

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL DAG-UMAN, ACCUSED-APPELLANT.

G.R. No. 96548. May 28, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

In Criminal Case No. OC-903 of Branch 15 of the Regional Trial Court at Ozamiz City, the accused, Joel Dag-uman, was convicted after due arraignment and trial, of a violation of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. The Trial Court's judgment, dated October 8, 1990, made the following dispositions:

"WHEREFORE, in view of the foregoing premises, the Court finds the accused Joel Dag-uman guilty beyond reasonable doubt of the violation of Section 4, Article II of Republic Act No. 6425, as amended; accordingly, he is hereby sentenced to the penalty of an imprisonment of reclusion perpetua and to pay a fine of Twenty Thousand (P20,000.00) Pesos, to suffer the other accessory penalties of the law and to pay the costs.

It appearing that accused Joel Dag-uman has been under detention since his arrest on October 3, 1989, he partly credited four-fifths (4/5) of his detention as he did not agree in writing to abide by the rules for convicted prisoners in accordance with Republic Act 6127.

The sixteen (16) sticks of handrolled marijuana cigarettes confiscated from the possession of the accused are forfeited in favor of the government and should be burned to ashes by the Clerk of Court."

The Court's verdict was reached after analysis and assessment of the contrasting proofs of the prosecution and the defense. The Court deemed the following facts established by the evidence of the prosecution, viz.:

" * * * Sgt. Emilio de Guzman and Sgt. Bernardino Mugot, members of the Narcotics Unit, stationed at Cotta, Ozamiz City, together with their team leader Reynaldo Miguel, conducted a buy-bust operation along the national highway at Banadero, Ozamiz City, at about 11:15 o'clock in the morning of October 3, 1989, using as poseur buyer their civilian informer from Cagayan de Oro City. This civilian informer previously conducted surveillance and a test buy operation in the area, and the result was positive. On the said date, time and place in question, Sgt. Miguel gave two (2) marked P5.00 bills to their poseur buyer, the serial numbers of which were PT319706 and QC-5099051 and duly registered in their logbook. When the said poseur buyer gave the marked P5.00 bills to accused Joel Dag-uman; the latter gave the poseur buyer six (6) sticks of handrolled marijuana cigarettes. Sgt. de Guzman and Sgt. Mugot who (were) just nearby immediately placed the accused under arrest and when a search was made on his person, his pants pocket yielded the two (2) marked P5.00 bills and another ten (10) sticks of handrolled marijuana cigarettes. The six (6) sticks of handrolled marijuana cigarettes were duly submitted to the NBI office, at Cagayan de Oro City, for laboratory examination and the results proved that the specimens were indeed marijuana (Exhs. D to D-5, E, E-1 to E-6)."

The Trial Court declared the People's evidence to be entitled to full faith and credit and that of the accused as "unworthy of belief at all." It said:

"Weighing the facts and circumstances obtaining in this case, there is positive evidence that the accused Joel

Dag-uman was caught in flagrante delictu selling marijuana cigarettes by the PC Narcotics Unit in an entrapment set up by them using their civilian informer from Cagayan de Oro City as poseur buyer, with marked P5.00 bills. As public officers duly designated in the enforcement of the Anti-Dangerous Drugs Law, there is that legal presumption that these police officers were regularly performing their official functions as such. And there is that admission by the accused that he came only to know Sgt. De Guzman when he arrested him, and therefore there was no motive or reason for Sgt. De Guzman to falsely incriminate him. The version of the accused that he was only induced by the two civilian informers of the PC Narcotics Unit to buy those marijuana cigarettes confiscated from him is too naive to be believe(d) by the Court and is unworthy of belief at all. He knew very well that buying or selling marijuana cigarettes is prohibited by law. Yet when he was requested by persons hardly known to him, he readily consented to buy said marijuana cigarettes. There is no showing that other alleged inducements were offered him, except that he was allegedly given that measly sum of P15.00, he consented to do an illegal act. The Court can only conclude that the version of the prosecution that an entrapment was set up to apprehend the accused in the act of selling of ** (peddling) or pushing marijuana cigarettes is more in keeping with logic and in the natural course of things. * * * "

Dag-uman has appealed his conviction and in this Court insists that his version of the material events -- which basically is that he was induced by Narcom agents to commit the crime, as above intimated-- should have been duly appreciated and consequently should have swung the balance in his favor. He also contends alternatively, that the Trial Court should have credited him with "the full time during which he underwent preventive imprisonment."

After a thoroughgoing review of the record, the Court is satisfied that the Trial Court's judgment has been correctly rendered and is not tainted by any reversible error in its essential conclusion of the appellant's guilt of the crime.

Nothing in the record warrants disbelief in the evidence given by the Government witnesses. Said witnesses were police officers who, acting on disclosures of undercover informants (their so-called "poseurs-buyers," or "assets"), had planned the entrapment of the appellant and carried it out successfully; they had personally seen the accused hand over to their designated "poseur-buyer" six (6) sticks of hand-rolled marijuana cigarettes and accept payment therefor in marked five-peso bills; that on apprehending the appellant, and searching him, they had taken from his possession the marked money, as well as ten (10) more sticks of handrolled marijuana; and the purchased cigarettes were subsequently shown by expert scientific examination to be indeed marijuana cigarettes. There is nothing in the record, too, on which to build and develop a theory of a "frame-up;" in fact, it is admitted on all sides that there was no prior acquaintance between the appellant and the police officers who had carried out his entrapment.

In contrast, the appellant's proofs attempt to substantiate an inherently improbable proposition, one that on its face immediately engenders skepticism and incredulity. His story of how he came to be in possession of the marijuana and the marked money is narrated by his counsel, as follows:[1]

On October 2, 1989, while he was drinking at a neighbor's store, three (3) friends of his came with two (2) strangers. "They all joined him and they finished drinking at about 9:00 p.m. He then left to go home and slept. That night was the eve of the barangay fiesta and there was a dance. On the following day, October 3, 1989 at about 11:00 o'clock, he was at the store of his neighbor Henry Hagonos. He was just sitting there when two young men approached him. They were the two (2) persons who were in company of his friends the night before. These two (2) men told him that they passed their night in the house of his (accused) friends. Then, they asked him if he has some marijuana cigarettes and he replied that he is not an addict. He was asked to buy marijuana cigarettes at the back of the public market by giving him P15.00 and compelled him to go to the place. He was further told that at the back of the public market, somebody will approach him, the person selling marijuana. He did obey the instructions ** . He rode on a motorcab and then he went to the back of the

public market. Upon arriving at the place, someone who was wearing a hat approached him and he told the former that he was requested to buy marijuana and the person asked him, 'how much,' to which he replied, 'I have P15.00, sir.' The person went to a path where there was a house and when he returned, he handed to him (accused) the marijuana already wrapped and he does not know the number of cigarette sticks. He then took a motorcab and returned to their house. While there, the two (2) persons called him and inquired if he got the marijuana sticks and he answered, 'Yes, here it is'. When he was handing the marijuana to the two (2) persons, 'the latter held his hands and (Sgt.) de Guzman pulled out his firearm and handcuffed him and informed him that he is an RSAF and they brought him to Cotta PC headquarters. This de Guzman suddenly appeared at the scene. Only the marijuana he bought at their request which he was about to hand in was taken from his pocket since he has no money at the time. ** ** He did not sell to a poseur-buyer on October 3, 1989 sticks of marijuana. 'The truth is that he was only requested to buy marijuana cigarettes. He later came to know that these two (2) persons were assets of the PC.

"** **. Although he is aware that marijuana cigarettes are prohibited and he may be arrested for its possession, he consented to buy because they (two persons) prevailed on him to buy it for them. He did not know the person from whom he is going to buy the marijuana sticks. This man just called him. There are many drug pushers who will call you at the place behind the market, according to the two (2) persons who requested him to buy. He did not know Sgt. de Guzman and Sgt. Mugot on October 3, 1989. He has no misunderstanding with them. ** **."

The appellant's story cannot be accepted. It is quite obviously a feebly contrived attempt to explain away his possession of marijuana and his act of selling it. The story is so far contrary to human experience as to call for immediate rejection; and the Trial Court was quite correct in so rejecting it.

Also meriting rejection is the appellant's contention that the fiscal's failure to present the so-called "poseurs-buyers" is fatal to the prosecution. The relevant information acquired by said "poseurs-buyers" was equally known to the police officers who gave evidence for the prosecution at the trial. They all took part in the planning and implementation of the operation, and all were direct witnesses to the actual sale of the marijuana cigarettes, the appellant's arrest immediately thereafter, and the recovery from him of the marked money and other marijuana cigarettes. The testimony of the "poseurs-buyers" was not therefore indispensable or necessary; it would have been cumulative merely, or corroborative at best. Besides, as the Solicitor General points out, "The reason the civilian poseur-buyers were not presented as witnesses was because--

one was already dead, mercilessly gunned down by the relative of an accused in another drug case, after testifying in that case also as poseur-buyer. The other poseur-buyer's identity is naturally being protected as his life is also threatened (May 18, 1990 tsn, p. 6-7; June 21, 1991, tsn, p. 7). **."

As regards the appellant's other contention that he should have been credited with "the full time during which he underwent preventive imprisonment," suffice it to point out that this is legally proper only if he had voluntarily agreed in writing to abide by the same disciplinary rules imposed on convicted prisoners (subject to certain exceptions); otherwise, as also correctly held by the Trial Court, he may be credited only with four-fifths (4/5) of the time of such preventive imprisonment.[2]

The Court notes that the appellant was sentenced to reclusion perpetua. The sentence should have been life imprisonment, which is that provided by the law under which he was convicted, R.A. 6425.

WHEREFORE, except for the modification that the appellant's sentence should be life imprisonment instead of reclusion perpetua, the appealed judgment of the Regional Trial Court at Ozamiz City (Branch 15) in Criminal Case No. OC-903, dated October 8, 1990, is AFFIRMED in toto, with costs de officio.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Appellant's Brief, pp. 6-7, in relation to TSN, Sept. 12, 1990, pp. 2-13

[2] Art. 29, Revised Penal Code as amended by RA. No. 6127, and further amended by EO No. 214, prom. July 10, 1987, reading as follows: " ** Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except ** : 1. When they are recidivists, or have been convicted previously twice or more time of any crime; and 2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily. If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment." (*Italics supplied*)

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