

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIAM ESLABON Y MARTINEZ, WILSON ESLABON Y MARTINEZ, AND ROMAN BITAUAG Y LACANGAN, DEFENDANTS-APPELLANTS.

G.R. Nos. 68523-24. November 10, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Before the Regional Trial Court of Aparri, Cagayan, Branch VIII, the Eslabon brothers WILLIAM and WILSON, and their friend Roman BITAUAG, were charged in two separate Informations with the crimes of Illegal Possession of Firearms (Cr. Case No. VIII-296), and of Drug Pushing (Cr. Case No. VIII-298) in violation of the Dangerous Drugs Act (R.A. No. 6425, as amended).

After joint trial, the three Accused were acquitted of Illegal Possession of Firearms but convicted of Drug Pushing and sentenced to reclusion perpetua, to pay a fine of P20,000.00, and the costs.

The Information in the Dope Pushing case charged the Accused as follows:

"That on or about July 18, 1983, and for sometime prior thereto, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, William Eslabon y Martinez, Wilson Eslabon y Martinez and Roman Bitauag y Lacangan, conspiring together and helping one another, not having been authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver sticks of marijuana cigarettes, a prohibited drug, to ready buyers, in fact said accused were actually selling and delivering several sticks of marijuana cigarettes to a team of Philippine Constabulary soldiers in civilian clothes who were then pretending to be buyers of sticks of marijuana cigarettes when they were apprehended." [1]

The prosecution evidence discloses that in the evening of July 18, 1983, Captain Teocencio T. Abrigo, then Commanding Officer of the 117th PC Company, stationed at Punta, Aparri, Cagayan, instructed two enlisted men, CSC Rodrigo de la Cruz and CSC Reynaldo Cabangbang, to conduct a "test-buy operation" on WILLIAM, who, after some surveillance, was reported to be engaged in the pushing of prohibited drugs.

Capt. Abrigo supplied his men with a marked twenty-peso bill with Serial No. RE-509575 (Exhibit "F"). The two enlisted men, with CSC Nestor Santos, went to the Eslabon residence at around 7:30 P.M. Upon arrival at the house, they saw WILLIAM with his brother WILSON and BITAUAG. They pretended to be buyers of marijuana worth P20.00. WILLIAM then instructed BITAUAG to get five sticks of marijuana from inside a room and to give it to CSC Cabangbang in consideration of P20.00, which WILSON received. During all this time, WILSON was holding a gun. Before the peace officers left the house, the Accused gave them two additional sticks of marijuana, which all of them took turns in sampling.

De la Cruz, Cabangbang and Santos returned to their headquarters with the 5 sticks of marijuana and reported to Capt. Abrigo that the Accused were, indeed, engaged in the sale of illegal drugs. A raiding team was organized led by Capt. Abrigo and, in around forty-five (45) minutes, they were at the Eslabon house. Capt. Abrigo

identified himself to the three Accused. At this point, WILLIAM ran upstairs and went inside his room, pursued by De la Cruz and Santos. These two could not get near as WILLIAM pointed a "grease gun", or a sub-machine gun at them.

De la Cruz and Santos appealed to him to surrender peacefully. After conferring with his wife, WILLIAM came down and voluntarily surrendered. A search of the house was then conducted, allegedly in the presence of the Barangay Captain and WILLIAM's wife, yielding 24 additional sticks of marijuana cigarettes from the same room from where BITAUAG got the five sticks purchased by the undercover men[2], a sub-machine gun, one hand grenade, six live ammunitions for a carbine, and live bullets for cal. .38 and .357 handguns. The marked P20.00 bill was also confiscated (Exhibit "F").

On July 19, 1983, or the day after, Cabangbang, De la Cruz, and Santos, executed a Joint Affidavit describing how they had bought marijuana from the Accused, the raid conducted by them, and the items that were seized. On the same day, separate Criminal Complaints for Drug Pushing and Illegal Possession of Firearms were filed by the Chief Investigator of the PC before the Municipal Trial Court of Aparri. After the requisite preliminary examination, and finding that a prima facie case existed against all the Accused, the Municipal Judge, on August 29, 1983, forwarded the records to the Provincial Fiscal for the filing of the proper Information.

The five sticks of marijuana cigarettes purchased by the three enlisted men were submitted to the PC laboratory at Echague, Isabela for examination. However, the same were lost in a fire which gutted the building of the PC Crime Laboratory, Regional Unit 2, on September 26, 1983.

During the trial, on motion of the prosecution, with the conformity of the defense, the Trial Court ordered another five (5) sticks of marijuana cigarettes of the remaining 24 confiscated sticks (Exhibit "H") to be subjected to laboratory examination. The chemistry report submitted (Exhibit "I") gave positive results for marijuana.

In their defense, the Accused denied having sold marijuana to the undercover agents; denounced the search and seizure for not having been covered by a warrant; assailed the prosecution for failure to present in evidence the confiscation receipt, which Capt. Abrigo had allegedly prepared in the presence of the Barangay Captain, and given to WILLIAM; and contended that the items seized by the raiding party were actually planted evidence.

Testimonial evidence was also presented by neighbors of the Eslabons to the effect that BITAUAG does not reside in the house of the Eslabons; that when the raid was conducted in the evening of July 18, 1983, Capt. Abrigo ordered the occupants of the Eslabon house to go down and thereafter ordered his men to search the house; that when the raiding party came down, witnesses heard them report to Capt. Abrigo "negative, sir"; that they did not see any member of the raiding party carrying a plastic bag or envelope after the raid; and that the Accused were thereafter taken to headquarters.

WILLIAM corroborated the testimonies of his witnesses that Capt. Abrigo ordered his men to go up the house but that the Captain stayed with the occupants of the house outside the house during the search; that when WILLIAM was asked by said officer where the marijuana and firearms were, he replied that he did not know; and that at headquarters they were subjected to "electric shock" maltreatment.

WILSON opted not to testify in his behalf.

BITAUAG, for his part, declared that he, WILLIAM and WILSON are like brothers; that he does not reside with them; that in the evening of July 18, 1983, he happened to be in front of the house of the Eslabons because he could not get a ride; and that, suddenly, uniformed men alighted from a jeep, poked an armalite at his stomach, boarded him on a jeep and took him to headquarters, where he was also maltreated; that he knows nothing about the cases filed against him and the Eslabon brothers.

As heretofore stated, the Trial Court acquitted the Accused of the crime of Illegal Possession of Firearms on the ground that the search conducted in the Eslabon house was illegal for lack of a search warrant. Thus, we are here concerned only with the charge of Drug Pushing, of which all three Accused were convicted.

The defense assails the conviction in that the Trial Court erred (1) "in holding that the alleged marijuana cigarettes taken in the raid without search warrant were admissible in evidence, and (2) in not giving credibility to the defense that evidence were planted to counteract violations of raiding team of human right."

We affirm the conviction.

We find it established that the three Accused directly participated in selling marijuana, a prohibited drug, to the undercover agents. WILLIAM was under surveillance by the PC for some time before the incident. When the peace officers went to the Eslabon house, pretending to buy marijuana, WILLIAM ordered BITAUAG to get the five sticks of marijuana cigarettes from a room in the first floor. WILSON stood by holding a gun in his hand. The Accused and the peace officers even took turns in taking a puff from the two extra marijuana sticks offered. No arrest could be effected by them because WILSON was holding a Thompson sub-machine gun.[3] Immediately after the raid, the operatives lost no time in filing the requisite complaint. The Municipal Trial Court Judge conducted the preliminary examination, heard the testimonies of De la Cruz and Cabangbang, and finding a strong case against the Accused issued Warrants of Arrest and forwarded the records to the Provincial Fiscal for the filing of the Informations.

The five sticks of cigarettes originally sent to the PC laboratory for examination were not part of the items seized during the raid and are, therefore, admissible. They were the ones "bought" by the three PC men and turned over to their headquarters. The defense did not object to the substitute five sticks ordered by the Trial Court to be sent to the PC laboratory for examination after the five sticks originally sent were burned when the PC laboratory was razed by fire. There is evidence showing that the substituted five sticks came from the same source of 24 sticks of marijuana cigarettes seized during the raid since they were taken from the same room from where BITAUAG obtained the five sticks originally "bought".[4] Laboratory tests found them positive for marijuana (Exhibit "I").[5] Also retrieved from the Accused was the marked P20.00 bill used in "buying" the marijuana sticks.[6]

The second assignment of error concerns credibility of witnesses. We find no ground for altering the Trial Court's appreciation of the credibility of the prosecution witnesses, as it had the singular advantage of observing at first hand their demeanor in giving their testimony[7], especially since it has not been shown that they had any improper motive to testify falsely against accused-appellants[8], but did so merely in compliance with their duty as enforcers of the law.

WHEREFORE, the appealed judgment is hereby AFFIRMED, with costs against accused-appellants.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Paras, JJ., concur.
Feliciano, J., on leave.

[1] Original Record, p. 20.

[2] T.s.n., June 4, 1984, pp. 7 & 37.

[3] T.s.n., January 9, 1984, p. 26.

[4] T.s.n., June 4, 1984, pp. 7 & 37.

[5] Original Record, p. 39; t.s.n., March 28, 1984, p. 8.

[6] T.s.n., January 9, 1984, p. 50.

[7] People vs. Millarpe, 134 SCRA 555 (1985); People vs. Canamo, 138 SCRA 141 (1985).

[8] People vs. Panuelos, 136 SCRA 501 (1985); People vs. Beltran, 138 SCRA 521 (1985).

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