

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. ALVIN LIQUEN Y COROS, ACCUSED/APPELLANT.

G.R. No. 97952. August 06, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Alvin C. Liquen was prosecuted for violation of R.A. No. 6425, the Dangerous Drugs Act of 1972. The criminal information alleged:

"That on or about the 26th day of August, 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, a NARCOM agent, who posed as buyer, two (2) match boxes containing dried marijuana leaves, knowing the same to be a prohibited drug.

Contrary to law."[1]

At arraignment, accused Liquen entered a plea of not guilty, and the case proceeded to trial. In due course of time, the trial court rendered a decision convicting the accused and sentencing him as follows:

"WHEREFORE, the Court hereby finds the accused ALVIN LIQUEN y COROS guilty beyond reasonable doubt of Violation of Section 4 of Republic Act No. 6425, as amended, and pursuant to the said law hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA and to pay the costs. The two match boxes of marijuana dried leaves subject of this charge are ordered confiscated and forfeited in favor of the Government."[2]

In his brief, appellant Liquen made the following assignment of errors:

- "1. The court a quo gravely erred in admitting the peso bills and marijuana adduced in evidence by the prosecution.
2. The court a quo erred in finding that the guilt of the accused-appellant for the crime charged has been established beyond reasonable doubt."[3]

The evidence of the prosecution tended to establish that on 24 August 1989, the 9th Narcotics Command ("NARCOM") Regional Unit in Zamboanga City, received information from a civilian informer that marijuana was being sold at Sangali, Zamboanga City. Sgt. Pedro S. Mamuad, NARCOM, was dispatched the following day, together with the civilian informer, to survey and observe the locality identified. The two (2) proceeded to Sangali, Zamboanga City, and there they saw appellant Liquen selling, at or near the vicinity of the JR Store, what they presumed to be marijuana to a group of teenagers, each of the group giving him payment therefore. Sgt. Mamuad did not arrest Alvin Liquen at that time since he was then on a surveillance and observation mission.

On 26 August 1989, a team of NARCOM agents was formed to entrap appellant Liquen. Sgt. Amos Foncardas, the team leader who was also the arresting officer, designated Sgt. Mamuad to pose as buyer of marijuana. He was handed two (2) P10.00 bills and four (4) P5.00 bills, or a total amount of P40.00, which bills were previously

marked, for use in purchasing marijuana. The other two (2) team members were Sgt. Alarcon and Sgt. Francia.

At 2:00 o'clock p.m. of 26 August 1989, the team took a privately-owned jeepney bound for Sangali, Zamboanga City. When they were nearing the vicinity of the JR Store, Sgt. Mamuad saw appellant at the store. Sgt. Mamuad instructed the jeepney driver to park at a CAFGU check-point, some 100 meters away from the JR Store. Sgt. Mamuad walked back towards the JR Store, followed closely by the rest of his team. When Sgt. Mamuad reached the store, he approached appellant Liquen and struck up a conversation with appellant. Sgt. Mamuad indicated to appellant his (Sgt. Mamuad's) intention to buy some "damo" (grass or marijuana) and gave appellant Liquen the marked peso bills. Appellant Liquen gave Sgt. Mamuad two (2) match boxes of marijuana, at the price of P20.00 per box.

Sgt. Mamuad opened the match boxes, inspected and smelled the contents thereof, and satisfied that the boxes contained marijuana, gave the pre-arranged signal which consisted of scratching the back of his head. Forthwith, the rest of the team, Sgts. Foncardas, Alarcon and Francia went inside the store, surrounded appellant Liquen and arrested him, after introducing themselves as NARCOM agents. The team searched the body of appellant and recovered from the front right pocket of his pants the P40.00 in marked money received from Sgt. Mamuad. Appellant Liquen was thereafter brought to the NARCOM Headquarters for investigation. Sgt. Francia advised the team to place their initials on the top of each of the two (2) match boxes. The two (2) boxes of marijuana were forwarded to the Philippine Constabulary ("PC") Crime Laboratory for examination and report. In Chemistry Record No. D-653-09 (Exhibit "A"), PC Chemist Mrs. Athena Anderson stated that four (4) tests were conducted on the specimen contents of the boxes and all four (4) tests showed that the contents consisted of dried marijuana leaves.

In his first assignment of error, appellant Liquen claims that the peso bills and marijuana confiscated from him should not have been admitted in evidence against him since these were the fruits of an illegal arrest and search conducted on him. Liquen insists that he was not lawfully arrested by the NARCOM agents as he was not then committing any offense, but was, according to him, merely taking a snack at the JR Store at the time he was arrested.

Appellant's first defense is bereft of merit. It has been held many times by this Court that entrapment, or the employment of ways and means of entrapping and catching an offender in flagrante as no bar to prosecution and conviction, not being prohibited by law.[4] In the case at bar, appellant Liquen having been caught in flagrante as a result of the "buy-bust operation," the police team was not only authorized but indeed obligated to arrest appellant Liquen, even without a warrant of arrest.[5] Section 5 (a) of Rule 113 of the Revised Rules on Criminal Procedure, reads in part as follows:

"Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; x x x."

In respect of the claim that the body search conducted on appellant was unlawful because it had not been supported by a valid search warrant, it suffices to note that one of the recognized exceptions to the rule that searches and seizures must be supported by a valid search warrant, relates precisely to a search that is incidental to a lawful arrest.[6] Thus, the seizure of the marked money and the marijuana from appellant Liquen after his lawful arrest without warrant cannot successfully be assailed as violative of the constitutional provision prohibiting unreasonable searches and seizures.

The second principal defense of appellant Liquen was that he had been "framed" by the police team. He denied

having sold marijuana to Sgt. Mamuad. The story that he gave during the trial was that on the date and at the time mentioned the information, he happened to be taking a snack at the JR Store when NARCOM agents who were then unknown to him arrived. One of the agents allegedly poked a knife at his throat and dragged him towards a parked vehicle. He was forcibly placed inside the vehicle and brought to a place unfamiliar to him for investigation. The defense presented two (2) witnesses to support this story.

The defense of "frame-up," like alibi, is a weak defense that is easy to fabricate but difficult to prove.[7] "Frame-up" as a defense is probably more difficult to prove than alibi, because of the presumption that public officers like NARCOM agents had performed their official duty in a regular manner.[8] In the case at bar, there is more than sufficient evidence to show that appellant had indeed been caught in flagrante by the NARCOM agents in the course of their "buy-bust operation." Appellant had physically delivered to Sgt. Mamuad the two (2) match boxes of marijuana leaves, pursuant to their agreement of purchase and sale. The agreement and the prompt delivery of the marijuana made by appellant, constituted the sale that is punished by the law.[9]

Appellant denigrates the prosecution's evidence as incredible, and describes the prosecution's "improbable account of an alleged pusher plying his trade x x x at a public place, in full view of inquisitive on-lookers and for a pittance of P40.00 x x x," as unworthy of belief and credence.[10]

Drug pushers are not normally very discriminating and selective in the choice of the place where they peddle their illicit merchandise and that place frequently includes a public place.[11] Indeed, the public character of a place does not necessarily insure its avoidance as a venue for prohibited sales by drug pushers; the public nature of the place chosen or adopted may in fact serve to conceal and disguise the nature of the transactions engaged in by drug peddlers.

In *People v. Paco*, (supra), the Court rejected much the same defense here put up by appellant Liquen, and said:

"Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall (*People v. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329; *People v. Sarmiento*, G.R. No. 72141, January 12, 1987, 147 SCRA 252), in front of a store (*People v. Khan*, supra) along a street at 1:45 p.m. (*People v. Toledo*, G.R. No. 67609, November 22, 1985, 140 SCRA 259), and in front of a house (*People v. Policarpio*, G.R. No. 69844, February 23, 1988.)"[12]

Experience shows that whether the poseur-buyer and the agents knew each other, is not material. What matters on a review of the judgment of conviction is not the level of pre-existing familiarity between the buyer and the seller of prohibited drugs, but positive proof of the agreement and the delivery which consummates the sale of a prohibited article.[13]

Finally, appellant argues that because of certain contradictions and inconsistencies in the testimonies of the prosecution witnesses, his guilt had not been proved beyond reasonable doubt. The supposed inconsistencies were the following:

"Prosecution witness Sgt. Mamuad declared that accused appellant was sitting inside JR Store when the former approached the latter and transacted the alleged sale of marijuana. (TSN, p. 16, October 17, 1989) On the other hand, Sgt. Foncardas testified that he saw Sgt. Mamuad gave the money to Liquen outside the store. (TSN, p. 20, October 19, 1989)

It seems quite odd that the arresting team could not even agree as to the physical appearance and name of their

alleged informer. While Sgt. Mamuad testified that the civilian informer, alias Mario, stands at 5' 6" with short-trimmed hair (TSN, p. 21, October 17, 1989), Sgt. Foncardas described Mario as 5' 3" in height and short-haired (TSN, p. 12, October 19, 1989), and latter declared that the name of the informer is Jeffrey. (TSN, p.16, October 18, 1989) Sgt. Alarcon for his part described Mario as 5' 4" in height and long-haired. (TSN, p. 21, 1989).

According to Sgt. Focardas, he instructed Sgt. Mamuad to buy two (2) match boxes of marijuana with the P40.00 he gave to the latter (TSN, p. 18, October 19, 1989), however, Sgt. Mamuad stated that he did not know how much marijuana the amount of P40.00 can buy (TSN, p. 25, October 17, 1989) when he supposedly conducted surveillance and acted as poseur-buyer during the buy-bust operation."^[14]

The Court, however, considers that alleged discrepancies relating to (a) whether the purchase of the prohibited drug took place inside or outside the JR Store in Sangali, Zamboanga City; (b) the precise physical appearance and height of the police informer; and (c) whether the buyer knew how much marijuana the amount of P40.00 could buy, all deal with minor details and do not adversely impact upon the credibility of the prosecution's witnesses nor upon the trustworthiness of the testimony offered by them.^[15]

Finally, the Court notes that the trial court found the testimony of the police officers before the trial court to have been straightforward and credible. Appellant did not even try to show that he was known to the police officers involved prior to his arrest. There was in addition no proof of any evil motive on the part of the policemen that might have led them to extort money and falsely to attribute to appellant a serious criminal offense. Thus, appellant was simply unable to overcome the presumption that the members of the police team which arrested him had acted in the regular performance of their public duty.^[16]

It has not escaped the attention of the Court that the trial court imposed upon appellant only the penalty of reclusion perpetua (which should be life imprisonment). The trial court, in other words, failed to apply completely the penalty prescribed in Section 4 of R.A. No. 6425, as amended, which reads as follows:

"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 supplied)

Under the above quoted provision, both life imprisonment and a fine ranging from P20,000.00 to P30,000.00 must be imposed in case of conviction. Since appeal by an accused who has been convicted in a criminal case throws open the whole case for review, including modification and increase of the imposable penalty,^[17] the Court must now impose upon appellant a fine of P20,000.00 in addition to the penalty of life imprisonment.

WHEREFORE, the decision of the trial court dated 31 January 1990 is hereby **AFFIRMED** with the following **MODIFICATIONS**: the penalty properly imposable is not reclusion perpetua which is different juridically from the correct penalty of life imprisonment. The imposable penalty must include a fine of P20,000.00. Accordingly, the penalty of life imprisonment is hereby **IMPOSED**, plus a fine of P20,000.00. Costs against appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

- [1] Record, p. 1.
- [2] Appellee's Brief, p. 3; Rollo, 36.
- [3] Appellant's Brief, p. 1.
- [4] *People v. Castiller*, 188 SCRA 376 (1990); *People v. Gatong-o*, 168 SCRA 716 (1988); *People v. Lagasca*, 148 SCRA 264 (1987); *People v. Natipravat*, 145 SCRA 483 (1986).
- [5] *People v. Santos*, 200 SCRA 431 (1991).
- [6] E.g., *People v. Tangliben*, 184 SCRA 220 (1990); *People v. Castiller*, *supra*; *Manipon, Jr. v. Sandiganbayan*, 143 SCRA 267 (1986).
- [7] *People v. del Pilar*, 188 SCRA 37 (1990); *People v. Nabunat*, 182 SCRA 52 (1990).
- [8] *People v. Macuto*, 176 SCRA 762 (1989); *People v. Rualo*, 152 SCRA 635 (1987).
- [9] *People v. Borja*, 182 SCRA 581 (1990); *People v. Consuelo*, 184 SCRA 402 (1990).
- [10] Appellant's Brief, p. 4; Rollo, p. 30.
- [11] *People v. Tandoy*, 192 SCRA 29 (1990); *People v. Paco*, 170 SCRA 681 (1989).
- [12] Appellee's Brief, p. 14-15; Rollo, p. 36.
- [13] *People v. Borja*, *supra*; *People v. Consuelo*, *supra*.
- [14] Appellee's Brief, pp. 15-16; Rollo, p. 36.
- [15] *People v. Arbolante*, 203 SCRA 85 (1991) citing *People v. dela Torre*, G.R. Nos. L-90804-05, July 1, 1991; *People v. Santiago*, G.R. No. L-46132, May 28, 1991; *People v. Ansing*, 196 SCRA 374 (1991); *People v. Mergar*, 157 SCRA 718 (1988); *People v. Manuel*, 160 SCRA 248 (1988); *People v. Bautista*, 147 SCRA 500 (1987).
- [16] *People v. Claudio*, 160 SCRA 646 (1988); *People v. De Jesus*, 145 SCRA 521 (1986).
- [17] E.g., *People v. Avila*, G.R. No. 84612, 11 March 1992; see also *Lontoc v. People*, 74 Phil. 513 (1943).

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