

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO COMO Y VALENZUELA, ALIAS “ANDO,” ACCUSED-APPELLANT.

G.R. No. 94313. September 30, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

This is an appeal from the decision[1], dated May 30, 1990, of the Regional Trial Court of Batangas, Branch 2, in Criminal Case No. 4452, finding accused-appellant guilty of a violation of Section 4, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act, sentencing him to suffer the penalty of life imprisonment, to pay a fine of P30,000.00 and to pay the costs. The judgment credited him with the preventive imprisonment he had under-gone, and directed the confiscation and forfeiture of the marijuana cigarettes subject of the offense.[2]

The information against appellant alleges that at around 6:30 in the evening of October 25, 1989, at Barangay Sta. Clara, Batangas City, appellant wilfully, unlawfully and feloniously delivered, gave away to another, distributed, transported or otherwise acted as a broker and sold more or less eight (8) sticks of Indian Hemp, more commonly called "marijuana", in violation of said law.[3] Upon arraignment, appellant, assisted by counsel, pleaded not guilty,[4] and trial on the merits forthwith ensued.

The following are the antecedent facts of the case as found by the trial court and adopted by the Solicitor General with corresponding page references to the transcripts of the proceedings:

"During the trial, it was established that on or before October 25, 1989 and subsequent thereto, Sergeants William E. Manglo, Gregorio Caraig and Isidro Malabanan are PC soldiers and members of the 4[th] Narcotics Regional Unit, Narcom Batangas District, with office at Laurel Park, Batangas City. Their main duty as Narcom agents is to conduct operations against violation of the Dangerous Drugs Act of 1972. (p. 2, TSN, February 28, 1990)

"For quite a time before October 25, 1989, said agents were already receiving information from a confidential informant that accused Reynaldo Como, alias Ando, was indulging in the sale of marijuana. On October 25, 1989 the agents formed a team with the help of a confidential informant to conduct a buy-bust operation against the accused who at the time was residing in Sta. Clara, Batangas City. The plan was (that) Sgt. William Manglo will act as poseur buyer to be introduced by the informant to the accused (not of course as a Narcom agent or PC soldier) as a friend willing to buy marijuana in the amount of P20.00. The money consisted of 4 five peso bills already marked and the serial numbers of which were recorded in the logbook of the agents. And according also to the plan, Sgt. Caraig will act as the team leader and together with Sgt. Malabanan will form the back-up team who will position themselves more or less 15 meters from Manglo and the accused and upon signal of Manglo would come forward and meaning to say that the buy-bust operation was accomplished. (pp. 2-3, TSN, Ibid.)

"As planned, the team proceeded to Sta. Clara, Batangas City at 6:30 o'clock in the afternoon of October 25,

1989. Accused was then in front of his house and the confidential informant introduced Manglo as a friend willing to buy marijuana in the amount of P20.00. Accused left, went up his house and returned handing to Manglo 8 sticks of marijuana cigarettes for which Manglo gave the accused the P20.00, consisting of 4 five peso bills as planned. Then and there Manglo signalled the back-up team, Caraig and Malabanan, who came forward and identified themselves as Narcom agents by showing to the accused their identification cards. (p. 3, TSN, March 14, 1990)

"Then and there accused was arrested and bodily searched for any weapon and the P20.00 consisting of 4 marked five peso bills were confiscated from the accused. (Ibid.)

"Thereafter, accused was brought to the Narcom office, where a booking sheet and arrest report, were prepared, signed by the accused and the arresting officer and also a receipt for the property seized from the accused consisting of 8 marijuana sticks of cigarettes and 4 five peso bills with its (sic) corresponding serial numbers signed by the Narcom agents and by the accused Reynaldo Como. (p. 4, TSN, Ibid.)

"The eight (8) marijuana sticks of cigarettes were submitted to the Chief Forensic Chemist, PCCL, Camp Crame, Quezon City upon formal request by Sgt. Caraig thru Sgt. Manglo for laboratory examination and report No. D-1176-89 submitted by Forensic Chemist Leslie B. Chambers, approved by Luena E. Layador, Asst. Chief Chemist and noted by Paulino B. Silan, Col. PC (GSC) Commanding Officer, shows a finding that qualitative examination conducted on the specimens submitted gave positive result to the test for marijuana and which finding was admitted by the defense during the trial of this case. (p. 4, TSN, February 28, 1990.)

"[5]

The defense of appellant was narrated by the trial court as follows:

"It is his version that around 6:30 o'clock in the evening of October 25, 1989 he was in his house in Barangay Sta. Clara, Batangas City, resting. Suddenly, somebody pulled him towards the outside of his house and all at once he saw these agents, Manglo, Caraig and Malabanan who handcuffed him. He protested but then these agents cocked their guns and so he became afraid and went with the agents (to) the Narcom office.

"In the Narcom office, he was first told to sign a document but he refused but because he was threatened he later on signed said document.

"Accused claimed that he was charged in the instant case at the instance of one Tuding whom he knows to be an informant of the Narcom agents, because at one time this Tuding was mortgaging to him some jewelries but they were fake and so he refused."[6]

In this appeal, appellant alleges that the trial court erred in believing the prosecution witnesses and in disbelieving the defense witnesses, and in finding him guilty beyond reasonable doubt of a violation of Section 4, Article II of Republic Act No. 6425, as amended.[7] Said assignment of errors patently concerns the credibility of witnesses, and we shall pass upon the same jointly in the same manner as appellant did in his brief.

In this regard, we once again advert to the long established rule that the matter of assessing the credibility of witnesses is the province of the trial court. It is stressed that this court is enjoined from casually modifying or rejecting the trial court's factual findings. Such factual findings, particularly the trial judge's assessment of the credibility of the testimony of the witnesses, are accorded great respect on appeal for the trial judge enjoys the advantage of directly and at first hand observing and examining the testimonial and other proofs as they are presented at the trial and is, therefore, better situated to form accurate impressions and conclusions on the basis thereof.[8] This notwithstanding, we have carefully reviewed the testimonial and documentary evidence in this case, considering the gravity of the offense involved.

Appellant tries to debase the credibility of the prosecution witnesses by pointing out alleged inconsistencies in

their testimonies which supposedly impair the essential veracity of the prosecution's version of the incident. As summarized by the Solicitor General,[9] appellant enumerated in his brief[10] some "contradicting and unbelievable" testimonies of prosecution witnesses which, to appellant's mind, were fatal enough to discredit their reliability, to wit:

1. Sgt. Gregorio Caraig referred to the accused as a notorious drug-pusher but admitted that the day of the alleged buy-bust, October 25, 1989 was the first time they received information that Como was selling marijuana. Sgt. Caraig meant to color the proceedings and give drama to the role of Como as the infamous accused. But Sgt. Caraig was contradicted by Sgt. William Manglo who alleged that they had been hearing about Como for about a year already prior to his arrest.
2. Sgt. Caraig said that he could identify the marked money because, previously, they took down the serial numbers. But when he was asked to identify the serial numbers, he could not give them. Sgt. Manglo contradicted him by saying that the marking was his signature below the letter O in Piso. They could not even tell the court what marking was done to constitute marked money.
3. It is impossible that Como would act so openly and in a public place in selling the marijuana.
4. It is incredible that the informant would disappear from view after introducing Sgt. Manglo to the accused.
5. It is hard to believe that Como would willingly sell marijuana to Sgt. Manglo whom he knows to be a NARCOM agent.
6. The receipt of property seized (Exh. "E") which was signed by Como as owner of the marijuana seized is inadmissible in evidence as his signature therein was procured in the absence of counsel.

We are not impressed by the foregoing hypotheses of appellant.

In the joint affidavit[11] executed by Sgts. Caraig and Malabanan, appellant was referred to as the "known notorious drug pusher", they having heard of his illegal deals of marijuana in Sta. Clara, Batangas City. The agents had known about appellant's notoriety for almost a year before the buy-bust operation on October 25, 1989 and, on the witness stand, Sgt. Caraig[12] and Sgt. Manglo,[13] categorically established that fact.

However, appellant's counsel lays considerable emphasis on the answer of Sgt. Caraig to the question on when for the first time they received information about his client's prohibited dealings. The pertinent portion of said examination is reflected in the transcripts as follows:

"Q

Now, what was the exact information that was relayed to you by this confidential informant at 5:30 o'clock?

A

That a certain Ando was selling marijuana, sir.

Q

And this was the first time that you received such information about that him?

A

For a long time already, sir, and we have been receiving information about him.

Q

Since when have you received information about this Ando?

A

On October 25, sir.

Q

So that was the first time that you received that information about that Ando?

A

Yes, Sir."^[14]

Apparently, what the defense counsel would want to impress upon the court was the prosecution's lack of sufficient evidence in conducting the said October 25, 1989 buy-bust operation. Yet, it is evident that Sgt. Caraig merely committed an innocent lapse during his cross-examination when he was persistently asked the question on when for the first time they received such information about appellant's illegal activities. As shown by his preceding answer, Sgt. Caraig explained that they had acquired knowledge about appellant's illicit activities for a long time already.

It is of common knowledge that the atmosphere of the courtroom during the trial can affect the accuracy and manner of a witness in answering questions, even in the case of an agent like Sgt. Caraig who apparently was temporarily confused by the line of questioning of appellant's counsel. What Sgt. Caraig actually referred to in his second answer to the same question was the information they received on October 25, 1989 from their confidential informant which reiterated their previous information on the matter.

Appellant also argues that Sgts. Caraig and Manglo could not even identify the markings placed on the bills, hence, there was allegedly a contradiction in the testimonies concerning the marked money used in buying the marijuana sticks. This is a specious submission. Sgt. Caraig's testimony touched upon the pre-recorded serial numbers of the marked money, while Sgt. Manglo particularized the markings he placed thereon. There can be no contradiction on statements dealing with completely different issues. On the other hand, such imperfections, if any there be, may in fact bolster rather than emasculate a person's credibility as one cannot be expected to remember a particular aspect, in this case the markings, with unerring accuracy in every minute detail.^[15]

Also, although there may be some inconsistencies in the testimonies of the prosecution witnesses, such inconsistencies relate to minor details and the fact remains that there is no disagreement among them as to the identity of the malefactor. Such inconsistencies, if at all, demonstrate that their testimonies are spontaneous and unrehearsed. These inconsistencies can be attributed to the treachery of the human memory and the rigor of examination during trial.^[16]

Anent the contention that it is impossible that Como would act so openly and in a public place in selling the marijuana, when it can be done surreptitiously with the least detection by the police officers, it has many times been held and with good reason that pushers, especially small quantity dealers or retailers, sell their prohibited wares to customers, usually unwary of people and circumstances around them.

In the recent case of *People vs. Hilario*,^[17] this Court had the occasion to again stress that:

"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 basket-ball 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)."

Appellant further dwells on the sudden disappearance of the confidential informant after introducing Sgt. Manglo to him. He expresses wonderment why the prosecution did not put the informant on the witness stand to testify, she being a material witness to the buy-bust operation. He accordingly contends that he is a victim of a frame-up. Appellant's postulations are without merit.

The Solicitor General correctly submits that it was not unnatural for the informant to immediately leave the scene of the incident after she had introduced the poseur buyer to appellant. Having accomplished her mission in the buy-bust operation, it would not be unusual for her to disappear from the scene for her own safety.[18] The testimony of the police informer is not essential for convicting the accused and her 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 wrongdoing to the police authorities.[19] Suffice it to say that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity.[20]

Besides, the presentation of the informant at the trial was not indispensable to the conviction of appellant because the sale of marijuana had been sufficiently proved by the testimony of the NARCOM agents. As long as the marijuana actually sold by appellant had been submitted as an exhibit, the failure to present informant, where her testimony would be merely corroborative or cumulative, would not be fatal to the case at bar. The positive and categorical testimonies of the prosecution witnesses who had personal knowledge of the happening, together with the physical evidence submitted, clearly prove the guilt beyond reasonable doubt of appellant for violation of the Dangerous Drugs Act.[21]

Furthermore, the defense that accused was framed up by the police officers requires stronger proof because of the presumption that public officers acted in the regular performance of their official duties.[22] There is nothing in the record to suggest that the police officers were compelled by any motive other than to accomplish their mission to capture a drug pusher in the execution of the crime.[23] The claim of appellant that the informer framed him up because the latter harbored a grudge against him, when he refused to extend her a mortgage loan, is not credible. Obviously, it is just as easy on the part of an accused to concoct the defense of an alleged frame-up. At all times, the police, the prosecutor and the courts must always be on guard against these hazards in the administration of criminal justice.[24]

Appellant's claim that it was improbable for him to have sold marijuana to Sgt. Manglo whom he knows to be a NARCOM agent is clearly self-serving. Indeed, it would be the height of folly for Sgt. Manglo to act as the poseur-buyer if it were true that he and appellant had known each other since 1985. Granting, however, that they knew each other at that time, what matters in drug pushing is not the existing familiarity between the seller and the buyer but their agreement and the acts constituting the sale and delivery of the marijuana leaves.[25]

Nevertheless, we agree with the contention of the People that the success of every buy-bust operation depends largely on the concealed identity of the poseur-buyer such that it has become a standard operating procedure to

designate as poseur-buyer one who is a total stranger to suspected sellers of prohibited drugs in the area of operation.[26] This belies appellant's pretension that the authorities involved could be so incompetent as to be oblivious of such a self-evident fact.

On appellant's final assertion that the receipt signed by him as the owner of the marijuana seized is inadmissible in evidence as his signature therein was procured in the absence of counsel, such supposed flaw does not overcome the prosecution's case. No useful purpose can be served by appellant's invoking such constitutional guarantee since it has been rendered unnecessary and inconsequential by the overwhelming evidence establishing his guilt. Where there is independent evidence, apart from the accused's uncounselled confession, that the accused is truly guilty, he accordingly faces a conviction.[27]

PREMISES CONSIDERED, with the qualification that the penalty of life imprisonment imposed in this case should not be considered as or equated with reclusion perpetua as erroneously stated by the court a quo, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

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

[1] Penned by Judge Irineo V. Mendoza.

[2] Original Record, 66.

[3] Ibid., 1.

[4] Ibid., 8.

[5] Rollo, 11-13.

[6] Ibid., 13-14.

[7] Appellant's Brief, 1; *ibid.*, 25.

[8] *People vs. Umali, et al.*, G.R. No. 84450, February 4, 1991.

[9] Brief for the Plaintiff-Appellee, 4-13; Rollo, 55-62.

[10] Appellant's Brief, 10-12; Rollo, 34-36.

[11] Original Record, 3.

[12] TSN, February 28, 1990, 6.

[13] *Ibid.*, March 4, 1990, 2, 4-6.

[14] *Ibid.*, February 28, 1990, 6.

[15] *People vs. Kalubiran*, G.R. No. 84079, May 6, 1991.

[16] *People vs. Segwaben*, G.R. No. 88401, February 19, 1991.

[17] G.R. No. 94037, May 6, 1991.

[18] Brief for the Plaintiff-Appellee, 11; Rollo, 60.

[19] *People vs. Odicta, et al.*, G.R. No. 93708, May 15, 1991, citing *People vs. Sanchez*, 173 SCRA 305.

[20] People vs. Ruedas, G.R. No. 83372, February 27, 1991.

[21] People vs. Umali, et al., G.R. No. 84450, February 4, 1991.

[22] People vs. Macuto, 176 SCRA 762 (1989).

[23] People vs. Sucro, G.R. No. 93239, March 18, 1991.

[24] People vs. Umali, supra.

[25] People vs. Rodriguez, 172 SCRA 742 (1989).

[26] Brief for the Plaintiff-Appellee, 12; Rollo, 61.

[27] People vs. Diamsoy, 178 SCRA 321 (1989).

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