

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO ABELITA Y LUQUIAS, DEFENDANT-APPELLANT.

G.R. No. 96318. June 26, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is an appeal from the decision dated November 19, 1990 of the Regional Trial Court, Branch 170, Malabon, Metro Manila in Criminal Case No. 8970-MN entitled "People of the Philippines v. Reynaldo Abelita y Luquias" finding the accused-appellant guilty beyond reasonable doubt of violation of Section 4, Article II, Republic Act No. 6425 and sentenced to suffer life imprisonment, to pay a fine of P20,000.00 and the costs of the suit.

The Information under which he was charged with violation of the aforesaid section and article of Republic Act No. 6425 read as follows:

"That on or about the 16th day of February, 1990, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused in consideration of P10.00 bill with Serial No. HB116649 received from poseur-buyer and without being authorized by law, did, then and there, wilfully, unlawfully and feloniously SELL, deliver and distribute three (3) handrolled cigarette sticks wrapped in a small white paper and which cigarette sticks when subjected to laboratory examination were found positive Indian Hemp commonly known as 'Marijuana', a prohibited drug.

"On the same occasion (sic), accused who as aforesaid is not authorized (sic) by law was likewise found to be in possession of thirty seven (37) handrolled cigarette sticks contained in a Bonna milk can for the purpose of dispatch in transit or transporting the same; and which when subjected to laboratory examination were likewise found positive for indian hemp, commonly known as marijuana.

"CONTRARY TO LAW." (Rollo, p. 4)

Upon arraignment, accused, duly assisted by counsel de oficio entered a plea of "not guilty." (see Brief for the Plaintiff-Appellee, p. 2).

Accused filed a motion to dismiss by way of demurrer to evidence contending among others that the failure of the prosecution to present the informant who allegedly bought the three (3) sticks of marijuana from him is fatal.

In an Order dated August 23, 1990, the motion to dismiss was denied.

After trial, the lower court rendered a decision on November 19, 1990, the dispositive portion thereof states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Reynaldo Abelita y Luquias guilty beyond reasonable doubt of Violation of Section 4, Article II, Republic Act No. 6425 and sentenced to suffer life imprisonment, to pay a fine of P20,000.00 and the costs of this suit.

"Let the accused be credited with whatever preventive imprisonment he has undergone by reason of this case, pursuant to Article 29 of the Revised Penal Code.

"SO ORDERED." (Rollo, p. 23)

Hence, this appeal from the lower court's decision raising the following assignment of errors:

"I

"THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED ON THE GROUND OF INSUFFICIENCY OF EVIDENCE FOR THE REASON THAT THE NBI FORENSIC EXPERT WAS NOT PRESENTED TO TESTIFY ON THE NBI REPORT OF ITS FINDINGS.

"II

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE STRENGTH ALONE OF THE IMPROBABLE AND HEARSAY TESTIMONY OF PROSECUTION WITNESS P/SGT. WILFREDO MENDOZA." (Rollo, p. 38)

The antecedent facts of this case as recounted by the prosecution's lone witness Sgt. Wilfredo V. Mendoza are as follows:

"x x x

"(A)t about 12:15 o'clock in the morning of February 16, 1990, he (Sgt. Wilfredo V. Mendoza) and his co-policemen, Pfc. Reynaldo Castil, Pat. Jaime Acusin, Pat. Paulino Almazan, Pat. Jesus Echavez, Cpl. Eduardo Sablay and Police Aide Diosdado Tubig, were patrolling the fishport compound at Northbay Boulevard, Navotas when they were approached by a man who told them that a certain 'Toto' was selling marijuana at Gilmar Beerhouse inside the fishport. He then planned to have Toto arrested and asked the informant if he could buy marijuana from Toto. When the informant agreed to the suggestion, he gave the former a P10.00 bill on which he placed his initial (Exh. "E"). The policemen and the informant proceeded to Gilmar Beerhouse and the latter entered inside while the policemen positioned themselves outside where they could see the interior of the beerhouse through the open spaces on the wall of said beerhouse. The policemen saw the informant approach Toto, who was occupying a table at a distance of four (4) arms' length from where they were positioned, and give the money to the latter who, in turn, handed to the informant a small white package. The policemen then entered the beerhouse and met the informant, who handed the package to Sgt. Mendoza. Pfc. Castil recovered from Toto a blue can of Bonna milk which, when opened, was found to contain thirty seven (37) sticks of marijuana and the P10.00 marked bill (Exhs. "D", "D-1" to "D-37" and "E"). The small white package handed by the informant to Sgt. Mendoza, on the other hand, contained three (3) sticks of marijuana (Exh. "C"). Toto, whom Sgt. Mendoza identified in open court as herein accused, was brought to the Navotas Police Station for investigation. The forty (40) sticks of marijuana were brought to the National Bureau of Investigation for laboratory examination, which gave positive result for marijuana (Exh. "B")" (Rollo, pp. 20-21).

Accused-appellant vehemently denied the charge particularly that of ownership of the marijuana found inside the 'Bonna' milk can. He claimed that while he and his friend Jun were drinking inside Gilmar Beerhouse at about midnight of February 16, 1990, three policemen arrived and arrested them allegedly for owning the marijuana placed in a can of milk being held by one of the policemen. He and Jun were brought to the Navotas Police Station where they were asked to admit ownership of the marijuana which they denied (Rollo, pp. 21-22).

The lower court found the testimony of the lone prosecution witness, Sgt. Mendoza more credible and presumed that he performed his duty in a regular manner, in the absence of any evidence showing that he was actuated by improper motive.

Furthermore, the lower court in finding the accused guilty of the crime charged, noted that the accused did not

deny the testimony of Sgt. Mendoza that he (accused) delivered a small white package containing three (3) sticks of marijuana to the informant in exchange of the P10.00 marked bill which was subsequently recovered inside the can of milk.

Accused-appellant maintains that the failure of the prosecution to present the forensic expert who prepared the NBI report of its findings that the confiscated materials are indeed marijuana is fatal to its cause. Hence, in the absence of a clear and conclusive evidence that such materials were prohibited drugs, the accused stands to be acquitted on the ground of insufficiency of evidence.

Furthermore, appellant stresses that the fact that the prosecution did not present the confidential informer as witness casts serious doubt on appellant's guilt because without the testimony of the poseur-buyer, there is no convincing evidence to show that appellant sold marijuana.

After a careful examination of the records of the case, We find no error to warrant the reversal of the finding of facts and conclusion of the trial court.

The failure of the prosecution to present the forensic expert who prepared the NBI report to establish the corpus delicti of the crime is not fatal. The records show that the accused and his counsel admitted the due execution and genuineness of the evidence submitted by the prosecution witness Forensic Chemist Felicisima M. Francisco during the pre-trial conference. Thereafter, the trial court issued an Order dated April 11, 1990 which embodied the manifestation of the prosecution that since the accused and his counsel admitted the genuineness and due execution of the forensic chemist report, it is dispensing with the testimony of the forensic expert. The trial court's Order dated April 11, 1990 is hereunder quoted as follows, to wit:

"Order

"x x x x x

"At the pre-trial today, the accused and his counsel admitted the due execution and genuineness of the evidence submitted by the prosecution witness Forensic Chemist Felicisima M. Francisco, to wit:

"Exh. A - Letter request dated

February 16, 1990

Exh. B - Report No. DDM90-265

Exh. C - Three sticks of

marijuana wrapped on

a white paper

Exh. D - Empty Bona Milk can

Exh. D-1 - Thirty seven (37) sticks

of marijuana cigarettes

"In view thereof, the prosecution manifested that it is dispensing with the testimony of F.M. Francisco and it is presenting two (2) witnesses. The defense counsel manifested, he will present two (2) witnesses. (p. 26, Record)" (Brief for the Plaintiff-Appellee, p. 6)

As pointed out by the Solicitor General, the accused-appellant must have overlooked his admission as to the due execution and genuineness of the forensic chemist report when he raised this first assignment of error.

We agree with the position of the Solicitor General that if the matters taken up and embodied in the pre-trial order were not in accordance with what was really stipulated upon, then accused-appellant should have interposed his objections earlier or as soon as the pre-trial order was issued. Hence, it is clear that upon the accused-appellant's failure to interpose objections, the facts stipulated during a pre-trial conference and embodied in a pre-trial order bind the parties.

In attacking the sufficiency of the evidence, the accused-appellant avers that the informer should have been presented before the lower court. The fact that the informer was never presented in court by the prosecution is of no moment. His testimony, if it were given, would at best be corroborative or cumulative.

This Court has ruled in several cases that non?presentation of the informer, where his testimony would be merely corroborative or cumulative, is not fatal to the prosecution's case. (*People v. Tangliben*, G.R. No. 63630, April 6, 1990, 184 SCRA 220 citing *People v. Asis*, G.R. No. 84960, September 1, 1989; *People v. Viola*, G.R. No. 64262, March 16, 1989; *People v. Capulong*, 160 SCRA 533 [1988] ‘*People v. Cerelegia*, 147 SCRA 538).

The testimony of the lone prosecution witness is positive and sufficiently clear to show that the accused-appellant committed the offense herein charged. The prosecution witness was not actuated by improper motive to fabricate the facts and to foist a very serious offense against the accused-appellant. His knowledge was acquired in the performance of his official duty and there being no showing that he is prejudiced against the accused-appellant, his testimony deserves full credit.

In the light of the foregoing considerations, there is a clear indication that the trial court did not commit any error in finding the accused-appellant guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425.

ACCORDINGLY, the judgment of the trial court dated November 19, 1990 is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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