

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRO ESGUERRA Y SEMINIANO, ACCUSED-APPELLANT.

G.R. No. 97959. April 07, 1993

Ponente: MELO, J.

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MELO, J.:

On August 31, 1989, accused-appellant Alejandro S. Esguerra was charged before the Regional Trial Court of the National Capital Judicial Region (Branch 169, Malabon) in Criminal Case No. 8197-MN, for Violation of Section 4, Article II of Republic Act 6425, as amended, thusly:

That on or about August 20, 1989, in the Municipality of Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there wilfully, unlawfully, and feloniously sell, deliver and give away to another ten (10) tea-bags of dried marijuana flowering tops, which are prohibited drugs, in violation of the above-cited law.

The case for the prosecution, as summarized by the Solicitor General, is as follows:

Three (3) weeks before August 20, 1989, Pfc. Roberto Dayag, Pat. Rizalino Francisco and Pat. Nemesio Era, all of the Anti-Narcotics Unit of the Navotas Police Station, conducted a surveillance on appellant to confirm a confidential information that he was engaged in selling marijuana at Roldan Street, Tangos, Navotas, Metro Manila (TSN, March 6, 1990, pp. 2-3).

Having confirmed that appellant was a "drug pusher," a buy-bust operation was hatched by Pfc. Dayag, Pat. Francisco, Pat. Era and P/Cpl. Rolando Mabbun (TSN, March 13, 1990, pp. 9-10).

On August 20, 1989, at around 2:30 o'clock in the afternoon, Pat. Dayag, Pat. Era and P/Cpl. Mabbun hid themselves inside a sari-sari store five (5) to eight (8) meters away from the corner of Roldan Street, Navotas, Metro Manila. Then, Pat. Francisco, as poseur-buyer, approached appellant who was standing at the corner of Roldan Street and told the latter that he (Pat. Francisco) wanted to buy "marijuana." Appellant informed Pat. Francisco that one (1) tea bag of marijuana cost Ten Pesos (P10.00) [TSN, March 6, 1990, pp. 3-5; TSN, March 13, 1990, p. 9].

Pat. Francisco then handed to appellant a marked Fifty Peso (P50.00) bill (Exh. G). In turn, appellant gave Pat. Francisco five (5) tea bags of marijuana (TSN, March 6, 1990, p. 5).

Whereupon, Pat. Francisco disclosed himself to appellant as a police officer. At this point, Pfc. Dayag, Pat. Era and P/Cpl. Mabbun came out from the store and apprehended appellant. The latter voluntarily returned the P50.00 marked money to Pat. Francisco (TSN, Mar. 6, 1990, p. 5).

Appellant was brought to the Navotas Police Station for investigation. Thereat, appellant surrendered another five (5) tea bags of marijuana (TSN, March 13, 1990, p. 8).

Upon the request of P/Cpl. Mabbun (Rec., Vol. II, p. 1), the National Bureau of Investigation conducted chemical, microscopic and chromatographic examinations of the contents of the ten (10) tea bags forwarded to it for laboratory tests. The contents of the ten (10) tea bags were found to be "marijuana" (TSN, Feb. 27, 1990,

pp. 1-6; Exhs. D & E). (pp. 55-58, Rollo)

At the trial, accused-appellant Alejandro Esguerra proffered a different story and denied the buy-bust operation as narrated above. Interposing alibi as a defense, he testified that on the afternoon of August 20, 1989, he was in his parents' house at No. 4 Leongson Street, San Roque, Navotas to ask for money from his mother, Purificasion Seminiano, in order to buy milk for his child. Upon receipt of the money, he boarded a tricycle and went to Tangos, Navotas but he was not able to return to his house as he was apprehended by P/Cpl. Roland Mabbun who informed him that a case was filed against him. Later on, he was incarcerated at the Navotas Municipal Jail by Pfc Roberto Dayag and P/Cpl. Mabbun. He denied the testimony of Pat. Rizalito Francisco concerning the P50.00 taken from him, saying that the same was given to him by his mother. On cross-examination, he admitted that he was arrested by P/Cpl. Roland Mabbun, Pfc Roberto Dayag, and Pat. Rizalito Francisco and that he was brought to the Navotas Police Station after his arrest (p. 12, Rollo).

To bolster the claim of accused-appellant that he has no knowledge of the crime imputed against him, his mother, Purificasion Seminiano, testified that on August 20, 1989 she was washing clothes in their house at Leongson Street, San Roque, Navotas; that accused-appellant was also there sleeping; that when accused-appellant woke up, he asked for money from her in order to buy milk for his child; and that upon being given the money, accused-appellant left and boarded a tricycle to go to Tangos, Navotas, Metro Manila (p. 13, Rollo).

Finding the case for the prosecution meritorious, the trial judge, the Honorable Eufrocinio S. dela Merced rendered a decision on November 5, 1990, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused ALEJANDRO ESGUERRA guilty beyond reasonable doubt of the crime of Violation of Section 4, Article II, R. A. 6425 and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency, with all the accessory penalties provided for by law and to pay the costs.

The ten (10) tea bags of dried marijuana flowering tops are hereby ordered confiscated in favor of the government, ordering the Officer-In-Charge of this Court to transmit the same to the Dangerous Drugs Board, Manila for proper disposition. (p. 14, Rollo)

Dissatisfied, accused-appellant interposed the instant appeal, arguing that the trial court erred in giving more weight to the testimony of the witnesses for the prosecution and consequently further erred in finding him guilty of the crime charged.

Accused-appellant's defense is anchored on the circumstance that 5 other marijuana tea bags were recovered or taken from his possession not at the time of his arrest, but when he was already at the police station. He reasons thus: The normal and standard procedure followed by police officers in the arrest of offenders is to frisk and search the persons of the violators for weapons or evidence during or immediately after the arrest. Assuming that there was a buy-bust operation and further assuming that he had the 5 marijuana tea bags subject of the sale, then, accused-appellant continues, when he was arrested, and following the standard procedure, he should have been frisked which would then have resulted in the discovery of the 5 other marijuana tea bags. As those other 5 tea bags were discovered only at the police station, accused-appellant concludes (a) there was no buy-bust operation and (b) the P50.00 and the 10 marijuana tea bags are planted evidence.

Accused-appellant's manner of reaching his conclusions is flawed. A number of causes may exist why no immediate body search of a suspected offender is done in any particular arrest. The most obvious, we suppose, is lack of proper training on the part of the arresting officer or officers. It could also happen that the arresting officers may conclude that the offender poses no danger and that it would be best to defer to a later time a more thorough body search to be conducted in the presence of witnesses thus obviating any later charge of

evidence-planting. This was what probably happened in the instant case. As the Solicitor General correctly points out, accused-appellant did not pose an imminent danger to the law enforcers because he was clearly outnumbered by the policemen. It may not be amiss then to conclude that there was no need to frisk accused-appellant for any hidden weapon or other evidence. What is significant is that accused-appellant was caught red-handed in the act of selling the prohibited item. The prosecution has proven with certainty all the elements necessary for a charge of illegal sale of marijuana which are: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor (*People v. Rumeral*, 200 SCRA 194 [1991]). Suffice it to say that there was no need for the policemen to concoct a story with regard to the other 5 marijuana tea bags recovered at the police station.

Accused-appellant further contends that because he and the poseur-buyer had not previously met, it would have been foolhardy for him to fearlessly enter into an illegal transaction with a complete stranger (p. 36, Rollo). The argument is baseless. It is a well-settled rule in this jurisdiction that what matters is not the existing familiarity between the buyer and the drug user, but rather the agreement and the acts constituting sale and delivery (*People v. Fernandez*, 209 SCRA 1 [1992]; *People v. Mendoza*, G.R. No. 92387, Dec. 18, 1992). In *People v. Rumeral* (200 SCRA 194 [1991]), this Court held that drug pushers, especially small quantity or retail pushers sell their prohibited wares to anyone who has the price for the drug, be they strangers or not.

Credibility-wise, we are inclined to believe the testimony of the poseur-buyer, Pat. Rizalito Francisco. His testimony was corroborated on most material points by P/Cpl. Roland Mabbun who testified that, together with Pat. Nemesio Era and Pfc. Roberto Dayag, he witnessed the illegal transaction from a certain place near Pat. Rizalito Francisco (p. 11, Rollo).

On the other hand, the defense of alibi and frame-up is not persuasive. The testimony of the lone witness Purificacion Seminiano, mother of accused-appellant, does not inspire belief, the mother instinct to protect a child being obvious. Her testimony was not buttressed by any other evidence. The defense theory bears the badges of a concoction easy to formulate but hard to prove (*People v. Acuram*, 209 SCRA 407 [1992]). Moreover, accused-appellant failed to explain the presence of the marks "RIZ" and "RCM" (the initials of Pat. Rizalito Francisco and Pat. Roland Mabbun, respectively) on the P50 bill (Exhs. G and G-2, Original Records). As between the positive declarations of the prosecution witnesses and the negative statement of the accused, the former deserves more credence (*People v. Doctolero*, 193 SCRA 632 [1991]). We recognize the rule that generally, when an appeal hinges on the credibility of witnesses, the assessment by the trial court is accorded highest respect (*Mendoza v. Court of Appeals*, 198 SCRA 312 [1991]).

In view of the positive identification of accused-appellant by the prosecution witnesses, We sustain the finding of the trial court that herein accused-appellant is guilty beyond reasonable doubt. Absent a showing that the law enforcers were moved by ill-motive or improper reason to falsely impute a serious charge against the accused, it is presumed that they have acted in the regular performance of their duty.

WHEREFORE, the decision appealed from is hereby affirmed with the slight modification as to the penalty which is understood to be life imprisonment in accordance with Republic Act No. 6425 as amended.

SO ORDERED.

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

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