

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO CABISADA Y HOYOHOY, ACCUSED-APPELLANT.

G.R. No. 98703. September 14, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Danilo Cabisada y Hoyohoy has appealed the decision of the Regional Trial Court of the 10th Judicial Region (Branch XV, Ozamis City) in its Criminal Case No. QC-912(R) which found him guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, for which he was sentenced to the penalty of life imprisonment, ordered to pay a fine of Twenty Thousand Pesos (P20,000.00), and to suffer the accessory penalties of the law as well as to pay the costs (p. 52, Record).

The information under which accused-appellant was charged and found guilty reads:

REPRODUCED INFORMATION

The undersigned First Assistant City Prosecutor accuses DANILO CABISADA y HOYOHOY, a resident of Bliss Project, Ozamiz City of the crime of VIOLATION OF SECTION 4, ARTICLE II OF REPUBLIC ACT 6425, AS AMENDED, committed as follows:

That on or about October 11, 1989 at 3:15 P.M. more or less, in Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another marijuana cigarettes.

CONTRARY to Section 4, Article II of Republic Act 6425, as amended.

City of Ozamiz, Philippines, April 27, 1990.

(SGD) DOMINADOR B. BORJE

First Assistant City Prosecutor

NPS-IX

(p. 1, Record.)

How accused-appellant was apprehended in the act of selling marijuana on October 11, 1989 was narrated by the court a quo, thus:

The evidence for the prosecution shows that on October 11, 1989, at about 3:15 P.M., at the gate of the Bliss Project, Ozamiz City, near the public market, Sgt. Reynaldo Miguel, Sgt. Bernardino Mugot, Sgt. Rolando Malagayo, and CIC Emilio A. de Guzman of the Philippine Constabulary, then members of the 10th Narcotics Regional Unit District "A", stationed at Cotta, Ozamiz City, conducted a buy-bust operation with a certain Percival Raterta, a civilian informer as their poseur buyer. This operation was staged by them after receiving

reliable information that rampant buying and selling of marijuana cigarettes occurred in said area.

Before going to the place of operation, Sgt. Reynaldo Miguel, the team leader, gave a marked ten-peso bill with SN-GJ279302, which was previously entered in their logbook. Before their pseudo-buyer Percival Raterta went to the place, the members of the narcotics team already placed themselves in strategic positions where they observed their poseur buyer Percival Raterta approached the accused Danilo Cabisada, standing at the gate of the Bliss Project, gave the marked ten-peso bill, and the accused giving in return handrolled marijuana cigarettes. After the poseur buyer walked away, the Narcotics agents promptly moved and closed in on the accused, but sensing their presence, the latter ran inside the public market with the narcotics agents in pursuit. At the entrance of the public market where there are stores, Sgt. Mugot, Malagayo and Miguel were able to hold the accused and they had to employ reasonable force to subdue him as he resisted arrest even when they informed him that they were Narcotics Agents. The arresting officers brought him to the PC headquarters at Cotta, Ozamiz City, and Sgt. Miguel, after a body search, found the marked ten-peso bill with SN-GJ 279302 with the initial of Sgt. Miguel was found inside the pocket of accused Danilo Cabisada.

When brought to the PC headquarters for identification and investigation, the accused identified himself as Danilo Cabisada y Hoyohoy, 25 years old, single and a resident of Sta. Cruz, Ozamiz City, and their poseur buyer Percival Raterta already delivered the six (6) sticks of handrolled marijuana cigarettes to their team leader Sgt. Reynaldo Miguel.

On examination of the six handrolled cigarettes bought by Percival Raterta and delivered by accused Danilo Cabisada to the latter, they found them to be marijuana cigarettes by reason of their training and experience as Narcotics Officers. And to confirm their findings, these six (6) sticks of hand-rolled marijuana cigarettes were sent to the Regional Office of the NBI for expert scientific examination (Exh. C). The team further learned from the PC headquarters that accused Danilo Cabisada, together with three (3) other persons, two of whom were Muslims, were previously arrested on May 23, 1989, by the members of the members (sic) of Regional Special Action Force (RSAF) of the Philippine Constabulary in possession of marijuana cigarettes. According to Sgt. Jim Cubillan, these persons were granted conditional immunity with the permission of Commanding Officer, Capt. Agosto V. Nazareth, 466th PC Company, Cotta, Ozamiz City, on condition that they will act as informers or agents that will lead to the arrest of the mastermind or the head dealer of marijuana in Ozamiz City. The four (4) suspects agreed to the conditions and they were immediately released from custody. According to Sgt. Jim Cubillan, in his rebuttal testimony, they followed accused Danilo Cabisada towards Lawis, but he ran away and never come to them, and they waited for him to report to the headquarters the following day, May 24, 1989, but he did not anymore report. Only the two (2) of the arrested suspects on May 23, 1989, complied with their conditions for their grant of immunity, but accused and another Muslim did not, so Criminal Case No. OC-866 R was filed against him on May 31, 1989, still pending arrest when he was caught red-handed selling marijuana cigarettes to Percival Raterta on October 11, 1989. (pp. 50-51, Record.)

The poseur-buyer, Percival Raterta, was presented and testified in the course of his examination-in-chief:

Q. Do you remember if there was a buy-bust operation conducted by the Regional Narcotics Unit of the Philippine Constabulary on October 11, 1989?

A. Yes, sir.

Q. At about 3:15 o'clock in the afternoon, will you please tell the Honorable Court if there was such an operation on October 11, 1989?

A. Yes, sir.

Q. And this operation was conducted at the gate of BLISS Project near the public market, am I correct?

A. Yes, sir.

Q. Where were you at that time?

A. I was at the gate of BLISS Project.

Q. And what happened when you were at the gate of BLISS Project of Ozamiz City?

A. I bought from Danilo Cabisada six (6) handrolled marijuana cigarettes at P10.00.

Q. You mean to say, for six handrolled marijuana cigarettes the cost is P10.00.

A. Yes, sir.

Q. Now, you stated, you were pointing to one whom you called Danilo Cabisada, if he is present in Court, will you please point to him?

A. Yes, I can.

Q. Please point to him.

A. This one, sir, Danilo Cabisada.

(Witness pointing to the accused inside the courtroom when asked his name he answered Danilo Cabisada).

Q. Now, who delivered the P10.00 bill to the accused personally?

A. I was the one, sir.

Q. And this ten peso bill was previously entered in the log book of the Narcotics Unit?

A. Yes, sir.

Q. Who gave you the ten peso bill?

A. S/Sgt. Reynaldo Miguel, our team leader.

Q. Do you know if Sgt. Miguel attached his initial to the ten peso bill?

A. Yes, sir.

Q. I am showing to you this machine copy of a ten peso bill with serial number GJ279302, will you please point in this ten peso bill the initial you stated affixed by Sgt. Reynaldo Miguel?

A. This one, sir. (Witness pointing to the initial right below the signature of the President of the Philippines.)

PROSECUTOR BORJE

At this juncture, Your Honor, we respectfully pray that the page of the record which the ten peso bill machine copy is attached be marked as Exhibit "D" and the ten peso bill as Exhibit "D-1" and the initial of Sgt. Miguel be encircled as pointed by the witness as Exhibit "D-1-A".

COURT

You have previously made markings?

PROSECUTOR BORJE

Yes, Your Honor.

Q. And the ten peso bill whose machine copy is now marked as Exhibit "D--1", was the original one ten peso bill you delivered personally to the accused, is that correct?

A. Yes, sir.

Q. And who delivered to you the six sticks of handrolled marijuana cigarettes after you delivered this ten peso bill?

A. Danilo Cabisada, sir.

Q. Now, after Danilo Cabisada received this ten peso bill which you delivered to him and after he delivered to you the six sticks of handrolled suspected to be marijuana cigarettes, what happened?

A. I went home to the office, I returned to the office.

Q Before you went back to the office, where there a PC Narcotics Agent close to the accused?

A. I did not see if there were Narcotics Agent because after receiving the six handrolled marijuana cigarettes I immediately went home to the office.

Q. To whom you delivered the six sticks of handrolled marijuana cigarettes which were delivered to you by the accused Danilo Cabisada?

A. In the office, to our team leader.

(TSN, August 9, 1990, pp. 3-5.)

and when subjected to cross-examination, he continued to respond to the series of questions, thus:

ATTY. BAÑOSIA

Q. Where did you see Danilo Cabisada on October 11, 1989?

A. There at the gate of the BLISS Project market site.

Q. Where is this BLISS Project which you have been mentioning?

A. At the back of the public market, sir.

Q. And you said that Danilo Cabisada was standing there?

A. At the gate.

Q. What was he doing?

A. He was standing there at the gate so I approached him and told him that I want to buy marijuana, and I gave him the money and in returned he gave me the marijuana, and I immediately went home to the office.

Q. You mean, when you gave the ten peso bill to the accused, the accused also gave to you immediately the six sticks of marijuana?

A. Yes, sir.

Q. And after that you immediately proceeded to the headquarters, am I correct?

A. Yes, sir.

Q. Before you went there to buy marijuana from the accused, did you have already an arrangement with your companions the Narcotics Agents that you will buy marijuana?

A. Yes, sir.

Q. Who are the Narcotics Agents whom you have agreed with in connection with that operation?

A. De Guzman, Mugot, Malagayo and before Sgt. Miguel arrived.

Q. What was the agreement about?

A. They just told me to buy marijuana from Danilo Cabisada.

Q. Did they also tell you where they will position themselves while you will buy marijuana from Danilo Cabisada?

A. Yes, sir.

Q. So at the time when you buy marijuana from Danilo Cabisada, you already knew what particular place where your companions position themselves?

A. I did not see them. I knew where they will position themselves, but I did not see them actually.

Q. Because you did not see them actually, you could not also see the particular distance of your companions to the place where you buy marijuana from Danilo Cabisada?

A. Yes, I could not estimate.

Q. But, immediately after buying marijuana, you immediately left and went to the headquarters, am I correct?

A. Yes, sir.

(TSN, August 9, 1990, pp. 8-9.)

which narration was corroborated on the witness stand by Sgt. Bernardino Mugot who pointed to accused-appellant as the person whom he saw delivering the marijuana cigarettes to the poseur-buyer after the P10 bill was handed over to accused-appellant (TSN, August 10, 1990, pp. 3-6).

For his part, accused-appellant maintains that his apprehension was in retaliation for his failure to provide information on drug dealers in the area. On direct examination, while he admitted that he was picked up by members of the Regional Special Action Force (R-SAF) of the Philippine Constabulary on May 23, 1989 at Oy-Oy's Restaurant (where he was employed as a waiter) along with 3 customers, he, however, denied having had marijuana cigarettes in his possession or that he was selling the same. He claimed he was released the following day, together with one of the three customers "named Lucas" (TSN, December 5, 1990, p. 8) on condition that he would "be an asset to them" and report "always about the actuation of the Parojinogs (a barriomate) ... 3 times a week, and if he failed ... (he) will be arrested and a case filed against (him)." However, he did not make any report on the Parojinogs because "I do not know their lifestyle, and besides these persons are somewhat dangerous and my brothers and sisters and my parents might be implicated if the Parojinogs will learn that I am giving information to the PC" (Ibid.). The two other customers were likewise released upon the intercession of a Mrs. Feliciano with Capt. Agosto V. Nazareth, Commanding Officer, 466th PC Company "because they were muslims (sic) and students of Misamis University" (Ibid, p. 7).

Accused-appellant further stated that he was not aware that when he failed to return on May 24, 1989, a day after his apprehension on May 23, 1989, to submit a report on the Parojinogs, the R-SAF had filed a case against him on May 31, 1989 for violation of Section 8 (illegal possession of marijuana), Article II of Republic Act No. 6425, as amended, docketed as Crim. Case No. O.C. 866-R or that a bond for his temporary release was set at P120,000.00.

In sustaining the version of the People vis-a-vis the evidence offered by the defense premised on denial, the trial court expressed the opinion that the testimonies of Sgt. Mugot and the poseur-buyer are categorically positive about accused-appellant's culpability, in default of any showing of ill-motive on their part to concoct the

imputation against accused-appellant. Anent the aspect of how the search was conducted, the trial judge tersely observed that a warrant therefor prior to apprehension was not indispensable inasmuch as the culprit was bodily searched incidental to his arrest while selling the prohibited drug (p. 57, Record).

Dissatisfied with the pronouncement of accountability, accused-appellant is now before us, raising issues which boil down to the principal query of whether he must be held to answer the inculpatory facts levelled against him (p. 1, Brief for the Appellant; p. 30, Rollo).

To support the plea of exculpation, accused-appellant advances the proposition that the evidence presented by the People is marred with vacillating, nay, incredible statements sufficient to exonerate him of the charge. Yet, the so-called elastic responses, as well as the alleged absurd narration were not amplified in his appeal brief to such a degree as to engender suspicion of bad faith. At most, accused-appellant could but point to certain details in Sgt. Mugot's open court declarations which he claims to be of vital significance. But accused-appellant's perception of discrepancy relative to his position and the positions of the buy-bust team members in the public market while the transaction was in progress is too trivial a matter as to seriously impair the credibility of the arresting officer on major points. A contrario, such inconsistency indicates veracity rather than prevarication (*People vs. Viñas*, 25 SCRA 682 (1968); 2 Regalado, Remedial Law Compendium, Volume 2, 1988 ed., p. 555) and only tends to bolster the probative value of such testimony (*People vs. Selfaison, et al.*, 61 OG 1513; Regalado, *supra*, at p. 555). Neither may Sgt. Mugot's story be disbelieved simply because of his seeming incompetence in conducting other buy-bust operations since a disquisition along this line is certainly foreign and irrelevant to the question of accused-appellant's liability (p. 12, Brief for Appellant).

In his bid to diminish the credibility of the poseur-buyer, accused-appellant insinuates that the factual premises established by Percival Raterta carry a hidden, if not sinister agenda all because the poseur-buyer from Bukidnon was specifically requested by the PC Narcotics Unit to travel to Ozamis City and to track down appellant. Had there been a more profound study of the stenographic notes, accused-appellant's counsel would have realized the futility of pressing the idea of an evil scheme as to why the poseur-buyer suddenly entered the scenario, so to speak, since it was underscored by Raterta that he was not coerced to act as an asset of the narcotics team:

Q. Where is your permanent address or residence?

A. Valencia, Bukidnon.

Q. You mean to say, you were recruited by the Philippine Constabulary Office in Ozamis City just to come here to become a poseur-buyer?

A. No, sir; they did not get me.

(TSN, August 9, 1990, p. 6; p. 13, Brief for Appellant).

Of course, the court *a quo* elicited the corresponding clarification from the poseur-buyer on the purpose of his trip to Ozamis City thus:

COURT

Q. So, your trip here in Ozamis City is purposely to be an informant of the Narcotics Agents?

A. Yes, sir, to look for a pusher.

Q. How did you know that there was a pusher in the public market place, who informed you that?

A. Because my co-confidential informant was trying to buy or has already bought from them.

Q. Are you referring to the accused Danilo Cabisada?

A. Yes, sir.

Q. So, you were purposely brought here by the Narcotics Agents to act as a poseur buyer?

A. Yes, sir.

(TSN, August 9, 1990, p. 7.)

But there is nothing in his testimony that suggests ill-motive for his task is precisely to directly participate in the entrapment of those engaged in the illicit traffic of drugs irrespective of personalities involved. Accused-appellant even goes to the extent of posing the query of why Raterta had to be the poseur-buyer when another asset from the locality could have done the job with ease and less cost to the PC Narcotics Unit. The fallacy in this argument is the fact that there is no indication that a local asset was available and willing to undertake the task, apart from the fact that the prerogative of choice as to whom should be tapped for a particular mission lies in the hands of the PC Narcotics Team.

By and large, the evidence adduced by the People is enough to sustain the conviction of accused-appellant over his protestations of innocence. We are not persuaded by accused-appellant's defense that he was haled to court in retaliation for his failure to provide information on local drug dealers in default of adequate proof that the witnesses against him were motivated by bad faith (*People vs. Labriaga*, 199 SCRA 530 (1991)). Withal, prosecution witnesses are entitled to full faith and credence as they are presumed to have acted in the regular performance of official duty (*People vs. Ramos, Jr.*, 203 SCRA 237 (1991)).

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto and the appeal is hereby DISMISSED.

SO ORDERED.

Bidin, Romero, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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