

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGIE ANDIZA Y ORIA, DEFENDANT-APPELLANT.

G.R. Nos. 71986-87. August 19, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

There are two clashing versions of what transpired in the evening of January 25, 1984 at No. 333, Mindoro Street, Mountain View Subdivision, Balibago, Angeles City.

The version put forward by the prosecution, and upheld by the trial court,[1] is as follows:

Together with a civilian informer, the group of Sgt. Edgardo Raquidan, Pat. Celestino de la Cruz, and Pat. Pedro Hernandez set off at about nine in the evening of January 25, 1984 for the abovestated residence where the appellant, already the subject of a week's surveillance[2], lived. Upon reaching the place, Sgt. Raquidan and Pat. de la Cruz positioned themselves just outside the steel gate while Pat. Hernandez and the civilian informer proceeded to the entrance door. The appellant came out of the house, talked with Pat. Hernandez and the civilian informer for about a minute, went back inside the house and, after a while, came out again, this time with a "Hope" cigarette pack. She gave the "Hope" pack to the civilian informer, who passed it on to Pat. Hernandez. Pat. Hernandez examined the contents of the pack, and pretending to be satisfied, he then pulled out from his pocket two marked P20.00-bills which he handed over to the civilian informer who, in turn, gave the money to the appellant. Thereupon, Pat. Hernandez gave the pre-arranged signal by touching his hair, signifying that the deal was completed.[3] Sgt. Raquidan and Pat. de la Cruz, who were some ten meters away from the spot where the exchange took place,[4] immediately approached the appellant, introduced themselves to her as NARCOM agents, and placed her under arrest. Sgt. Raquidan took the marked bills from the accused.[5] Convinced by Sgt. Raquidan to surrender to his group other stuffs of marijuana which may still be in her possession, the appellant voluntarily turned over to them a brown paper bag containing 23 sticks of hand-rolled marijuana cigarettes, three small plastic bags with dried marijuana fruiting tops inside, and several pieces of empty plastic bags. At about this time, the NARCOM agents noticed a man standing near them looking like a drug addict. Upon questioning, the man identified himself as Antonio Manuel, and admitted that he was there to buy more marijuana from the appellant.[6] Searched, the man's wallet yielded two sticks of marijuana cigarettes. Thereafter, the appellant and Antonio Manuel were brought to the NARCOM office at Angeles.

Vehemently denying that she was guilty of the charges brought against her, the appellant gave a different account of the incident. She testified that on the night in question, she was attending as a "tong" collector for four Mah-Jongg players who were playing Mah-Jongg at the garage of the house where she was staying. As she was watching the game, while seated beside one of the players, a man suddenly barged in and pulled her for no reason at all. The same man poked a gun at her, and forced her to go with him outside the gate where she was thrust into a waiting car with two men inside and taken to the NARCOM office. The man who dragged her out of the premises where she lived, whom she came to know as Pat. Celestino de la Cruz, accused her of being a drug pusher. Pat. de la Cruz then pulled out from a drawer the marijuana items involved in this case, placed these in

front of her, and forced her to admit that these were hers, but she refused, whereupon he slapped her. She denied having known Antonio Manuel before, and claimed that she saw him for the first time only at the NARCOM office on the very night she was taken there. She likewise denied that the marked bills were found in her possession, alleging instead that while she was at the NARCOM office, Sgt. Raquidan, whom she met for the first time there, made her stand up, shoved a P100.00-bill into her pocket, after which Sgt. Raquidan pulled it out and said: "What is this?" to which she replied that it was not hers.[7]

Subsequently, three separate informations were filed: two separate informations against the appellant for selling as well as possessing marijuana, in violation of Sections 4 and 8 of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972; and another information against Antonio Manuel for violation of the same law.[8]

The trial court accorded greater weight to the evidence presented by the prosecution. It pronounced the appellant guilty beyond reasonable doubt of the offenses charged thereby sentencing her as follows:

1. In Crim. Case No. 6499, to THIRTY (30) YEARS of life imprisonment and to pay a fine of P20,000.00, with subsidiary imprisonment in case of insolvency; and

2. In Crim. Case No. 6500, 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.[9]

From the foregoing judgment of conviction, the appellant came to this Court.

The appellant contends that the testimonies of Sgt. Raquidan and Pat. de la Cruz are pure hearsay because these witnesses were not the ones who actually transacted with the appellant for the alleged purchase of marijuana; and that, in fact, the two key persons supposedly involved in the "buy-bust" operation, namely Pat. Hernandez and the civilian informer, were never presented as witnesses during the trial.

This contention is untenable. The testimonies of both Sgt. Raquidan and Pat. de la Cruz were based on their actual and personal knowledge of the facts in dispute, being eyewitnesses to the incident in question. They may not have been within hearing distance, specially since conversation would expectedly be carried on in hushed tones, but they were certainly near enough to observe the movements of the appellant and the poseurs-buyers. It is not disputed that the area just outside the door of the house, where the exchange took place, was well-lighted,[10] but that beyond the steel gate it was dark, such that a person positioned outside the gate could easily see the people inside by peeping between the steel bars and remain undetected.[11]

In this case, there are no compelling reasons to depart from the general rule that factual findings of trial courts on the credibility of witnesses should not be disturbed because courts have the opportunity to observe the demeanor and conduct of the witnesses while they are testifying on the witness stand.

Moreover, the principal prosecution witnesses were all law enforcers and are, therefore, presumed to have regularly performed their duty in the absence of proof to the contrary.[12]

Furthermore, we find the testimonies of the above eyewitnesses, given during the direct as well as in the cross examinations, to be consistent and compatible on the material points. Both Sgt. Raquidan and Pat. de la Cruz categorically stated that they saw the appellant come out of the house, converse with the civilian informer and Pat. Hernandez, go back inside the house only to re-emerge after a few minutes with what appeared to be a pack of "Hope" cigarettes. They watched as the appellant handed the cigarette pack over to the civilian informer who, in

turn, gave the same to Pat. Hernandez. They witnessed the transfer of the marked bills from the hand of Pat. Hernandez to the civilian informer, and finally to the appellant.

The appellant underscores the fact that Pat. Hernandez and the civilian informer were not made to take the witness stand, and maintains that their non-presentation rendered a fatal blow to the prosecution's case. We do not agree. Admittedly, Pat. Hernandez and the civilian informer would be highly competent witnesses, being, themselves, the poseurs-buyers; however, their testimonies are not indispensable in view of the declarations of not only one, but two other eyewitnesses. If presented, their testimonies would merely constitute cumulative evidence, thus, their non-presentation as witnesses does not mean suppression of testimony that is adverse to the prosecution.[13] At any rate, the matter of presenting witnesses for the People is a prerogative of the prosecuting fiscal. In the instant case, there was no need to present Pat. Hernandez because the testimonies of Sgt. Raquidan and Pat. de la Cruz, together with those of Cpl. Romeo Consengco and the forensic chemist, Daisy Panganiban, were already clear, sufficient, and convincing. Besides, the defense could have requested the court below to issue subpoenas requiring the said eyewitnesses to testify, but as the defense apparently failed to do that, they cannot now argue that said eyewitnesses' testimonies would have been adverse to the prosecution.

Additionally, the appellant contends that there were no marked bills in her possession at the time of her arrest as, in fact, the statements of Sgt. Raquidan to the effect that he made the subject markings, were inconsistent with his earlier statements. The alleged inconsistency was, however, explained by Sgt. Raquidan himself in the course of his testimony, thus:

Q. So you do not know if you are the one who placed the marking?

A. I'm not sure that I placed the marking because if I can see the money I can pinpoint it.[14]

Indeed, after having been shown the two P20.00-bills, Sgt. Paquidan acknowledged that it was he who placed the markings on those bills, and this fact was confirmed by the other prosecution witnesses. But even if the purported contradictory statements were to be excluded, there still remains sufficient evidence to convict the appellant for "drug-pushing". In any case, as correctly pointed out by the Solicitor General, the matter of who actually placed the markings is a minor detail which cannot substantially affect the finding of guilt by the trial court.

Besides the foregoing seeming inconsistency, no other discrepancy in the testimonies of the prosecution witnesses ^ was raised in the brief of the appellant.

Significantly, nowhere in the appellant's brief is there any mention of Antonio Manuel who was arrested on the same occasion with the appellant. In fact, the sworn statement of Manuel,[15] in which he categorically stated that he bought from the appellant the marijuana found in his wallet, was never controverted.

Interestingly, Pat. de la Cruz testified that one or two days before they undertook the "buy-bust" operation, he himself witnessed the sale of marijuana by the appellant to a person whom the police asked to pose as buyer; that purposely, the appellant was not arrested then because the police were expecting the "Igorot supplier" of marijuana to the appellant to arrive on the 25th of January, and were planning to entrap the two.[16]

On the other hand, the testimonies of the appellant and of his single witness, Ricardo Policarpio, only served to weaken their credibility. For instance, it is very odd, considering that it was her aunt, Lucy Oria, who requested her to go to Angeles City, that the appellant did not bother at all, not even out of curiosity, to ask Lucy Oria for what reason and for how long had she been detained.[17] The explanation given by the appellant that she was too

shocked to ask, is unbelievable. Her surprise in seeing her aunt behind bars, if true, should have all the more provoked her to ask a barrage of questions. Moreover, while the appellant repeatedly stated that when she arrived in Angeles City at about 2:00 o'clock in the afternoon, on January 22, 1985, Lucy Oria was already detained at the city jail,[18] Ricardo Policarpio confidently declared that on January 22, 1985, he saw Lucy Oria at her residence in Mountain View Subdivision.[19]

Another inconsistency is Policarpio's statement during cross-examination, that he did not see if the appellant was dragged into a jeep, car, or truck as he only heard the sound of a vehicle,[20] as against his sworn statement, to wit: "That the man succeeded in pushing Virgie and bring her outside. I noticed that there was a jeep parked near the gate and forcibly brought Virgie on (sic) the said jeep." [21] Also, according to the appellant, there were two men and two women playing Mah-Jongg; [22] but, according to Policarpio, aside from him there were two men and one woman. [23]

In sum, the defense evidence which is replete with inconsistencies and improbabilities, as extensively discussed in the trial court's decision, does not inspire belief. The version of the prosecution, backed by the positive identification by eyewitnesses, pointing to the appellant as the perpetrator of the crime, is decidedly more credible than the tale related by the appellant, which was correctly rejected by the trial court.

All considered, we hold that the guilt of the appellant Andiza has been proven beyond reasonable doubt. However, the trial court erred, in not considering that the possession of marijuana is inherent in the crime of selling them, [24] and in not applying the rule that when the principal penalty imposed is higher than prison correccional no subsidiary imprisonment shall be imposed upon the culprit. [25]

WHEREFORE, the judgment in Criminal Case No. 6499 for the sale of marijuana is AFFIRMED except that there shall be no subsidiary imprisonment in case of insolvency. The judgment in Criminal Case No. 6500 for possession of prohibited drugs is REVERSED and SET ASIDE.

With costs against the appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras and Padilla, JJ., concur.

[1] Regional Trial Court of Angeles City, Branch LIX, Hon. Cancio C. Garcia, Presiding Judge.

[2] T.s.n., session of August 28, 1984, 22.

[3] Id., 6-12.

[4] T.s.n., session of July 10, 1984, 6.

[5] Id., 21.

[6] T.s.n., session of August 28, 1984, 17.

[7] T.s.n., session of September 17, 1984, 4-13.

[8] Decision, 4; Rollo, 24.

[9] Id., 9, 29.

[10] T.s.n., session of September 17, 1984, 34.

[11] T.s.n., session of August 28, 1984, 29-30, 32.

[12] *People vs. Agapito*, No. 73786, October 12, 1987, 6.

[13] *People vs. Extra*, No. L-29205, July 30, 1976, 72 SCRA 199, citing *People v. Sigayan, et al.*, Nos. L-18523-26, April 30, 1966, 16 SCRA 844; *People v. Cristobal*, No. L-13062, January 28, 1961, 1 SCRA 151; and *People v. Escalona*, No. L-13294, March 29, 1961, 1 SCRA 891.

[14] T.s.n., session of August 6, 1984, 7.

[15] "Karugtong ng Salaysay ni Ginoong Antonio M. Manuel na kusang loob na ibinigay sa pagtatanong ni P/Cpl. Romeo C. Consengco, dito sa tanggapanang Narcotics Command, Angeles District Office, nitong ika-26 ng Enero 1984," Exhibit "M-1," Exhibits, 13.

[16] T.s.n., session of August 28, 1984, 24-26.

[17] T.s.n., session of September 17, 1984, 18.

[18] *Id.*, 17.

[19] T.s.n., session of October 2, 1984, 19.

[20] *Id.*, 26.

[21] Affidavit of Ricardo Policarpio, Exhibit "3," Exhibits, 41.

[22] T.s.n., session of September 17, 1984, 5.

[23] T.s.n., session of October 2, 1984, 32.

[24] *People v. De Jesus*, Nos. L-71942-43, November 13, 1986, 145 SCRA 521.

[25] Art. 39(3), Revised Penal Code.

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