

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO CANELA Y ARANETA, ACCUSED-APPELLANT.

G.R. No. 97086. May 08, 1992

Ponente: NOCON, J.

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NOCON, J.:

Subject of this appeal is the decision of the Regional Trial Court, Branch 56, Lucena City, wherein appellant Edgardo Canela was found guilty beyond reasonable doubt of the crime penalized under Article II, Section 4 of Republic Act No. 6425, as amended by P.D. No. 1675, otherwise known as the Dangerous Drugs Act of 1972, under the information which reads:

"That on or about the 17th day of May 1988, in the City of Lucena, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, for and in consideration of P20.00, sold and delivered, to another, that is, to one Sgt. Dominador Cruz, a PC Narcom Agent of Camp Nakar, Lucena City, posing as buyer, dried marijuana fruiting tops, weighing approximately 5 grams, in violation of the aforementioned law.

"Contrary to law".

Accused-appellant pleaded "NOT GUILTY" to the offense charged and, after trial, the court a quo rendered judgment against him, the dispositive portion of which reads:

"WHEREFORE, by the evidence adduced, the Court finds Edgardo Canela guilty beyond reasonable doubt of the crime penalized under Article II, Section 4 of Republic Act 6425 as amended by P.D. No. 1675, otherwise known as the Dangerous Drugs Act of 1972, and accordingly sentences him to reclusion perpetua, and to pay a fine of not less than P20,000.00".

The People's version of the facts is as follows:

Acting on an information that a certain Edgar was peddling marijuana at the corner of Claro M. Recto St., Lucena City, a team of Narcotics Command (hereinafter referred to as NARCOM) agents composed of Sgts. Dominador Cruz, Elpidio Anasta, Ramoncito Yeban and Iluminado Evangelista was formed to conduct a "buy--bust" operation on May 17, 1988.

A mission order was accordingly issued by Captain Rodolfo Basco of the Quezon NARCOM wherein Sgt. Dominador Cruz was to act as a poseur-buyer. A dragnet was set up where a team was deployed at different strategic places near the Supreme Transit Terminal where the intended sale was to take place.

Across the Supreme Transit terminal is a billiard hall where a civilian informer contacted the accused and for a while the two conversed after which accused-appellant approached the poseur-buyer. The latter asked accused-appellant if he could buy two (2) tea bags of marijuana. Accused-appellant left for a while and after about three (3) minutes, he (accused-appellant) returned with the marijuana, gave the same to Sgt. Cruz and the latter gave him two (2) marked ten peso bills.[1] Then a certain Sgt. Elpidio Anasta approached the two, searched the

accused and recovered from him the marked money paid by the poseur-buyer, a tea bag containing marijuana, one stick of marijuana cigarette and rolling papers.

Accused-appellant however, disputes the foregoing facts. Instead, he stated that what transpired is as follows:

On May 17, 1988, accused-appellant went to the billiard hall fronting the Supreme Transit bus terminal along C.M. Recto in Lucena City for a meeting with his business partner Antonio Guevarra, which had been scheduled previously. As accused-appellant arrived early for the meeting, he sat on the long bench on the side of the billiard hall where two persons were already seated to his right.

Shortly thereafter, a purported civilian agent of the local NARCOM by the name of Bong Alday entered the billiard hall and approached an unidentified person seated at the far end of the bench. Accused-appellant saw Bong Alday handing folded money to the unidentified person who after receiving the money, stood up and pulled something from his pocket.[2] As he was about to hand it to Bong Alday, another purported NARCOM civilian agent by the name of Ato Angeles, suddenly grabbed the right arm of the unidentified person. The latter struggled to extricate himself and eventually got free and ran towards the rear of the billiard hall along the path where the accused-appellant was. As the unidentified person ran past the latter, the former dropped the folded money and two (2) articles wrapped in a plastic bag at or near the accused-appellant's feet, or approximately less than a foot away. The folded money and the objects were picked up by Angeles who was then in pursuit of the two (2) persons. Not being able to catch up with the two persons who fled, Bong Alday and Ato Angeles returned to the billiard hall after twenty (20) minutes. They approached accused-appellant and asked him if he knew the identities of the two persons. Accused-appellant answered in the negative. Angered by the response, Angeles cursed him and said, "Putang ina mo, tatangi ka pa ay kitang-kita ko na sa iyo ipinasa ang marijuana." Accused-appellant then reasoned to the agents that the marijuana was not passed to him but instead dropped by the unidentified person, and that the same was picked up by Angeles. Irked by his reasoning, Angeles told accused-appellant, "Putang ina mo, magmamaang-maangan ka pa ay totoo namang nagmamarijuana ka. Pilosopo ka pa". At this juncture, the NARCOM agent grabbed the accused-appellant by his left arm and forced him out of the billiard hall. Accused-appellant protested and maintained that he has not committed any crime, but Angeles pulled his gun and threatened to shoot him if he will not go along. Out of fear, accused-appellant went with Angeles to the local NARCOM Headquarters. Upon arrival thereat, Angeles indorsed accused-appellant to Sgt. Dominador Cruz, who then conferred with Angeles for about fifteen minutes. Thereafter, Sgt. Cruz searched accused-appellant, took his wallet and money amounting to P80.00 and interrogated him as to identities and whereabouts of the persons who escaped the NARCOM agents. When accused-appellant answered the questions propounded to him in the negative, Sgt. Cruz angrily uttered the following remarks, "Tarantado ka, huwag kang magbubulaan, tutoo namang nagmamarijuana ka rin." Sgt. Cruz continued interrogating accused-appellant, and when the latter continued to answer the questions in the negative, the former slapped him twice and left the room. The following day, accused-appellant was brought once again to the room of Sgt. Cruz and there he was told that he could be released provided he can come up with the amount of P12,000. Accused-appellant was not able to come up with the said amount.

After carefully reviewing the records of the case, We hold the accused-appellant innocent. He was made the fall-guy for an unsuccessful NARCOM buy-bust operation.

The conflicting and inconsistent testimonies of the prosecution witnesses on material points, such as the formation of the team, the composition of the team, on the presence of the civilian informer with the team, the marked money used, time of the operation, on the conduct of the exchange, the articles seized from accused-appellant, and the alleged target of the buy-bust operation, attest to the weakness of the prosecution's case, and thereby engendering doubt as to the guilt of the accused-appellant.

The prosecution relied heavily on the testimonies of P/Lt. Tita Advincula, Sgt. Dominador Cruz, Sgt. Elpidio Anasta and Sgt. Rico Atienza. While Sgt. Ramoncito Yeban was also presented, the prosecution sought to strike-out his testimony from the record on the pretext that he was a hostile witness.[3] No order to strike-out Sgt. Yeban's testimony was however given by the trial court.

On the formation of the team, Sgt. Cruz testified that the team for the buy-bust operation was organized because of a mission order issued by Captain Roberto Basco.[4] This was contradicted by Sgt. Anasta, however, who testified that the team was formed as a result of an information received by Sgt. Evangelista that a certain Edgardo Canela is selling prohibited drugs at Claro M. Recto in front of the Supreme Transit bus terminal. No mention was ever made on the alleged mission order.[5]

On the composition of the team, Sgt. Dominador Cruz testified that the following NARCOM agents conducted the "buy-bust" operation: Sgts. Cruz, Evangelista, Yeban, Anasta and Doctor,[6] while Sgt. Elpidio Anasta testified on direct examination that the above-named NARCOM agents with the exception of Sgt. Doctor conducted the operation.[7] However, on cross-examination, Sgt. Anasta testified that aside from those he mentioned, Sgt. Atienza was with them in the operation.[8] He also testified that Sgt. Doctor remained in the office at the time the buy-bust operation was conducted. On the other hand, Sgt. Rico Atienza testified that the NARCOM agents who conducted the operation were Sgts. Evangelista, Cruz, Anasta and Yeban.[9] At that time, he was the duty investigator and he stayed at the office while the "buy-bust" operation was being conducted.[10] As to Sgt. Doctor's participation, he testified on cross examination that Sgt. Doctor was a member of the team, but stayed in the office.[11] Sgt. Doctor, however, denied that he is a member of the "buy-bust" team; that he was not present at the time of the alleged "buy-bust" operation; and that he stayed in his office for a while and only came to know of the "buy-bust" operation on the following day, May 18, 1988.[12]

On the civilian informer who was with the team, Sgt. Cruz testified on cross examination that their civilian informer was already in the office in the morning of May 17, 1988 and who later accompanied the team in the "buy-bust" operation.[13] This was contradicted by Sgt. Anasta who maintained that no civilian informer was with them at the time of the "buy-bust" operation.[14]

On the marked money used by the team, Sgt. Cruz testified that the ten peso bills used in the operation came from their commanding officer, Capt. Rodolfo Basco. When he received the money, there were no markings on it, but the serial number of the money was recorded in the log book.[15] On the other hand, Sgt. Atienza testified that the marked money was given by Sgt. Evangelista to him which he initialed[16] and then gave the marked money to Sgt. Cruz before the operation.

On the time of operation, Sgt. Cruz testified that the "buy-bust" operation took place at around 10:00 o'clock in the morning.[17] On cross examination, Sgt. Atienza testified that the "buy-bust" operation took place at around "171430" hrs or 2:30 P.M., the time stated in the booking sheet.[18]

On the conduct of the exchange, Sgt. Cruz said it was the civilian informer who approached the accused-appellant. He did not introduce the accused-appellant to the informer because the latter left immediately after approaching the accused-appellant. Sgt. Cruz asked the accused-appellant if he was selling marijuana. Instead of answering, the accused-appellant then went back to the billiard hall and after three (3) minutes, he came back with two (2) teabags of marijuana.[19] Contrary to Sgt. Cruz' version, Sgt. Anasta testified that among the members of the team present during the exchange, he was the nearest to Sgt. Cruz. That at the time of exchange, Sgt. Cruz was alone; that the accused-appellant approached Sgt. Cruz, who apparently had the marijuana with him, because the accused-appellant never left the billiard hall during the exchange.[20]

On the articles seized from the accused-appellant, Sgt. Anasta stated during the direct examination, that he

recovered from the right hand of the accused-appellant the marked money, a teabag of marijuana, a stick of cigarette and a rolling paper.[21] However, on cross-examination Sgt. Anasta testified that what he recovered from the accused-appellant were the marked money, two (2) teabags of marijuana, four (4) rolling papers, and two (2) sticks of suspected marijuana.[22] Sgt. Atienza on the other hand testified that what Sgt. Anasta turned over to him during the investigation were two (2) marked ten peso bills, a small tea bag of marijuana and one stick of suspected marijuana cigarette.[23]

On the alleged identity of the subject target of the alleged "buy-bust" operation, Sgt. Cruz testified that his commanding officer, Capt. Rodolfo Basco ordered him to apprehend accused-appellant whom he specifically identified by name.[24] Sgt. Yeban on the other hand, testified that it was upon the orders of Sgt. Evangelista that they conducted a surveillance on accused-appellant, whom Evangelista specifically identified by name.[25] Sgt. Anasta testified, however, that neither Sgt. Evangelista nor the alleged informant gave a description of the alleged target/subject of the surveillance, much less was the latter identified as accused-appellant. He asserted that they were not even told whether the subject/target was a male or female.[26]

All the foregoing inconsistencies on material points tend to show that the accusations against the accused-appellant are fabricated. These inconsistencies were never explained by the prosecution. Irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the culpability of the appellant and his guilt for the crime charged.[27]

Sgt. Cruz could not have acted as poseur-buyer in the buy-bust operation because at the time of the alleged operation, Sgt. Cruz was already known to the accused-appellant as a NARCOM agent.[28] It was only when accused-appellant was brought to the NARCOM headquarters that he first saw Sgt. Cruz on that day.[29]

Indeed the conflicting and inconsistent testimonies of the prosecution witnesses raise doubt as to whether a "buy-bust" operation directed at accused-appellant was indeed conducted by the team of Sgt. Evangelista. No mission order which was the basis for the formation of the team of Sgt. Evangelista was ever presented, in spite of the reservation of the prosecution to do so.[30] Its non-presentation raises a pre-sumption of its non-existence much less the organization of a "buy-bust" team led by Sgt. Evangelista.

Likewise, the NARCOM "blotter" wherein all apprehensions made by the Quezon Narcotics Command are entered and/or recorded and which Sgt. Anasta promised to bring to the court, was never presented.

The suspicion that there is no such evidence or if there is, its presentation would not support the prosecution's case, is not far fetched.

Moreover, this Court finds that the arresting officers had violated accused-appellant's rights when they failed to inform of his rights as mandated by the Constitution.

The case of *People v. Galit*[31] laid down the guidelines to be observed by police officers in making an arrest, as follows:

"At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative or anyone he chooses by the most expedient means by tele-phone if possible, or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained

in violation of the procedure herein laid down, whether exculpatory or in-culpatory, in whole or in part, shall be in-admissible in evidence."

The Constitution gave more teeth to the foregoing principle and further provided:

"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 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." [32]

In *People vs. Nicandro*, [33] this Court emphasized that the phrase "to be informed of his right to remain silent and to . . . counsel", contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.

There is no showing that accused-appellant was properly informed of his constitutional rights. While Sgt. Atienza claimed that he informed the accused-appellant of his constitutional rights when he prepared the booking sheet and arrest report, a perusal of said document [34] failed to show that accused-appellant was informed of said rights.

And this was eventually admitted by Sgt. Atienza on cross-examination. Not only did he not inform accused-appellant of his rights, he also failed to explain said rights to him. He simply made the accused read the same. [35] Even when accused-appellant was made to sign on the ten-peso bills allegedly confiscated from him in the buy-bust operation; he was only made to read his constitutional rights. [36]

Making accused-appellant read his constitutional rights is simply not enough. The prosecution must show that accused-appellant understood what he read, and that he understood the consequences of his waiver.

The failure of the arresting officers to follow established procedure in dealing with persons they may have arrested engenders doubts as to the veracity of their claim that they arrested accused-appellant after he had tried to sell them marijuana.

While this Court commends the efforts of law enforcement agencies who are engaged in the difficult and dangerous task of apprehending and prosecuting drug-traffickers, it cannot also close its eyes nor be deaf to the many reports of false arrests of innocent persons for extortion and blackmail, and in some instances, to satisfy some hidden personal resentment of the "informer" or law enforcer against the accused. Courts should be vigilant and alert to recognize trumped-up drug charges lest an innocent man, on the basis of planted evidence, be made to suffer the unusually severe penalties for drug offenses. [37]

WHEREFORE, the decision appealed herefrom is hereby REVERSED, and the accused-appellant, Edgardo Canela, is hereby ACQUITTED on reasonable doubt of the crime charged. Costs de officio.

SO ORDERED.

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

[1] Exhibit "D-1" and "D-2".

[2] T.S.N., March 20, 1989, pp. 36-38.

[3] T.S.N., December 13, 1988, p. 3.

[4] T.S.N., November 10, 1988, pp. 4-5; T.S.N., December 14, 1988, pp. 4-6.

- [5] T.S.N., December 13, 1988, p. 5.
- [6] T.S.N., November 10, 1988, p. 5.
- [7] T.S.N., December 13, 1988, p. 5.
- [8] T.S.N., January 18, 1989, pp. 6; 10-11.
- [9] T.S.N., December 27, 1988, p. 5.
- [10] Id., at p. 6.
- [11] T.S.N., January 26, 1989, pp. 49-51.
- [12] T.S.N., February 12, 1990, pp. 8-10.
- [13] T.S.N., December 14, 1988, pp. 9-12.
- [14] T.S.N., January 18, 1989, pp. 7-9.
- [15] T.S.N., December 14, 1988, pp. 46-47; T.S.N., November 10, 1988, p. 10.
- [16] T.S.N., January 26, 1989, pp. 25-27.
- [17] T.S.N., November 10, 1988, p. 4.
- [18] T.S.N., January 26, 1989, pp. 20-21.
- [19] T.S.N., November 10, 1988, pp. 7-9.
- [20] T.S.N., January 18, 1989, pp. 24-26.
- [21] T.S.N., December 13, 1988, p. 10.
- [22] T.S.N., January 18, 1989, p. 28.
- [23] T.S.N., January 26, 1989, pp. 31-32.
- [24] T.S.N., November 10, 1988, p. 5.
- [25] T.S.N., December 7, 1988, p. 7.
- [26] T.S.N., December 13, 1988, pp. 24-25.
- [27] *People vs. Caboverde*, 160 SCRA 550 (1988); *People vs. CFI of Rizal, Branch IV, Quezon City*, 161 SCRA 249, (1988).
- [28] T.S.N., March 20, 1989, pp. 49-50; 62-67.
- [29] Id., at p. 61.
- [30] T.S.N., November 10, 1988, p. 4.
- [31] L-51770, 135 SCRA 465, (1985).**
- [32] Art. III, sec. 12, par. 1.

[33] L-59378, 141 SCRA 289, (1986).

[34] Exhibit "1".

[35] T.S.N., January 26, 1989, pp. 21-22.

[36] Id., at pp. 45-46.

[37] People vs. Garcia, G.R. Nos. 64867-68, 172 SCRA 262 (1989); People vs. Taruc, L-74655, 157 SCRA 179 (1988); People vs. Ale, L-70998, 145 SCRA 50 (1986).

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