

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GILBERTO YUMANG, ACCUSED-APPELLANT.

G.R. No. 94977. May 17, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The dreams of youth are boundless - a beautiful marriage, a happy family, a successful career, even fame and fortune at the end of the rainbow. But for the accused-appellant the future is grim and bleak. He has been sentenced to life imprisonment and to pay a fine of P30,000.00 for violation of the Dangerous Drugs Act. And he is only 25.

The trial court found that on February 25, 1990, an informer reported to Kalookan City Police that the accused-appellant Gilberto Yumang was selling marijuana along Buklod ng Nayon Street, Kalookan City. Acting on this report, the Anti-Narcotics Unit organized a buy-bust team composed of P/Cpl. Agapito Quimson, P/fc. Reynaldo Valdez, Bienvenido Santos, P/fc. Reynaldo Ventinilla and Police Aide Francisco Garcia. Police Aide Francisco Garcia was to pose as the buyer using a P10.00 bill with serial number LC-628026.[1]

The team headed for the target place at 5 o'clock in the afternoon of that date. While the rest of the team posted themselves where they could see the sham transaction, Garcia approached Yumang and asked to buy marijuana cigarettes. Yumang handed three cigarette sticks to Garcia, who unrolled the rolling paper and verified the marijuana leaves inside. Garcia then placed Yumang under arrest and together with the other members of the team took him to the police station. The three sticks of marijuana cigarettes were marked by Garcia with his initials and, upon subsequent examination by the National Bureau of Investigation, yielded positive results.[2] An information for violation of Section 4, Article II of RA 6425 was later filed against Yumang in the Regional Trial Court of Kalookan City.

The prosecution presented Garcia, Quimson and Ventinilla to testify on the entrapment and arrest of the accused.[3] Mrs. Virginia Perez, evidence custodian, identified the three sticks of marijuana turned over to the NBI.[4] Her testimony complemented the certification and the Dangerous Drug Report issued by NBI Forensic Chemist Ma. Carina M. Javier, which were presented as Exhibits A and B respectively.[5] The marijuana cigarettes, marked as Exhibit D, were positively identified by Garcia as the corpus delicti of the offense.[6]

The accused told an entirely different story. He said that on February 25, 1990, he was in the store of his aunt at Buklod ng Nayon, Dagat-dagatan, Kalookan City, when Bienvenido Santos called him and for unknown reasons placed him under arrest.[7] He was later brought to the Kalookan City police station, where he was charged as a pusher of marijuana under Art. II, Section 4 of RA 6425, as amended. This testimony was not corroborated.

Under Section 4, Article II of RA 6425, as amended, the penalty of life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00 shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug or shall act as a broker in such transactions.

We have held that in the illegal sale of marijuana, what matters is the agreement between the buyer and the seller, and the acts constituting the sale and the delivery of marijuana leaves.[8] It is true that the money allegedly used for the purchase of the marijuana was never submitted in evidence. However, it is now settled that the presentation in evidence of the buy-bust money is not indispensable to the conviction of an accused provided that the sale of marijuana is adequately proven by other evidence and there is un rebutted testimony of eyewitnesses who saw the actual handing over the marijuana in exchange for money.[9] Such testimony came from the other members of the team, namely, Quimson and Ventinilla. At any rate, the fact that Yumang handed the three marijuana sticks of cigarette corresponding to the P10.00 offered by Garcia suffices to constitute, if not sale, the delivery of the prohibited drug, which is also prohibited and covered by the information reading as follows:

That on or about the 25th day of February 1990 in Kalookan City, MM. and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to others three (3) sticks of handrolled marijuana cigarette, knowing the same to be prohibited drug.

Contrary to law.

A buy-bust operation is a form of entrapment employed by peace officers to catch a malefactor in flagrante delicto.[10] It has been defined as the employment of such ways and means for the purpose of trapping or capturing a law breaker.[11] The idea to commit the crime originates from the accused; nobody induces or prods him into committing the offense.[12] In the case at bar, the buy-bust operation was formed by the police officers precisely to test the veracity of the tip and in order to apprehend the perpetrator. Having caught the culprit red-handed as a result of the buy-bust operation, Garcia and his team-mates were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest.

Garcia's testimony as corroborated by Ventinilla and Quimson clearly and positively identified Gilberto Yumang as the marijuana peddler. The alleged contradiction pointed out by the defense in Garcia's testimony and his affidavit regarding the time the examination of the marijuana was done is inconsequential. It is undisputed that Yumang handed the marijuana in question to Garcia. The apparent lapse of memory on the part of P/fc. Ventinilla regarding the officer to whom Garcia handed the marijuana after the incident is too trivial to impair the essential veracity of the evidence of the prosecution.

The long-settled rule in criminal jurisprudence is that when what is in issue is the credibility of witnesses, appellate courts will generally not disturb the findings of the trial court unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case[13]. The reason is that the latter is in a better position to observe the witnesses on the stand and to determine by their deportment whether they are stating or falsifying the truth.

The accused-appellant's denial cannot prevail over the detailed and unshaken testimonies of the apprehending officers who caught him red-handed. It has not been shown that they had any ulterior motive that might have prompted them to testify falsely against him. On the contrary, the presumption is that NARCOM agents are performing their functions when they conduct buy-bust operations and entrap and arrest violators pursuant to the campaign against the illicit traffic in dangerous drugs. The evidence submitted by the prosecution is strong enough to rebut the constitutional presumption of innocence and to establish the accused-appellant's guilt beyond reasonable doubt.

WHEREFORE, the decision of the trial court is **AFFIRMED** in toto, with costs against the accused?appellant. It is so ordered.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

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- [1] TSN, May 7, 1990, pp. 6-7.
- [2] Records, p. 23.
- [3] TSN, May 7, 1990, pp. 5-9; 13-14; May 28, 1990, pp. 3-7.
- [4] Ibid., May 7, 1990, pp. 2-5
- [5] Records, pp. 22-23.
- [6] TSN, May 28, 1990, pp. 6-7.
- [7] Ibid., May 29, 1990, pp. 2-3.
- [8] *People v. Macuto*, 176 SCRA 762.
- [9] *People v. Pascual*, 208 SCRA 393; *People v. Alerta, Jr.*, 198 SCRA 656.
- [10] *People v. Rodriguez*, 205 SCRA 791.
- [11] *People v. Ramos, Jr.*, 203 SCRA 237.
- [12] *People v. Ramos, Jr.*, 203 SCRA 237.
- [13] *People v. Pascual*, 208 SCRA 393.

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