

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO TUBORO Y ACUNIN, DEFENDANT-APPELLANT.

G.R. No. 97306. August 03, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Mario Tuboro y Acunin appeals from the judgment of the Regional Trial Court, Branch CLXIV (164), Pasig, Metro Manila in Criminal Case No. 1161-D for violation of Section 4, Article II of Republic Act 6425, as amended, otherwise known as the "Dangerous Drugs Act."

The Information against the accused-appellant alleged:

"That on or about the 7th day of March, 1990 in the Municipality of Mandaluyong, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, did, then and there wilfully, unlawfully and feloniously sell, deliver and give away to another 100 grams of dried marijuana flowering tops placed in a sealed plastic bag with markings wrapped in a white paper which is a prohibited drug, in violation of the above-cited law." (p. 5, Rollo.)

Upon arraignment, the accused, assisted by counsel de parte, entered a plea of "not guilty."

The prosecution evidence established the following facts:

At around 5:00 o'clock in the afternoon of March 7, 1990, acting on a telephone call that a certain "Nonoy" was selling marijuana between Kapalaran and Agudo Streets in Mandaluyong, Metro Manila, P/Cpl. Genrie A. Lucero of the SWAT, Metropolitan Police Field Force, Fort Bonifacio, Makati, Metro Manila, after consultation with his superior officer Capt. Valencia, formed a team to conduct a buy-bust operation. Patrolman Antonio Dimain was designated to act as poseur-buyer while four (4) other policemen would serve as back-up. Pat. Dimain was given by Pat. Lucero marked P100 and P50 bills, which were earlier xeroxed. Pat. Dimain was further instructed to handcuff the suspect immediately upon giving him the marked bills.

The team proceeded to Mandaluyong. Pat. Dimain posted himself on Agudo Street, while his companions were fifteen (15) meters away from him. After a while, he saw the appellant, Mario Tuboro. He approached appellant and asked him if he could buy some marijuana. The appellant shelled out a plastic bag of marijuana and Pat. Dimain, in turn, gave him the marked bills. Afterwards, Pat. Dimain introduced himself as a policeman, handcuffed the appellant who resisted, but he was prevented from escaping because the other team members swooped down on the scene of the arrest.

Appellant was brought to Fort Bonifacio where he was investigated by Pat. Umali. At the same time, Pats. Lucero and Dimain executed a Joint Affidavit.

The National Bureau of Investigation, which conducted a laboratory examination of the contents of the plastic bag recovered from the appellant, found its contents positive for marijuana.

The defense's version, on the other hand, was as follows:

The appellant is a second year high school student at Ramon Magsaysay High school. He absented himself from school in the evening of March 7, 1990 because he had to finish a school project. He went to Boni Market to buy some materials which he needed for his school project. On Barangka Street going to the market, he was accosted by Cpl. Lucero and told to board a tricycle and Lucero brought him to his (Lucero's) home. From there, Lucero brought him to Fort Bonifacio in his car. Tuboro was led to Lucero's sleeping quarters and at around 11:00 p.m. was brought out and taken to the police headquarters. Up to this point in time, he was not informed by Lucero that he was under arrest for a particular offense.

At the police headquarters, Tuboro came to know that he was being detained for allegedly selling marijuana. He was allegedly mauled by three police officers who threatened to maul him again unless he admitted on tape that he sold marijuana. While being video taped, Tuboro was made to point to a package wrapped in a newspaper which, he learned later, contained marijuana. Reporters were present at the time. The records do not show, however, that Tuboro was informed of his Constitutional rights. Since that day, Tuboro has been under detention.

After the trial, the court a quo in a decision promulgated on September 11, 1990 convicted Tuboro of the crime charged and imposed upon him "the penalty of reclusion perpetua (life imprisonment) [sic] and to pay a fine of P20,000.00." (p. 21, Rollo.)

However, because he was only "a teenager barely 19 years old, a high school student with no derogatory record in his community or in school when he committed the offense charged" which was his first offense and the amount of the prohibited drug illegally sold by him was "minimal," the trial court recommended to the President, through the Secretary of Justice: "clemency for the herein accused after a few years of service of his sentence based on the humanitarian principle, as once put by the Bard, that justice must be tempered with mercy." (p. 21, Rollo.)

The accused has appealed, assailing the trial court's appreciation of the evidence against him, and assigning the following errors against its decision:

1. The court erred in ruling that the evidence presented by the prosecution is formidable.
2. The court erred in not upholding the constitutional presumption of innocence in favor of the accused.
3. The court erred in finding that "about 100 grams of marijuana were bought from the accused by the police poseur-buyer utilizing two marked peso bills.
4. The court erred in not considering that the alleged acts of confession by the accused were obtained after he was mauled by several policemen.
5. The court erred in finding that the defense of the accused that he was the victim of a "frame-up" was "puny."

Section 4, Article II of Republic Act No. 6425, as amended, provides:

"Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed." (Underscoring ours.)

The credibility of the prosecution witnesses and the weight to be given to their testimonies are matters that lie within the trial court's discretion.

The alleged inconsistencies and contradictions in the testimonies of the police witnesses involve minor details which do not dent the case of the prosecution "nor do they reflect on the witnesses' honesty" (People vs. Bernardino, 193 SCRA 448; People vs. Doctolero, 193 SCRA 632). On the contrary, they are indications of their truthfulness and candor (People vs. Kyamko, 192 SCRA 374). The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction. (People vs. Marco Polo, 147 SCRA 551). In this case, the transaction was consummated when the accused handed a bag of marijuana to the poseur-buyer in exchange for the money paid to him by the latter. The alleged inconsistencies are of no significance to us in establishing the guilt of the accused. As this Court aptly held in People vs. Macuto, 176 SCRA 762:

"What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices. The identity of the tea bag of marijuana which constitutes the corpus delicti was established before the court. This being so, the conflicting testimonies for the prosecution x x x did not discredit the whole of the prosecution evidence as being inconclusive (People vs. Tejada, G.R. No. 81520 [February 21, 1989]). The rule that the testimony of a prosecution witness may be disbelieved in some facts but may be believed in other facts is applicable to this case (People vs. Pacada, 142 SCRA 427 [1986])."

It is not incredible that the meeting between Dimain and appellant on March 7, 1990, was their first. In the nature of "buy-bust" operations, the designated poseur-buyer must be a perfect stranger to the suspected drug pusher, for normally a suspect would not transact business with known police operatives.

All important is the fact that the accused sold marijuana to the policeman without being induced to do so.

The trial court convicted the accused on the strength of the prosecution's evidence rather than on account of his weak defense.

"Well-settled is the rule that the factual findings of the trial court, which had all the opportunity to observe the behavior and demeanor of the witnesses and weigh all the evidence presented, are accorded great respect and weight in the absence of a clear showing of arbitrariness and misapprehension of the facts." (People vs. Demecillo, 186 SCRA 161, 171.)

Anent Tuboro's "frame-up" theory we held in People vs. Agapito, 154 SCRA 694, 695, that:

"In cases involving persons accused of being drug pushers or sellers, almost always the defense is that the accused was framed by the apprehending police officers. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption, that official duty has been regularly performed, exists."

Moreover, "there's nothing in the record to suggest that the police officers were compelled by any motive other than to accomplish their mission to capture appellant [Tuboro] in the execution of the crime" (People vs. Castiller, 188 SCRA 376, 382). Police officers are presumed to have performed their duties regularly in the absence of any evidence to the contrary (Rule 131, Section 5(m), Rules of Court); and their testimonies are entitled to full faith and credit (People vs. Patog, 144 SCRA 429).

The alleged denial of Tuboro's right to counsel during custodial investigation, is not a material issue in this case for no extrajudicial statement was taken from him. Besides, the trial court, in determining his culpability relied on the eyewitness' testimonies of the apprehending officers and not on any extrajudicial statement made by him.

The court is convinced that the guilt of the appellant of the crime charged had been proven beyond reasonable

doubt. However, the penalty of reclusion perpetua imposed by the trial court is improper for it is not the penalty provided in Section 4, Article II of Republic Act 6425. The penalty provided by law is "life imprisonment to death and a fine ranging from P20,000 to P30,000."

WHEREFORE, the appealed decision of the Regional Trial Court of Manila is AFFIRMED but with modification only in respect of the penalty of imprisonment imposed on him by the trial court which is hereby changed to life imprisonment. In all other respects, it is AFFIRMED. Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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