

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALIAS CRYSLER BABAC, DEFENDANT-APPELLANT.

G.R. No. 97932. December 23, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Iloilo City Branch 23 in Criminal Case No. 33079 entitled *People of the Philippines v. alias Crysler Babac (sic)*, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding the accused CRYSLER BABAC GUILTY beyond reasonable doubt for Violation of Section 4, Article II of Republic Act 6425, otherwise known as The Dangerous Drugs Act as amended and hereby sentences said accused to suffer the penalty of life imprisonment; to pay a fine of P20,000.00 without imprisonment in case of insolvency and to pay the costs.

In the service of sentence, the accused shall be credited with his preventive imprisonment under the terms and conditions prescribed in Article 29 of the Revised Penal Code, as amended.

The confiscated Marijuana (Exh. "D"), together with its plastic container are hereby declared forfeited in favor of the government, and upon the finality of this Decision, the Branch Clerk of Court, this Branch, is directed to turn over the same to the NBI through the Chief, PC Crime Laboratory, Region VI, Camp Delgado, Iloilo City, for disposition in accordance with law."

SO ORDERED."

The prosecutions evidence as summarized by the lower court in its decision is as follows:

"At about 3:00 o'clock in the afternoon on April 6, 1989, Staff Sergeant Francisco Allaga of the 6th NRU Narcotics Unit was at Brgy. Luna, La Paz, Iloilo City together with Sgts. Roberto Felecio, Gabasa and Cartel upon instruction of Lt. Suyo for them to conduct a buy-bust operation in view of reports received by the latter that selling of marijuana is rampant in said area. Sgt. Allaga who acted as poseur-buyer proceeded to a store inside the interior part of Luna Street, La Paz, Iloilo City per the sketch showed to him by Lt. Suyo. -Upon arriving thereat, he asked a boy where alias Babac is. The boy left and for about 2 minutes returned with Alias Babac. Sgt. Allaga then asked if he is Babac to which the latter replied in the affirmative asking if he (Allaga) wants to get (sic). Sgt. Allaga answered 'yes worth P60.00' as he handed to herein accused Babac the corresponding money bills which he caused to be xeroxed (Exh. "E", p. 35, rec.) before they proceeded to the area. Crysler Babac left and returned five (5) minutes later with another boy coming from the interior. Sgt. Allaga then sitting in the store saw Crysler Babac and the boy from a distance of about 15 meters. Already feeling suspicious, Babac gave the pack of marijuana (Exh. "D") to the boy who in turn gave it to him (Allaga). Sgt. Allaga walked towards Babac to apprehend him but the latter ran towards the interior part of the place and failed to arrest him. They were not also able to recover the amount of P60.00 from the accused.

S/Sgt. Fradejas of the PC Crime Laboratory at Camp Delgado, Iloilo City received the letter-request for Laboratory Examination (Exh. "B", p. 35, rec.) duly signed by the Commanding Officer of the Narcotics

Command (Exh. "B-1") together with the specimen from Sgt. Bayate at 10:10 in the morning on April 10, 1989. Lt. Zenaida Sinfuego, Forensic Chemist of the PCCL subjected the specimen thus submitted (Exh. "D") to physical examination (microscope), chemical test and thin layer chromatography (TLC) test to determine the presence of marijuana. As reflected in her Chemistry Report (Exh. "C", p. 36, rec.) 'Qualitative examination conducted on the above-mentioned specimen gave POSITIVE result to the test for marijuana' (Exh. "C-4")." (At pp. 2-3, Decision)

The defense, on the other hand, claims that on April 6, 1989, the accused worked at the BMY Rice Mill the whole day. He reported for work in the morning until 6:00 o'clock in the evening as there were about 700 sacks of rice to be shipped for Cebu that day. He continued reporting for work until he was arrested on May 31, 1989 for allegedly violating the Dangerous Drugs Act.

The lower court gave full faith and credit to prosecution's version and rendered the aforequoted questioned decision.

The accused-appellant raises the following assignment of errors:

I

THE LOWER COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF SGT. ALLAGA;

II

THE LOWER COURT ERRED IN FINDING THE APPELLANT GUILTY BEYOND A REASONABLE DOUBT OF THE CRIME CHARGED, THE PROSECUTION NOT HAVING ESTABLISHED AN UNBROKEN CHAIN OF CUSTODY OF EXHIBIT "D";

III

THE LOWER COURT ERRED IN NOT FINDING FOR THE ACCUSED. (Rollo, p. 2)

and stresses the following points in his brief in the hope of creating doubt about his guilt in his favor:

- "1) It is hardly believable that appellant will readily sell marijuana to a person he does not know;
- 2) Sgt. Allaga's uncorroborated testimony has been satisfactorily contradicted and discredited;
- 3) Failure of the prosecution to arrest or to file charges against the child who delivered the alleged marijuana to Sgt. Allaga is fatal to the cause of the prosecution;
- 4) Failure of the prosecution to present the said child as witness amounts to a willful suppression of evidence and creates a presumption that the same is adverse if produced; and
- 5) The prosecution has failed to establish an unbroken chain of possession or custody of the alleged prohibited drug such that it failed to prove that the very same object allegedly taken from the appellant was the very same thing examined.

After a thorough examination of the evidence on record, this court has no other recourse but to affirm the conviction of the accused-appellant. The issues raised on appeal are factual. The appellant has failed to present convincing reasons why the usual respect which appellate courts give to factual findings of trial courts should not be maintained in this case.

It must be noted that the accused-appellant, testifying on his own behalf, hinges his defense on alibi with Rodolfo

Gonzales, an alleged co-worker in the rice mill and Florencia Babac, accused-appellant's mother, corroborating his testimony. However, the testimonies of the defense witnesses do not in any manner strengthen the appellant's case. They all testified to the fact that the accused went to work in the morning of April 6, 1989 and went home at around 6:00 o'clock in the evening. They failed to establish, however, that it was impossible for the accused to have gone to the scene of the crime at the time of the alleged buy-bust operations. The possibility of the accused having accomplished the transaction is further made evident by the fact that the rice mill is very near the place where the buy-bust operation was conducted. As the lower court has correctly pointed out "xxx considering the proximity of the place where the buy?bust operation was conducted to the BMY Rice Mill where he allegedly worked, it could not have been physically impossible for the accused to be at the scene of the incident." It has, time and again, been held that for the defense of alibi to prosper, it should be shown that it is physically impossible for the accused to have been present at the scene of the crime or its vicinity at the time of its commission (People v. Ruedas, 194 SCRA 553 [1991]; People v. Solis 182 SCRA 182 [1990]; People v. Alcantara 33 SCRA 812 [1970]). Moreover, the accused has been positively identified by prosecution witness as the perpetrator of the crime charged. Such positive identification prevails over the simple denials of the accused. (People v. Camarao 188 SCRA 671 [1990] citing People v. Khan, 161 SCRA 406 [1988]; People v. Delavin, 148 SCRA 257 [1987]; People v. Tuscano, 137 SCRA 203 [1985]; People v. Estrada, 22 SCRA 112 [1968]).

The appellant also attacks the credibility of the prosecution's theory by asserting that the accused is not foolhardy to sell marijuana to a person he does not know. In People v. Rumeral (G. R. No. 86320, August 5, 1991) citing People v. Sanchez (173 SCRA 305 [1989]), the doubts as to the possibility of persons selling marijuana to strangers has already been put to rest with the following pronouncement of the court:

"xxx Drug pushers, especially small quantity or retail pushers sell their prohibited wares to anyone who has the price of the drug, be they strangers or not. What matters is not the existing familiarity between the buyer and the seller but their agreement and acts constituting the sale and delivery of marijuana leaves. xxx."

The appellant next points to the insufficiency of Sgt. Allaga's lone testimony as to the alleged incident. As stated earlier, accused-appellant impresses upon this Court that the prosecution should have presented other witnesses to corroborate Sgt. Allaga's story such as his companions during the buy-bust operations and the child who allegedly handed the pack to Sgt. Allaga.

It is the prosecuting fiscal's prerogative to determine whom to present as witness (People v. Alerta, G.R. No. 85250, July 1, 1991; People v. Bati, 189 SCRA 97 [1990]; People v. Solomon 166 SCRA 767 [1988]; People v. Andiza, 164 SCRA 643 [1988]). The prosecution may have deemed Sgt. Allaga's testimony as sufficient to establish its case. The lower court likewise found it to be so. Courts are not precluded from rendering a judgment of conviction based on the testimony of a single witness as long as such is found to be credible and positive and it satisfies the court that the accused is guilty beyond reasonable doubt (People v. Rumeral, supra; People v. Javier, 182 SCRA 830 [1990]).

It must also be considered that no motive is imputed against Sgt. Allaga which would impel him to falsely testify against the accused. The accused-appellant even testified that he does not know Sgt. Allaga nor does he have any quarrel or misunderstanding with him (p. 12 TSN, October 3, 1989). Under the circumstances obtaining herein, Sgt. Allaga's testimony may be received as true (People v. Rumeral, supra). Law enforcers are presumed to have regularly performed their duty in the absence of proof to the contrary (People v. Alerta, supra; People v. Castiller, 188 SCRA 376 [1990]; People v. Khan, 161 SCRA 406 [1988]).

The guilt of the accused is further established by his actions after the alleged buy-bust operations. He evidently went into hiding as he could not be contacted during the preliminary investigation as shown in the proof of service of the subpoena issued against him. The defense offered no other explanation except for bare denials that he never

received a subpoena (p. 17, TSN, October 3, 1989). In fact, the authorities were only able to effect his arrest on May 31, 1989 - more than a month after the buy--bust operations. It is a well-settled rule that flight is indicative of guilt of the accused (*People v. Eduarte*, 187 SCRA 291 [1990]; *People v. Mercado*, 190 SCRA 452 [1990]; *People v. Guevarra*, 94 SCRA 642 [1979]).

As to the appellant's contention that the prosecution has failed to establish an unbroken chain of possession or custody of the prohibited drug, the same must also fail. Sgt. Allaga has positively identified the pack (Exhibit "D") offered in evidence by the prosecution as that which was handed to him during the buy-bust operations. (p. 14 TSN, September 19, 1989) The defense had the opportunity to cross-examine Sgt. Allaga on that particular subject and establish the irregularities, if there be any. Add to this, the proffered explanation of the Solicitor General in the People's brief as follows:

"xxx Such slight delay was obviously brought about by the fact that the 6th Narcotics Regional Unit at Iloilo City was evidently undermanned and its staff had to attend to other tasks also requiring immediate attention and implementation at the time. This is not to mention the fact that the intervening days between the time of the perpetration of the crime and the time Exhibit "D" was actually taken for examinations to the PC Crime Laboratory happened to fall on a weekend." (Brief for the Plaintiff-Appellee, pp. 13-14)

In the absence of proof to the contrary, the principle earlier enunciated as to the presumption of regularity in the performance of official duties is equally applicable.

WHEREFORE, all the foregoing premises considered, the appeal is hereby DISMISSED. The decision appealed from is AFFIRMED.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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