

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARCHIE DISTRITO Y QUIAMCO, AND MARNE MORA Y JAVIERTO, ACCUSED-APPELLANTS.

G.R. No. 95540. September 18, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The appellants, Archie Distrito y Quiamco and Marne Mora y Javierto, seek a reversal of the decision dated August 20, 1990 in Criminal Case No. 8958 of the Regional Trial Court of Dumaguete, Branch XXX, finding them guilty of having violated Section 4, Article II (drug-pushing) of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972.

Appellants were tried and convicted under an Information which reads as follows:

“That on or about the 28th day of September, 1989, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another, not being authorized by law, did, then and there wilfully, unlawfully and feloniously deliver and sell to another person more or less half a kilo of dried marijuana leaves, a prohibited drug.” (p. 17, Rollo.)

When the appellants were arraigned on October 27, 1989, they pleaded not guilty.

The prosecution presented as witnesses the members of the 7th Narcotics Command (NARCOM) stationed in Dumaguete City namely: Patrolman Leon Quindo, S/Sgt. Ranulfo T. Villamayor and S/Sgt. Ruben V. Laddaran and the Forensic Chemist of the PC Crime Laboratory, P/Lt. Myrna P. Arreola.

Patrolman Quindo testified that at around ten o'clock in the morning of September 28, 1989, he proceeded to the Sta. Rosa Street jeepney terminal pursuant to a tip that a certain Archie Distrito was selling marijuana in that area. To disguise his identity, Quindo wore shorts instead of his uniform. Seeing Distrito beside a parked jeep, Quindo approached him and confided that he wished to buy one (1) kilo of dried marijuana leaves. Distrito allegedly agreed to deliver the goods for which Quindo was to pay Distrito P1,200.00. They agreed to meet at 5:30 in the afternoon at the corner of Tan Pedro Teves and Sta. Catalina Streets for the delivery of the marijuana.

Quindo thereafter hurried back to his detachment office to inform his Commander, M/Sgt. Villamor, who right away conducted a briefing and organized a buy-bust operation. Others present at the briefing were Sgt. Ruben Laddaran, C2C Collet, Pfc. Noble and C2C Wolfe of the NARCOM. The plan was for Quindo to go to the appointed place with his companions to back him up from a discreet distance. They planned to arrest Distrito upon Quindo's giving the signal which was to be his act of taking money from his pocket.

The prosecution witnesses testified that Distrito appeared at the designated place at 5:15 in the afternoon together with a companion, his co-accused Marne Mora. As soon as they came within “a talking distance” (p. 7, tsn, December 20, 1989) of Quindo, Distrito allegedly told Mora to hand over to him a black back pack bag which Mora was allegedly carrying. As soon as Quindo reached for his pocket, his companions rushed toward Distrito

and Mora and announced that they were under arrest. The appellants tried to flee but the fleet-footed NARCOM agents were able to overtake and bring them to the NARCOM office where the black bag was opened in their presence. The bag yielded marijuana which, upon being weighed, was found to weigh one-half (1/2) kilo. The microscopic, chemical and chromatographic examination of the stuff confirmed that it was marijuana.

On the other hand, the accused Distrito and Mora denied Quindo's allegation that they delivered and sold dried marijuana leaves to him. Distrito alleged that he had known Quindo since the 1970's (more than ten years) when his uncle, Captain Dominador Distrito, was the jail warden. He alleged that at 6:45 p.m. on September 28, 1989, he was on his way to the City Hall quadrangle to watch a basketball game when he met his friend and neighbor, Marne Mora, a fourth-year high school student at Cathedral College, who was also going to the City Hall quadrangle to watch the game. While waiting for the game to start at 7:00 in the evening, Distrito invited Mora to a snack of "banana-cue" from one of the ambulatory stores near the gate.

Suddenly they were nabbed by NARCOM agents Quindo and Laddaran who were holding .45 caliber firearms. Mora tried to run but he was clubbed on the head with the butt of a gun. Both of them were hauled off to the detachment office at Lt. Locsin Street. The office was dark because of an on-going black-out. When the lights came back, they saw a black bag on the table in front of them. Quindo took the marijuana leaves and seeds, weighed them (350 grams) and placed them in a brown envelope with the names of the accused written on it. During the investigation of the accused, Mora was elbowed by an agent to force him to admit ownership of the bag and its contents. He was made to wear an army helmet which was repeatedly "knocked" (p. 10 tsn, June 25, 1990) by the investigators with their .45 caliber pistols. Commander Villamor allegedly strangled Distrito to force him to admit ownership of the bag. Then the two accused were handcuffed and brought to the City Jail where they were detained without being allowed to contact or consult a relative, a lawyer or a doctor.

On August 20, 1990, the trial court rendered judgment convicting Distrito and Mora of the crime charged and sentenced them to suffer the penalty of life imprisonment, to each pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The half-kilo of dried marijuana leaves, stalks and seeds subject of the offense were ordered confiscated in favor of the Government and turned over to the Dangerous Drugs Board for proper disposal without delay.

Dissatisfied, the appellants appealed the decision to this Court. They filed separate briefs. Distrito alleged that the lower court erred:

1. in giving credence to the theory of the prosecution, the same being riddled with "bogholes of improbability;" (p. 40, Rollo)
2. in convicting the accused of violation of Section 4, Art. II of R.A. 6425, as amended, and even assuming that the prosecution's version is accepted at face value, the conviction should only be for possession but, in any event, Distrito should be acquitted;
3. in not outlawing the so-called "buy-bust operation" in question; and
4. in not acquitting him on grounds of reasonable doubt.

Mora alleged in his brief that the trial court erred in finding him guilty beyond reasonable doubt of the crime charged, contrary to the evidence.

There is merit in the appeal.

We find that the poseur-buyer, Patrolman Quindo, by his own admission, was well-known as a peace officer in Dumaguete City. He admitted that, without a disguise, he would undoubtedly have been recognized by Distrito

who had known him for 19 years. Since his “disguise” was only to wear short pants instead of his police uniform, the device was inadequate to conceal or alter his identity. Hence, if Distrito was engaged in selling prohibited drugs, he (Distrito) would not have been so foolish as to do business with Quindo whom he knew to be a police officer. The testimony of Quindo on direct examination reads:

“Q. You have as a matter of fact been too obvious as a NARCOM policeman, is that not correct in your surveillance and in your operatives, you don’t hide your identity?

“A. Yes, that is true, during the operatives and surveillance like that, I change my attire and appearance to be like a buyer or user and hooked to the drugs like that.

“Q. You mean, in the morning of September 28, 1989 when you were allegedly negotiating with Distrito, you were in disguise?

“A. Yes.

“Q. You were in disguise because you didn’t want him to recognize you as Pat. Quindo?

“A. Yes.

“Q. Otherwise if you were not in disguise, you would be known to Distrito?

“A. Yes.

“Q. What was your disguise?

“A. I was wearing only short pants.

“Q. You did not cover your face?

“A. Yes.

“Q. And your face was seen very well by Distrito?

“A. Yes.

“Q. And as a matter of fact, this was in broad daylight in the morning at 10:00 o’clock?

“A. Yes.

“Q. Except for that short pants your appearance was not changed, you did not put on any make-up or masquerade?

“A. Yes.

“Q. And in spite of your disguise which was consisting only of short pants, you want this Court to believe that Archie Distrito did not recognize you any more and he was willing to negotiate with you?

“A. Yes.” (pp. 10-11, tsn, December 20, 1989.)

Another flaw in Quindo’s evidence is that although he alleged that Distrito had been under surveillance as a seller of marijuana, he surprisingly did not know Distrito’s personal circumstances. He did not know where Distrito lived. The transcript of his testimony reads thus:

“Q. But you know that he is living in Dumaguete even if you do not know his exact place?

“A. That I do not know also.

“Q. You mean, within the period of your surveillance you don’t know the personal circumstances of Distrito?

“A. No.” (p. 9, tsn, December 20, 1989.)

There was also a discrepancy between the quantity of marijuana that Quindo wanted to buy, and which Distrito supposedly agreed to sell, (one kilo), and that which was allegedly confiscated from the appellants (only 350 grams) in the black bag. Moreover, the ownership of the black bag was not established. Distrito and Mora vehemently disclaimed ownership of the bag (p. 85, tsn, May 28, 1990 and p. 9, tsn, June 25, 1990). During the cross-examination of Quindo, he was asked:

“Q. Now, did you take any effort to establish the ownership of the bag, were you able to ascertain who the owner of the bag was?

“A. I am only certain that the owner is Mora because he was the one carrying it.

“Q. Merely on that assumption?

“A. Yes.” (p. 29, tsn, December 20, 1989.)

No marked money was seized from the accused as none passed from the alleged buyer (Quindo) to the alleged sellers. While Quindo testified that the agreed price was P1,200.00, he did not state that he brought that amount of money to the venue of the sale, or any amount at all, much less what denominations they consisted of.

During the trial, Quindo stated that from the time he “confiscated” the black bag from the accused, the money “remained with him.” When he was asked for the whereabouts of the money, his answer was that he had already spent it (p. 13, tsn, December 20, 1989).

Quindo failed to explain why his supposed meeting with Distrito, at the corner of Tan Pedro Teves and Sta. Catalina Streets at 5:30 p.m. actually occurred at the gate of the City Hall Quadrangle at 6:45 p.m.

Appellants’ allegation that they were not apprised of their rights nor allowed to communicate with a lawyer or seek outside assistance, was not denied by the prosecution.

Quindo admitted a discrepancy between the number (281815 H) of the brown envelope containing the specimen and the number stated in the Request for Examination (281615 H) (pp. 9-12, tsn, May 23, 1990).

Mora was not a party to the alleged negotiation between Quindo and Distrito at the jeepney terminal in the morning of September 28, 1989. Mora was never under surveillance. The only link between him and Distrito was that they were neighbors and friends. The only evidence against them was Quindo’s uncorroborated testimony that Distrito agreed to sell him 1 kilo of marijuana.

The NARCOM logbook entry for September 28, 1989 states in general terms that Distrito was “arrested for violation of Section 4, Article II of R.A. 6425.”* Apart from that general statement, there is no allegation that they were apprehended in possession of prohibited drugs.

The loose ends in the evidence of the prosecution are sufficient to engender reasonable doubt that the charges against the two accused were trumped up. Reasonable doubt must be resolved in favor of the accused. Therefore, without the requisite quantum of proof of guilt beyond reasonable doubt, the conviction of the appellants should be overturned. “Proof to sustain conviction must survive the test of reason. Suspicion of guilt, no matter how strong, should not be permitted to sway judgment” (People vs. Fontanilla, 199 SCRA 897).

A judgment of conviction in criminal cases must be predicated on the strength of the prosecution’s evidence and not on the weakness of the evidence for the defense (People vs. Lucero, 197 SCRA 717).

The accused are presumed innocent until their guilt is established by proof beyond reasonable doubt. The

evidence against them must engender moral certainty or constitute that degree of proof which produces conviction in an unprejudiced mind (Sec. 2, Rule 133, Revised Rules of Court), a certainty that convinces and satisfies the reason and conscience of those who are to act upon it (People vs. Bacdad, 196 SCRA 786, citing People vs. Padilla, 177 SCRA 129 and People vs. Salguero, 198 SCRA 357).

WHEREFORE, the judgment of conviction against the appellants, Archie Distrito y Quiamco and Marne Moran y Javierto, is hereby REVERSED and SET ASIDE on the ground of reasonable doubt. The appellants are acquitted of the crime charged and their immediate release from custody is ordered. Costs de officio.

SO ORDERED.

Medialdea and Bellosillo, JJ., concur.

Cruz, J., (Chairman), on leave.

* Section 4 of R.A. 6425 (Dangerous Drugs Act of 1972), as amended by P.D. 44 provides:

“Sale, Administration, Delivery, Distribution and Transportation of prohibited drugs. - The penalty of imprisonment ranging from twelve [12] years and one [1] day to twenty [20] years and a fine ranging from Twelve Thousand to Twenty Thousand Pesos 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 any of such transactions. x x x.”

“Should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the penalty of life imprisonment to death and a fine ranging from Twenty Thousand to Thirty Thousand Pesos shall be imposed upon the pusher.”

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