

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO LUA Y NERI, ACCUSED-APPELLANT.

G.R. Nos. 114224-25. April 26, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Caloocan City finding accused-appellant Rolando Lua y Neri guilty of violating Sec. 4, Art. II, of R.A. No. 6425[2] as amended, and of P.D. No. 1866.[3]

Pursuant to OPLAN SATURN, a program addressing the growing drug problem in Bagong Silang, Caloocan City, a buy-bust operation was conducted by police operatives for the entrapment of Rolando Lua.

At 12 o'clock noon of 30 March 1991, Lt. Norberto Surara, Commander of Bagong Silang Police Sub-station, Caloocan City, and his men discussed plans to serve a search warrant on alleged drug pusher Hilario Talavera and to conduct a buy-bust operation against accused-appellant Rolando Lua alias "Chekwa." To verify the report on the illegal drug activities of appellant, Ulysses Orlino, a police informer, was dispatched to the vicinó of Lua. A few moments later, Orlino returned confirming the report on appellant's illegal operations near his residence at Bo. Sto. Niño, Tala, Caloocan City. Two teams were formed, one to conduct the buy-bust operation, and the other, to serve the search warrant on Hilario Talavera. Police Officers Constantino Guerrero, Marino Puno, Jose Marte and Alfredo Antonio formed the buy-bust team. Guerrero was designated as poseur-buyer. Before leaving the station Guerrero, in the presence of SPO3 Perfecto Sobejana and other police officers, marked with "X" and his initials "C.G." 3 P10-bills to be used in the entrapment of appellant.

Guerrero and his buy-bust team arrived at Bo. Sto. Niño at 4 o'clock in the afternoon together with their informant Ulysses Orlino. Orlino pointed to Guerrero the appellant who was then outside the door of his house. The team strategically positioned themselves near a neighboring house while Guerrero approached accused-appellant Lua and said, "Chekwa, pa score nga," and simultaneously handed him the 3 marked P10-bills. Appellant took the money and went inside his house. Shortly after, he returned with 3 small tea bags of marijuana which he gave to Police Officer Guerrero. At this juncture, Guerrero signaled to his companions to close in. He then grabbed appellant by the hand after introducing himself as a police officer and arrested him. Guerrero recovered the marked money from the other hand of appellant.

When the rest of the team approached Guerrero and appellant Lua, PO Marino Puno noticed something bulging from the waistline of appellant so he immediately frisked him. Puno lifted Lua's shirt and found a .38 cal. paltik in the latter's possession. Guerrero who was standing beside the accused grabbed the handgun which had two (2) live bullets and an empty shell in the cylinder. When Lua was asked where he kept the rest of the marijuana he unhesitatingly replied that they were inside his house. Accompanied by the police operatives, appellant went inside his house and in the presence of his wife pointed to the police officers a soapbox containing a brick of dried marijuana. Puno showed the marijuana brick to those around him including appellant's household.

After the operation, appellant together with the pieces of evidence against him, namely, 3 marked P10-bills with

serial numbers RB886096, PF245345, QF260152; 3 tea bags of marijuana (5.3934 grams); marijuana brick inside a soapbox (209.00 grams); and, a .38 cal. paltik with two (2) live bullets and an empty shell, were surrendered to the team leader, SPO3 Perfecto Sobejana, and Lt. Surara who were both waiting at the barangay hall. SPO3 Sobejana and Patrolmen Guerrero, Puno, Antonio and Marte jointly executed a sworn statement on their operation.

At six o'clock in the evening appellant Rolando Lua as well as the pieces of evidence found in his possession were referred to PO3 Gilbert Dioso for investigation.

On 1 April 1991 PO3 Dioso prepared a referral letter to the National Bureau of Investigation for laboratory examination and chemical analysis of the 3 tea bags and the brick of marijuana wrapped in a newsprint and placed inside a plastic bag. The following day, 2 April 1991, Dioso also prepared a referral letter to the Inquest Fiscal of Caloocan City for proper evaluation and disposition of the cases against appellant.

On the same day the National Bureau of Investigation Forensic Chemist Alicia Liberato submitted her Reports Nos. DDM-91-249 and DDM-91-250 finding the specimens positive for marijuana.

Parenthetically, on 6 July 1992, PNP Senior Superintendent Antonio T. Sierra, Chief of the Firearms and Explosive Office, issued a certification that accused-appellant Rolando Lua was not a licensed nor a registered firearm holder of any kind and caliber after verifying the computerized master list of all licensed firearm holders.

Separate informations for violation of Sec. 4, Art. II, of R.A. 6425, as amended, and for violation of P.D. 1866 were filed against Rolando Lua.

The appellant has a different account of the events. He says that at around 4 o'clock in the afternoon of 30 March 1991 while sleeping in his house with his 3-year old daughter he was awakened from his sleep when a certain Resty, a security guard of the Tala Leprosarium, handcuffed him. He asked Resty why, but he received no answer. According to appellant Resty was with three (3) other companions - Rodel Ginco who was also a security guard at the Tala Leprosarium, Boy Mano who was a civilian, and Police Officer Guerrero. Then he was boarded in an owner-type jeep and brought to the other barangay in front of Hilario Talavera's house. He also claims he was transferred to a parked mobile car where he saw Edgardo Calanday inside the car also handcuffed. From where he was sitting he could see the police operatives walking to and fro inside Talavera's house. Then they were brought to the administration site outside the Tala Leprosarium where they stayed for an hour, after which they were brought to the Bagong Silang Detachment where they were detained for three (3) days.

Appellant's neighbor, Catalino Hidacan, corroborated the testimony of appellant. Hidacan testified that after the arrest the persons who nabbed the appellant returned and entered the latter's house. However, when they went out, they were already carrying with them something wrapped in a newspaper while one of them was holding a gun.

Appellant assigns the following errors to the trial court: (a) in sustaining the prosecution and disregarding completely the testimony of defense witness Catalino Hidacan; (b) in according probative weight to the testimonies of the police officers on the disputable presumption that they regularly performed their duties thus disregarding the right of the accused to be presumed innocent until proven guilty beyond reasonable doubt; and, (c) in not taking judicial notice of his physical condition when his hands were closed and clinched because of Hansen's disease or leprosy so that it is highly improbable to possess a firearm and violate P.D. 1866.

The thrust of this appeal is laid on the credibility of the witnesses. Time and again this court has ruled that the findings of the lower court respecting the credibility of witnesses are accorded great weight and respect since it had the opportunity to observe the demeanor of the witnesses as they testified before the court. Unless substantial

facts and circumstances have been overlooked or misunderstood by the latter which if considered would materially affect the result of the case, this court will undauntedly sustain the findings of the lower court.

We find no compelling reason to overturn the decision of the lower court. The appellant asseverates that the police arrested him at all cost to save face and to project that OPLAN SATURN was successfully carried out. Such allegation is a mere conjecture bereft of factual basis. In drug related cases, the accused would most often raise the defense of being framed up. However, for that defense to prosper, the evidence adduced must be clear and convincing. Like alibi, it is a weak defense that is easy to concoct but difficult to prove. In the absence of proof, the presumption is that the police officers regularly performed their official duties. Moreover, the appellant failed to convincingly show any ill motive on the part of prosecution witnesses to testify falsely and to impute to him such grave offenses. It is settled that where there is no evidence to indicate that a principal prosecution witness was actuated by improper motive, the presumption is that he was not so actuated. He would not prevaricate and cause damnation to one who brought him no harm or injury.[4]

Appellant would persuade us that the police narration of facts could not be freed from material inconsistencies, thus the disputable presumption that the police officers acted regularly in pursuance of their official duties must be rendered subordinate to the constitutional right of the accused to be presumed innocent until proved guilty beyond reasonable doubt.

We are not convinced. The imputed inconsistencies regarding the time when the arresting officers arrived at the appellant's residence and the date when the markings on the recovered gun were placed do not affect the credibility of the prosecution witnesses. This court finds the same too minor to matter, the same having been satisfactorily explained by the prosecution witnesses. Thus, in *People v. Gonzales*[5] we held that testimonial discrepancies could be caused by the natural fickleness of memory which tend to strengthen rather than weaken credibility as they erase any suspicion of rehearsed testimony. Contrary to appellant's claim, the guilt of the accused has been established beyond reasonable doubt. The testimony of PO Guerrero was sufficient to show that indeed appellant committed the offenses with which he was charged. It was established that appellant sold and delivered prohibited drug to PO Guerrero who acted as poseur-buyer knowing fully well that what he sold and delivered was a prohibited drug.

As regards the third assigned error, we do not find the same compelling enough to exculpate the appellant. Leprosy or Hansen's disease is a chronic granulomatous infection of humans which attacks superficial tissues, especially the skin and peripheral nerves.[6] The infection normally results in the loss of touch but the patient does not really lose his motor functions. Only in severe cases do trauma and secondary chronic infections lead to loss of digits or distal extremities.[7] In the case at bar, the appellant failed to show that he can no longer make use of his hands, thus rendering him incapable of committing the offenses with which he is being charged. The disease does not deter him from possessing nor of using a firearm in violation of P.D. No. 1866.

Having settled the issues raised by appellant, the equally important matter as regards admissibility of the evidence should likewise be passed upon. The buy-bust operation conducted by the police operatives is a form of entrapment allowed by law. The arrest of the appellant was lawful having been caught in flagrante delicto. Consequently, there is no need for a warrant for the seizure of the 3 tea bags of marijuana (5.3934 grams) the same being the fruit of the crime. With respect to the body search made by Puno, the same was valid being incidental to a lawful arrest. Therefore, the .38 cal. paltik and the two (2) live bullets and the empty shell found in the cylinder are admissible in evidence.

As regards the brick of marijuana found inside the appellant's house, the trial court correctly ignored it apparently in view of its inadmissibility. While initially the arrest as well as the body search was lawful, the warrantless

search made inside appellant's house became unlawful since the police operatives were not armed with a search warrant. Such search cannot fall under "search made incidental to a lawful arrest," the same being limited to body search and to that point within reach or control of the person arrested, or that which may furnish him with the means of committing violence or of escaping. In the case at bar, appellant was admittedly outside his house when he was arrested. Hence, it can hardly be said that the inner portion of his house was within his reach or control.

In sum, this court finds accused-appellant Rolando Lua guilty beyond reasonable doubt of violating Sec. 4, Art. II, of R.A. 6425, as amended, under which the penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed. However, with the passage of R.A. 7659, which took effect on 31 December 1993, amending certain sections of The Dangerous Drugs Act, the imposable penalty for the sale or delivery of prohibited drug is prison correccional to reclusion temporal^[8] if the quantity involved is less than 750 grams of marijuana. Taking into account that appellant is not shown to be a habitual delinquent and the said amendatory provision being favorable to him, the quantity of marijuana involved being only 5.3934 grams or less than 750 grams, the aforestated penalty imposed under R.A. 7659 should be applied. There being no mitigating nor aggravating circumstances, and following *People v. Simon*,^[9] the imposable penalty shall be prison correccional in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be taken from the medium period of prison correccional, which is two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is one (1) month and one (1) day to six (6) months of *arresto mayor*.

On the charge of illegal possession of firearms, we sustain the finding and conclusion of the trial court. The prosecution has indubitably established the existence of the .38 cal. paltik and the two (2) live bullets, and the fact that appellant did not have the necessary license or permit to possess the same. Accordingly, under Sec. 1 of P.D. No. 1866, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed, the range of which is seventeen (17) years, four (4) months and one (1) day to reclusion perpetua. Considering the pertinent provisions of the Indeterminate Sentence Law, the maximum of the penalty to be imposed shall not exceed the maximum fixed by law, while the minimum shall not be lower than the minimum likewise fixed by law.

WHEREFORE, the decision of the court a quo is MODIFIED. For violating P.D. 1866, accused-appellant ROLANDO LUA y NERI is sentenced to suffer the indeterminate penalty of seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as minimum, to eighteen (18) years, eight (8) months and 20 days likewise of reclusion temporal maximum as maximum; and, for violating Sec. 4, Art. II, of R.A. 6425, as amended, the indeterminate penalty of six (6) months and twenty (20) days of prison correccional minimum as minimum, to two (2) years, six (6) months and ten (10) days of prison correccional medium as maximum, to be served successively in accordance with Art. 70 of the Revised Penal Code.

Appellant should be credited with the full time of his preventive imprisonment upon a showing that he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited with four-fifths (4/5) of the time of such preventive imprisonment.

Costs against accused-appellant.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Penned by Judge Rene Victoriano, RTC-Br. 124, Caloocan City.

[2] The Dangerous Drugs Act of 1972.

[3] Codifying the Laws on Illegal-Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives; and Imposing Stiffer Penalties for Certain Violations thereof and for Relevant Purposes (P.D. 1866 as amended).

[4] *People vs. Ong Co*, G.R. No. 112046, 11 July 1995, 245 SCRA 733, citing *People v. Simon*, G.R. No. 56925, 21 May 1992, 209 SCRA 148, and *People vs. Villagrancia*, G.R. No. 94471, 1 March 1993, 219 SCRA 212.

[5] G.R. No. 106098, 7 December 1993, 228 SCRA 293 citing *People vs. Santito, Jr.*, G.R. No. 91628, 22 August 1991, 201 SCRA 87 and *People vs. Ramos*, G.R. No. 103631, 8 June 1993, 223 SCRA 298.

[6] Miller Richard A., *Harrison's Principles of Internal Medicine* 1, McGraw-Hill Book Company, 11th Ed., 1987, p. 633.

[7] *Ibid.*, p. 635.

[8] *People vs. Simon*, G.R. No. 93028, 29 July 1994, 234 SCRA 555.

[9] *Ibid.*

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