

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO GONZALES Y PAGKEL, ACCUSED-APPELLANT.

G.R. Nos. 67801-02. September 10, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Appellant Ernesto Gonzales y Pagkel was charged in two (2) separate informations[1], one for unlawfully selling and the other for unlawfully possessing marijuana leaves, in violation of Sections 4 and 8, Article II of Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act". The informations read as follows:

Criminal Case No. 5620:

"That on or about the 2nd day of February 1983, in the City of Angeles, Philippines, the above-named accused, did then and there willfully, and unlawfully sell, deliver and/or transfer to another dried marijuana leaves, without any authority whatsoever."

Criminal Case No. 5619:

"That on or about the 2nd day of February 1983, in the City of Angeles, Philippines, the said accused not being lawfully authorized to possess or otherwise use any prohibited drug, did then and there willfully and unlawfully have in his possession and under his custody and control dried marijuana leaves which is a prohibited drug."

The accused entered a plea of not guilty, and the case proceeded to trial.

The evidence for the prosecution discloses that on 2 February 1983, at about 10:30 a.m., a civilian informer came to the office of S/Sgt. Edgardo Raquidan of the Anti-Narcotics Command, Camp Tomas Pepito, Sto. Domingo, Angeles City, Pampanga, and reported on the alleged drug trafficking activities of appellant Gonzales. This report was relayed to the commanding officer of the Anti-Narcotics Command at Camp Tomas Pepito, who thereupon organized a team of five (5) members to carry out a surveillance and "buy-bust" operation.[2] C2C Romeo Vanzuela, a Philippine Constabulary trooper assigned to the Anti-Narcotics Command, was designated as poseur-buyer and was given two (2) P5.00 marked bills, bearing Serial Nos. YT712225 and XB077345, to be used in the entrapment operation.[3] The team left the Camp dressed in civilian clothes on board a Land Cruiser. Some 500 meters away from the store which was the target area, located on R.D. Reyes St. corner Jesus St., Barangay Lourdes Northwest, Angeles City, the members of the team alighted from their vehicle. C2C Romeo Vanzuela and the civilian informer went ahead; following closely behind were S/Sgt. Raquidan and the other team members. Upon reaching the store, the civilian informer casually introduced C2C Romeo Vanzuela to appellant Gonzales as a friend from Manila who wanted to buy marijuana. S/Sgt. Raquidan purchased a bottle of softdrink from the store, all the while observing appellant Gonzales, the civilian informer and C2C Vanzuela, from a distance of about 5 meters. Appellant Gonzales asked how many tea bags of marijuana C2C Vanzuela wanted; in reply, the latter inquired about the price per tea bag. Appellant Gonzales named the price of P10.00 per tea bag and then took from within or beneath the sand near his feet one (1) tea bag which he handed to C2C Vanzuela

who, in turn, gave him the marked money in payment. Thereupon, C2C Vanzuela gave the pre-arranged signal by scratching his head with his hand. The rest of the members of the team, who had been quietly observing from nearby, rushed to the appellant and placed him under arrest. The marked P5.00 bills were found in appellant's possession.[4]

The team members assured appellant Gonzales that if he could turn over to them more tea bags of marijuana, they would help him in his "predicament". Apparently convinced, appellant Gonzales allegedly took from the sand four (4) more plastic tea bags. The tea bags were sent to the PC Crime Laboratory for chemical examination and there, the contents thereof were positively identified as marijuana leaves. Appellant Gonzales was brought to Camp Olivas, San Fernando, Pampanga, for investigation. He was detained there, and on 7 February 1983, he signed a statement regarding the circumstances of his arrest.[5]

For his part, appellant Gonzales denied the accusations made against him. He contended that in the morning of 2 February 1983, between 11:00 and 12:00 o'clock, he was at the corner store which is about 25 meters away from his family's house to have a P50.00 bill changed. Appellant Gonzales stated that he had intended to give P20.00 to his mother and that a person named John changed his P50.00 bill into four (4) P5.00 bills and three (3) P10.00 bills. Thereupon, two (2) persons arrived on the scene, one of whom appellant recognized as S/Sgt. Privaldo. The law enforcement officers poked their guns at appellant, handcuffed him and took him to Camp Olivas. Appellant claims that along the way and even at Camp Olivas, he was physically maltreated. Appellant was twice investigated; firstly, on the very day of his arrest on 2 February 1982; and secondly, on 5 February 1983. On the latter date, he signed an extrajudicial statement which, he claimed before the trial court, had been extracted from him involuntarily.[6]

Appellant's plea of innocence and his defense did not convince the trial court. On 1 December 1983, the trial court rendered a decision with the following dispositive portion:

"WHEREFORE, in view of all the foregoing discussion, judgment is hereby rendered finding accused ERNESTO GONZALES y PAGKEL guilty beyond reasonable doubt of violation of Section 4, Article II, R.A. No. 6425, as amended, otherwise known as 'The Dangerous Drugs Act of 1972,' as charged in the Information, and the Court imposes upon accused Ernesto Gonzales y Pagkel the penalty of life imprisonment and a fine of twenty thousand pesos (P20,000.00), and to pay the costs.

The Information for violation of Section 8 under the same law, Criminal Case No. 5619, charging the accused for possession of the four (4) tea bags of marijuana is to be dismissed, as it is hereby ordered DISMISSED, for the reason that the essential element of possession necessarily is embraced or included in the Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs under Section 4 thereof.

So ordered."[7]

Appellant Gonzales is now before this Court, asserting that the prosecution had failed to prove his guilt beyond reasonable doubt and that accordingly, the trial court had erred in convicting him of violation of Section 4, Article II, Republic Act No. 6425, as amended.

Appellant insists that the extrajudicial statement[8] submitted by the prosecution in evidence had been extracted from him involuntarily, i.e., that he was maltreated and threatened and intimidated into signing the same. The Court notes that this extrajudicial statement was taken into account by the trial court when it rendered the questioned judgment of conviction. The trial court said:

"His defense that he was maltreated and threatened into signing the said extrajudicial statement is belied by many inconsistencies on his part which destroyed his credibility. If indeed he was compelled by violence, threat or intimidation into signing it, why on earth did he not confide the same even secretly to his relatives

especially to his mother or wife [from] whom he can expect comfort and protection so that something may be done about it by them, as according to him they visited him often in his detention cell? All the protestations of innocence by the accused are considered by the Court, and the same were found to be the result of an afterthought on his part. The extrajudicial statement, as it were, was found to be an admission of guilt on the part of the accused, positive in its narration of facts, well-meaning and natural; it therefore deserves full faith and credit." [9] (Underscoring supplied)

Although appellant Gonzales was apprised of his right to counsel, he was not afforded an effective opportunity to obtain counsel. His sworn statement itself stated that it was being given in the absence of counsel for appellant Gonzales:

"x x x x x x x x x x

b) Na karapatan mo ring kumuha ng isang abogado/manananggol na siyang susubaybay sa iyo sa pagsisiyasat na ito at kung inaakala mong wala kang ikakaya ang tanggapang ito ang siyang kukuhang isa para sa iyo;

c) Na ang lahat ng sasabihin sa pagsisiyasat na ito ay maaaring gamitin ebidensiya laban o pabor sa iyo sa alinmang hukuman dito sa Pilipinas.

TANONG: Ito ba ay nauunawaan at naintindihan mo ang iyong mga karapatan na nakasaad sa ilalim ng ating Bagong Saligang Batas.

SAGOT: Opo. (Lagda ng tagapagsalaysay)

TANONG: Nakahanda ka bang magbigay ng kusang loob at pansariling salaysay kahit na wala ka pang sariling manananggol sa pagsisiyasat na ito.

SAGOT: Opo (Lagda ng tagapagsalaysay), sapagkat alam ko naman ang aking mga sinasagot." [10] (Underscoring supplied.)

Whether the extrajudicial confession had been in fact extracted from appellant Gonzales by the exercise of physical violence or intimidation upon him is of secondary relevance; what is critical, legally speaking, is whether or not the extrajudicial confession had been given and the right to remain silent had been waived in the presence of accused's counsel.

It is now too well-settled to require extensive citation of authority that the right to remain silent and to refrain from giving an extrajudicial confession and to have competent and independent counsel, cannot be waived save in the presence of counsel [11] and that an extrajudicial confession obtained under such circumstances is not admissible in evidence. [12] We cannot, therefore, take account of the extrajudicial confession of appellant Gonzales. The judgment of conviction must hence stand or fail on the basis of the other evidence of record.

Appellant Gonzales claimed that the "buy-bust" operation allegedly mounted by the Anti-Narcotics Command, stationed at Camp Tomas Pepito, had been merely fabricated by the agents of that Command to pin on him responsibility for the alleged sale and possession of marijuana leaves. The prosecution contended otherwise. S/Sgt. Raquidan and C2C Romeo Vanzuela, members of the team dispatched to conduct the surveillance and "buy-bust" operation, were presented in the witness stand to narrate to the court the events which transpired on the morning of 2 February 1983. The trial court gave full credence to their testimony:

"After a careful study and analysis of the evidence, both for the prosecution and the defense, and the testimonies of their witnesses which were carefully and keenly observed in their conduct and demeanor while testifying, weighty reasons compels the Court to accept the theory of the prosecution. It accepts the prosecution version which took place on when accused Ernesto Gonzales y Pagkel was apprehended in an entrapment made by the anti-narcotics agents, through a poseur buyer, selling marijuana contained in one (1) plastic bag

with the use of marked money in the transaction to be credible as the testimonies of the prosecution witnesses appear to the Court to be natural, positive, straightforward and convincing including the part given under cross-examination by the defense.

x x x x x x x x"[13]

The trial court, however, overlooked material inconsistencies in the testimony of the two (2) principal prosecution witnesses, inconsistencies which, to the mind of the Court, seriously impair the credibility of both the prosecution witnesses.

According to S/Sgt. Raquidan, appellant Gonzales got the first tea bag or marijuana from where it had been buried in the sand at the very place where the "deal" was being transacted. Sgt. Raquidan testified as follows:

“Q From where did the suspect actually get this tea bag when you said he took it from the ground?

A: It was buried in the sand, sir.

Q: Where is this place, the very place where the suspect took the tea bag which according to you it was buried from the sand?

A: At the same place where they were staying.

Q: Will you stand up and demonstrate how the suspect actually took that tea bag from the sand?

A: When C2C Vanzuela gave the money then the suspect just bent down and then got the tea bag (witness demonstrating by picking up from the ground).[14] (Underscoring supplied)

Sgt. Raquidan further insisted that the four (4) other tea bags which appellant was allegedly induced to produce by a promise of assistance from the arresting officers, had been taken by appellant Gonzales also from where they had been hidden under the sand on the very place where the supposed sale transaction took place:

“Q Incidentally, where did the suspect get these four (4) other tea bags?

A: From the sand where they were buried, sir.

Q: Where is this particular place located where you said the other four (4) tea bags were buried?

A: Along R.D. Reyes St., Corner Jesus St., Lourdes North West, Angeles City, sir.

Q: How far is this place where the other four (4) tea bags were buried from the place where you actually made the arrest of the suspect?

A: Not more than a meter because when he bent he was able to get the four (4) tea bags, sir.

x x x x x x x x"[15]

(Underscoring supplied)

Upon the other hand, C2C Romeo Vanzuela who claimed to have, as poseur-buyer, personally dealt with appellant Gonzales, gave a quite different story. Like S/Sgt. Raquidan, Romeo Vanzuela was at the scene of the transaction and therefore could not have been mistaken, if indeed the transaction had taken place. C2C Vanzuela declared:

“Fiscal Deang:

Q: What was that that this Erning was trying to ask you 'how many'?

A: He was asking us how many T-bags of marijuana.

Q: What was your answer?

A: I asked him how much is one T-bag and Erning answered me P10.00 per T-bag. And then he told me to wait and when he returned he handed to me one T-bag of marijuana, sir.

Q: Did you examine what this T-bag contains?

A: I tried to see if it is marijuana, sir. And I found out that it is marijuana.

Fiscal Deang:

Q: When you saw that it was marijuana, what did you do?

A: I gave the signal, sir.

Q: What was that signal?

A: I scratch (sic) my head, sir. Then when I scratch (sic) my head, my companions came, sir.

Q: How about the marked money, what happened to the marked money?

A: When the T-bag was handed to me, I handed the money.

Q: To whom?

A: To Erning, sir. And after I gave the money, I gave the signal.

x x x x x x x x"[16]

Thus, according to one principal prosecution witness (S/Sgt. Raquidan), the tea bags of marijuana had been concealed buried in sand immediately adjacent to the store where the transaction allegedly took place. The other principal prosecution witness (C2C Vanzuela), upon the other hand, had stated that the tea bag allegedly sold by the appellant Gonzales had been obtained from somewhere away from the immediate vicinity of the alleged sale transaction. The testimony given by S/Sgt. Raquidan appears to us to be quite implausible in character. We think it extremely improbable that a vendor of marijuana, a prohibited drug, would store his cache of the prohibited drug by burying the same in sand immediately outside a corner store where people constantly pass by and which is therefore subject to continuous visual observation both by customers of the corner store and passers-by. The corner store did not belong to appellant Gonzales and it was, of course, constantly accessible to the general public.

The trial court itself must have found Sgt. Raquidan's testimony improbable: for it discarded such testimony and accepted instead the version offered by C2C Romeo Vanzuela. After summarizing the evidence for the prosecution and for the defense, the trial court made the following findings:

"The testimony of C2C Vanzuela, which was corroborated in all its material aspects by that of S/Sgt. Raquidan, showed that with the marked money in his possession at the target area near a store at Jesus St., Lourdes Northwest, Angeles City, the accused approached him and the civilian informer. The civilian informer introduced him (C2C Vanzuela) to the accused this way: 'I have a new friend from Manila who wants to buy marijuana.' The accused asked: 'How many?' C2C Vanzuela countered: 'How much is one tea bag?' The accused answered: 'P10.00 per tea bag.'

The transaction as to the 'hot stuff' having been agreed upon between the seller and the buyer, the former left, and returning after a while, he handed over to the latter one tea bagful of marijuana. The buyer, simultaneously thereafter, gave the seller, the accused herein, the two (2) five-peso bills marked money, who received them. It was at this point of the transaction that the pre-arranged signal was made--the poseur buyer (C2C Vanzuela) scratching his head with his hand--when, S/Sgts. Privaldo and Raquidan swooped down upon the accused,

placed him under arrest and recovered the marked money from his pocket. C2C Vanzuela gave the tea bag of marijuana to Sgt. Rubencio Privaldo." [17] (Underscoring supplied)

Unlike the trial court, however, we do not believe that we can simply discard the improbable testimony of S/Sgt. Raquidan and adopt and rely upon that of C2C Vanzuela. We believe that the material and unexplained inconsistency between the testimonies of the two (2) principal prosecution witnesses relating not to inconsequential details but to the alleged sale transaction itself, and the inherently improbable character of the testimony given by one of the two (2) principal prosecution witnesses, had the effect of vitiating the testimony given by the other principal prosecution witness. [18] Why should two (2) police officers give two (2) contradictory descriptions of the same sale transaction, which allegedly took place before their very eyes, on the same physical location and on the same occasion? We must conclude that a reasonable doubt was generated as to whether or not the "buy-bust" operation ever took place.

It remains only to note that the defense of the appellant, which was simply that he had nothing to do with the alleged sale transaction, was corroborated by Emelita Cayabyab, owner of the corner retail store where the transaction allegedly took place. Her testimony was summarized by the trial court in the following manner:

"x x x x x x x x x x

This witness testified that on February 2, 1983 from 9:00 to 11:30 o'clock in the morning she was in her store at Jesus St., Lourdes Northwest, Angeles City. Ernesto Gonzales was there asking somebody to change his money. Then two (2) persons came and poked their guns at Ernesto Gonzales and boarded him in their Land Cruiser.

She did not testify in the investigation of the cases at the Office of the City Fiscal.

On cross-examination she testified that she knows Ernesto Gonzales for more than a year. He is not her relative. The mother of Ernesto asked her to testify as a witness because she was at her store when the two persons wearing T-shirts came and took Ernesto away. She was at the time inside her store." [19]

We consider that the prosecution had failed to prove beyond reasonable doubt appellant Gonzales guilt of the offense charged.

WHEREFORE, the Decision of the trial court dated 1 December 1983 is hereby REVERSED to the extent that it held appellant Ernesto Gonzales y Pagkel guilty in Criminal Case No. 5620 of illegal sale of dried marijuana leaves, and appellant Ernest Gonzales y Pagkel is hereby ACQUITTED of the charge of illegal sale of a prohibited drug.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Fernan, C.J., (Chairman), on leave.

[1] Records, Criminal Case No. 5620, p. 2; Records, Criminal Case No. 5619, p. 2.

[2] TSN, 5 April 1983, pp. 8-11.

[3] Id., pp. 24-26.

[4] Id., pp. 12-24.

[5] Id., pp. 27-29.

[6] TSN, 24 August 1983, pp. 4-16.

[7] Rollo, pp. 7-13.

[8] Folder of Exhibits, p. 6.

[9] Regional Trial Court Decision, p. 6.

[10] Sinumpaang Salaysay, Folder of Exhibits, p. 6.

[11] *People v. Galit*, 135 SCRA 465 (1985); Section 12 [1], Article III, 1987 Constitution; see also *People v. Pineda*, 157 SCRA 71 (1988); *People v. Hernandez*, 162 SCRA 422 (1988); *People v. Nolasco*, 163 SCRA 623 (1988).

[12] *People v. Decierdo*, 149 SCRA 496 (1987) and cases cited therein; *People v. Macario Diamsay*, G.R. No. 67289, 5 October 1989.

[13] Rollo, p. 11.

[14] TSN, 5 April 1983, pp. 20-21.

[15] *Id.*, pp. 28-29.

[16] TSN, 3 August 1983, pp. 9-10.

[17] Rollo, pp. 11-12.

[18] *People v. Olaes*, G.R. No. 76547, 30 July 1990.

[19] Rollo, pp. 10-11.

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