

PEOPLE OF THE PHILIPPINES, VS. NELSON COLLANTES Y CATAPUNGAN ALIAS “BOY,” RESPONDENTS.

G.R. No. 97146. May 08, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the decision dated October 25, 1990 of the Regional Trial Court of Zamboanga City, Branch XII, finding appellant Nelson Collantes guilty beyond reasonable doubt of drug-pushing, a violation of Section 4 of Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of life imprisonment and pay a fine of P20,000.

The information which was filed against the appellant on August 28, 1989 by the 4th Assistant City Fiscal of Zamboanga City reads as follows:

“That on or about August 22, 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there wilfully, unlawfully and feloniously sell to Sgt. PEDRO S. MAMUAD six (6) sticks of handrolled marijuana cigarettes, knowing same to be a prohibited drug.” (p. 15, Rollo.)

The facts are recited in the appealed decision as follows:

“Prosecution evidence shows that in the morning of August 18, 1989, a Confidential Informant (CI) reported to SSgt. Amos Foncardas at the NARCOM office in Upper Calarian, Zamboanga City, the selling by one ‘Alias Boy’ of marijuana in Doña Juliano Uro Drive at Tetuan, Zamboanga City. SSgt. Foncardas, then, introduced Sgt. Pedro Mamuad, Jr. another NARCOM agent, to the Confidential Informant and instructed Sgt. Mamuad to go with the CI and conduct a surveillance on ‘Alias Boy.’ SSgt. Foncardas was the team leader of Sgt. Mamuad. So in the afternoon of August 18, 1989, Sgt. Mamuad and the CI proceeded to Doña Uro Drive, Tetuan, and stood at the store thereat. While watching at the store, the CI saw ‘Alias Boy’ and the CI told Sgt. Mamuad that he was the ‘Alias Boy’ selling marijuana. Mamuad and the CI stood by and watched the movement in the vicinity. Mamuad saw certain teenagers with ‘Alias Boy,’ the teenagers smelling something coming from ‘Alias Boy.’

“Sgt. Mamuad returned to the Narcom office and reported to SSgt. Amos Foncardas that the CI was able to pinpoint to him what they were after. SSgt. Foncardas instructed Mamuad to conduct further surveillance the following day, August 19, 1989, which he did. Mamuad again saw ‘Alias Boy’ near the store with teenagers. So on August 21, 1989, about 6:45 SSgt. Amos Foncardas instructed Sgt. Mamuad to conduct a test buy on ‘Alias Boy.’ Sgt. Mamuad and the CI arrived at the area - Doña Uro drive, Tetuan - about 7 o'clock in the evening. When the two arrived ‘Alias Boy’ was in the area and the Confidential Informant (CI) was able to talk to ‘Alias Boy.’ The CI brought ‘Alias Boy’ to Sgt. Mamuad and introduced Mamuad as a user of marijuana. Sgt. Mamuad then told ‘Alias Boy’ that he wanted to buy P5 worth of marijuana. ‘Alias Boy’ gave Mamuad three sticks of marijuana and Mamuad gave him the P5.00. With that done, Sgt. Mamuad returned to the Narcom Office at Calarian, reported to SSgt. Foncardas, turned over to him the three sticks of marijuana.

“About 9:00 o'clock in the morning, August 22, 1989, a buy-bust operation was planned and SSgt. Foncardas briefed his team on the operation. The team was composed of SSgt. Amos Foncardas, SSgt. Norberto Francia and Sgt. Pedro S. Mamuad. Sgt. Mamuad was assigned to act as the poseur buyer. The three-men NARCOM team left their office about 6:45 o'clock evening of August 22, 1989, riding one motorcycle which was driven by SSgt. Foncardas. Upon reaching the target area in Tetuan, Mamuad was given the two pieces of P5 bill to serve as the buy-bust money. Then Foncardas instructed Mamuad to go ahead of the two other members of the team. Mamuad proceeded to the Store at Doña Uro Drive, Tetuan.

“From the store where he was standing, Mamuad saw a group of four persons in the volleyball court located about three meters from the store. Mamuad recognized ‘Alias Boy’ among the four persons in the volleyball court.

“Sgt. Mamuad approached the group in the volleyball court. ‘Alias Boy’ saw him and ‘Alias Boy’ stood up. Mamuad told ‘Alias Boy’ that he wanted to buy P10 worth of marijuana. He, then, gave ‘Alias Boy’ the two P5 bills. ‘Alias Boy’ got six sticks of marijuana cigarettes from the right front pocket of his short pants and gave them to Sgt. Mamuad. Mamuad placed the handrolled marijuana cigarettes in the left front pocket of his polo shirt.

“Then Sgt. Mamuad lighted a Hope cigarette and his two companions - Foncardas and Francia ? went to Sgt. Mamuad and ‘Alias Boy’ introduced themselves as NARCOM agents and arrested ‘Alias Boy.’ Foncardas made a body search on ‘Alias Boy’ and recovered the two P5 bills from the back right pocket of ‘Alias Boy’ short pants. Mamuad, then, turned over to Foncardas the six sticks of marijuana cigarettes he had bought from ‘Alias Boy.’

“‘Alias Boy’ was, then, brought to the NARCOM office at Calarian, Zamboanga City, aboard a service jeep, Foncardas and Francia were with ‘Alias Boy’ inside the jeep, together with the jeep's driver. Mamuad drove in the motorcycle alone to go to their office. In the NARCOM office, ‘Alias Boy’ was investigated by SSgt. Francia.” (pp.16-19, Rollo.)

Athena Elisa P. Anderson, Forensic Chemist/Document Examiner of the PC/INP (now PNP) Laboratory Services Recom-9, identified Chemistry Report No. D-071-89, as the one she issued after conducting an examination on the specimens submitted which gave positive results for marijuana, a prohibited drug (pp. 2-6, TSN, October 10, 1989).

On October 25, 1990, the trial court rendered judgment finding the appellant guilty beyond reasonable doubt of having violated Section 4 of Article II, Republic Act No. 6425 (Dangerous Drugs Act) and sentenced him to suffer the penalty of life imprisonment. The dispositive portion of the decision reads:

“WHEREFORE, finding Nelson Collantes y Catapungan guilty beyond reasonable doubt of having violated Section 4 of Art. II, Rep. Act No. 6425 as charged, he is SENTENCED to serve life imprisonment and to pay the fine of Twenty Thousand Pesos (P20,000.00). Subsidiary imprisonment need not be served in case the fine is not paid due to insolvency.

“The nine (9) sticks of marijuana cigarettes used as exhibits in this case are ordered to be burned.” (p. 38, Rollo.)

Collantes appealed in due time, alleging that the trial court erred:

1. in believing the prosecution's version that there was a buy-bust operation conducted by the NARCOM agents on August 22, 1989;
2. in giving weight to the inconsistent and conflicting testimonies of the prosecution witnesses and in disregarding the evidence for the defense; and

3. in convicting accused-appellant of violation of Sec. 4, Article II of R.A. 6425 despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

The credibility of the law enforcement agents who conducted the buy-bust operation is the main issue in this appeal. The determination of that issue is addressed to the sound discretion of the trial court (*People vs. Escabarte*, 158 SCRA 602).

This case presents no reason to disturb the rule that the findings of the trial court on the issue of credibility of the witnesses' testimonies are accorded great weight and respect on appeal because the trial judge had first-hand opportunity to examine and observe the conduct and demeanor of the witnesses during the giving of their testimonies (*People vs. Rodriguez*, 172 SCRA 742; *People vs. Tejada*, 170 SCRA 497).

Appellant's contention that there were serious inconsistencies in the testimonies of the prosecution witnesses/police officers cannot save the day for him. The contradictory testimonies of the witnesses on whether a flashlight or a matchbulb was used in making the body search and whether the marked money was found in appellant's wallet or in his pocket were insubstantial, hence, they do not affect the witnesses' credibility (*People vs. Bardon*, 165 SCRA 416). On the other hand, such minor inconsistencies in the testimony of a witness may be an indication of truthfulness (*People vs. Ausan*, 152 SCRA 52).

Appellant's contention that the testimonies of the two-policemen-companions of Sgt. Mamuad were hearsay because they only watched the buy-bust operation from a distance, has no merit. Those policemen-companions of Sgt. Mamuad actually witnessed the buy-bust operation with their own eyes but necessarily from a distance, for, otherwise, their close proximity to the operation would have given it away. They were there merely to watch the transaction from a distance, to act as furtively as possible, and to close in only when the opportunity arose.

Appellant questions the non-presentation of the informer who allegedly introduced Sgt. Mamuad as a "user" to appellant. Informers are never presented in court because of the need to preserve their cover so they can continue their invaluable service to the police (*People vs. Consuelo*, 184 SCRA 402). The determination of who should be utilized as witnesses by the prosecution is addressed to the sound discretion of the fiscal or prosecutor handling the case (*People vs. Nabunat*, 182 SCRA 52). As the fiscal had enough other witnesses to prove the criminal operation of the appellant, he could dispense with the informer's evidence which would have been merely corroborative.

Appellant's allegation that he could not have sold marijuana to Sgt. Mamuad because he knew him to be a NARCOM agent was not given any credit by the trial court. Neither should we.

The presumption that the police officers regularly performed their duty (*People vs. Macuto*, 176 SCRA 762), has not been overturned. We find appellant Collantes guilty beyond reasonable doubt of selling marijuana cigarettes in violation of Section 4, Article II of the Dangerous Drugs Act (Rep. Act No. 6425).

WHEREFORE, the decision of the Regional Trial Court of Zamboanga City in Criminal Case No. 9431 is AFFIRMED in toto with costs against the appellant.

SO ORDERED.

Narvasa, C.J., Cruz, Medialdea, and Bellosillo, JJ., concur.

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