-25).

When asked to describe the manner of his arrest, Appellant recounted that the policemen suddenly burst through the door and that while they were searching his house he protested, only to say, after a few more questions, that he was not able to protest because he was then "in a state of shock" and was "afraid" (ibid., pp. 28-29).

Discrepancies may also be detected between defense witness Angelito Flores' testimony and Appellant's. Thus, Flores testified that on 12 January 1988, at about 9:00 A.M., he and Appellant started repairing a destroyed sala set (tsn., 5 July 1989, p. 5). Appellant, on the other hand, stated that he arrived at Sta. Cruz before noon, ate lunch, rested for an hour and went to a customer's house (tsn., 5 October 1988, pp. 24-25).

Flores also declared that at about 4:00 P.M., of 12 January 1988, he and Appellant left to see a movie and went back to the house at around 6:30 P.M. (tsn., 5 July 1989, p. 4). Appellant, however, never mentioned watching a movie with Flores stating that he went back to the house at around 3:30 P.M., after coming from a customer's house and helped his brother measure upholstery materials (tsn., 5 October 1988, p. 25).

In describing the arrest, Flores mentioned that a "small boy," who was about "twenty-two years old" first entered the house followed by five (5) policemen who immediately placed them under custody. He claimed that he was not able to observe the search as he and Appellant were "brought outside of the house and the policemen were the only ones left behind" (tsn., 5 July 1989, pp. 6, 11-12). Appellant, however, gave no account of the "twenty-two (22) year old small boy" and merely stated that he observed the policemen illegally searching the first and second floors of his house while he and Flores just stood by, shocked (tsn., 5 October 1988, pp. 6, 15, 27-29).

The aforementioned inconsistencies and discrepancies do affect the credibility of defense witnesses, leaving us with no alternative but to give full faith and credit to the testimonies of the police officers herein who not only have not been shown to have been actuated by any improper motive in testifying as they did but who are also presumed to have performed their duties in a regular manner.

In fine, we perceive no substantial reason to heed Appellant's plea for acquittal.

WHEREFORE, the judgment appealed from is hereby AFFIRMED. Costs against accused-appellant Ariel Hilario y Garcia.

SO ORDERED.

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

[*] Penned by Judge Sabino R. de Leon, Jr.

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