

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO CO Y UMALI, ACCUSED-APPELLANT.

G.R. No. 94369. October 28, 1991

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is an automatic review of the decision dated March 16, 1990 of the Regional Trial Court, National Capital Region, Pasig, Metro Manila, convicting the accused of the crime of violation of Section 4, Republic Act No. 6425, as amended (Sale of Prohibited Drugs).

The information against him reads:

"That on or about the 26th day of July, 1986, in the municipality of Pasig, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused without having been authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another dried marijuana fruiting tops, a prohibited drug weighing 3.05 grams, in violation of the above-cited law, as amended." (p. 2, Rollo.)

As found by the trial court, the facts of this case are as follows:

On July 26, 1986, Patrolmen Ramon Peraja and Esteban Mendoza and five other policemen conducted a buy-bust operation against drug abusers and suspected drug addicts in Villa Angeles, Barangay Bambang, Pasig, Metro Manila. Patrolman Peraja posed as a buyer of marijuana. The accused approached him and asked: "Pare, bibiyahe ka?" (Cumpare, want to take a trip?) When he answered in the affirmative, he was asked how much he would buy, and he replied: "P15." The accused suggested that Patrolman Peraja buy P20 worth. When Patrolman Peraja agreed to do so and fished out of his pocket a P20-bill, the accused took it from him and gave him dried marijuana fruiting tops wrapped in a sheet of notebook paper (Exh. G). Peraja immediately arrested the accused and brought him to the police headquarters. The pocket of marijuana tops was sent to the PC Crime Laboratory for examination. The forensic chemist of the PC Crime Laboratory determined that it was marijuana indeed.

In his defense, the accused and his aunt, Maxima Concepcion, testified that on July 26, 1986, at 11:00 a.m., the accused was at his cousin's house helping to cook food to be sold, when policemen arrived and arrested him in the store. He was not frisked. He was just told to get in a tricycle with the policemen who brought him to their headquarters. The policemen put him in jail and they prepared a written statement which he was asked to sign. He did not read the contents of the statement.

After trial, the accused was sentenced to suffer the penalty of life imprisonment (reclusion perpetua) and to pay a fine of Twenty Thousand Pesos (P20,000).

In this appeal, the accused-appellant alleges that the court a quo erred in convicting him despite the prosecution's "utterly infirmed (sic) and insufficient evidence." (p. 6, Appellant's Brief.)

There is no merit in appellant's contention that there is no proof that he is a pusher for no previous surveillance of

his activities had been made by the police. The evidence is allegedly silent as to how he was implicated in that nefarious activity.

Not true. The proof was supplied by Patrolman Ramon Peraja himself to whom the appellant sold the marijuana leaves.

Appellant suggests that the failure of the prosecution to present Peraja's companions in the "buy-bust" operation, namely, Patrolmen Ely Almension, Tomas del Rosario, Pauleta, Oscar Ballero, Jr. and Cpl. Velasco, means that their testimonies would have been adverse if produced. The discretion to choose the witnesses to be presented for the State rests in the prosecution (*People vs. Solomon*, 166 SCRA 767). The prosecution's decision to present Peraja only is beyond reproach since other testimonies would have been merely corroborative.

Appellant next contends that "there is no showing that the marijuana fruiting tops presented for the court's viewing were the same alleged marijuana tops supposedly confiscated from" him. (p. 8, Appellant's Brief.) According to appellant, the procedure taken by the arresting officer for the safekeeping and preservation of the identity and integrity of the evidence left much to be desired. It was not established by even a jot of evidence that the marijuana fruiting tops allegedly taken from the accused-appellant were properly marked, initialled, and secured.

We find that contention without merit. The matter suspected to be marijuana was confiscated from the appellant by Patrolman Peraja in the buy-bust operation, and the confiscated item was immediately sent by Lt. Reyes of the Pasig Police to the PC Crime Laboratory for examination. It was Capt. Elias Canapi, a forensic chemist at the PC Crime Laboratory, who made the laboratory examination and who found that the item was marijuana (pp. 5-8, t.s.n., Feb. 1987).

The issue in this appeal is the credibility of the witnesses who testified in the case, i.e., whether or not the trial court was correct in giving more weight to the testimonies of the prosecution witnesses than to the testimonies of the appellant and his witnesses. In the determination of the credibility of witnesses, the rule is well-settled that "unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the appellate court will not disturb its factual findings. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court is in a better position than the reviewing tribunal to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties." (*People vs. Lamosa*, 173 SCRA 518.)

Since the credibility of the prosecution's witnesses is not in doubt, the trial court was justified in giving more weight to their testimonies than to those of the defense. The testimonies of the appellant's witnesses were full of inconsistencies and contradictions. As observed by the trial court:

"2. x x x the following considerations show that the witnesses for the defense were not truthful and sincere:

"a) The accused could not even give the real name of his other witness who was supposed to be his cousin and whom he was supposedly helping everyday prepare food for sale (t.s.n., May 29, 1989, pp. 2-4).

"b) Witness Maxima Concepcion said that she requested the accused only on the particular date (sic) to help her (Id., Oct. 4, 1989, p. 3). On the other hand, the accused said that helping Maxima Concepcion was his routine activity. As a matter of fact, he was supposed to arrive in Maxima Concepcion's place at 8:00 o'clock in the morning and stay until 4:00 in the afternoon (Id., May 29, 1989, p. 4).

"c) The accused said that Maxima Concepcion was his cousin (Id., p. 3). On the other hand, Maxima Concepcion testified that accused was her nephew (Id., Oct. 4, 1989, p. 2).

"d) The accused testified that he was apprehended by Lt. Peraja and several policemen (Id., May 29, 1989, p. 3), while Maxima Concepcion alleged that the accused was apprehended by one policeman (Id., Oct. 4, 1989, p. 5).

"e) The accused also said on cross-examination that his job before his apprehension was a construction worker (Id., May 29, 1989, p. 7), yet he was supposed to be a full time helper of his cousin, Maxima Concepcion, preparing food for sale (Id., p. 4)." (pp. 2-3, Decision dated March 16, 1990; pp. 145-146, Record.)

The court convicted the appellant on the strength of the prosecution's evidence, not because the evidence for the defense was weak.

Finding the guilt of the accused to have been established beyond a reasonable doubt, the decision appealed from is affirmed in toto. Costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

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