

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMMANUEL ELIGINO, ACCUSED-APPELLANT.

G.R. Nos. 70113-14. December 11, 1992

Ponente: MELO, J.

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MELO, J.:

This is an appeal interposed by Emmanuel Eligino from the decision of the Regional Trial Court of the Third Judicial Region (Angeles City, Branch LIX) in its Criminal Case No. 6374 (Illegal Possession of Prohibited Drugs) and Criminal Case No. 6375 (Illegal Sale of Prohibited Drugs), finding him guilty beyond reasonable doubt of both charges and sentencing him as follows:

"1. In Criminal Case No. 6374, to Six (6) Years and One (1) Day of imprisonment and to pay a fine of P6,000.00 with subsidiary imprisonment in case of insolvency;

"2. In Criminal Case No. 6375, to life imprisonment and to pay a fine of P20,000.00 with subsidiary imprisonment in case of insolvency." (p. 8, Rollo.)

Two separate informations, both dated December 6, 1983, were filed by 2nd Assistant City Fiscal Alberto M. Suller charging Emmanuel Eligino with Illegal Possession of Prohibited Drugs and Illegal Sale of Prohibited Drugs as defined and penalized under Sections 8 and 4, respectively, of Art. II, Republic Act No. 6425 (Dangerous Drugs Act of 1972) committed as follows:

"Criminal Case No. 6374

That on or about the 10th day of October, 1983 in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control marijuana cigarettes and dried marijuana flowering tops without any authority whatsoever." (p. 1, Rollo.)

"Criminal Case No. 6375

That on or about the 10th day of October, 1983 in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or deliver marijuana cigarettes to a poseur-buyer without any authority whatsoever." (p. 2, Rollo.)

Fairly established by the evidence presented by the People are the following facts:

On the early evening of October 10, 1983, a team of NARCOM operatives composed of Lt. Calunsod, as leader, and Sgt. Raquidan and Pats. Angeles and de la Cruz, as members, all of the 3rd Regional Narcotics Unit, Camp Pepito, Angeles City, nabbed along Oak Street, Sta. Maria Subdivision, Angeles City, a certain Ramon Rejano for selling sticks of marijuana to a NARCOM civilian agent who acted as poseur-buyer. The operatives then persuaded Rejano to reveal to them his source of the marijuana. Rejano named a certain "Maning" as his supplier. The team then planned for the entrapment of said "Maning" and with Rejano as the guide, they proceeded to the residence of "Maning" at No. 1124 Oak St., Sta. Maria Subdivision, Angeles City.

Upon reaching "Maning's" place, the team members immediately positioned themselves for the operation. Sgt. Raquidan and Pat. Angeles posted themselves at the carport leading to the door of "Maning's" house while the rest of the group scattered themselves at vantage points. At that time, the door of "Maning's" house which led to the carport was closed. As originally planned, and armed with the marked US\$1 bill (Exh. "J") previously handed to him by the team, Rejano proceeded to and knocked at the door. When it was slightly slid open, Rejano said, "Kukuha pa ako". Thereafter, through a light emanating from inside the house, a hand extended through the door and handed to Rejano five (5) sticks of marijuana (Exh. "C"). In return, Rejano gave the marked bill. Thereupon Sgt. Raquidan and Pat. Angeles followed by the other members of the team barged through the door into the house. There they saw a shocked "Maning" who turned out to be Emmanuel Eligino, herein accused-appellant. The team introduced themselves as NARCOM agents and placed Emmanuel Eligino under arrest. Found in his possession was the marked US\$1.00 bill which he surrendered to them. Rejano, upon the other hand, handed to the team the five (5) sticks of handrolled marijuana cigarettes, contained in a small plastic bag container, which he bought from Eligino (Exh. "C"). Convinced by Sgt. Raquidan that it would lessen his offense if he would yield other marijuana which he may still have in possession, Eligino allowed the members of the team inside the house and led them to a room whereat he opened an "aparador" and brought out and handed to the team a round candy can (Exh. "H") containing twenty-one (21) sticks of handrolled marijuana cigarettes and two (2) small and two (2) medium-size plastic bags of dried marijuana fruiting tops (Exhd. "D" and "E"; "F" and "G", respectively). Sgt. Raquidan placed identifying marks, consisting of his initials, on the seized articles. The team turned over the material evidence, as well as the persons of Eligino and Rejano, to an investigator.

The following day, Eligino was investigated by Cpl. Romeo Consengco of the NARCOM. He was informed of his constitutional rights to remain silent and to counsel but he waived said rights. He then admitted having possessed and having sold marijuana. His statement was reduced into writing, signed by him and subsequently sworn to before Fiscal Mercado of the Fiscal's Office, Angeles City (Exh. "K" and "K-1").

Meanwhile, the seized marijuana items were forwarded to the PC Crime Laboratory, Camp Olivas, San Fernando, Pampanga for examination (Exh. "A"). Daisy Panganiban, forensic chemist, examined the seized items and found the same to be positive of marijuana (Exh. "I").

Accused-appellant presented a completely different version of the facts. He testified that at about 7:00 P.M. of October 10, 1983, while he, his wife and their two children were viewing television inside their house, some-one knocked at the door. He went thereto and upon opening it, men in civilian attire, numbering more than three who identified themselves as NARCOM agents, suddenly barged in, handcuffed him and started searching his house without showing any search warrant to him. Unable to find anything, the men took him outside, mauled him, boarded him into a car and brought him to the NARCOM office. Along the way, one of the two men who was seated with him at the back seat of the car, whom he later identified as Pat. Celestino de la Cruz, continued beating him by hitting his chest with the butt of a .45 caliber pistol.

At the NARCOM office, de la Cruz and his companions allegedly continued mauling accused-appellant, prodding him to admit possession and sale of marijuana items which he saw for the first time atop a table at the NARCOM office. He admitted his signatures appearing in the statement (Exhs. "K" and "K-1") but said that he was merely made to sign the document which he did because the NARCOM people told him that he will be set free the moment he signs it; that he was not assisted by a lawyer when he was investigated; that he does not know the contents of the document he was made to sign and the same was not explained to him; and that he does not remember having been asked the questions and having given the answers appearing in the document except those pertaining to his personal circumstances.

The trial judge, the Honorable Cancio C. Garcia, now serving with distinction in the Court of Appeals, found the

version of the prosecution to be more credible, thus:

"After a thorough and meticulous review of the evidence on record, we are unable to resist the commanding weight and credence of the People's case. In contrast, we find the accused's version of the incident as saddled with inconsistencies and improbabilities that make it unworthy of belief.

To begin with, none of the Narcotic agents who apprehended the accused on the night of October 10, 1983, has any axe to grind against him. In fact, prior to that date, they do not know the accused nor does the latter know them. For sure, the agents went to Oak Street in the early evening of that date in connection with another buy-bust operation involving Ramon Rejano against whom a separate case has also been filed with this Court (Crim. Case No. 6371). As it were, it was a pure coincidence that they chanced upon the accused after Rejano pointed to them the source of the marijuana cigarettes he had earlier sold to the agents' civilian informer. The agents did not even know the residence of the accused until Rejano led them to it. Given these backdrop, we simply cannot believe that the members of the Narcom team who took part in the apprehension of the accused and who testified before this Court, could have concocted such a tale of serious implications and far-reaching consequences against an innocent being.

Upon the other hand, we find too unusual the testimony of the accused that despite the alleged barging of strangers into his house, handcuffing him and searching his home for at least thirty minutes, he was not able to utter any remark, not even to ask them why he was handcuffed or why his house was being searched (tsn, pp. 13, 16, June 26, 1984). Were we to believe him, he just meekly stood by and allowed the intruders the unbridled violation of the privacy of his home right in his very presence and in the presence of his family. Surely, what the accused would want us to believe runs against the grain of common experience and human behavior. This becomes all the more so when taken in the light of the accused's testimony that his mouth was not muzzled by the man into silence and that had he wanted to, he could have asked them why they were searching his house (tsn, p. 28, June 26, 1984). The more we ponder on these, the greater our certainty becomes that after the accused was caught red-handed in possession of the marked one US dollar bill (Exh. 'J') paid to him by Rejano in exchange for the five sticks of marijuana cigarettes contained in a small plastic bag (Exh. 'C'), and after the Narcom agents had introduced them as such to the accused, he allowed them entry into his house, and, relying on Raquidan's words that his offense will be lessened if he would surrender other marijuana which he may still have in his possession, he brought out from the 'aparador' the remaining marijuana items he had concealed thereat and handed them to the agents.

Nor are we impressed by the alleged mauling supposedly administered to him by the Narcom operatives. In fact, accused's testimony in this respect is confusing, if not conflicting...." (pp. 5-6, Rollo.)

From the trial court's judgment of conviction, accused-appellant has instituted the present appeal, contending that the trial court erred in not holding that the prosecution failed to prove his guilt beyond reasonable doubt because:

"1. The arresting officers were not armed with any search warrant nor any warrant of arrest; it follows that the testimonies of the arresting officers, arrest of the accused-appellant and the consequent seizures of Exhs. 'D' and 'J' are doubly illegal and as such these exhibits are therefore absolutely not admissible in evidence.

2. The constitutional rights of the accused, specifically, the right to counsel, the right to remain silent, and the statement the accused makes may be used as evidence against him were not afforded the accused. The prosecution had the burden of proving that the accused waived constitutional rights against self-incrimination and they failed miserably to prove waiver.

3. Contrary to the testimonies of all defense witnesses, testimonies of the prosecution witnesses, Sgt. Raquidan, Pat. Angeles, Pat. de la Cruz are not clear, convincing and straightforward but fraught with contradictions and inconsistencies which cannot and can never pass the test of 'proof of guilt beyond reasonable doubt.'

4. Alleged poseur-buyer Ramon Rejano who was supposed to have purchased the five sticks of marijuana

cigarettes from the accused was never presented in court despite insistence of counsel for accused; his non-identification and non-presentation are therefore subject to presumption that if ever so identified and presented, his testimony would only be adverse to the prosecution's cause.

5. Considering the inadmissibility of the testimonies of the NARCOM agents as fully explained above, and the non-identification and non-presentation of alleged poseur-buyer Ramon Rejano, absolutely no proof of evidence has been adduced that the alleged five marijuana cigarettes were sold by the accused to Rejano.

6. Assuming arguendo, that the testimonies of the NARCOM agents were true the same would only exempt the accused-appellant from any criminal liability for they together with their alleged poseur-buyer, had instigated accused-appellant to commit the crime charged." (pp. 3-5, Brief for Accused-Appellant; pp. 306-308, Rollo.)

Accused-appellant first contends that his warrantless arrest was illegal because when the NARCOM operatives effected the arrest, they did not have personal knowledge of facts that accused-appellant had committed an offense.

This contention is without merit.

Section 5, Rule 113 of the Rules on Criminal Procedure clearly provides:

"Sec. 5. Arrest without warrant, when lawful. -- A peace officer or private person may, without warrant, arrest a person:

(a) when in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense;

(b) when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; x x x."

Having caught accused-appellant in flagrante delicto as a result of the buy-bust operation, the peace officers were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest (People vs. Paco, 170 SCRA 681 [1989]; People vs. Rodriguez, 172 SCRA 742 [1989]; People vs. Bali, 189 SCRA 97 [1990]). And since accused-appellant's arrest was lawful, it follows that the search made incidental to the arrest was valid (People vs. Tangliben, 184 SCRA 220 [1990]).

The argument of accused-appellant that the NARCOM agents had no personal knowledge of the facts indicating that he had committed a crime because the evidence of the prosecution failed to prove that the alleged sale was seen by the NARCOM agents deserves no consideration at all. The evidence for the prosecution clearly shows that Rejano, after his arrest, revealed to the agents that his source of marijuana was a certain "Maning". Rejano then led them to the residence of accused-appellant. Arriving thereat, the agents inconspicuously positioned themselves for the operation, with Sgt. Raquidan and Pat. Angeles posting themselves at the carport. They leaned by the wall of the house parallel to the main door, which was some 5 to 6 meters away. Then, Rejano knocked at the door. When it was slightly opened, Rejano said, "kukuha pa ako". Thereafter, a hand extended out through the door and handed something to Rejano, after which Rejano handed the marked dollar bill in return. Both Sgt. Raquidan and Pat. Angeles were certainly near enough to observe the movements of the accused-appellant and the buyer. With the information from Rejano that "Maning", herein accused-appellant, was his source of the marijuana he was peddling, the team had every reason to conclude that an offense -- the sale of marijuana -- had been committed.

The Court zealously guards against the curtailment of a person's basic constitutional and natural right to liberty. But the Court also upholds the law which specifically allows a warrantless arrest under Rule 113, Section 5, par. (a) of the Rules of Court, if the accused is caught in flagrante delicto, as in the case at bar. The passing from

accused-appellant's hand of the five (5) sticks of marijuana to Rejano compelled the NARCOM team to arrest accused-appellant without a warrant. Under those circumstances, accused-appellant cannot claim that his right to liberty was violated. Nor can he invoke his constitutional right to the protection of the innocent against any manner of highhandedness from the authorities, however praiseworthy their intentions (*People vs. Aminnudin*, 163 SCRA 402 [1988]). For, "to require a search and arrest warrant during on-the-spot apprehensions of drug pushers, illegal possession of firearms, jueteng collectors, smugglers of contraband goods, robbers, etc., would make it extremely difficult, if not impossible, to contain the crimes with which these persons are associated" (*People vs. Tangliben*, supra).

With regard, however, to the second contention of accused-appellant that the trial court erred in admitting in evidence his written confession (Exhs. "K" and "K-1"), We find the same to be meritorious.

The record shows that accused-appellant's alleged waiver of his constitutional rights, more particularly of his right to counsel, was made without the assistance of counsel. In *Morales vs. Ponce Enrile* (121 SCRA 538 [1983]), reiterated in *People vs. Galit* (135 SCRA 465 [1985]), this Court categorically stated that "the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel."

Be that as it may, the inadmissibility of accused-appellant's confession does not render the prosecution's case for naught. No useful purpose can be served by accused-appellant's invocation of such constitutional guarantee since it has been rendered unnecessary and inconsequential by the overwhelming evidence establishing his guilt. Where there is independent evidence, apart from the accused's uncounselled confession, that the accused is truly guilty, he accordingly faces a conviction (*People vs. Como*, 202 SCRA 200 [1991]).

Accused-appellant next contends that the trial court erred in lending credence to the testimony of the prosecution's witnesses despite their apparent inconsistencies.

This issue hinges on the credibility of witnesses. On this point, we have consistently deferred to the findings of the trial judge who observes first hand the demeanor and deportment of the witnesses so as to determine the credibility of their testimony (*People vs. Anciano*, 189 SCRA 519 [1990]; *People vs. Bernardo*, 186 SCRA 876 [1990]). As an appellate court, this Court has none of the judge's advantageous position, relying, as it does, only on the cold records of the case and on the judge's discretion (*People vs. Sanchez*, 192 SCRA 649 [1990]).

Accused-appellant points to two alleged inconsistencies in the testimony of Sgt. Raquidan and Pat. Angeles which, to accused-appellant's mind, are fatal to and discredit their reliability, to wit:

First, Sgt. Raquidan testified that he placed the marking on the dollar bill at their office, while Pat. Angeles testified that Sgt. Raquidan placed the marking while they were on their way to the residence of accused-appellant; and

Second, Sgt. Raquidan testified that accused-appellant's residence was a one-storey affair while Pat. testified that the residence was a two-storey bungalow.

These inconsistencies, in our view, are not sufficiently substantial to impair the veracity of the prosecution's evidence. While witnesses may differ in their recollections of an incident, it does not necessarily follow from their disagreement that all of them should be disbelieved as liars and their testimony completely discarded as worthless (*People vs. Manalansan*, 189 SCRA 619 [1990]). As long as the mass of testimony jibes on material points, the slight clashing statements neither dilute the witnesses' credibility nor the veracity of their testimony (*People vs. de los Santos*, 200 SCRA 431 [1991]). Thus, inconsistencies and contradictions referring to minor details do not, in any way, destroy the credibility of witnesses (*People vs. de las Pinas*, 141 SCRA 379 [1986]), for indeed, such inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are

honest and unrehearsed. (People vs. Barba, 203 SCRA 436 [1991]; People vs. de los Reyes, 203 SCRA 707 [1991]).

Accused-appellant also contends that his guilt has not been established beyond reasonable doubt. He underscores the fact that Rejano was not made to take the witness stand which non-presentation, he maintains, is a fatal blow to the case of the prosecution as it is clear suppression of evidence which, if produced, would be adverse. We do not agree. Admittedly, Rejano would be a highly competent witness, being himself the poseur-buyer. However, his testimony is not indispensable in view of the testimony of Sgt. Raquidan and Pats. Angeles and de la Cruz categorically declaring that they saw accused-appellant sell five sticks of marijuana (Exh. "C") to Rejano while the latter handed the marked bill to the former. Immediately after the exchange, Sgt. Raquidan and Pat. Angeles barged through the door into the house. Rejano handed to the team the sticks of marijuana and the marked bill was found in the possession of accused-appellant.

In People vs. Alerta, Jr. (198 SCRA 656 [1991]), this Court held that the non-presentation of the civilian informant who was himself the poseur-buyer is not indispensable because the sale of marijuana had been sufficiently proven by the testimony of the NARCOM agents.

As long as the marijuana actually sold by accused-appellant had been submitted as an exhibit, the failure to present informant and poseur-buyer would not be fatal to the case because his testimony would be merely corroborative and cumulative. The positive and categorical testimony of the prosecution witnesses who had personal knowledge of the happening, together with the physical evidence submitted, clearly proves the guilt of accused-appellant beyond reasonable doubt (People vs. Como, 202 SCRA 200 [1991]).

At any rate, the matter of presenting evidence for the People is the prerogative of the prosecutor (People vs. Adiza, 164 SCRA 643 [1988]; People vs. Solomon, 166 SCRA 767 [1988]). Apparently, the prosecution found it unnecessary to present Rejano because there was already sufficient evidence to establish the case of the prosecution (People vs. Alerta, Jr., supra). Accused-appellant's pretense that he was not engaged in the drug deal cannot overcome the over-whelming evidence of the prosecution. So well-entrenched is the rule that greater weight is given to the positive testimony of prosecution witnesses than to the denials of the accused (People vs. de Jesus, 145 SCRA 521 [1986]). Moreover, no ill-motives were imputed to the prosecution witnesses who happened to be NARCOM agents and there is nothing in the record to suggest that these agents were compelled by any motive other than to accomplish their mission to capture a drug pusher in the execution of a crime. Their testimony, therefore, must be given full faith and credence (People vs. Labriaga, 199 SCRA 530 [1991]).

Finally, accused-appellant contends that if the prosecution's version were to be believed, then he is entitled to an acquittal as he was instigated to commit the crimes levelled against him.

This is correct if accused-appellant were induced into committing the crimes imputed against him. But there was no instigation or inducement in the case at bar. What was resorted to by the NARCOM agents was a buy-bust operation or entrapment. This is a procedure or operation sanctioned by the Revised Penal Code (People vs. Valmores, 122 SCRA 922 [1983]). In the case of People vs. Y. Gatong-o, et al. (168 SCRA 716 [1988]). We defined entrapment as the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. In entrapment, the idea to commit the crime originates from the accused. Nobody induces or prods him into committing the offense. This act is distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal (People vs. Ramos, Jr., 203 SCRA 237 [1991]).

The Court is convinced that the guilt of accused-appellant has been proven beyond reasonable doubt. The

buy-bust operation conducted by the NARCOM agents to catch him was an entrapment allowed by law (*People vs. Rumeral*, 200 SCRA 194 [1991]).

The Prosecutor filed two separate informations because when accused-appellant was caught in flagrante delicto selling five sticks of marijuana, he was prevailed upon by the agents to turn over the other "stuffs" of marijuana which were still in his possession. The trial court erroneously convicted accused-appellant of both illegal possession and sale of marijuana. In *People vs. de Jesus* (145 SCRA 521 [1986]) and *People vs. Andiza* (164 SCRA 642 [1988]), We held that the possession of marijuana is inherent in the crime of selling the same:

"The trial court's severe stand against traffic in drugs is understandable. But the assumption is that the legislature will not indulge in absurdities. Since possession of prohibited drugs is inherent in the crime of selling them, it is to be assumed that, in punishing selling, the legislature took into account the need to possess them first.

The penalty for selling -- life imprisonment to death -- is already quite harsh. The legislature should not have intended to attach a further penalty of 12 years for possession. It would be superfluous especially if the accused have been imposed a death sentence for selling." (*People vs. de Jesus*, supra.)

Likewise, the judgment in Criminal Case No. 6375 for illegal sale of marijuana, sentencing accused-appellant to life imprisonment and to pay a fine of P20,000.00 with subsidiary imprisonment in case of insolvency, is not quite correct. The rule is when the principal penalty imposed is higher than prison correccional no subsidiary imprisonment shall be imposed upon the culprit (Art. 39. Revised Penal Code).

WHEREFORE, the judgment in Criminal Case No. 6375 is AFFIRMED, except that there shall be no subsidiary imprisonment in case of insolvency. The judgment in Criminal Case No. 6374 for possession of prohibited drugs is REVERSED and SET ASIDE.

With no costs against accused-appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide Jr., and Romero, JJ., concur.

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