

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DON RODRIGUEZA, ACCUSED-APPELLANT.

G.R. No. 95902. February 04, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

On appeal before us is the decision of the Regional Trial Court of Legaspi City, Branch 10, finding accused-appellant Don Rodriguez guilty beyond reasonable doubt of violating Section 4, Article II of the Dangerous Drugs Act of 1972 (Republic Act No. 6425, as amended) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 and costs:[1]

However, the Solicitor General, deviating from his conventional stance in the prosecution of criminal cases, recommends the acquittal of appellant for the reasons stated in his Manifestation for Acquittal (In Lieu of Appellee's Brief) filed with the Court. We have reviewed and analyzed the testimonial and documentary evidence in this case and we find said recommendation to be well taken.

The information, dated July 10, 1987, charges Don Rodriguez and his co-accused, Samuel Segovia and Antonio Lonceras, with allegedly having in their custody and possession 100 grams of marijuana leaves and for selling, in a buy-bust operation, said 100 grams of dried marijuana leaves for a consideration of P200.00.[2]

During the arraignment, all the accused pleaded not guilty to the charge against them. At the trial, the prosecution and the defense presented several witnesses after which the court a quo rendered judgment acquitting Samuel Segovia and Antonio Lonceras but convicting and penalizing herein appellant as herein-before stated.

The following facts are culled from the decision of the trial court and the evidence presented by the prosecution.

At around 5:00 o'clock in the afternoon of July 1, 1987, CIC Ciriaco Taturan was in their headquarters at the Office of the Narcotics Regional Unit at Camp Bagong Ibalon, Legaspi City, together with S/Sgt. Elpidio Molinawe, CIC Leonardo B. Galutan and their commanding officer, Major Crisostomo M. Zeidem, when a confidential informer arrived and told them that there was an ongoing illegal traffic of prohibited drugs in Tagas, Daraga, Albay. Major Zeidem formed a team to conduct a buy-bust operation, which team was given P200.00 in different denominations to buy marijuana. These bills were treated with ultraviolet powder at the Philippine Constabulary Crime Laboratory (PCCL). Sgt. Molinawe gave the money to Taturan who acted as the poseur buyer. He was told to look for a certain Don, the alleged seller of prohibited drugs. Taturan went to Tagas alone and, while along the road, he met Samuel Segovia. He asked Segovia where he could find Don and where he could buy marijuana. Segovia left for a while and when he returned, he was accompanied by a man who was later on introduced to him as Don, herein appellant.[3]

After agreeing on the price of P200.00 for 100 grams of marijuana, Don halted a passing tricycle driven by Antonio Lonceras. He boarded it and left Taturan and Segovia. When he came back, Don gave Taturan "a certain object wrapped in a plastic" which was later identified as marijuana, and received payment therefor. Thereafter,

Taduran returned to the headquarters and made a report regarding his said purchase of marijuana.[4]

Based on that information, Major Zeidem ordered a team to conduct an operation to apprehend the suspects. In the evening of the same date, CIC Galutan and S/Sgt. Molinawe proceeded to Regidor Street, Daraga, Albay and arrested appellant, Antonio Lonceras and Samuel Segovia. The constables were not, however, armed with a warrant of arrest when they apprehended the three accused. The arrestees were brought to the headquarters for investigation.[5]

Thereafter, agents of the Narcotics Command (NARCOM) conducted a raid in the house of Jovencio Rodriguez, father of appellant. Taduran did not go with them. During the raid, they were able to confiscate dried marijuana leaves and a plastic syringe, among others. The search, however, was not authorized by any search warrant.[6]

The next day, July 2, 1987, Jovencio Rodriguez was released from detention but appellant was detained. An affidavit, allegedly taken from and executed by him, was sworn to by him before the assistant city prosecutor. Appellant had no counsel when his sworn statement was taken during that custodial investigation. The arrestees were also examined by personnel of the PCCL and were found positive for ultraviolet powder.[7]

The three accused presented different versions of their alleged participations.

Samuel Segovia testified that he was in their house in the evening of July 1, 1987 listening to the radio. Later, he ate his merienda and then went out to buy cigarettes from the store. While he was at the store, a jeep stopped behind him. Several armed men alighted therefrom and ordered him to get inside the jeep. He refused but he was forced to board the vehicle. He was even hit by the butt of a gun.[8]

He was thereafter brought to Camp Bagong Ibalon where he was investigated and was repeatedly asked regarding the whereabouts of Rodriguez. He was man-handled by the NARCOM agents and was detained while inside the camp. He was then made to hold a P10.00 bill treated with ultraviolet powder. When he was taken to the PCCL and examined, he was found positive of the ultraviolet powder. He was also made to sign some papers but he did not know what they were all about.[9]

Appellant, on the other hand, testified that on said date he was in the house of his aunt in San Roque, Legaspi City. He stayed there overnight and did not leave the place until the next day when his brother arrived and told him that their father was taken by some military men the preceding night. Appellant went to Camp Bagong Ibalon and arrived there at around 8:00 o'clock in the morning of July 2, 1987. When he arrived, he was asked if he knew anything about the marijuana incident, to which question he answered in the negative. Like Segovia, he was made to hold a P10.00 bill and was brought to the crime laboratory for examination. From that time on, he was not allowed to go home and was detained inside the camp. He was also tortured in order to make him admit his complicity in the alleged sale of marijuana.[10]

In the assignment of errors in his brief, appellant contends that the trial court erred in (1) admitting in evidence the sworn statement of appellant which was obtained in violation of his constitutional rights; (2) convicting appellant of the crime charged despite the fact that the 100 grams of dried marijuana leaves allegedly bought from him were not properly identified; (3) convicting appellant of the crime charged despite the fact that the evidence for the prosecution is weak and not convincing; and (4) finding appellant guilty beyond reasonable doubt of selling or at least acting as broker in the sale of the 100 grams of marijuana to CIC. Taduran late in the afternoon of July 1, 1987, despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[11]

We rule for the appellant and approve the recommendation for his acquittal. In disposing of this case, however, we feel that the issues raised by appellant should properly be discussed seriatim.

- A buy-bust operation is a form of entrapment employed by peace officers to trap and catch a malefactor in flagrante delicto.[12] Applied to the case at bar, the term in flagrante delicto requires that the suspected drug dealer must be caught red-handed in the act of selling marijuana or any prohibited drug to a person acting or posing as a buyer.

In the instant case, however, the procedure adopted by the NARCOM agents failed to meet this qualification. Based on the very evidence of the prosecution, after the alleged consummation of the sale of dried marijuana leaves, CIC Taturan immediately released appellant Rodriguez instead of arresting and taking him into his custody. This act of CIC Taturan, assuming arguendo that the supposed sale of marijuana did take place, is decidedly contrary to the natural course of things and inconsistent with the aforestated purpose of a buy-bust operation. It is rather absurd on his part to let appellant escape without having been subjected to the sanctions imposed by law. It is, in fact, a dereliction of duty by an agent of the law.

- The admissibility of the sworn statement allegedly executed by appellant was squarely placed in issue and, as correctly pointed out by the defense, said sworn statement is inadmissible in evidence against appellant.

We have once again to reiterate and emphasize that Article III of the 1987 Constitution provides:

"Sec. 12 (1). Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have a competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x

(3) Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him."

An examination of said sworn statement shows that appellant was informed of his constitutional right to remain silent and to be assisted by counsel during custodial examination. He was also asked if he was waiving his right to be assisted by counsel and he answered in the affirmative. However, while the rights of a person under custodial investigation may be waived, such waiver must be made not only voluntarily, knowingly and intelligently but also in the presence and with the assistance of counsel.[13] In the present case, the waiver made by appellant being without the assistance of counsel, this omission alone is sufficient to invalidate said sworn statement.[14]

- Corollary to this, we take cognizance of the error of the trial court in admitting in evidence against appellant the articles allegedly confiscated during the raid conducted in the house of Jovencio Rodriguez.

As provided in the present Constitution, a search, to be valid, must generally be authorized by a search warrant duly issued by the proper government authority.[15] True, in some instances, this Court has allowed government authorities to conduct searches and seizures even without a search warrant. Thus, when the owner of the premises waives his right against such incursion[16] ; when the search is incidental to a lawful arrest[17] ; when it is made on vessels and aircraft for violation of customs laws[18] ; when it is made on automobiles for the purpose of preventing violations of smuggling or immigration laws[19] ; when it involves prohibited articles in plain view[20] ; or in cases of inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations,[21] a search may be validly made even without a search warrant.

In the case at bar, however, the raid conducted by the NARCOM agents in the house of Jovencio Rodriguez was not authorized by any search warrant. It does not appear, either, that the situation falls under any of the aforementioned cases. Hence, appellant's right against unreasonable search and seizure was clearly violated. The

NARCOM agents could not have justified their act by invoking the urgency and necessity of the situation because the testimonies of the prosecution witnesses reveal that the place had already been put under surveillance for quite some time. Had it been their intention to conduct the raid, then they should, because they easily could, have first secured a search warrant during that time.

- The Court further notes the confusion and ambiguity in the identification of the confiscated marijuana leaves and other prohibited drug paraphernalia presented as evidence against appellant.

CIC Taduran, who acted as the poseur buyer, testified that appellant sold him 100 grams of dried marijuana leaves wrapped in a plastic bag. Surprisingly, and no plausible explanation has been advanced therefor, what were submitted to and examined by the PCCL and thereafter utilized as evidence against the appellant were the following items:

"One (1) red and white colored plastic bag containing the following:

Exh. 'A' - Thirty (30) grams of suspected dried marijuana fruiting tops contained inside a transparent plastic bag.

Exh. 'B' - Fifty (50) grams of suspected dried marijuana leaves and seeds contained inside a white colored plastic labelled 'Robertson'.

Exh. 'C' - Four (4) aluminum foils each containing suspected dried marijuana fruiting tops having a total weight of seven grams then further wrapped with a piece of aluminum foil.

Exh. 'D' - Five (5) small transparent plastic bags each containing suspected dried marijuana fruiting tops having a total weight of seventeen grams.

Exh. 'E' - One plastic syringe." [22]

Evidently, these prohibited articles were among those confiscated during the so-called follow-up raid in the house of Jovencio Rodriguez. The unanswered question then arises as to the identity of the marijuana leaves that became the basis of appellant's conviction. [23] In *People vs. Rubio*, [24] this Court had the occasion to rule that the plastic bag and the dried marijuana leaves contained therein constitutes the corpus delicti of the crime. As such, the existence thereof must be proved with certainty and conclusiveness. Failure to do so would be fatal to the cause of the prosecution.

- It is accepted that, as a rule, minor inconsistencies in the testimony of a witness will not affect his credibility. It even enhances such credibility because it only shows that he has not been rehearsed. [25] However, when the inconsistencies pertain to material and crucial points, the same detract from his overall credibility.

The exception, rather than the rule, applies in the case at bar. As correctly pointed out by the Solicitor General, the testimonies of the prosecution witnesses are tainted with serious flaws and material inconsistencies rendering the same incredible. [26]

CIC Taduran, in his testimony, said that they had already been conducting surveillance of the place where the buy-bust operation was to take place. It turned out, however, that he did not even know the exact place and the identity of the person from whom he was to buy marijuana leaves. Thus:

"FISCAL TOLOSA

Q What place in Tagas were you able to go (to)?

WITNESS

A I am not actually familiar in (sic) that place, in Tagas, although we occasionally passed there.

Q Now, upon your arrival in Tagas, what did you do that afternoon?

A I waited for the suspect because previously, we have already been conducted (sic) surveillance (sic) in the vicinity.

Q Upon arrival in Tagas, were you able to see the suspect?

A By the road, sir.

Q Who was the first person did you see (sic) when you arrived at Tagas?

A The first person whom I saw is Samuel Segovia.

Q Were you able to talk with this Samuel Segovia?

A According to him, we could get some."[27]

The same findings go for the testimony of witness Galutan. In his direct examination, he declared that they arrested the three accused all at the same time on the fateful night of July 1, 1987. But in his cross-examination and as corroborated by the Joint Affidavit of Arrest[28] submitted by him and Molinawe, it appeared that Lonceras and Segovia were arrested on different times and that appellant Don Rodriguez was not among those who were arrested. Instead, it was Jovencio Rodriguez, Don's father, who was picked up at a much later time.

With said inconsistencies in sharp focus, we are constrained to give more credibility to the testimony of appellant Rodriguez. While it is true that appellant's defense amounts to an alibi, and as such is the weakest defense in a criminal prosecution, there are, nonetheless, some evidentiary aspects pointing to the truth in his testimony. Firstly, the Joint Affidavit of Arrest corroborates his testimony that he was not among those who were arrested on the night of July 1, 1987. His co-accused Segovia also testified that appellant Rodriguez was not with them when they were apprehended by the NARCOM agents.

Secondly, the apparent motive of the NARCOM agents in prosecuting the accused was also revealed during the trial of the case. Rebuttal witnesses Gracita Bahillo, sister of appellant, and Hospicio Segovia, father of Samuel Segovia, testified that Sgt. Molinawe, who has since been reportedly dismissed from the service, asked for P10,000.00 from each of them in exchange for the liberty of the accused.[29] This allegation was never refuted by the prosecution. Hence, the rule laid down by this Court that the statements of prosecution witnesses are entitled to full faith and credit[30] has no application in the case at bar.

Finally, the Court has repeatedly ruled that to sustain the conviction of the accused, the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[31] As clearly shown by the evidence, the prosecution has failed to establish its cause. It has not overcome the presumption of innocence accorded to appellant. This being the case, appellant should not be allowed to suffer for unwarranted and imaginary imputations against him.

WHEREFORE, the judgment of conviction of the court below is hereby REVERSED and SET ASIDE and accused-appellant Don Rodriguez is hereby ACQUITTED of the crime charged. It is hereby ordered that he be immediately released from custody unless he is otherwise detained for some other lawful cause.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Nocon, JJ., concur.

[1] Original Record, 622.

[2] Ibid., 1.

- [3] TSN, June 14, 1988, 4-14.
- [4] Ibid., id., 11-15.
- [5] TSN, March 17, 1988, 8-12.
- [6] TSN, June 14, 1988, 16.
- [7] TSN, May 18, 1988, 16-17.
- [8] TSN, September 6, 1988, 4-7.
- [9] Ibid., Id., 8-13.
- [10] TSN, May 23, 1989, 12.
- [11] Brief for the Appellant, 1.
- [12] People vs. Del Pilar, 188 SCRA 37 (1990).
- [13] People vs. Olaes, 188 SCRA 91 (1990); People vs. Hernandez, et al., 162 SCRA 422 (1988).
- [14] People vs. Nolasco, 163 SCRA 623 (1988).
- [15] Section 2, Article III, 1987 Constitution.
- [16] Bagcal vs. Villaraza, 120 SCRA 525 (1983); Callanta vs. Villanueva, et al., 77 SCRA 377 (1977).
- [17] Adams vs. Williams, 407 U.S. 143 (1972).
- [18] Roldan vs. Arca, 65 SCRA 336 (1975).
- [19] Carroll vs. U.S., 267 U.S. 132 (1925).
- [20] Harris vs. U.S., 390 U.S. 234 (1968).
- [21] Camara vs. Municipal Court, 387 U.S. 523 (1967).
- [22] Exh. "E", Chemistry Report No. D-4387; Original Record, 296.
- [23] Brief for the Appellant, 17.

[24] 142 SCRA 329 (1986).

- [25] People vs. Marcos, 185 SCRA 154 (1990); People vs. Mangalino, 182 SCRA 329 (1990).
- [26] Manifestation for Acquittal, 18.
- [27] TSN, June 14, 1988, 9.
- [28] Original Record, 474.
- [29] TSN, August 4, 1989, 8-10; September 6, 1989, 9.
- [30] People vs. Demecillo, 186 SCRA 161, (1990).
- [31] People vs. Solis, et al., 182 SCRA 182 (1990); People vs. Buenaflor, 181 SCRA 225 (1990).

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