

PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS. JOEL QUINTERO Y YBASCO, ACCUSED-APPELLANT.*G.R. Nos. 80315-16. November 16, 1994*

Ponente: BELLOSILLO, J.

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JOEL QUINTERO Y YBASCO is languishing in the Maximum Security Compound at the New Bilibid Prisons in Muntinlupa, Metro Manila, because the prosecution witnesses, according to the court a quo, were more credible than the accused. Since a criminal prosecution involves not only the question of credibility but the more important issue of whether the guilt of the accused has been established beyond reasonable doubt, we are inevitably drawn to a verdict of acquittal.

The version of the prosecution is that on 19 March 1986 Pfc. Emeterio Malanyaon of the Anti-Narcotics Section, Makati Police Station, received a telephone call from an unidentified woman informer that a man dressed in white T-shirt, khaki shorts and tennis shoes was selling shabu at P10.00 per foil along Pateros St., Makati. To check the veracity of the call, the woman was requested to call again in the afternoon, which she did, and affirmed her earlier report. Thereafter, a team composed of Pfc. Henry de la Cruz, Det. Emeterio Malanyaon, Det. Marlon Almoguerra, Det. Antonio Manalastas, and Dets. Del Prado and Dionida (their first names not given in the record) proceeded to Pateros St. on a buy-bust operation. The informant was not with the team. While Det. Almoguerra posed as buyer, Dets. Malanyaon and Dionida acted as peanut and corn vendors, respectively. The rest of them posted themselves some fifteen (15) meters away from where the accused sat in front of a sari-sari store.

The prosecution further narrates that the accused approached Det. Almoguerra and asked, "P're, score ka ba?" Thereafter, an exchange of one foil of marijuana and a marked P10.00-bill ensued. The accused was then arrested and frisked as a result of which nine (9) more foils of dried marijuana leaves and eleven (11) sticks of marijuana cigarettes were recovered from his waistline. He was brought to the Makati Police Station where he executed a written statement (Exh. "A") admitting possession of more prohibited drugs in his house at Pateros St. and requesting the buy-bust team to accompany him there in order to get the drugs. On the basis of the confession, six (6) more plastic bags containing dried marijuana flowering tops and another bag of crushed dried marijuana leaves and seeds were recovered from his house.

Accordingly, the accused was charged with illegal sale of a foil of marijuana dried leaves, in violation of Sec. 4, Art. II, of The Dangerous Drugs Act,[1] and illegal possession of nine (9) rolls of dried marijuana flowering tops, eleven (11) handrolled marijuana cigarette sticks, six (6) plastic bags containing cut stems of dried marijuana flowering tops, and one (1) plastic bag of crushed dried marijuana leaves and seeds wrapped in a piece of paper, in violation of Sec. 8, Art. II, of the same Act.[2]

Accused-appellant denied selling marijuana to Det. Almoguerra as he knew the latter to be a policeman. He claimed that he was only buying corn for his wife when Det. Dionida, pretending to be a corn vendor, suddenly poked a gun at him and led him to the corner of Osmeña St. where two tricycles with five persons on board were

waiting. After being forced to board one of the tricycles, he was brought to a warehouse near the Makati Police Precinct where he was tortured into signing Exh. "A" wherein he admitted possession of more prohibited drugs in his residence.

On 9 September 1987, in a joint decision, the accused was exonerated from the charge of unlawful possession of marijuana, but declared guilty of illegal sale of the prohibited merchandise.[3] Hence, his appeal concerns only his conviction for illegal sale of one (1) foil of marijuana.

Aside from proof of the actual sale, a conviction for drug-pushing requires that the drug subject of the sale be positively and categorically identified in open court as the very drug sold by the accused.[4]

In the case at bench, only three of the six-men buy-bust team, namely, Pfc. de la Cruz, Det. Malanyaon and Det. Almoguerra, testified for the prosecution, and none of them was able to positively identify the foil of marijuana supposedly sold by the accused. Pfc. de la Cruz attempted to do so but failed since he was not even sure that what was sold was really a foil of marijuana. In open court, he testified:

Q: And you are not sure that the accused handed one stick of marijuana?

A: It was a cigarette.

Q: You are not sure, why did you arrest him?

A: We are (sic) not sure but we are (sic) waiting for a pre-arranged signal by the poseur-buyer.[5]

Det. Malanyaon, on the other hand, when asked to make the identification, passed the burden to Det. Almoguerra, the poseur-buyer, in this wise:

Q: And can you identify the marijuana allegedly sold by accused to Pat. Almoguerra during the buy-bust operation?

A: During the buy-bust operation, I could no longer identify, sir.

Q: Is it not a fact that you were one of the members of the buy-bust operation?

A: Yes sir, but it was Almoguerra who had in possession at that time as I am (sic) telling them to have reasonable care with the confiscated stuff (underscoring ours).[6]

Det. Almoguerra, the most competent person to make the proper identification according to Pfc. Malanyaon, obviously failed likewise as he merely relied on the letter "M" found on the foil but could not identify, much less name, the person who actually made the mark. When asked whether he himself marked the foil of marijuana purportedly sold to him to distinguish it from the nine (9) other foils allegedly recovered from the accused, and for which the latter was separately charged for illegal possession, Det. Almoguerra categorically admitted his failure thus -

Q: Now, did you make any marking on that one foil of marijuana which was sold to you by the accused?

A: I did not put any marking but I can recognize the marking found there.

Q: In other words, you did not make any marking during that operation?

A: I did not (underscoring ours).

Considering that accused-appellant was being entrapped on a buy-bust mission, the police operatives should have carefully and meticulously marked the evidence so that it could be presented and properly identified in court. The drug sold by the accused constitutes the very corpus delicti of the offense the presentation and positive

identification of which are an indispensable requirement for his conviction. The fact that the buy-bust team led by Pfc. de la Cruz failed in this important task cannot but inure to the detriment of the cause for the prosecution.[7]

The foregoing discussion would otherwise sufficiently dispose of the instant appeal. But there are several points which appear to have been overlooked which further render the version of the prosecution not as credible and reliable as it was considered to be by the court a quo.

First. The alleged buy-bust operation was conducted without prior surveillance.[8] Although not always necessary, the absence of a prior surveillance nevertheless renders quite suspect the genuineness of the alleged buy-bust mission where the police operatives proceeded to the suspect's reported area of operation within hours from being tipped off, unaccompanied by the informant, and relying solely on the description of their quarry. In this case, the buy-bust team by Pfc. de la Cruz proceeded to Pateros St. with only the description that the suspect was someone "wearing white t-shirt, khaki pants and tennis shoes"[9] to guide them in the arrest of the accused. Such description was so general and vague that it could very well have applied to a number of "John Does" lurking in the area. Besides, we find it quite incredible that accused-appellant should single out Det. Almoguerra, the poseur-buyer, as his prospective buyer of all the people milling in the busy street of Pateros.

Second. Pfc. Pablo R. Singayon, the police investigator assigned to the case, testified that Det. Malanyaon marked a P10.00-bill with the letters "A. N. U." (acronym for Anti-Narcotics Unit) the day before the alleged buy-bust operation on 19 March 1986 following the standard operating procedure of preparing for a buy-bust the day before it was to be conducted.[10] However, Det. Malanyaon claimed to have been informed about the illegal activities of accused-appellant in the morning of 19 March 1986 only. If this were so, then how was it that he was able to prepare the marked money the day before as testified by Pfc. Singayon?

Third. Dets. Almoguerra and Malanyaon both claimed that they immediately saw accused-appellant seated on a bench in front of a sari-sari store upon arriving at Pateros Street.[11] However, Pfc. Henry de la Cruz, likewise a member of the buy-bust team, testified that they had to wait for forty-five minutes before their target showed up.[12]

Fourth. Accused-appellant denied selling marijuana to Det. Almoguerra as he knew the latter to be a member of the Makati Police Force. This claim was not refuted but was even admitted by the prosecution.[13] Hence, it becomes quite easy to sustain accused-appellant for we cannot believe that the latter would risk going to jail for life for the measly sum of P10.00 which was what the transaction with Det. Almoguerra would have brought him. In fact, we have already said that in the very nature of buy-bust operations, the designated poseur-buyer should be a perfect stranger to the suspected drug-pusher, for normally a suspect would not transact business with known police operatives[14] in view of the obvious risk involved. Our pronouncement to the effect that knowledge by the accused that the poseur-buyer is a policeman is not a sound argument enough to support the theory that the accused could not have sold drugs to the police cannot be applied to the instant case. In the cases where we have so ruled, it was established that the policeman had already bought shabu from the accused on two previous occasions[15] and that the claim that the accused knew the poseur-buyer to be a policeman was a mere allegation which was not proved.[16] To repeat, that herein appellant knew Det. Almoguerra to be a policeman was even admitted by the prosecution.[17]

As is true in all criminal cases, unraveling the truth is quite difficult. More often than not, the resolution of a case is reduced to the tedious exercise of figuring out who of the parties is narrating the true version of the antecedents. Thus, the reason for the various rules of evidence formulated to guide the bench in this quest. However, foremost and overriding such rules is the principle that innocence, not guilt, is the presumption. Courts do not exist to declare guilty and, thus convict, every and all persons brought and charged before them. For this reason, any

circumstance indicating possible innocence on the part of the accused is to be carefully weighed and considered. This is what we are doing in the instant case. In pronouncing an acquittal, we are moved by the circumstances already mentioned which, though not enough to convince us of accused-appellant's innocence, nonetheless effectively preclude us from making a pronouncement that his guilt has been established beyond all reasonable doubt which is, as it ought to be, to justify his conviction.

WHEREFORE, the judgment appealed from is REVERSED and accused-appellant JOEL QUINTERO Y YBASCO is ACQUITTED on reasonable doubt of illegal sale of marijuana under Sec. 4, Art. II, of "The Dangerous Drugs Act."

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Crim. Case No. 22944.

[2] Crim. Case No. 22945.

[3] Penned by Judge Buenaventura J. Guerrero, Regional Trial Court of Makati, Br. 133, Original Records, pp. 242-250; Rollo, pp. 23-31.

[4] People v. Martinez, G. R. Nos. 105376-77, 5 August 1994; People v. Mendiola, G. R. No. 110778, 4 August 1994; People v. Labarias, G. R. No. 87165, 25 January 1993, 217 SCRA 483, 488; People v. Pacleb, G. R. No. 90602, 18 January 1993, 217 SCRA 92, 98; People v. Mariano, G. R. No. 86656, 31 October 1990, 191 SCRA 136, 148; People v. Macuto, G. R. No. 80112, 25 August 1989, 176 SCRA 762, 767.

[5] TSN, 22 September 1986, p. 9; Original Records, p. 151.

[6] Id., p. 8; Id., p. 150.

[7] People v. Mendiola, G. R. No. 110778, 4 August 1994 citing People v. Macato, 176 SCRA 762 [1989], People v. Vocente, 188 SCRA 100 [1990], People v. Mariano 191 SCRA 136 [1990]; People v. Rodriguez, G. R. No. 95902, 4 February 1992, 205 SCRA 791, 799--800.

[8] TSN, 26 November 1986, p. 14; Original Records, p. 167.

[9] TSN, 10 September 1986, p. 10; Id., p. 137.

[10] TSN, 26 November 1986, pp. 3-4; Id., pp. 156-157.

[11] TSN, 10 September 1986, p. 4; Id., p. 131.

[12] TSN, 25 August 1986, p. 6; Id., p. 123.

[13] TSN, 22 September 1986, p. 10; Id., p. 152.

[14] People v. Tuboro, G. R. No. 97306, 3 August 1992, 212 SCRA 33, 37.

[15] People v. Salamat, G. R. No. 103295, 20 August 1993, 225 SCRA 499, 507.

[16] People v. Manzano, G. R. No. 103393, 24 August 1993, 225 SCRA 590, 593.

[17] TSN, 22 September 1986, p. 10; Original Records, p. 152.

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