

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO CAMBA Y RAPISORA, ACCUSED-APPELLANT.

G.R. No. 97960. May 10, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an information[1] filed on 6 February 1989 with the Regional Trial Court of Malabon, docketed therein as Criminal Case No. 7309-MN and assigned to Branch 169 thereof, the accused, a fisherman of Navotas, Metro Manila, was charged with the violation of Section 4, Article II of R.A. No. 6425 (Dangerous Drugs Act of 1972), as amended, committed thus:

"That on or about January 30, 1989, in the Municipality of Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without any authority under the law, did then and there willfully, unlawfully, and feloniously sell, deliver and distribute two (2) tea bags of marijuana fruiting tops, and found in his possession one (1) aluminum foil bag containing four (4) tea bags of marijuana fruiting tops, all having a total weight of 14.2 grams, which are prohibited drugs.

Contrary to law."

A plea of not guilty having been entered by the accused at his arraignment on 10 April 1989,[2] trial on the merits was held on various dates. P/Capt. Lina Sarmiento (a forensic chemist of the PC Crime Laboratory), Pat. Rizalito Francisco, Pat. Nemesio Era, and Pat. Emmanuel Buhisan took the witness stand for the prosecution. The accused and his wife, Elizabeth Camba, testified for the defense.

On 4 June 1990, the trial court rendered its decision[3] thus:

"WHEREFORE, the Court finds the accused EDUARDO CAMBA Y RAPISORA guilty beyond reasonable doubt of the crime of Violation of Section 4, Art. II of R. A. 6425 as amended, 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 four (4) tea bags of marijuana fruiting tops all having a total weight of 14.2 grams are hereby 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.

SO ORDERED."

The evidence for the prosecution, upon which the trial court based its decision, is summarized in the Appellee's Brief[4] as follows:

"On 30 January 1989, members of the Navotas Police Anti-Narcotics Unit received a confidential telephone call from an unidentified civilian informant that someone was selling marijuana at the corner of M. Naval and Liongson Streets, San Roque, Navotas, Metro Manila (p. 2, tsn, Aug. 14, 1989).

Acting on said information, Sergeant Tomas Mabini, Chief of the Anti-Narcotics Unit Special Action Team,

immediately organized and dispatched a team of policemen to conduct surveillance and effect the arrest of the person reportedly selling marijuana. For this purpose, Sgt. Mabini designated Pat. Rizalito Francisco to act as poseur-buyer (p. 3, tsn, id.). Thereafter, Francisco together with Patrolmen Emmanuel Buwisan, Leandro Serrano and Nemesio Era proceeded to the abovementioned place (id.).

Upon reaching the corner of M. Naval and Liongson Streets, appellant was spotted at a vacant lot (p. 21, id.). In accordance with their plan for Pat. Francisco to act as poseur-buyer, the latter approached and paid appellant with a marked twenty (P20.00) peso bill with Serial No. DN068193 (Exhs. "D" and "D-1"). Appellant in turn gave Pat. Francisco two (2) tea bags of suspected dried marijuana leaves (p. 4, tsn, id.).

Pursuant to the pre-arranged signal agreed upon for Francisco to raise his right hand as soon as the sale was consummated, other members of the back-up team who had earlier positioned themselves behind a nearby tricycle about five (5) meters from where the drug deal was taking place, immediately moved in to effect the arrest of appellant (pp. 12-13, tsn, id.).

The arrest yielded two (2) tea bags of suspected marijuana. An additional four (4) tea bags in aluminum foil were also seized from his possession. (p. 4, tsn, id.).

Thereupon, appellant was brought to the Navotas Police Station and detained for violation of Sec. 4, Article II of R. A. 6425 (Dangerous Drugs Act) (p. 5, tsn, id.)

The suspected marijuana specimen contained in six (6) tea bags were forthwith sent to the PC-INP Crime Laboratory at Camp Crame, Quezon City for laboratory examination (id.).

During the trial, the prosecution presented Police Captain Lina Sarmiento, forensic chemist of the PC-INP Crime Laboratory. She testified that on January 31, 1989, suspected marijuana leaves contained in one (1) aluminum foil weighing 14.2 grams were forwarded to her office by the Navotas Police Anti-Narcotics Unit requesting laboratory examination. After personally conducting said examination, Sarmiento concluded that said specimen was indeed marijuana (Exh. "E"), a prohibited drug. The result of said examination was consequently reduced into writing and marked as Exhs. "B" to "B-1" (pp. 3-5, tsn, August 9, 1989)."[5]

The accused's version, corroborated by the testimony of his wife, Elizabeth, is entirely different. At around 1:00 p.m. of 30 January 1989, he was standing at the corner of M. Naval and Liongson Streets, Navotas, Metro Manila, waiting for his co-worker, Jose Silva, to collect his wages. As a fisherman under the employ of one Tacquio Emson, he was supposed to get his share from the proceeds of the sale of fish at the said designated place. Suddenly, four men from the Navotas Police Station arrived and arrested him for allegedly selling marijuana. He knew two of them, namely, Pat. Francisco and Pat. Serrano, because they were his former neighbors. Despite his denial of the accusation against him, he was brought to the Police Headquarters of Navotas where Pat. Buhisan took P350.00 from his wallet and divided the same among his fellow policemen. His Seiko wrist watch was also taken from him but his wife, Elizabeth, was able to recover it three months later. He was followed to the police headquarters by his wife who was informed that he was being detained for selling marijuana. In exchange for the dropping of the case against him, the policemen allegedly demanded from her P6,000.00. Because they were not able to raise the P6,000.00, a case for selling and possessing marijuana was filed against him.[6]

No rebuttal evidence was presented by the prosecution.

In convicting the accused, the trial court relied on the testimony of Pat. Rizalito Francisco who claimed to have acted as the buyer and whose testimony was corroborated by the testimonies of Pat. Nemesio Era and Pat. Emmanuel Buhisan. It said that "[i]t was not shown they had any improper motive to testify falsely against accused," and they testified "merely in compliance with their duty as enforcer of the law." [7] As against the accused, it opined that he "did not offer very good defense for his part," as his "denial cannot prevail over the positive identification of a credible prosecution witness who identified [him] x x x to be the seller of marijuana."

It also ruled that Elizabeth's testimony "could not even destroy the positive identification by a credible witness." [8]

The accused (hereinafter appellant) seasonably appealed to us from the judgment of conviction and, in his brief, raised the following assignments of errors:

- "1. The trial court erred in giving credence to the testimony of Pat. Rizalito Francisco to be the basis for the conviction of the accused to suffer the penalty of reclusion perpetua;
2. The trial court also failed and erred to consider the inconsistency of testimonies between Pat. Rizalito Francisco and Pat. Emmanuel Buhisan;
3. The trial court erred in saying that the arresting officers did not have any improper motive to testify falsely against the accused." [9]

Regarding the first assigned error, the appellant contends that:

"it would be foolish for a drug pusher to deliver and sell marijuana to a policeman who was his former neighbor ... [he] cannot be foolish to do the same and only to find himself locked in jail forever." That Pat. Francisco did not actually see [him] selling marijuana x x x. Even the alleged six (6) tea bags of marijuana weighing 14.2 grams were not shown to him in court for his identification; x x x." [10]

Anent the second assigned error, he points out the inconsistency between the testimony in open court and the sworn statement [11] of Pat. Francisco that while in the former he declared that the police team was composed of Patrolmen Buhisan, Era, Serrano, and himself, in the latter he stated that only Era, Serrano, and himself composed the team. [12] The inclusion of Buhisan in the former was even denied by Buhisan himself who testified that he was not one of the arresting officers but merely "the officer-on-case." [13]

As regards the third assigned error, the appellant maintains that the arresting policemen were in fact impelled by ulterior motives as shown by their failure to "refute the testimony of Elizabeth Camba that [they] asked P6,000.00 from her in exchange for the dropping of the case"; "they even divested [him] of his earnings in the amount of P350.00." [14]

By the mandate of the Constitution, an accused is presumed innocent until the contrary is proved. [15] It is a firmly settled doctrine that to overcome such presumption, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged must be established by the prosecution, [16] or, put a little differently, a finding of guilt must be proved beyond reasonable doubt or that degree of proof which produces a conviction in an unprejudiced mind; it should not be based on a mere accusation for an accusation is not, according to the fundamental law, synonymous with guilt. [17]

We have carefully and painstakingly examined the records of this case and the testimonies of the witnesses of both parties and we are convinced that the evidence for the prosecution falls short of the required quantum of proof for the conviction of the appellant. The haphazard presentation of the evidence for the prosecution only exposed the gaps in material facts which cannot put our minds to rest and engender a moral certainty that the appellant is guilty of the offense charged.

Firstly, the alleged poseur-buyer, Pat. Rizalito Francisco, unwittingly admitted on cross-examination that he did not actually know if the appellant was selling marijuana when he arrested him. Thus:

"Q: That is why you are not so serious when you gave your written statement to Pat. Emmanuel Buhisan in filing this complaint in court?

A: No, sir.

Q: Because you are not so serious in the filing of this complaint because you are a new member of the Navotas Police, on January 30, 1989, you don't even know whether the accused was actually selling marijuana when you arrested him?

A: No, sir."[18]

The answer "no sir" could not have been due to a misinterpretation of the question. If it were, the prosecution should have clarified the matter on re-direct. It did not.

Secondly, we agree with the appellant that no member of the arresting team identified the alleged six tea bags of marijuana in court. Although Pat. Francisco mentioned them,[19] Pat. Era referred to only four tea bags[20] and Pat. Buhisan merely spoke of "the exhibits." But none of them were made to identify in open court the six or the four tea bags alleged to have been recovered from the appellant. No tea bag was marked in evidence. As proof of the prohibited drug, only the Certification of Laboratory Result[21] dated 31 January 1989 prepared by the forensic chemist, P/Capt. Lina Sarmiento, was identified by the latter and formally offered in evidence. The testimony of P/Capt. Sarmiento, however, does not at all establish the chain between the tea bags allegedly recovered from the appellant and the specimen submitted for examination. All that P/Capt. Sarmiento could state was that the specimen was submitted on 31 January 1989 by the OIC of the Anti-Narcotics Unit of the Navotas Police Station whose identity was never disclosed.[22] No sound explanation exists as to why the prosecution failed to mark as exhibits and offer in evidence the six tea bags.

Thirdly, it is equally difficult to understand why Pat. Francisco was not even made to identify in open court the alleged P20.00 marked money which he, as the supposed poseur-buyer, claimed to have delivered to the appellant. It was only two months and ten days after Pat. Francisco had testified that the existence of the bill surfaced. It only occurred to the prosecution to present the marked money during the course of the testimony of Pat. Emmanuel Buhisan on 24 October 1989,[23] when he produced the P20-bill and claimed that it was the marked money. Only then did the prosecuting fiscal move to have it marked as Exhibit "D." [24] But again, Pat. Buhisan was merely the investigator assigned to the case who took the statement of Pat. Francisco. He was not even a member of the arresting team as, in fact, he did not know when the arrest of the appellant was made.[25] How he came into possession of the bill is unclear from the prosecution's evidence.

Fourthly, the belated introduction of the alleged marked bill in evidence raises grave doubts as to its origin. If, according to Pat. Francisco, he had delivered to the appellant a marked bill in exchange for the alleged two tea bags of marijuana, and it was after the exchange that he gave the pre-arranged signal and arrested the appellant, then the marked bill should have been in the possession of the appellant at the time of the arrest and merely recovered from him. The evidence for the prosecution does not yield this fact. Pat. Francisco did not testify that he retrieved it from the appellant. He only declared the following on direct examination:

"Q: When you gave your signal by raising your right hand, what did your companions do?

A: They immediately approached us, Sir.

Q: After approaching you, what did they do?

A: We arrested the accused, Sir.

Q: What about you?

A: I held the evidence, Sir.

Q: What evidence are you referring to?

A: The two (2) tea bags of marijuana and the other four (4) tea bags of marijuana contained in an aluminum foil, Sir.

Q: Where did you recover the four (4) other tea bags of marijuana?

A: In his possession, Sir.

Q: Who recovered that?

A: I was the one, Sir.”[26]

Thus, it was not shown in Pat. Francisco's own testimony that the marked bill, which is a vital piece of evidence, was recovered from the appellant. Otherwise, he should have included it among the items of evidence which he held.

Also, the testimony of Pat. Francisco that he was the one who discovered from the appellant the alleged four other tea bags in the course of the latter's arrest is inconsistent with the declaration of Pat. Era that he was the one who obtained them from the appellant, although it was Pat. Buhisan who first frisked him:

"Q: You immediately approached the accused?

A: Yes, Sir.

Q: Then what did you do with the accused?

A: Pat. Buhisan was the one who frisk the accused, Sir.

Q: Were you able to find anything?

A: Yes, Sir. When I frisk the accused I was able to recover four (4) tea bag [sic] of marijuana placed in an aluminum foil, Sir.”[27]

This testimony of Pat. Era further strengthens the conclusion that the marked bill was not in the possession of or recovered from the appellant.

The testimony of Pat. Era does not inspire belief. For one, Pat. Buhisan, by his own admission, was not with the arresting team; therefore, he could not have frisked the appellant as alleged by Pat. Era. For another, assuming that Pat. Buhisan lied when he testified that he was not a member of the team, and thus he did frisk the appellant, then he must have found nothing from the latter, thereby contradicting the claim of Pat. Era that four tea bags were found in the appellant's possession.

Finally, it is incomprehensible that despite the appellant's serious accusations that the members of the arresting team not only took from him P350.00, which they divided among themselves, plus his Seiko wrist watch which was returned only three months later, and also demanded P6,000.00 in exchange for the dropping of the case against him, none of the policemen involved were called to the witness stand to rebut the charges.

In the light of all the foregoing, the appellant must be acquitted on the ground of reasonable doubt. The lackadaisical, if not inept, manner the prosecution presented its case could not result in any other conclusion. We stress once more what we reiterated in *People vs. Tantiado*[28] regarding the role of law enforcers and prosecutors in drug cases:

"Because of its ineptitude, the Government has again lost a case in the fight against drug pushers and users. It is then timely to exhort the law enforcement agencies, especially those assigned to enforce the Dangerous Drugs Act, to carefully prepare their plans for buy-bust operations and to efficiently and effectively carry them out, ever mindful of the possibility that their blunders may not only frustrate the efforts to eradicate the drug

menace but worse, embolden drug lords, pushers or users into defying the authorities. The drug problem has reached harrowing proportions. It has broken the lives, shattered the hopes and destroyed the future of thousands of our young citizens. Society can hardly excuse such blunders in the relentless war against the menace.

To the prosecuting arm of the Government, We reiterate what this court had said in *People vs. Esquivel* [82 Phil. 453, 459]:

'In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state.' "

Although the penalty is now immaterial, it would not be amiss to make another observation. The trial court imposed the penalty of reclusion perpetua which was not the penalty provided for by law at the time the offense charged was allegedly committed. The penalty then imposable was life imprisonment. We have time and again declared that both penalties are not synonymous but are entirely different and distinct penalties.[29] Evidently, it considered the latter as the English translation of the former, which is not the case.[30] Courts must impose only those penalties which the law prescribes and strictly use its terminology.

WHEREFORE, the appealed decision of Branch 169 of the Regional Trial Court of Malabon, Metro Manila, in Criminal Case No. 7309-MN is REVERSED and, on ground of reasonable doubt, the appellant EDUARDO CAMBA y RAPISORA is hereby ACQUITTED and ordered released from detention, unless further detention for any lawful cause is warranted.

Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Original Records (OR), 1; Rollo, 2.

[2] OR, 15.

[3] Id., 70-76; Rollo, 9-15, 49-55. Per Judge Eufrocinio S. dela Merced.

[4] Rollo, 84-106.

[5] Rollo, 89-91.

[6] TSN, 16 January 1990, 2-6; TSN, 9 January 1990, 5-6.

[7] OR, 75; Rollo, 14.

[8] Id.

[9] Rollo, 46.

[10] Id., 47.

[11] Exhibit "C."

[12] Rollo, 47.

[13] Id.

[14] Id., 48.

[15] Section 14(2), Article III, 1987 Constitution.

[16] People vs. Garcia, 215 SCRA 349 [1992].

[17] People vs. Matrimonio, 215 SCRA 613 [1992].

[18] TSN, 14 August 1989, 9 (emphasis supplied).

[19] TSN, 14 August 1989, 4-5.

[20] Id., 13-14.

[21] Exhibit "B."

[22] TSN, 9 August 1989, 7.

[23] Pat. Francisco testified on 14 August 1989.

[24] TSN, 24 October 1989, 7.

[25] Id., 4-5.

[26] TSN, 14 August 1989, 4.

[27] TSN, 14 August 1989, 13.

[28] 213 SCRA 365, 379-380 [1992].

[29] People vs. Penillos, 205 SCRA 546 [1992].

[30] People vs. Baguio, 196 SCRA 459 [1991].

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