

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX QUERRER, DEFENDANT-APPELLANT.

G.R. No. 97147. July 15, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Alex Querrer, was charged with violation of Section 4, Republic Act No. 6425, as amended, in Criminal Case No. D-9877 before the Regional Trial Court, First Judicial Region, Branch 40, Dagupan City. The information filed in said case reads, as follows (p. 3, Rollo):

"That on or about the 25th day of March, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALEX QUERRER, did then and there, wilfully, unlawfully and criminally, sell and deliver dried 'marijuana' leaves or Indian hemp contained in a matchbox, without authority to do so.

Contrary to Sec. 4, R.A. 6425, as amended."

After trial on the merits, the trial court rendered its decision on December 28, 1990, the dispositive portion of which reads, as follows (p. 15, Rollo):

"WHEREFORE, the accused ALEX QUERRER is found guilty beyond reasonable doubt of Violation of section 4, Republic Act No. 6425, as amended; otherwise known as the Dangerous Drugs Act of 1972 and hereby sentences him to suffer life imprisonment and to pay a fine of P30,000.00 with subsidiary imprisonment in case of insolvency; and to pay the costs.

"SO ORDERED."

Hence, the present appeal.

The facts of this case, as found by the trial court are, as follows (pp. 11-12, Rollo):

"Evidence for the prosecution tends to show that on March 25, 1990, at 4:30 P.M., the Narcotics Section Dagupan City Police Station conducted a 'buy bust' operation at Fernandez Street, Dagupan City, against the accused Alex Querrer, a resident of Rivera Street; that Patrolman Velasquez, a member of the Narcotics team pretended to buy marijuana leaves from the accused with the use of marked money; that Patrolman Velasquez, with an asset informer approached the accused; that the rest of the team led by Cpl. Federico Mina were positioned strategically within sight of the accused; that Cpl. Mina and Patrolman Arzadon were (in front) of the Wellington Store, while Sgt. Orlando Garcia and patrolman Gaspar Dacpano were at the lobby of Rodela Theatre; that the accused was in between the Rodela Theatre and the Wellington Store; that the accused ordered a certain boy to get the stuff (marijuana leaves); that the boy handed the marijuana leaves in a matchbox to the accused and (who) in turned (sic) gave the matchbox to the asset and the asset gave the boy P20.00 marked money (who) in turn gave it to the accused; that immediately, the Narcotics team rushed towards Alex Querrer and the asset; that Cpl. Federico Mina took the money from Alex Querrer, and the matchbox of marijuana leaves (was) confiscated from the accused when he was apprehended; that the

Narcotics team and the accused proceeded to Poblacion, Calasiao, because the accused led them to the source of marijuana leaves but found nothing; that the accused was brought to the police station and he was investigated; that the P20.00 bill with serial No. GV242353 was marked with an initial of Cpl. Andaya and the date 3/25/90; that the accused was photographed as well as the money and the matchbox of marijuana leaves; that an inventory of confiscated marijuana leaves was made; that a communication or letter was prepared by investigator Dacpano and sent to the Executive Director of Dangerous Drug Board in Manila; that an inventory receipt of the confiscated marijuana leaves was also prepared; and that the Forensic Chemistry Report by Demeline Denton-dela Cruz, NBI, found the specimen, positive result for marijuana.

"Evidence for the defense tends to show that the accused Alex Querrer is 30 years old, single, laborer and resident of Fernandez street, Dagupan City; that the accused know(s) Federico Mina, Jr., Sgt. Garcia and Patrolman Velasquez; that he (knows) Pat. Velasquez because he was his contemporary and they used to go in the (sic) school in the University of Pangasinan; that on March 25, 1990, at 4:30 p.m. he was in a certain stall in the market where he used to work as laborer; that he denied having sold a matchbox of marijuana leaves to an asset; likewise, he denied that he was given P20.00 bill for the said (matchbox) of dried marijuana leaves; that the accused denied the testimony of Cpl. Mina, Jr. to the effect that he nodded his head to a certain Boy to sell a match(box) of dried marijuana leaves to the asset; that he denied that a matchbox of dried marijuana leaves was confiscated from him; likewise, he denied that the marked, P20.00 bill was confiscated from him; that the Boy referred to by the policeman is now dead; that it was that certain Boy who sold that marijuana leaves to the asset of the policemen; that the accused admitted that he was brought to Poblacion, Calasiao, Pangasinan by Cpl. Mina, Sgt. Garcia and Pat. Velasquez for the purpose of finding the (sic) Boy but was not able to find him."

As aforementioned, the trial court found the accused-appellant guilty as charged rationalizing, as follows (pp. 13-14, Rollo):

"From the evidence, the Court finds that the accused Alex Querrer was arrested in a buy bust operation conducted by the Narcotics Section of the Dagupan City Police Station on March 25, 1990 at Fernandez Street, Dagupan City; that when Patrolman Ireneo Velasquez who pretend(ed) to be a buyer together with an asset/informer approached the accused, the latter ordered Boy to get the stuff (Marijuana leaves); that Boy delivered to the asset the marijuana leaves in a matchbox (Exhibit 'E') and received the P20.00 marked money from the asset which Boy gave to the accused; that at this juncture, the policemen led by Cpl. Federico Mina, Jr. arrested the accused and recovered from him the P20.00 bill marked money (Exhibit 'H') and the asset handed the matchbox of marijuana leaves; that also recovered from the accused (were) two (2) other (matchboxes) of marijuana leaves; that specimen of the marijuana flowering tops and leaves stuffed in a matchbox recovered from the accused was tested by the National Bureau of Investigation Forensic Chemist and gave a positive result for marijuana (Exhibit 'F'); that colored pictures (Exhibit 'G') were taken of the accused Alex Querrer (exhibit 'G-1') holding a partly open(ed) (matchbox) with 'guitar' marking showing a discern(i)ble small brownish mutilated object() in his right hand (Exhibit 'G-2') and two (2) other partly opened (matchboxes) showing similar substance (Exhibit 'G-3') and picture of one (1) partly open(ed) (matchbox) and a P20.00 bill (Exhibit 'D'); that an inventory receipt (Exhibit 'G-4') dated March 26, 1990 was signed by Sgt. Orlando Garcia (Exhibit 'D-1') and Cpl. Federico Mina, Jr., (Exhibit 'D-2'); and that pursuant to law a letter dated March 26, 1990 (Exhibit 'C') signed by Patrolman Gaspar Dacpano, the investigator was sent to the Executive Director, Dangerous Drugs Board, Manila.

"It is undisputed that the findings that the marijuana subject of this case is one of the prohibited drugs under Republic Act. No. 6425, as amended; that the accused Alex Querrer was arrested in connection with the buy-bust operation conducted by the Dagupan City Police authorities on March 25, 1990, at 4:30 p.m. at Fernandez Street, Dagupan City; that Cpl. Federico Mina, Jr., Sgt. Orlando Garcia and Patrolman Ireneo Velasquez actually participated in the said operation; and that the marijuana subject of this case was confiscated from the accused during the buy-bust operations.

"While it is true that the marijuana leaves were seized and confiscated by the arresting officers without a search warrant, the seizure was made contemporaneously with the arrest of the accused and at the place where the arrest was effected. The accused was lawfully arrested and search was made incident to the arrest. (Agnelio vs. U.S., 269 U.S. 30). Officers may search premises of an accused even without a warrant if made contemporaneous with the arrest and at the place where the arrest occurs. (U.S. vs. Coffman, 50 Supp. 823, July 6, 1953).

"As the taking of the dried marijuana leaves, was made contemporaneous with the arrest, the seizure of said dried marijuana leaves does not constitute illegally seized evidence.

"In the case at bar, the arrest of the accused could fall under the pertinent exception provided under Rule 113, Sec. 5, (a). Par. (a) addresses a situation where a crime is committed in the presence of the officer. It could be said that the accused was committing a crime when he ordered Boy to get the stuff (marijuana leaves) and to deliver the same to the asset of the policemen and received from Boy the P20.00 bill marked money as payment thereof.

"The bare denial of the accused can not prevail over the positive testimony of the arresting officers. No evidence has been adduced by the defense to prove that the prosecution witnesses (had) ill motive to testify against the accused.

"The Court finds the degree of proof which after investigations of the whole record produces moral certainty in an unprejudiced mind of accused's culpability.

"The presumption of innocence of the accused has been successfully overwhelmed by evidence beyond reasonable doubt to establish guilt (.)"

In this appeal, the accused-appellant assigns a single error committed by the trial court (p. 22, Rollo):

"I

"THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT FOR INSUFFICIENCY OF EVIDENCE."

He maintains that it was not him who sold and delivered the marijuana leaves to the asset of the police. As testified to by Cpl. Federico Mina, Jr., he (accused-appellant) never got hold of the marijuana leaves, neither the money (tsn, Nov. 5, 1990, pp. 7, 9). The testimony of Pat. Irineo Velasquez cannot be believed. It is almost impossible that he sold the marijuana leaves and received the money in the presence of the police whom he knows and who knows him.

We sustain the conviction of the accused-appellant by the trial court.

The contentions of the Office of the Solicitor General in its impressive brief has rendered unconvincing all the arguments of the accused-appellant. We, therefore, adopt it as Our own (pp. 49-53, Rollo):

"Appellant contends that his guilt has not been proven beyond reasonable doubt. In support thereof, he (capitalizes on) the testimony of prosecution witness, (Cpl.) Mina, that it was the boy, and not appellant, who handed the marijuana to the civilian informer.

"The contention is puerile.

"True it is that as testified by (Cpl.) Mina, it was the boy who handed the marijuana to the civilian informer. However, (Cpl.) Mina further testified that precisely the boy handed the marijuana to the civilian informer upon the order of appellant. Thus:

"x x x

"q. After Pat. Velasquez and the asset you mentioned approached the accused while you were around 15 meters away, what did accused Alex Querrer do?

"a. Alex Querrer ordered somebody to get the stuff, and Pat. Velasquez did (sic) the asset were able to confiscate the stuff leading to the apprehension of the accused who was also apprehended for another matchbox of marijuana.

"q. What do you mean by stuff?

"a. The suspected marijuana leaves, sir.

"q. Who give (sic) the stuff to the asset?

"a. A boy was ordered by the accused, sir.

"q. x x x." (tsn., November 5, 1990, pp. 6-7; Italics supplied for emphasis.)

"Moreover, (Cpl.) Pfc. Mina further testified that after the boy received the marked money as payment for the marijuana, the boy handed the marked money to appellant. All these thus indicate too vividly appellant's participation in the sale.

"Appellant, however, contends as incredible his having sold marijuana in the presence of policemen who he well knew and recognized, more particularly (Cpl.) Mina and Sgt. Garcia who used to visit him at his place and with (sic) whom he used to run errands for, and Pat. Velasquez who used to be his classmate at the University of Pangasinan (tsn., December 17, 1990, pp. 3?4).

"The contention is futile.

"The fact that appellant and the policemen were close acquaintances does not render it incredible for appellant to have sold old marijuana in their presence. Precisely, it is because of friendship that appellant entertained the wrong notion that the policemen, would not arrest him despite his nefarious activity of selling marijuana. Besides, it only renders all the more credible that indeed appellant when arrested was committing a crime because otherwise, the policemen who are his friends would not have implicated him with so serious an offense as drug pushing which is punishable by life imprisonment.

"In any event, the issue boils down to (the) question on the (sic) credibility of witnesses. The trial court gave credence to the testimonies of (Cpl.) Mina and Pat. Velasquez. Surely, this finding of the trial court should be sustained, consistent with the principle of long use that on matters of credibility, the finding of the trial court must be given the highest degree of respect (People v. Tintore, 111 SCRA 714; People vs. Bautista, 92 SCRA 465, 472). Besides, being police officers, (Cpl.) Mina and Pat. Velasquez enjoy in their favor the presumption of regularity in the performance of their duties (Rule 131, Section (5)(m), Revised Rules of Court)."

An additional observation weakens further the allegation of the accused-appellant that inasmuch as it was not him who sold and delivered the marijuana leaves to the asset of the police, he should not be held liable for violation of Section 4, Republic Act No. 6425, as amended.

Section 2 of said law defines the term "sell" as the act of giving a dangerous drug, whether for money or any other material consideration; and the term "deliver" as a person's act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration. It is thus impertinent that it was another person who gave the marijuana leaves to the asset of the police. What is material is that the giving of the marijuana leaves was pursuant to the instruction of the accused-appellant, as Cpl. Mina, Jr. testified to categorically.

We, therefore, find that the guilt of the accused?appellant for violation of Section 4, Republic Act No. 6425, as

amended, has been proven beyond reasonable doubt. However, the imposition by the trial court of subsidiary imprisonment in case of his failure to pay the fine, is erroneous. Article 39(3) of the Revised Penal Code is explicit that when the principal penalty imposed is higher than prision correccional, no subsidiary imprisonment shall be imposed upon the culprit (*People v. Andiza*, G.R. No. 71986-87, August 19, 1988, 164 SCRA 642; *People v. Bati*, G.R. No. 87429, August 27, 1990, 189 SCRA 97; *People v. Domingo, et al.*, G.R. No. 82375, April 18, 1990, 184 SCRA 409).

ACCORDINGLY, the decision appealed from is hereby AFFIRMED subject to the modification that the imposition by the trial court of subsidiary imprisonment is deleted.

SO ORDERED.

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

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