

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. UTOH LAKIBUL Y DAUD, ACCUSED-APPELLANT.

G.R. No. 94337. January 27, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is an appeal interposed by the accused Utoh Lakibul y Daud from the decision[*] of the Regional Trial Court of Zamboanga City, 9th Judicial Region, Branch 12, in Criminal Case No. 9002 finding him guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency.

On November 8, 1988, the Assistant City Fiscal filed an information charging the accused with violation of Section 4, Article II of the Dangerous Drugs Act committed as follows:

"That on or about November 8, 1988, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wilfully, unlawfully and feloniously sell to PO2 Manuel S. Alarcon two (2) wrappers containing dried marijuana, knowing same to be a prohibited drug.

CONTRARY TO LAW."[1]

On December 27, 1988, the accused, assisted by his counsel, pleaded "not guilty" to the Information.[2]

After trial on the merits, the trial court rendered its decision on May 14, 1990 finding the accused guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

"WHEREFORE, finding accused UTOH LAKIBUL y DAUD guilty beyond reasonable doubt of the crime charged, he is sentenced to serve LIFE IMPRISONMENT pursuant to Section 4, Article II of Republic Act 6425, as amended, and to pay Twenty Thousand (P20,000.00) Pesos fine without subsidiary imprisonment in case of non-payment thereof due to insolvency.

SO ORDERED."[3]

The antecedent facts as culled by the Solicitor General are as follows:

"On November 6, 1988, NARCOM Agent TSgt. Generoso Dalumpines received information about the presence of a drug pusher at Lower Calarian, Zamboanga City. Major Cabayacruz, Officer-In-Charge of the NARCOM then instructed surveillance.

Thereafter, TSgt. Dalumpines and SSgt. Elmer Dedicatoria proceeded to Lower Calarian, near the mini-fish market, to conduct their surveillance. Thereat, they saw several teenagers going to the suspected pusher (p. 3, tsn, May 12, 1989).

On the following day, November 7, 1988, the two (2) NARCOM agents proceeded to the same place where

they again observed several teenagers going to the suspected drug pusher (pp. 3-4, *ibid*).

On November 8, 1988, TSgt. Dalumpines informed Major Cabayacruz of the results of their surveillance and right there and then decided to conduct a buy-bust operation.

A three (3) man team was formed to conduct the buy-bust operation composed of TSgt. Dalumpines as the team leader, SSgt. Dedicatoria and Petty Officer II (PO2) Manuel S. Alarcon, Sr. as the poseur-buyer. After a short briefing, TSgt. Dalumpines got from TSgt. Mohammed Sali Mihasun two (2) five peso bills to be used in the buy-bust operation. Said five peso bills bore the serial numbers JD 426621 and JM 36075 (Exhs. "E" and "F", respectively) [p. 4, *ibid*].

The three-man team then proceeded to lower Calarian on board a tricycle. Upon arrival in the area and from a distance of about ten (10) meters, TSgt. Dalumpines pinpointed the suspected pusher to PO2 Alarcon. Thus, PO2 Alarcon approached the suspect and told the latter of the former's desire to buy P10.00 worth of marijuana. The suspect produced from his pocket two (2) newspaper wrapped articles. PO2 Alarcon examined the contents of said newspaper wrapped articles and when he was satisfied that it contained marijuana, he gave the two (2) five peso bills to the suspect.

The entrapment having been completed, PO2 Alarcon gave the pre-arranged signal by putting his hand over his head and scratched [*sic*] the same. Immediately, TSgt. Dalumpines rushed up to the suspect and placed him under arrest. PO2 Alarcon turned over the two (2) newspaper wrapped marijuana to TSgt. Dalumpines and later brought the suspect to the NARCOM Office for investigation where he identified himself as UTOH LAKIBUL. The two (2) five peso bills were recovered from appellant after a body search (pp. 17-23, *tsn*, April 18, 1989).

Laboratory tests conducted (Exh. "C") confirmed that the two (2) newspaper wrapped articles (Exh. "B-1" and "B-2") sold by appellant to PO2 Alarcon was marijuana (p. 4, *tsn*, March 16, 1989)."[4]

The accused, on the other hand, had a different version of the events that transpired on that day. His testimony was summarized by the trial judge as follows:

"Utoh Lakibul, who gave his age as 23, said he was a fish vendor at Lower Calarian in a small market there. On November 6, 7 and 8, 1988, he was selling fish in this place. Nobody approached him or talked to him on November 6 and 7, 1988. But on November 8, 1988, about 8:30 in the morning, somebody called him. Though he did not know the person, he went and approached him. When he did so two persons, dressed in civilian clothes, grabbed him and told him to go with them to the office. Utoh Lakibul said he refused, even made a bodily motion to get away from the two persons. Somebody else went near him, telling Utoh Lakibul that if he did not go with them something would happen to him. So Utoh Lakibul became afraid and went with the three men - who took him aboard a tricycle to their office. In the office, Lakibul was asked about his name and age. He was shown marijuana taken from the pocket of the arresting officer and money, also taken from the pocket of the same arresting officer. He was told that the marijuana and money (bill) were the evidence against him. Lakibul denied and said he did not know anything about it. Nothing had been taken from his pocket or body. After about 20 minutes, four persons took him downtown to the City Fiscal's Office. In the City Fiscal's Office, he was asked if the marijuana and money belonged to him and he said he did not know about it. He was not given any lawyer but he was not made to sign any document. From the City Fiscal's Office, Utoh Lakibul said he was brought to the City Jail. At the time the three persons arrested him while he was selling fish there were people who saw him.

On cross-examination, Utoh Lakibul said that the marijuana shown to him was the same one he had seen in court (inside two newspaper wrappers). There was no commotion when the three persons arrested him. But people saw him being arrested; but none of them did anything to help him (TSN, September 26, 1989, pp. 1-8)."[5]

The accused appealed from the judgment of conviction, assigning the following errors[6] allegedly committed by the trial court, to wit:

I

IN BASING ITS DECISION CONVICTING THE ACCUSED/APPELLANT ON EXHIBIT "F" OF THE PROSECUTION.

II

IN NOT BELIEVING THE TESTIMONY OF ACCUSED/APPELLANT AS CORROBORATED BY HIS THREE WITNESSES.

III

IN RELYING ON THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING THE EVIDENCES ADDUCED DURING THE TRIAL IN FAVOR OF ACCUSED/APPELLANT.

The accused contends that the trial court erred in allowing the marking of Exhibit "F" considering that the serial numbers on the two five-peso bills were different from that presented by the prosecution witness. We do not agree. A reading of the stenographic notes showed that there was no mistake as to the identity of the marked bills presented by the prosecution. The testimony of PO2 Alarcon is reproduced as follows:

"Q:

Do you remember these two P5 bill (sic) that was (sic) given to you by TSgt. Dalumpines?

A:

Yes.

Q:

How well (sic) you know that that was the two P5 bill (sic)?

A:

By its (sic) serial number.

Q:

Do you remember the serial number?

A:

Yes.

Q:

Please tell us.

A:

The one P5 bill bearing SN JM 0360, I mean JM 36075.

Q:

You are sure of that?

A:

Yes.

Q:

How about the other one?

A:

JD 426621.

Q:

I have here two P5 bills, with SN 360765 and the other one JD 426621, is this (sic) the one (sic) you mentioned?

A:

Yes.

FISCAL CAJAYON:

Your Honor, please, I would like to request that P5 bill bearing SN JD 426621 be marked as our Exhibit "E", your Honor.

COURT:

Mark it.

FISCAL CAJAYON:

Q:

How about the other one, what Serial No. was it (sic)?

A:

JM 36075.

Q:

I have here P5 bill bearing SN 36075, is this the one?

A:

Yes.

FISCAL CAJAYON:

I also request, your Honor, the other P5 bill with SN JM 360765 be marked as Exhibit "F".[7]

Besides, even without the money to buy the marijuana so long as the police officer went through the motion as a buyer and his offer was accepted by the appellant and the marijuana delivered to police officer, the crime was consummated by the delivery of the goods.[8]

The second and third assignment of errors imputed by the accused to the trial court turn on the issue of credibility. It is well-settled that the findings of the trial court on the credibility of witnesses are entitled to great weight on appeal "as it is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying. The impression of the trial court on the matter is binding upon the Supreme Court unless there appears a grave abuse of discretion or obvious misapprehension of

facts".[9] In the case at bar, We find no reason to deviate from the general rule.

We agree with the findings of the trial court when it gave more credence to the prosecution's evidence, thus:

"The issue is, then, one of creditability (sic) and as the Court stated earlier, it gives credit to the government witnesses and not to Defense witnesses. First, the Court saw how these witnesses testify (sic) and believes (sic) in the sincerity of the government witnesses, their truthfulness and in the manner they testified. Second, Defense witnesses were long-time neighbors of Utoh Lakibul and his mother. They testified on the request of Lakibul's mother. Third is that, the Court cannot believe that the sound "Pssst" is loud enough to attract the attention of persons some meters away. Especially, of persons who were engaged in some activity, like buying. Fourth reason is that the testimonies of the witnesses are more elaborate than that of the accused himself. For instance, the accused himself did not state he was called by the "Pssst" sound; he did not say that his co-fish vendor, Apna Labbay, had touched his shoulder to indicate to him he was being called by the three persons. In fact, accused did not mention that Apna Labbay was one of those selling fish near his fish table. Then, not one of Defense witnesses - not even accused himself - ascribed any evil or ulterior motive as to why NARCOM agents, who did not know the accused until the two days of surveillance and the day of the buy-bust operation would just arrest him without reason. There was no previous misunderstanding or trouble between accused and the NARCOM men; neither did any of the NARCOM men involved intimate to accused they wanted any money or anything from accused. There are no substantive defects in (sic) Prosecution (sic) testimonial evidence that may entitle accused to acquittal based on reasonable doubt."[10]

As to the alleged inconsistencies in the testimonies of the prosecution witnesses as contained in the appellant's Brief, We do not find them substantial enough to impair the essential veracity of their narration that the accused was caught in flagrante selling marijuana during the buy-bust operation conducted by the NARCOM agents.

WHEREFORE, finding no reversible error in the trial court's findings, the decision of the Court a quo is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[*] Penned by Judge Pelagio S. Mandi.

[1] Rollo, p. 7.

[2] Rollo, p. 11.

[3] Rollo, p. 35.

[4] Rollo, pp. 92-95.

[5] RTC Decision, p. 6; Rollo, p. 33.

[6] Rollo, p. 47; Appellant's Brief, p. 1.

[7] TSN, April 18, 1989, pp. 18-19.

[8] People vs. De la Cruz, 191 SCRA 160 (1990).

[9] People vs. Ancheta, 148 SCRA 178 (1978).

[10] Rollo, p. 34.

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