

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE TANILON Y PISALBON, ACCUSED-APPELLANT.***G.R. No. 94569. May 11, 1993*

Ponente: MELO, J.

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Not satisfied with the judgment of conviction of the Regional Trial Court of the Seventh Judicial Region (Branch 30, Dumaguete City) sentencing him to suffer an imprisonment term for life and to pay a fine of P20,000.00 for violation of Section 4, Article II of Republic Act 6425, otherwise known as the Dangerous Drug Act of 1972, Jose Tanilon y Pisalbon comes to this Court questioning said conviction, alleging in the process that the court erred in anchoring its verdict of conviction on the credibility of the witnesses for the prosecution, thereby overlooking other matters of substance which could have resulted in accused-appellant's acquittal.

The evidence for the prosecution discloses that, on account of numerous reports of drug abuse in the province, M/Sgt. Renulfo T. Villamor, Jr., Officer-in-Charge of the Narcotics Command (NARCOM) in the provinces of Negros Oriental and Siquijor ordered his men to conduct intelligence operations and strict surveillance on persons suspected of being engaged in the use or traffic of drugs. Among those persons is herein accused-appellant Jose Tanilon y Pisalbon who was pointed out by civilian "informers" as engaged in the sale of marijuana. After some days of discreet surveillance and convinced of the veracity of the reports, M/Sgt. Renulfo T. Villamor, Jr. called his operatives, Pfc. Wenefredo Noble, C2C Ohl S. Wolfe, and Pat. Leon Quindo to his Office at about 7:30 o'clock on the evening of December 22, 1989 and briefed them on a buy-bust operation he wanted them to undertake involving accused-appellant. Sgt. Villamor gave a P5 bill with Serial No. NE 022509 (Exhibit "A") with his initials (Exhibit "A-1") affixed on it to Pfc. Wenefredo Noble who would pose as a buyer and forthwith sent Pfc Noble and C2C Wolfe to the Dumaguete City public market where accused-appellant plied his trade. Arriving at the door of Bejar's Store, Pfc Noble, with C2C Wolfe following discreetly about a meter behind, casually approached accused-appellant and offered to buy two sticks of marijuana cigarettes. Accused-appellant entered the store and came out about 5 minutes later carrying two rolled sticks of cigarettes (Exhibits "E-1" and "E-2") which he gave to Pfc Noble who in turn delivered to accused the marked P5 bill, Exhibit "A" which accused-appellant right away inserted in his pocket. Thereupon, Pfc Noble held accused-appellant by the arm, identified himself as a NARCOM agent and placed accused-appellant under arrest. The holding of the arm of the accused by Pfc Noble being a pre-arranged signal, C2C Wolfe responded by approaching the two and assisted in the arrest by handcuffing accused-appellant. Then, Pfc Noble and C2C Wolfe brought accused-appellant to the NARCOM headquarters where Pfc Noble delivered the two rolled sticks of cigarettes, Exhibits "E-1" and "E-2", to Pat. Leon Quindo who was in charge of material evidence in drug cases. Accused-appellant was ordered to empty his pockets and when he did, out came the marked P5 bill which he received earlier from Pfc Noble. He was thereupon detained and booked for violation of the Dangerous Drugs Act of 1972. He could not present any authority to possess and sell the two rolled sticks of cigarettes (Exhibit "E-1" and "E-2").

The following morning, Pat. Quindo gave to M/Sgt. Villamor the two rolled sticks of cigarettes, Exhibits "E-1"

and "E-2", received by him from Pfc Noble the previous night. Forthwith M/Sgt. Villamor conducted a test of the rolled sticks through the "HASCHISH" (sic) method which resulted in the presumptive finding of presence of Tetrahydro-canavenol or marijuana. M/Sgt. Villamor then caused to be prepared the requisite Request for Laboratory Examination addressed to the Commanding Officer of the PCCL Crime Laboratory (Exhibit "C") which he personally delivered, together with the two sticks of cigarettes, to the PC Crime Laboratory in Cebu City on January 12, 1990 (Exhibit "D-2") for further examination. At the PC Crime Laboratory, the specimens were subjected to microscopic, chemical, and chromatographic examination by P/Sgt. Myrna P. Arreola, a Chemist, who found the two sticks positive for marijuana (Exhibit "D-3"), a finding which she embodied in her Chemistry Report No. C-011-90 (Exhibit "D")."

Accused-appellant, on the other hand, denied the charge and claimed that he was a victim of a frame-up. He testified that on December 22, 1989 at around 8:00 o'clock in the evening, while he was doing his usual task at the Bejar Store where he was then working, he was approached, held by the hand, and arrested by Jun Villamor, Noble, and Quindo allegedly for selling marijuana. The three men, whom he knew to be members of the police force, did not show him any warrant of arrest or search warrant. Thereupon, he was taken to the Old Police Station where he was asked to "put out all the things he had in his body." He then took out his wallet, Residence Certificate, his I.D., and S.S.S. card. Pat. Quindo asked him "where is your marijuana," to which he replied, "I do not have any". Then Pat. Quindo took out two rolled sticks from his drawer and showed it to accused-appellant, asking him if those sticks belonged to him, to which he gave a negative answer. Thereupon, accused-appellant was brought to the Rehabilitation Center where he was detained. Four days later, he was brought to the Municipal Court in Dumaguete City by Pfc. Noble and M/Sgt. Villamor. After 20 minutes, he was taken back to the Rehabilitation Center.

After assessing the evidence of both parties, the Honorable Enrique C. Garrovillo adjudged accused-appellant guilty beyond reasonable doubt of the crime charged.

The Court supports the trial judge's decision in view of his superior opportunity to observe the demeanor of the witnesses on the stand under direct and cross-examination and thereby to assess properly their credibility. The findings of facts of the trial judge who tried the case and heard the witnesses, should not be disturbed on appeal and should be given considerable weight and respect especially in regard to the credibility of witnesses, since he was in a better position to observe the conduct and deportment of the witnesses (*People vs. Victor Olivas y Facundo*, G.R. No. 101577, Nov. 13, 1992 citing *People vs. Dilao, et al*, 100 SCRA 358 [1980]; *People vs. Cabrera*, 100 SCRA 424 [1980]; *People vs. Badeo*, 204 SCRA 122 [1991]). In the absence of a showing that they were reached arbitrarily or without sufficient basis, the factual findings of the trial judge are received with much respect by and indeed are binding on this Court (*People vs. Jonathan Alban y Joshep*, G.R. No. 97431, September 28, 1992).

The Court also accepts the findings of the trial court on the credibility of the NARCOM agents who testified for the prosecution. The Court gives credence to their narration of the incidents because they are law officers who are presumed to have regularly performed their duty in the absence of convincing proof to the contrary (*par. M*, Sec. 30, Rule 131 of the Revised Rules on Evidence; *People vs. Lopez*, G.R. No. 102381, September 29, 1992). Moreover, accused-appellant failed to present evidence sufficient to overcome the clear, convincing, credible, and overwhelming evidence of the prosecution.

The defense of accused-appellant that he was framed-up by the NARCOM agents cannot be given credence. Such exculpatory version of his is hollow and self-serving. In cases involving persons accused of being drug pushers or sellers, almost always the defense is that the accused was framed-up by the apprehending police officers. The Court realizes the disastrous consequences on the enforcement of law and order, not to mention the well-being of

society, if the courts, solely on the basis of the rotten reputation of some policemen, accept at every instance this form of defense which can be so easily concocted and fabricated. Moreover, accused-appellant has not shown any ill-motive on the part of the NARCOM agents to falsely accuse him of a crime with serious repercussions. It is precisely for these reasons that we have the legal presumption that official duty has been regularly performed (People vs. Lopez, supra, citing People vs. Agapito, 154 SCRA 694; People vs. Marcos, 185 SCRA 154).

If, as accused-appellant claims, he was arrested for no apparent reason, and to which his employer protested, then the defense should have at least asked that his employer be called to the witness stand to corroborate accused-appellant's version. Inexplicably failing to do so, the defense may thus be properly charged with suppressing evidence unfavorable to it.

Accused-appellant questions the trial court's finding that he became known as a drug trafficker through civilian agents and by discreet surveillance, which finding, he contends, is not borne out by the evidence adduced by the prosecution. He maintains that it was only the accusing finger of an unidentified informer that linked him to the reported drug-pushing activity in the public market of Dumaguete City. But his pretended innocence has been unmasked by the buy-bust operation conducted by the NARCOM agents on which occasion he was caught red-handed selling marijuana to a poseur-buyer. His claim of being tagged as drug-trafficker based on mere reports of unidentified informants has been proved to be true by the buy-bust operation. The method adopted by the NARCOM agents was entrapment which is not a bar to prosecution and conviction and a means not contrary to law (People vs. Lagasca, 148 SCRA 264 [1987]).

Impugning the credence accorded to the prosecution's evidence, accused-appellant assails the version of the prosecution by pointing some equivocations in the testimony of Pfc. Noble which accused-appellant says are contrary to human behaviour and experience. Specifically, he cites the absence of haggling between him and Pfc. Noble over the price of marijuana sticks and his act of immediately placing the marked P5 bill in his pocket even after Pfc. Noble had identified himself as agent.

It is unlikely for the parties in an illicit and covert deal, such as the sale of prohibited stuff in a public place, to still haggle over the price considering that such transaction is ordinarily and necessarily carried out in a very discreet and surreptitious manner and with great dispatch, in order to avoid possible detection by authorities. Also, drug pushers no longer set a price for the prohibited commodity they are peddling since they expect their would-be buyers to be familiar with the prevailing selling price of whatever prohibited article or drug is being bought and sold. Besides, the absence of haggling over the price of the marijuana sticks between accused-appellant and Pfc. Noble was satisfactorily explained by the latter during his cross-examination, thus:

Q - Why did you choose that number two (2) sticks of marijuana cigarettes?

A - Because the money that was handed to me by M/Sgt. Villamor was only P5.00 and the price is P2.50 per stick.

Q - You were the one who set the price?

A - The was the usual price of a marijuana stick of cigarette.

Q - You were very certain then that from him you would obtain it at P2.50 per stick?

A - Yes.

Q - There is not even a moment of haggling as to its price?

A - No, sir.

Q - Did you say to him that you would buy the 2 sticks of marijuana cigarettes at P5.00?

A - No, sir.

Q - Did you not say to him that you would buy 2 sticks of marijuana cigarettes?

A- Yes. (pp. 10-11, TSN, March 9, 1990).

To all appearances, the absence of any negotiation over the price of the marijuana sticks only lends further credence to Pfc. Noble's version of the incident.

With respect to the act of accused-appellant in placing the marked P5 bill in his pocket even after Pfc. Noble had identified himself as a peace officer, suffice it to state that having been effectively placed under arrest by Pfc. Noble and C2C Wolfe, accused-appellant knew that it would be a futile attempt on his part to suppress or do away with the marked money since such desperate attempt could easily be frustrated by the duo.

Accused-appellant further contends that the testimony of Pfc. Noble does not jibe with that of C2C Wolfe regarding the supposed marking of the P5 bill. Pfc. Noble claimed that it was during the briefing in the office prior to the buy-bust operation that M/Sgt. Villamor initialed the bill while C2C Wolfe averred that he saw the marked bill for the first time during the buy-bust operation. Any seeming inconsistency obviously refers to a minor detail and does not in any way destroy the credibility of witnesses (People vs. delos Pinas, 141 SCRA 379 [1986]). As long as the mass of testimony jibes on material points, slight clashing statements neither dilute the witnesses' credibility nor the veracity of their testimony (People vs. delos Santos, 200 SCRA 431 [1991]), for verily, it matters little at what time the P5 bill was initialed -- the inculpatory fact is that it was received by accused-appellant as the purchase price of two sticks of marijuana cigarettes.

Lastly, accused-appellant claims that when the NARCOM agents closed in to arrest him, they were not armed with a warrant, be it for arrest, or for search and seizure, hence his arrest and the consequent confiscation of the marked money from him were illegal and unlawful for running afoul with the constitutional injunction against warrantless arrests, searches and seizures and all proceedings had thereafter are perforce, without lawful basis.

Having caught accused-appellant in flagrante delicto as a result of the buy-bust operation, the NARCOM agents were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest (People vs. Emmanuel Eligino, G.R. No. 70113-14, Dec. 11, 1992, citing People vs. Paco, 170 SCRA 681 [1989]; People vs. Rodriguez, 172 SCRA 742 [1989]; People vs. Bali, 189 SCRA 97 [1990]). And since accused-appellant's arrest was lawful, it follows that the search made incidental thereto was valid (People vs. Emmanuel Eligino, supra, citing People vs. Tangliben, 184 SCRA 220 [1990]).

The Court, taking into account the above considerations, sees no reason to reverse the decision of the trial court.

WHEREFORE, the judgment under review is hereby AFFIRMED.

**SO ORDERED.**

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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