

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO GIRENG Y PINTO, ALIAS “MANDY,” ACCUSED-APPELLANT.

G.R. No. 97949, February 01, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Accused-appellant Armando Gireng y Pinto was charged with violating Sec. 4, Art. II of R.A. 6425, [1] as amended, before the Regional Trial Court of Cabanatuan City in an information dated 25 May 1989 alleging that about the 24th of May 1989 he unlawfully and wilfully sold to another four (4) plastic tea bags of marijuana dried leaves with seeds and had in his possession one (1) piece of marijuana cigarette roach.

The evidence shows that at around ten o'clock in the morning of 24 May 1989 Philippine Constabulary (PC) soldier Romeo de Jesus of the Narcotics Command (NARCOM) Office at Cabanatuan City received an information from a confidential informant that there was a suspected pusher of prohibited drugs at DS Garcia, Cabanatuan City. He notified his superior, a certain Lt. Macusi, about the information. A plan was then set for a buy-bust operation to entrap the suspect. Sgt. Teofilo Solis was designated as poseur-buyer and was given by de Jesus two marked P10-bills [2] while the latter was assigned to act as "back-up." Sgt. Solis placed a dot inside the number "0" on the upper right hand corner of each bill.

At around one o'clock in the afternoon of the same day, de Jesus, Sgt. Solis and the informant proceeded to the aforementioned address. Upon reaching the place, de Jesus positioned himself about fifteen (15) to twenty (20) meters from the house of the suspect while Sgt. Solis and the informant went to the house and knocked at the door. Accused-appellant went out of the house. After a brief conversation, appellant handed four (4) plastic tea bags to Sgt. Solis. In turn, the latter gave the former the two (2) P10-bills. Thereupon, Sgt. Solis gave the pre-arranged signal by scratching the back of his head, signifying that the deal was completed. Immediately, de Jesus approached appellant, introduced himself as a NARCOM agent and placed the accused under arrest. De Jesus recovered the marked bills from the right front pants pocket of the appellant. The object of the transaction was already in the possession of Sgt. Solis.

Thereafter, accused Gireng was brought to the NARCOM Office. The confiscated items, which consisted of four (4) tea bags of marijuana and a short roach of marijuana, were examined at the chemical laboratory of the NARCOM headquarters and found positive for marijuana. [3] Later, the items were sent to Camp Olivas, Pampanga, for another laboratory examination. The technical report, as attested to by the forensic chemist, showed that the specimens were indeed positive for marijuana. [4]

Only appellant testified in his defense. According to him, on 24 May 1989, while he was sleeping near the window of his house, de Jesus and Sgt. Solis awakened him. They were looking for a certain "Larry." Since he did not know the whereabouts of "Larry," he was dragged outside of his house and brought to the NARCOM Office. His mother, who was also in the house, tried to prevent the policemen from taking him with them.

Pitted against the shaky defense of accused-appellant, the trial court found the testimony of de Jesus supported by the prosecution's documentary evidence. The court was convinced in the veracity of his testimony. Thus on 18 March 1991 judgment was rendered finding accused-appellant Armando Gireng y Pinto alias "Mandy" guilty as charged and sentencing him to life imprisonment and to pay a fine of P20,000.00. [5]

In this appeal, accused-appellant disputes the finding of the trial court that his guilt has been proved beyond reasonable doubt. He argues that the essential element of sale of marijuana was not established with the requisite quantum of evidence. He emphasizes that the poseur-buyer and the informant were not presented to buttress the seemingly weak cause for the prosecution, and that the marijuana was not identified in court by de Jesus. Furthermore, appellant posits that the prosecution's documentary evidence is inadmissible because: (a) the marked bills were not identified as Sgt. Solis who allegedly was the one who placed the dot in the number "0" on the upper right hand corner of each bill was not presented in court; (b) neither was the certificate of field test identified because the person who issued it was not presented; and, (c) the "pagpapatunay" was signed by accused-appellant during custodial investigation without assistance of counsel of his choice and without having been informed of his constitutional right to remain silent and to counsel. He still further argues that apart from the foregoing considerations, the filing of the Information on 25 May 1989 violated procedural orderliness. He claims that the prohibited items were endorsed to Camp Olivas only on 29 May 1989, and that the NARCOM officers did not even bother to wait for the final result of the laboratory examination before charging him with the offense.

The submission of proof that the sale of the illicit drug took place between the poseur-buyer and the seller thereof is indispensable in every prosecution for illegal sale of marijuana, coupled with the presentation of the corpus delicti as evidence. [6] In the case at bench, the prosecution has proved with certainty all the elements necessary for the offense of illegal sale of marijuana which are: the identity of the buyer as well as the seller, the object and consideration of the sale, and the delivery of the thing sold and the payment therefor. [7] PC soldier de Jesus narrated in detail the transaction which he observed from a distance of fifteen (15) to twenty (20) meters from Solis, the informant and appellant:

FISCAL AGAPITO:

Q:

Upon arrival of (sic) the place, what happened now Mr. Witness?

A:

The informant together with Sgt. Solis went to the house of the pusher suspect, sir.

x x x x

Q:

What happened after that? After Sgt. Solis is knocking (sic) the door?

A:

Somebody went out, sir x x x x I saw them talking but I cannot (sic) hear their conversation because of my distance, sir x x x x I saw the pusher handing something to Sgt. Solis, sir.

x x x x

Q:

After that, did you approach Sgt. Solis?

A:

When the suspect handed something to Sgt. Solis, then Sgt. Solis handed something to the suspect, I approached them, sir.

Q:

After Sgt. Solis handed something to that person, what did you do?

A:

I waited (for) Sgt. Solis to scratch the back of his head, sir.

Q:

Is (sic) Sgt. Solis scratched (sic) the back of his head?

A:

I saw him scratched (sic) the back of his head, sir.

Q:

What did you do after that?

A:

When I saw Sgt. Solis scratched (sic) the back of his head, I ran towards them to apprehend the suspect, sir.

Q:

Were you able to apprehend or arrest the suspect? The pusher?

WITNESS:

A:

Yes, sir.

FISCAL AGAPITO:

Q:

How did you arrest the suspect?

A:

When I reached them, I introduced myself as a NARCOM agent and I apprehended him (the suspect) for selling marijuana, sir.

Q:

Were you able to seize the marijuana which he was selling at that time?

A:

When I apprehended him, the marijuana is (sic) already in the possession of Sgt. Solis, sir.

Q:

How about the payment which (was) handed by Sgt. Solis to the pusher?

A:

I got the money from the right front pocket of his light blue corduroy pants, sir. [8]

Quite understandably, de Jesus was not able to see the object of the transaction due to the considerable distance between him and the parties to the sale, but when he went near them the marijuana was already in the possession of Sgt. Solis. The government agents then caused the drug to be examined on the same day at the chemical laboratory of the NARCOM headquarters and later turned it over to the PC Crime Laboratory at Camp Olivas for another examination. [9] The items, weighing 3.8 grams, were tested positive for marijuana. The chemistry report attested to by the forensic chemist thus conclusively established the corpus delicti of the crime. [10]

The testimony of the poseur-buyer or of the confidential informant is no longer material considering that accused-appellant's drug pushing was positively attested to by de Jesus. [11] Moreover, informants are generally not presented in court because of the need to hide their identity and preserve their invaluable service to the police. [12]

The marked bills were properly identified by de Jesus because he was the one who gave them to Sgt. Solis who placed a dot inside the number "0" on the upper right hand corner of each bill and which he later recovered from appellant. Even assuming that the bills were not properly identified, this Court has already ruled that the absence of the marked money does not create a hiatus in the evidence for the prosecution provided that the sale is adequately proved by the prosecution. [13]

The omission to present in court the person who issued the certificate of field test did not result in weakening the case against appellant since the omission was rectified by the forensic chemist who testified on the certificate that she issued.

We concede to the argument of appellant that the "pagpapatunay" is inadmissible in evidence against him for having been obtained in violation of his rights as a person under custodial investigation for the commission of an offense. The records show that he was not informed of his right not to be compelled to sign the document; neither was he informed of his right to counsel and the fact that the document may be used as evidence against him. [14] Nevertheless, his exoneration will not follow as a causatum since the other evidence on record is more than adequate to warrant his conviction. [15]

As regards the last argument of accused-appellant, we are in conformity with the observation of the Office of the Solicitor General that -

The laboratory examination result of the confiscated items is not an indispensable requirement before filing an information for the violation of the provisions of RA 6425, as amended x x x To require the Narcom agents (to) await the result of the laboratory examination, which usually takes weeks or months, before haling the suspects to court would make said agents liable under Art. 125 of the Revised Penal Code. [16]

A fastidious scrutiny of the records of this case provides no reason to deviate from the findings of the trial court regarding the culpability of the witnesses for the prosecution, specially since they are police officers who are presumed to have regularly performed their official duties, the contrary not having been proved. [17]

In *People v. Ale*, [18] this Court recognized that by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. However, accused-appellant in this case has

failed to convince us that de Jesus and Sgt. Solis are unscrupulous policemen engaged in mulcting activities who, either motivated by the desire to extort money or exact personal vengeance, nabbed him in lieu of a certain "Larry." If he were really innocent, as he professes, he should have substantiated his defense by the testimony of his mother who was allegedly with him during his arrest [19] or by other weighty evidence. Frame-up, like alibi, is a defense that has been invariably viewed by courts with disfavor for it can just as easily be concocted and is a common and standard line of defense in most prosecutions arising from violations of The Dangerous Drugs Act. [20]

Pursuant to Secs. 4 and 20 of R.A. 6425, as amended by R.A. 7659 in relation to the directive of People v. Simon, [21] if the marijuana involved is below 250 grams, the penalty to be imposed shall be prision correccional. Considering that in this case only 3.8 grams of marijuana are involved, the proper imposable penalty is prision correccional in its medium period absent any mitigating or aggravating circumstance. Applying the Indeterminate Sentence Law, the maximum shall be taken from the medium period of prision correccional, which is two (2) years, four (4) months and one (1) day, to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor, in any of its periods, the range of which is one (1) month and one (1) day to six (6) months.

WHEREFORE, the decision appealed from finding accused-appellant ARMANDO GIRENG y PINTO guilty beyond reasonable doubt of violating Sec. 4, Art. II of R.A. 6425, is AFFIRMED with the modification that he is sentenced to suffer an indeterminate prison term of six (6) months of arresto mayor maximum as minimum, to four (4) years and two (2) months of prision correccional medium as maximum.

It appearing that accused-appellant has been detained since 24 May 1989, [22] or already beyond the period of his maximum sentence, his immediate release from custody is ordered unless he is lawfully held for another cause.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quason, and Kapunan, JJ., concur.

[1] The Dangerous Drugs Act of 1972.

[2] Exhs. "A" and "B."

[3] Exh. "C."

[4] Exh. "E."

[5] Rollo, pp. 27-28.

[6] People v. Pacleb, G.R. No. 90602, 18 January 1993, 217 SCRA 92; People v. Labarias, G.R. No. 87165, 25 January 1993, 217 SCRA 483.

[7] People v. Esguerra, G.R. No. 97959, 7 April 1993, 221 SCRA 261.

[8] TSN, 3 July 1990, pp. 7-9.

[9] Id., p. 11.

[10] People v. Manzano, G.R. No. 86555, 16 November 1993, 227 SCRA 780.

[11] See People v. Fernandez, G.R. No. 90019, 8 December 1993, 228 SCRA 301; People v. San Andres, G.R. Nos. 101189-90, 27 May 1993, 222 SCRA 666; People v. Bagang, G.R. Nos. 92793-94, 30 March 1993, 220

SCRA 572.

[12] People v. Marcelo, G.R. No. 105005, 2 June 1993, 223 SCRA 24.

[13] People v. Pascual, G.R. No. 88282, 6 May 1992, 208 SCRA 393; People v. Hoble, G.R. No. 96091, 22 July 1992, 211 SCRA 675.

[14] People v. Gesmundo, G.R. No. 89373, 9 March 1993, 219 SCRA 743.

[15] See People v. Viente, G.R. No. 103299, 17 August 1993, 225 SCRA 361.

[16] Re delay in the delivery of detained persons.

[17] See People v. Doro, G.R. No. 99866, 2 June 1993, 223 SCRA 19; People v. Salinas, G.R. No. 107192, 18 November 1993, 228 SCRA 45.

[18] G.R. No. 70998, 14 October 1986, 145 SCRA 50.

[19] TSN, 3 December 1990, p. 48.

[20] People v. Angeles, G.R. Nos. 95761-62, 12 February 1993, 218 SCRA 352.

[21] G.R. No. 93028, 29 July 1994.

[22] Records, p. 10.

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