

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR RIVERA Y MENDOZA ALIAS “OSCAR” AND DANILO ALBELDA Y MENDOZA, ACCUSED-APPELLANTS.

G.R. No. 98123. October 01, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

Oscar Rivera and Danilo Albelda were convicted of violating Section 4, Article II, of Republic Act 6425, and each sentenced to reclusion perpetua and a P20,000.00 fine.[1] This was a mistake; it should have been life imprisonment plus fine. But did the trial court commit a worse mistake in convicting them at all in the first place? The appellants vigorously say so and ask for the reversal of their conviction. The People say nay.

The principal witness for the prosecution was Pat. Jose Fernandez of the Anti-Narcotics Unit of the Quezon City Police Force, who led the buy-bust operation that resulted in the arrest of the appellants.[2] On September 25, 1989, at about 2 o'clock in the afternoon, his team proceeded to the squatters' area near the Nepa Q-Mart in Quezon City where an informer said drug-pushing activities were rampant. As the other team members deployed themselves unobtrusively, the informer took Fernandez with him and introduced him to Oscar Rivera, who was standing on the street. Fernandez said he was interested in buying P200.00 worth of marijuana. Rivera said he had the marijuana and told Danilo Albelda, who was waiting nearby, to get it. Albelda went into an alley and returned a few minutes later with a bundle wrapped in a piece of newspaper.[3] Fernandez unwrapped the package and, apparently satisfied with the contents, handed Rivera two P100.00 bills he had previously marked with his initials.[4] Fernandez then gave the secret signal and the other team members closed in and identified themselves as anti-narcotics agents. They retrieved the marked money from Rivera and arrested him and Albelda. At police headquarters, the bundle was delivered to the desk sergeant, who thereafter sent it to the PC-INP Crime Laboratory for examination. The contents were later found by Leslie Chamber, a forensic chemist of the laboratory, to be positive for marijuana.[5] After preliminary investigation, Rivera and Albelda were formally charged with drug pushing before the Regional Trial Court of Quezon City.[6]

The two accused had a different story to tell. They said that in the afternoon in question, they were on their way to a drinking party to be hosted by Sony Abang, whose father had just returned from Saudi Arabia. While walking along Ermin Garcia street, they were blocked by a blue car. Four men stepped out to frisk them for marijuana but found nothing. Nevertheless, the men, who said they were policemen although they were wearing civilian clothes, arrested them and took them to police headquarters. There they were beaten up to make them confess that they were drug pushers.[7]

Leonardo Quilim corroborated his two friends. He said that he was walking with them along Ermin Garcia street but fell behind briefly to urinate when the blue car blocked Rivera and Albelda. The four men who came out placed them under arrest after frisking them and finding no marijuana on them.[8]

After evaluating the evidence of the parties, Judge Jaime N. Salazar, Jr., decided in favor of the People. The trial

judge found the testimony of Fernandez more credible and supported by the physical evidence of the marijuana and the marked money. He rejected the averment of the defense that the accused had been framed, noting that there was no showing of any improper motive that could have urged Fernandez to perjure himself and send two innocent men to prison for the rest of their lives. The trial court also refused to believe that the blue car just "popped out" in the busy street and the four men simply arrested the two accused without any reason and in the presence of many people.

The decision is now questioned in the appellants' brief on the main ground that it should not have given credence to the testimony of Fernandez, the lone alleged eyewitness of the prosecution. The defense argues that, assuming they were really drug dealers, the appellants would not have sold marijuana to Fernandez, whom they had never met before, and in a busy street at that. The marijuana had not been sufficiently identified and could have been merely planted. The marked money was not properly marked and should have been dusted instead with fluorescent powder to make it more credible evidence. Moreover, the informer should have been presented in court to corroborate the account of the alleged buy-bust operation, on which Fernandez alone testified.

We have said time and again that questions of fact are best resolved by the trial court, which has the opportunity to observe the witnesses on the stand and determine from their demeanor if they are testifying truthfully or falsely. The findings of the trial court on these questions are conclusive on this Court unless it appears that they were reached arbitrarily or in disregard of the evidence on record. The defense faults the trial judge for noting the discourteous demeanor of Albelda and suggests he became biased because of it, but we see no reason why that behavior should have been disregarded. Albelda's arrogance was an indication of his credibility or lack of it. Timidity, forthrightness, surliness, belligerence, indignation, embarrassment, hesitancy, glibness, evasiveness, insolence - these and many other indicia define the credibility of the witness on the stand. The opportunity of the trial judge to observe all these characteristics places him in a better position than the appellate court in resolving controverted issues of fact. This is the reason why his findings thereon are received on appeal with great respect, if not indeed as conclusive on the higher court.

The other issues raised in the appellants' brief are also untenable. It is for the party to plan its own strategy and to choose which witnesses to call and what evidence to submit to support its own cause. If the accused felt that the prosecution did not present the informer because he would testify against it, they should themselves have called him to the stand to testify for the defense. It was also the prerogative of the prosecution to choose the manner of marking the money to be used in the buy-bust operation, and the fact that it was not dusted with fluorescent powder did not render the exhibit inadmissible. Indeed, the use of initials to mark the money used in the buy-bust operation has been accepted by this Court in numerous cases.[9] The testimony that the marijuana was duly turned over to the desk sergeant and later sent to the laboratory has not been refuted. Finally, the circumstances of the sale, while indeed curious, are nevertheless believable. We have observed in a significant number of decisions that drug pushers have become so reckless that they have not hesitated to sell their wares even to total strangers and in the most public of places, like pool halls, busy streets, markets and schools.[10]

As we observed in *People v. Bagawe*:^[11]

Drug pushing when done on a small level as in this case belongs to that class of crimes that may be committed at any time and at any place. After the offer 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*, 142, 142 SCRA 329; *People v. Sarmiento*, 147 SCRA 252); in front of a store (*People v. Khan*, *supra*) along a street at 1:45 p.m. (*People v. Toledo*, 140 SCRA 259), and in front of a house (*People v. Policarpio*, 158 SCRA 85).

We are convinced with the trial court that the guilt of the two appellants has been proved beyond reasonable doubt. The presumption of innocence in their favor has been overcome by the overwhelming evidence against them. However, as remarked at the beginning of this opinion, the impossible penalty against them is life imprisonment, not reclusion perpetua, which carries accessory penalties not attached to life imprisonment. We emphasized this distinction in Administrative Circular No. 6-A-92 dated June 21, 1993, and have repeated it in a growing number of cases^[12] to correct this common mistake of trial courts.

Oscar Rivera is only 34 years old. Danilo Albelda is only 31. Both must now spend the rest of their lives in the gray precincts of a prison cell. The Court fervently hopes that their case will serve as a deterrent to other young men and women like them who might be tempted as they were to poison our people with the venom of the dangerous drug. Is this a forlorn hope?

WHEREFORE, the appeals are DISMISSED. The decision of the trial court is AFFIRMED except for the penalty of reclusion perpetua, which is corrected to life imprisonment. The fines are retained. Costs against the appellants.

SO ORDERED.

Davide, Jr., Bellosillo, and Quason, JJ., concur.
Griño-Aquino, J., on leave.

[1] Decision penned by RTC Judge Jaime N. Salazar, Jr., Branch CIII, Quezon City, dated July 18, 1990.

[2] TSN, January 24, 1990, p. 20.

[3] Ibid., pp. 16-19.

[4] Id., pp. 19-20; pp. 22-23.

[5] Exhibit A, Records, p. 60.

[6] Information, Records, p. 1.

[7] TSN, July 10, 1990, pp. 4-33.

[8] TSN, June 1, 1990, pp. 4-11.

[9] People v. de Guzman, 188 SCRA 407; People v. Mendoza, 216 SCRA 715; People v. Alaban, 214 SCRA 301; People v. Li Wai Chung, 214 SCRA 504; People v. Naro, G.R. No. 94863 - July 19, 1993; People v. Madrid, 210 SCRA 196; People v. Abelita, 210 SCRA 497; People v. Honrada, 204 SCRA 858.

[10] People v. Alaban, 214 SCRA 301; People v. Simbulan, 214 SCRA 537; People v. Maugaw, 207 SCRA 732; People v. Madrid, 210 SCRA 196; People v. Arceo, 202 SCRA 170; People v. Hilario, 196 SCRA 716; People v. Kalubiran, 196 SCRA 644; People v. Tandoy, 192 SCRA 28; People v. Paco, 170 SCRA 681.

[11] 207 SCRA 761.

[12] People v. Penillos, 205 SCRA 546; People v. Baguio, 196 SCRA 459; People v. Mobe, 81 Phil. 58; People v. Ramos, 203 SCRA 237; People v. Madriaga, 211 SCRA 698; People v. Pablo, 213 SCRA 1.

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