

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL ROLDAN Y SAMSON, LAURO SANTIAGO Y CRUZ AND LITO DE LA CRUZ Y SEBASTIAN, ACCUSED-APPELLANTS.

G.R. No. 98398. July 06, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

In Criminal Case No. 9648-MN, the accused Raul Roldan y Samson, Lauro Santiago y Cruz and Joselito de la Cruz y Sebastian were charged with the violation of Section 4,[1] Article II of R.A. No. 6425 as amended, otherwise known as the Dangerous Drugs Act of 1972. The information,[2] dated 23 October 1990, against the accused reads as follows:

"That on or about the 22nd day of October 1990, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did then and there willfully, unlawfully and feloniously sell, distribute, deliver to Pat. Nemesio L. Ira in a buy-bust operation, twenty (20) tea bags of marijuana leaves, which is a prohibited drug.

Contrary to law."

Upon arraignment on 7 November 1990, the three (3) accused assisted by counsel de officio, entered a plea of not guilty.[3]

On Motion for Reinvestigation[4] dated 28 November 1990, the charge against Joselito de la Cruz was dismissed by the trial court in a Resolution[5] dated 3 January 1991.

After trial, the trial court rendered a decision[6] dated 8 April 1991, the dispositive portion[7] of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Raul Roldan y Samson and Lauro Santiago y Cruz guilty beyond reasonable doubt of violation of Section 4, Article II of R.A. No. 6425 and sentencing each one of them to suffer the penalty of life imprisonment, to pay a fine of Twenty Thousand Pesos (P20,000.00) and the cost of this suit.

The confiscated tea bags of marijuana (Exhs. 'G' to 'G-17'; 'H-1' to 'H-3') are forfeited in favor of the government and the Branch Clerk of Court is directed to turn over the same, upon the finality of this decision, to the Dangerous Drugs Board for proper disposition.

SO ORDERED."

The present appeal assigns a lone error[8] allegedly committed by the trial court:

"The lower court seriously erred in giving credence to the prosecution as against the defense when it should have done the other way around (sic); hence, it erred when it convicted the accused."

The relevant facts as found by the trial court are the following:[9]

"x x the Intelligence Special Operations Groups of the Navotas Police Station had been receiving telephone calls from concerned citizens complaining about the rampant selling of marijuana somewhere in a basketball court at Kapalaran St., San Roque, Navotas, Metro Manila. On October 20, 1990, Pat. Nemesio Ira, a member of said unit, received a similar complaint from a caller, who did not identify himself, naming the persons allegedly selling marijuana near said basketball court as alias 'Larry' and alias 'Raul long hair' and have the description of said persons. Pat. Ira then reported the said complaint to Cpl. Roland Mabbun of the same unit. In order to check the veracity of the said complaint, Cpl. Mabbun contacted his civilian informer, gave him P100.00 and instructed the latter to buy marijuana near the basketball court at Kapalaran Street from alias Raul and Larry, after giving the description of the two suspects. After thirty minutes, the civilian informer reported to Cpl. Mabbun that he was able to buy three (3) tea bags of marijuana. At about noontime of the same day, Cpl. Mabbun again instructed the said civilian informer to buy marijuana to check if Raul and Larry were still at said place, and said civilian informer returned at about 1:00 o'clock in the afternoon with two tea bags of marijuana allegedly bought from Raul and Larry. As only Cpl. Mabbun and Pat. Ira were at the police station then, they waited for Pat. Lauro Santos and Pfc. Victor Luya, who arrived at about 4:00 o'clock in the afternoon and they organized themselves into a team for the purposes of conducting a buy-bust operation, with Cpl. Mabbun as team leader and Pat. Ira as poseur-buyer. At about 4:30 o'clock in the afternoon of the same day, the team, accompanied by the civilian informer, proceeded to Kapalaran St. and positioned themselves in an alley near the basketball court where they were met along the way by Raul and Larry. The civilian informer introduced Pat. Ira to Raul and Larry as a person who wanted to buy marijuana. Raul then asked Pat. Ira how much he wanted to buy and the latter replied that he would buy P30.00 worth of marijuana. Raul asked for the money and Pat. Ira gave him the marked money consisting of one ten peso bill and one twenty peso bill, on which he and Cpl. Mabbun had earlier placed their initials (Exhs. 'A' and 'B'). Raul and Larry then went to the basketball court and took something from beneath the pile of wood at the side of the basketball court. Raul and Larry then returned to where they left Pat. Ira and was joined on the way by Joselito de la Cruz. Larry handed three tea bags of marijuana wrapped in newsprint to Pat. Ira who, thereupon, gave the pre-arranged signal to the other members of the team, who ran towards them and helped him in arresting the three suspects. The team members then asked Raul as to where the other stocks of marijuana were and the latter accompanied them to the side of the basketball court where there was a pile of pieces of wood. Raul took a nestogen milk can under the pile of wood and gave it to the police officers. The can contained seventeen (17) tea bags of marijuana which were individually wrapped in newsprint. The police officers likewise recovered the marked money from Raul and they brought the three suspects to the Navotas Police Station.

At the Navotas Police Station, Pat. Ira and Cpl. Mabbun placed their initials and the words 'buy bust' on the newsprint wrapper of the three (3) tea bags of marijuana bought by Pat. Ira from the accused (Exhs. 'H-1' to 'H-3'; 'H-1-A' to 'H-3-A'; 'H-1-B' to 'H-3-B'). They likewise placed their initials on the nestogen can (Exh. 'G') and on the newsprint wrapper of the seventeen (17) tea bags of marijuana contained in said can (Exh. 'G-1' to 'G-17'). All the marijuana confiscated were thereafter turned over to the National Bureau of Investigation for laboratory examination. The certification and report subsequently issued by the National Bureau of Investigation, which were admitted by the defense counsel, show that the examination of the specimen submitted gave positive results for marijuana (Exhs. 'E' to 'F')."

These facts were testified to by Pat. Nemesio Ira[10] and Cpl. Roland Mabbun,[11] agents of the Intelligence Special Operations Group of the Navotas Police Station who had posed as buyer-poseur and team leader, respectively, of the buy-bust operation. The testimony of the forensic chemist of the Forensic Chemistry Section of the National Bureau of Investigation ("NBI") was not offered by the prosecution, since the defense admitted[12] the former's Certification dated 22 October 1990 (Exhibit "E") and Report dated 23 October 1990 (Exhibit "F"); both documents concluded that the specimens delivered to the NBI for forensic chemistry examination, weighing approximately 34 grams, proved positive for marijuana.

Appellants presented a different version of the facts. The trial court summed up appellants' story as follows:[13]

"On the other hand, both accused denied the charge against them. They claim that between 4:00 to 4:30 o'clock in the afternoon of October 22, 1990, they were sitting on a bench near the basketball court at Kapalaran St., together with Joselito de la Cruz, watching five persons playing basketball. Three policemen, whom they later came to know as Pat. Ira, Pat. Luya and a certain Baba suddenly alighted from a motorized tricycle which stopped in front of them. The said policemen arrested them and brought them to the Navotas Municipal Building. During the investigation, Cpl. Mabbun was forcing them to admit ownership of the marijuana which was shown to them but they refused to do so.

Anna Rose Rafael tried to corroborate the claim of the accused. She testified that at about 4:00 to 4:30 o'clock in the afternoon of October 22, 1990, she was at the door of her house at Kapalaran St., about six (6) meters away from the basketball court when a motorized tricycle stopped in front of Raul Roldan, Larry Santiago and another person who were then sitting on a bench near the wall of the basketball court; that three policemen alighted from said motorized tricycle, drew their guns and poked the same at Raul Roldan and Larry Santiago; and that the policemen thereafter brought Raul Roldan and Larry Santiago with them."

As noted, appellants' brief assigns a solitary error, cast in very general terms, allegedly committed by the trial court. Close study of appellants' brief reveals an enumeration of seven (7) instances where the trial court arrived at conclusions adverse to the defense because, according to appellants, the former "misread certain pieces of evidence [or] it overlooked certain material circumstances." [14] In other words, appellants actually submit seven (7) assignments of error.

These assignments of error, however, have a common element: the trial court's ascribing credibility to prosecution witnesses which the defense contends to be misplaced. Hence, the ultimate issue posed in this case is whether the trial court erred (1) in giving credence to the testimony of prosecution witnesses tending to show that they had succeeded in entrapping appellants in a buy-bust operation as peddlers of marijuana on the afternoon of 22 October 1990; and (2) in not believing the claims of the defense that (a) no buy-bust operation actually occurred and (b) that the accused were merely being forced to admit ownership of, and to implicate a certain Jojo Florendo as the source of, the marijuana.

The fundamental issue obviously involves the credibility of witnesses. There is no paucity of jurisprudence relating to the Court's role in respect of issues of this nature.

The Court accords great respect to the factual conclusions drawn by trial courts, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity of observing the deportment and demeanor of witnesses while listening to them speak, enabling him to form at first hand a judgment as to whether witnesses were telling the truth or not. [15] When the issue is one of credibility of witnesses, the Court has almost invariably accorded the highest degree of respect to the findings of the trial court. [16]

Appellate courts will not disturb the credence (or lack of it) accorded by the trial court to the testimony of witnesses unless it be clearly shown that the trial court had overlooked certain facts of substance which, if considered, would affect the result of the case [17] or arbitrarily disregarded facts and circumstances of significance in its appraisal. [18]

Appellants here have failed to show any reason why the Court should depart from the general rule.

Appellants allege that the court a quo erred in its finding that the prosecution's witnesses had no ill motive which would have moved them to testify falsely against the accused. [19] On the contrary, appellants contend, they had established ill motive on the part of Cpl. Roland Mabbun as he was forcing appellant Raul Roldan to implicate one Jojo Florendo as the source of the marijuana. This fact was allegedly revealed in the cross-examination [20] of Roldan to wit--

"Cross examination by Fiscal Estacio

Q: That time when Mabbun was asking you to admit the ownership of this "damo", you were mentioning that you were then being investigated, is it not?

A: Yes, sir.

Q: By the way, how did Mabbun force you to admit ownership of this 'damo'?

A: We were asked if we own it and they told us to cooperate with them as to the source of marijuana by the name Jojo Florendo, sir."[21]

The assertion that an evil motive tainted the actions of law enforcement officers conducting buy-bust operations and testifying against the accused thereafter, runs counter to the legal presumption that law enforcers have regularly performed their duties. The general rule is set out in, e.g., *People v. Sanchez*[22] in these terms:

"Where there is no evidence and nothing to indicate the principal witness for the prosecution was [moved] by improper motives the presumption is that he was not so [moved] and his testimony is entitled to full faith and credit."[23]

In the absence of convincing proof to the contrary, the presumption must be upheld.[24]

The Court has carefully examined the record of the case and except for the above-quoted testimony of appellant Roldan on cross-examination, the allegation that the law enforcement officers sought to implicate a supposed third person named Jojo Florendo is bereft of basis. The Court is unable to understand why so important an affirmative defense (if true) was left so patently lacking in specification and development. The quantum of proof required to overthrow the presumption of regularity of performance of official duty was not attained nor were efforts exercised to obtain such proof. The testimony of Roldan is totally uncorroborated and self-serving.

The second assignment of error[25] is that the trial court erred in giving credence to the testimony of prosecution witness Pat. Nemesio Ira who had stated on cross-examination that the accused "got the marijuana [from] beneath the pile of wood at the side of the basketball court"[26] despite Pat. Ira's failure to state such fact in his sworn affidavit.[27] The defense claims that the omission had adversely affected the witness' credibility and bolstered its claim that no buy-bust operation had actually taken place and that the accused were arrested merely to pressure them to testify against a certain Jojo Florendo.[28]

In *People v. Alcantara*,[29] the Court addressed this issue of discrepancy between an ex parte affidavit and the affiant's testimony in open court when it observed that "an affidavit being taken ex parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject."[30] This point was elaborated upon in *People v. Villanueva*[31] in the following terms:

"x x x Moreover, affidavits are frequently not complete reproductions of what the declarants had in mind, considering the affidavits are frequently prepared by the administering officer and cast in the latter's language or the latter's understanding of what the affiant had said, while the affiant frequently simply signs the affidavit after the same has been read to him. The statements made by witness Atienza during the preliminary investigation of the criminal case were merely reiterations of what Atienza's affidavit had set out and it may be recalled that preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination (not guilt beyond reasonable doubt) of probable cause prior to the filing of an information in court. It is the statements in open court during trial which deserve careful consideration."[32]

We consider that the omission does not warrant a reversal of the trial court's decision. Certainly, the omission

does not detract from the fact that the accused were caught in flagrante delicto in the sale of marijuana.

In their third and seventh assignment of errors,[33] appellants complain that the trial court had taken into account inconsistencies in the testimonies of appellants and their witness but had disregarded inconsistencies in the testimony of prosecution witnesses.

In its decision, the trial court observed:

"x x x, while both accused claimed that Joselito de la Cruz was seated with them on the bench when the policemen arrived and arrested them, their witness, Anna Rose Rafael, stated that she [did] not know the third person seated with the two accused, although she admitted that she knows Joselito de la Cruz, who is her neighbor. Likewise, while Anna Rose Rafael testified that the policemen drew and poked their guns at the accused the latter, however, made no mention of such fact, even admitting that they voluntarily went with the policemen." [34]

Considering the testimony of defense witness Rafael that she was approximately only six (6) meters away from the basketball court when the accused were arrested; [35] that the basketball court was a small one consisting of only a single court; [36] that only five (5) children were playing at the time [37] and that the accused and another person were the only spectators of the game, [38] the trial court was justified in not giving credence to her testimony. For the foregoing circumstances show that Anna Rose Rafael was in a position to clearly identify the third person seated beside the accused Raul and Larry. Instead, Anna Rose chose to contradict the testimonies of the accused themselves that Joselito de la Cruz was the third person with them and that no guns had been drawn during the entire incident.

The inconsistencies [39] attributed to the prosecution witness which, according to the defense, the trial court disregarded, relate to alleged discrepancies between (a) the direct and cross-examination of Pat. Ira as to who had transacted with the accused in the purchase of marijuana, and (b) photographs submitted by the defense showing a basketball goal attached to a wall [40] and Cpl. Mabbun's testimony that appellants took out the rest of the marijuana from underneath a pile of pieces of wood near the "pole" of the basketball goal.

Appellants point out that while in his direct testimony, Pat. Ira said that:

"it was their civilian informer who told the accused that he [the civilian informer] wanted to buy marijuana", [41]

in his cross-examination, Pat. Ira claimed that he was the one who had told appellant Roldan "that he wanted to buy marijuana." [42]

A review of the transcripts, in particular the citations of appellants, does not support appellants' contention. The transcripts show that Pat. Ira never wavered in his testimony that he himself had informed the appellants that he wanted to buy marijuana. Nowhere in the transcript does it appear that the civilian informer had informed appellants that he wanted to buy the marijuana during the buy-bust operation. To the contrary, the direct testimony of Pat. Ira states:

"Fiscal Estacio (witness):

x x x x x x x x

Q: What happened when you were accompanied by the civilian informer to that person allegedly selling marijuana?

A: [Pat. Ira] The civilian informer told that person that I wanted to buy from him, sir.

x x x x x x x x"[43]

(Emphasis supplied)

The transcripts clearly show the roles of the civilian informer and Pat. Ira during the buy-bust operation: the former introduced the latter to appellants and thereafter Pat. Ira effected the purchase of the marijuana.

Appellants also claim a discrepancy between Cpl. Mabbun's testimony to the effect that they recovered the rest of the marijuana from underneath the "piled pieces of wood near the pole of the basketball goal"[44] and the documentary evidence offered by appellants, photographs (Exhs. '2' and '3') allegedly of the basketball court where the arrest had been made, showing no pole but rather a basketball ring and board attached to a wall. Appellants conclude that Cpl. Mabbun was in fact not with the group who arrested the appellants as claimed by the latter,[45] and that the trial court had arbitrarily disregarded those photographs which, appellants insists, show the exact condition of the basketball court when appellants were arrested.[46]

In declining to ascribe weight to the photographs which Anna Rose Rafael had identified, the trial court noted that the "pictures were taken only on February 11, 1991, whereas the buy bust operation occurred on October 22, 1990;"[47] and that accordingly, the possibility that the pile of wood had been taken away during the intervening four (4) month period was great. Those photographs had been taken, not by Anna Rose, but by an unnamed photographer who was not presented in court at all.[48]

Appellants assert finally that it is "highly inconceivable" that they would have sold marijuana at the basketball court where the prosecution witnesses claimed they did,[49] considering that the basketball court was the center of the community of San Roque Navotas.[50]

The argument does not persuade. As pointed out by this Court in *People v. Paco*:[51]

"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)."[52] (Underscoring supplied)

It does not appear far-fetched at all that marijuana and other drugs would be bought and sold by spectators at a municipal or barangay basketball court.

Finally, appellants argue that it is "against reason" that law enforcers engaged in a "buy-bust" operation would expose their civilian informant as the police did in the case at bar.[53] Suffice it to say that this Court will not pretend to establish on an a priori basis what detailed acts police authorities might credibly undertake and carry out in entrapment operations.

WHEREFORE, for all the foregoing, the Decision of the Regional Trial Court of Malabon, Branch 170, Metropolitan Manila in Criminal Case No. 9648-MN dated 8 April 1991 is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

[1] "Section 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 transactions, x x x. (as amended by P.D. No. 1675)."

[2] Records, pp. 1-2.

[3] Id., p. 11.

[4] Id., pp. 16-17.

[5] Id., pp. 18-20.

[6] Penned by Judge Marina L. Buzon.

[7] Trial Court Decision, Rollo, p. 19.

[8] Appellants' Brief, Rollo, p. 38.

[9] Trial Court Decision, Rollo, pp. 15-17.

[10] TSN, 8 January and 22 January 1991, pp. 1-8 and 1--22; Records, pp. 122-151.

[11] TSN, 29 January 1991, pp. 1-15; Records, pp.152--166.

[12] TSN, 22 January 1991, pp. 1-3; Records, pp. 130-132.

[13] Trial Court Decision, Rollo, pp. 17-18.

[14] Appellants' Brief, Rollo, p. 40.

[15] People v. Naguita, 208 SCRA 207 (1992); People v. Li Wai Cheung, 214 SCRA 504 (1992); People v. Bolosa, 209 SCRA 476 (1992); People v. Ocampo, 206 SCRA 223 (1992); People v. Magaluna, 205 SCRA 266 (1992); People v. Fabian, 204 SCRA 730 (1991); Eduardo Arroyo v. Court of Appeals and Ruby Vera-Neri v. People, 204 SCRA 750 (1991); People v. Toribio, 198 SCRA 529 (1991); People v. Catubig, 195 SCRA 505 (1991); People v. Flores, 185 SCRA 366 (1990); People v. Caringal, 176 SCRA 404 (1989); People v. Perez, 175 SCRA 203 (1989); People v. Valdez and Orodio, 159 SCRA 152 (1988); People v. Cayago, 158 SCRA 586 (1988).

[16] People v. Patog, citing People v. Jones, People v. Egas and People v. Rosario, 144 SCRA 429 (1986).

[17] People v. Patog, *supra*.

[18] People v. Bolosa, *supra*, note 15.

[19] Appellants' Brief, Rollo, p. 40.

[20] TSN, 19 February 1991, pp. 6-9; Records, pp. 184--187.

[21] Id., p. 6; Records, p. 184.

[22] 173 SCRA 305 (1989), citing *People v. Patog*, 144 SCRA 429 (1986).

[23] 173 SCRA at 312.

[24] *People v. Segwaben*, 194 SCRA 239 (1991).

[25] Appellants' Brief, Rollo, p. 41.

[26] *id.*

[27] Records, pp. 73-74.

[28] Appellants' Brief, Rollo, p. 42.

[29] 151 SCRA 326 (1987).

[30] 151 SCRA 326 at 330.

[31] G.R. No. 96469, 21 October 1992.

[32] G.R. No. 96469, 21 October 1992, pp. 6-7.

[33] Appellants' Brief, Rollo, pp. 43 and 45-47.

[34] Trial Court Decision, Rollo, pp. 18-19.

[35] TSN, 12 February 1991, p. 3; Records, p. 169.

[36] *Id.*, p. 7; Records, p. 173.

[37] *Id.*, p. 12; Records, p. 178.

[38] *Id.*

[39] Appellants' Brief, Rollo, pp. 45-57.

[40] *Id.*, pp. 43-44.

[41] Appellants' Brief, Rollo, p. 45.

[42] *Id.*, p. 46.

[43] TSN, 8 January 1991, p. 3; Records, p. 124.

[44] TSN, 29 January 1991, p. 14.

[45] Appellants' Brief, Rollo, p. 47.

[46] *Id.*, pp. 43-44.

[47] Trial Court Decision, Rollo, pp. 43-44.

[48] TSN, 12 February 1991, p. 10; Records, p. 176.

[49] Appellants' Brief, Rollo, pp. 44-45.

[50] *Id.*

[51] 170 SCRA 681 (1989).

[52] 170 SCRA at 689.

[53] Appellants' Brief, Rollo, p.45.

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