

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO DE LARA Y GALARO, ACCUSED-APPELLANT.

G.R. No. 94953. September 05, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 28, Manila in Criminal Case No. 94953, finding appellant guilty beyond reasonable doubt of violating Section 4 of Republic Act No. 6425, as amended by B.P. Blg. 179.

I

The Information charged appellant as follows:

"That on or about January 9, 1987, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there willfully and unlawfully sell or offer for sale two (2) foils of flowering tops of marijuana and one (1) plastic bag of flowering tops of marijuana, which are prohibited drugs" (Rollo, p. 6).

Upon arraignment, appellant, assisted by his counsel de parte, pleaded not guilty to the information (Records p. 5).

II

On December 15, 1986, Capt. Restituto Cablayan of the National Criminal Investigation Service (NCIS) of the Western Police District (WPD), instructed Sgt. Enrique David to conduct a surveillance operation in the vicinity of Garrido and Zamora Streets at Sta. Ana, Manila, after receiving reports of rampant drug-pushing in that area (TSN, December 14, 1987, p. 21).

In compliance thereof, a team led by Sgt. Enrique David, conducted a surveillance operation on December 15 and 17, and confirmed the reported drug-pushing activities in that area by the group of appellant and a certain Ricky alias "Pilay" (TSN, December 2, 1987, pp. 5-6). No arrest was made because the team was instructed by their superior to conduct a surveillance operation only (TSN, January 11, 1988, p. 28).

On January 8, 1987, Malaya (Exh. "F") and People's Tonight (Exh. "K"), reported that there were rampant, drug-pushing activities in the vicinity of Garrido and Zamora Streets in Sta. Ana, Manila, prompting Gen. Alfredo Lim, then WPD Superintendent, to reprimand the NCIS office (TSN, December 2, 1987, p. 2).

On January 9, because of the reprimand given by Gen. Lim, Capt. Cablayan instructed Sgt. David to plan a buy-bust operation and to form a six-man team with Pfc. Martin Orolfo, Jr. as the poseur-buyer (TSN, December 2, 1987, p. 6, January 11, 1988, p. 6).

At around 4:45 P.M. of the same day, the team, together with their confidential informant, went to Garrido Street.

Upon arriving thereat, they strategically positioned themselves. Pfc. Orolfo, Jr. and the confidential informant proceeded to the house of appellant located at No. 2267 Garrido Street, where they saw him standing outside. The confidential informant introduced Pfc. Orolfo, Jr. to appellant as an interested buyer of marijuana. Appellant asked Pfc. Orolfo, Jr. "Ilan ang bibilhin ninyo?" (How much will you buy?). Pfc. Orolfo, Jr. replied: "Two foils" handing at the same time the marked twenty-peso bill (Exh. "E") to appellant. The latter, after placing the money in the right pocket of his pants, went inside his house (TSN, January 11, 1988, pp. 7-9). Minutes later, appellant came back and handed two foils (Exhs. "D-1-a" and "D-1-b") wrapped in onion paper (TSN, January 11, 1988, p. 8). It was after he handed the two foils to Pfc. Orolfo, Jr., that he sensed the presence of the police operatives. He then tried to retrieve the two foils but Pfc. Orolfo, Jr. prevented him from doing so. During the scuffle, one foil was torn. Appellant then ran inside his house with Pfc. Orolfo, Jr. in pursuit. The latter was able to subdue appellant. Sgt. David confronted appellant, who admitted that he kept prohibited drugs in his house. Appellant showed the arresting officers a blue plastic bag with white lining containing prohibited drugs. A receipt of the articles seized (Exh. "F") was made by Pfc. Orolfo, Jr. (TSN, January 11, 1988, pp. 12-15).

Thereafter, the team, together with appellant, proceeded to the WPD headquarters for investigation. Thereat, Sgt. David ordered Pfc. Orolfo, Jr. to commence the investigation of appellant (TSN, January 11, 1988, pp. 19-21).

During the investigation, appellant was apprised of his constitutional rights to remain silent and to have the assistance of counsel. When appellant was asked to give a written statement, he refused to do so pending arrival of his lawyer (TSN, January 11, 1988, p. 23).

The prohibited drugs seized from appellant were brought to the NBI for chemical analysis. A report and certification of Ms. Aida Pascual, Forensic Chemist of the NBI (Exhs. "C" and "D"), show the drugs to be positive for marijuana.

Appellant denied having sold marijuana to anyone and claimed that the arresting officers merely planted the marijuana on his person. He testified that on January 9, 1987, he arrived home from work as a security guard of the Vergara Brothers Agency at around 3:00 P.M. After changing his clothes, he went out to fetch his son, who was left in the care of a neighbor. Upon returning to his house with his son, he was arrested by the police. The police proceeded to search his house, without any search warrant shown to him. After the search, he and his wife were brought to the WPD headquarters. He claimed that inspite of his protestation that he would like to wait for his lawyer before giving any statement, the police continued their interrogation.

Appellant denied that the twenty-peso bill was given to him by the poseur-buyer. He claimed that he was merely forced to sign his name on the photocopy of the twenty-peso bill (Exh. "F") and that the first time he saw the blue plastic bag containing prohibited drugs was when he was at the police station (TSN, June 14, 1988, pp. 1-11).

To corroborate his story, appellant presented his younger brother, Gerry de Lara.

On October 2, 1989, the trial court rendered its decision, disposing as follows:

"WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of violation of Sec. 4, Art. II of R.A. 6425 as amended as charged in the Information; and this Court hereby sentences the accused to suffer a penalty of life imprisonment and to pay a fine of P20,000.00" (Rollo, p. 24).

Hence, this appeal.

III

In his appeal, appellant questions the legality of his arrest and the seizure of prohibited drugs found inside his house. Furthermore, he claims that he was not assisted by counsel during his custodial interrogation (Rollo, pp. 55-57).

As to the legality of appellant's arrest, we find that the police operatives acted within the bounds of law.

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure dealing with warrantless arrests provides:

"Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person;

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

b) When an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it;

xxx xxx xxx"

In the case at bench, appellant was caught red-handed in delivering two tin foils of marijuana to Pat. Orolfo, Jr., the poseur-buyer. Applying the aforementioned provision of law, appellant's arrest was lawfully effected without need of a warrant of arrest. "Having caught the appellant in flagrante as a result of the buy-bust operation, the policemen were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest" (People v. Kalubiran, 196 SCRA 644 [1991]; People v. De Los Santos, 200 SCRA 431 [1991]).

Appellant, however, asseverates that his arrest was precipitated only by newspaper publications about the rampant sale of drugs along Garrido and Zamora Streets, Sta. Ana, Manila (Rollo, p. 53). If appellant implies that the police merely stage-managed his arrest in order to show that they were not remiss in their duties, then appellant is wrong. A surveillance on the illegal activities of the appellant was already conducted by the police as early as December 15 and 17, 1986. The newspaper reports concerning the illegal drug activities came out only on January 8 and 14, 1987, long after the police knew of the said illegal activities. Appellant's eventual arrest on January 9, 1987 was the result of the surveillance conducted and the buy-bust operation.

The evidence shows that appellant ran inside his house upon sensing the presence of the police operatives. The testimony of Pat. Orolfo, Jr., the poseur-buyer, is as follows:

"FISCAL:

Q: After placing the P20 bill in his right pocket, what did he do?

A: He went to his house and minutes later, he came back, sir.

Q: When he came back what happened?

A: He handed to me two tin foils containing suspected marijuana leaves wrapped in onion paper.

Q: And what happened next when he returned with those items?

A: After he handed to me two foils, he sensed the presence of the operatives and he tried to retrieve the two foils, sir, and I prevented him and during the scuffle one piece of foil was broken, he tried to run inside the house, so I subdued him immediately and apprehended him while he was inside the house.

Q: After he was subdued by your group, what happened?

A: Sgt. David confronted him regarding this case and he voluntarily admitted that he was still keeping prohibited drugs inside his house?

Q: What did the group do after he voluntarily admitted that he was keeping prohibited drugs inside his house?

A: He pointed inside his house (sic) one plastic bag colored blue with white lining containing prohibited drug" (TSN, January 11, 1988, pp. 12-14).

The policemen's entry into the house of appellant without a search warrant was in hot-pursuit of a person caught committing an offense in flagrante. The arrest that followed the hot-pursuit was valid (1985 Rules on Criminal Procedure, Rule 113, Section 5[a]).

We also find as valid the seizure of the plastic bag of prohibited drugs found inside appellant's house.

The seizure of the plastic bag containing prohibited drugs was the result of appellant's arrest inside his house. A contemporaneous search may be conducted upon the person of the arrestee and the immediate vicinity where the arrest was made (*People v. Castiller*, 188 SCRA 376 [1990]).

We find to be meritorious appellant's claim that he was not assisted by counsel during the custodial investigation, specifically when he was forced to sign the photocopy of the marked twenty-peso bill (Exh. "E"), Receipt of Property Seized (Exh. "F"), and the Booking and Information Sheet (Exh. "H").

The said documents are inadmissible in evidence for the reason that there was no showing that appellant was then assisted by counsel nor his waiver thereto put into writing (Constitution, Art. III, Sec. 3[2]).

Be that as it may, the rejection of said evidence would not affect the conviction of appellant in view of the abundance of other evidence establishing his guilt. The ruling in *People v. Mauryao*, 207 SCRA 732 (1992) is apropos:

"It bears emphasis, however, that the accused appellant's conformity to the questioned documents has not been a factor at all in his conviction. For even if these documents were disregarded, still the accused-appellant's guilt has been adequately established by other evidence of record. The trial court's verdict was based on the evidence of the prosecution not on his signatures on the questioned documents. Accused-appellant's denial simply can not prevail over the detailed and unshaken testimonies of the apprehending officers who caught him red-handed selling marijuana and who have not shown to have any ulterior motive to testify falsely against accused-appellant."

IV

The trial court sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 pursuant to Section 4, Article II of the Dangerous Drugs Act of 1972, as amended by B.P. Blg. 179. However, said law was further amended by R.A. No. 7659.

Under Section 17 of R.A. No. 7659, the penalty to be imposed for selling, administering, delivering or distributing less than 750 grams of marijuana, shall range from "prision correccional to reclusion perpetua depending upon the quantity."

Under Section 4 of R.A. No. 7659, the penalty for selling, dispensing, delivering, transporting or distributing marijuana in excess of 750 grams or more shall be "reclusion perpetua to death and a fine ranging from Five Hundred Thousand Pesos to Ten Million Pesos."

We noticed that the penalty of reclusion perpetua was imposed by R.A. No. 7659 as the maximum penalty when the quantity of the marijuana involved in the offense is less than 750 grams and at the same time as the minimum

penalty when the quantity of marijuana involved is 750 grams or more. It is the duty of the Court to harmonize conflicting provisions to give effect to the whole law (*Rufino Lopez and Sons v. Court of Appeals*, 100 Phil. 850 [1957]). Furthermore, one of this Court's primordial responsibilities is to give a statute its sensible construction. This is to effectuate the intention of the legislature so as to avoid an absurd conclusion with regard to its meaning (*Lamb v. Phipps*, 22 Phil. 456 [1912]). Therefore, when the quantity involved is less than 750 grams, Section 17 of R.A. No. 7659 should be read correctly to provide a penalty ranging from prision correccional to reclusion temporal only.

The provision of Article 22 of the Revised Penal Code, which states that "penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony," finds meaning in this case. Appellant is entitled to benefit from the reduction of the penalty introduced by R.A. No. 7659.

In order to determine the penalty to be imposed on appellant, we first divide the amount of 750 grams into three to correspond to the three applicable penalties, namely, prision correccional, prision mayor and reclusion temporal.

If the marijuana involved is from 500 to 749 grams, the penalty to be imposed is reclusion temporal. If the marijuana involved is from 250 to 499 grams, the penalty to be imposed is prision mayor and if the weight of the marijuana involved is below 250 grams, the penalty to be imposed is prision correccional.

Since there is no evidence as to the weight of the two foils and one plastic bag of flowering tops of marijuana seized from appellant, we resolve the doubt in favor of appellant and conclude that the quantity involved was: (i) below 750 grams; and (ii) not less than 250 but not more than 499 grams.

Hence, the maximum penalty that can be imposed on appellant is prision mayor. Applying the Indeterminate Sentence Law to appellant, who was convicted under a special law (*People v. Macantando*, 109 SCRA 35 [1981]), and as such law was interpreted in *People v. Simon*, G.R. No. 93028, July 29, 1994, the minimum penalty that can be imposed on appellant should be within the range of prision correccional.

WHEREFORE, the Decision appealed from is **AFFIRMED** with the modification that appellant shall suffer an indeterminate penalty of **FOUR (4) years and TWO (2) days of prision correccional**, as minimum, to **EIGHT (8) years and ONE (1) day of prision mayor**, as maximum.

SO ORDERED.

Davide, Jr., Bellosillo, and Kapunan, JJ., concur.
Cruz, (Chairman), J., on leave.

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