

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSALINDA RAMOS Y DAVID, DEFENDANT-APPELLANT.

G.R. Nos. 85401-02. June 04, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Appellant Rosalinda Ramos seeks the reversal of the decisions of the Regional Trial Court, Branch 73, Third Judicial Region at Olongapo City, finding her guilty beyond reasonable doubt in Criminal Case No. 5990 for violating Section 8 of Republic Act No. 6425 (Dangerous Drugs Act of 1972 as amended) and in Criminal Case No. 5991 for violating Section 4 of the same Act and sentencing her to:

- 1) Imprisonment of six (6) years and one (1) day and a fine of P6,000.00 in Criminal Case No. 5990; and
- 2) Life imprisonment and a fine of P20,000.00 in Criminal Case No. 5991.

The two informations filed against the appellant respectively alleged:

Criminal Case No. 5990

"That on or about the 29th day of November, 1982 in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being lawfully authorized, did then and there wilfully, unlawfully and knowingly have in his/her/their person, possession and control twenty (20) sticks of marijuana cigarettes."

Criminal Case No. 5991

"That on or about the 29th day of November, 1982 in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there wilfully, unlawfully and knowingly engage in selling, delivering, giving away to another and distributing four (4) sticks of marijuana cigarettes which is/are prohibited drug(s)." (Rollo, p. 68)

The prosecution's version of the facts, as summarized by the Solicitor-General, is as follows:

"On November 29, 1982, at around 7:00 o'clock in the evening, a civilian informer came to the Narcotics Command Office in Olongapo City and reported that a cigarette vendor by the name of 'Mama Rose' was selling marijuana at the corner of 3rd Street and Rizal Avenue in Olongapo City (TSN, pp. 4-5, 13, May 4, 1984; pp. 3-4, 11, April 9, 1986). Captain Castillo instructed the informant to conduct a test buy. He gave to the informant two (2) five-peso bills, noting first the serial numbers in his pocket note (TSN, pp. 5, 14-15, May 4, 1984; p. 4, April 9, 1986). The informer left and after thirty (30) minutes came back and gave to Captain Castillo two (2) sticks of marijuana cigarettes (Exhibit 'C-2') which he bought from appellant. Captain Castillo again instructed the informer to make another test buy from the suspect. From his wallet, Captain Castillo extracted another two (2) five-peso bills and before handing the same to the informer, recorded the serial numbers in his pocket note (TSN, pp. 19-21, May 4, 1984).

A team composed of Captain Castillo, Sgt. Tahil Ahamad, CIC Danilo Santiago and Angel Sudiactal left with

the informer. The informer proceeded to where appellant was selling cigarettes to conduct the next test buy while the NARCOM agents waited at the Black and White Open Bar located at 7th Street, Rizal Avenue, Olongapo City (TSN, pp. 6-7, April 9, 1986). The bar was about three (3) blocks away from the place where appellant was selling cigarettes (TSN, pp. 19, 8, id.). After forty-five (45) minutes more or less, the informer arrived at the Black and White Bar and again gave to Captain Castillo two (2) sticks of marijuana (Exhibit 'C-1'; TSN, p. 23, May 4, 1984; p. 6, April 9, 1986).

The team then proceeded to the place where appellant was selling cigarettes. After identifying themselves as NARCOM agents, Capt. Castillo told appellant that she was being placed under arrest for illegal peddling of marijuana. Appellant was requested to take out the contents of her wallet (TSN, pp. 6-7, April 9, 1986). The four marked five-peso bills were found among her possessions and were confiscated after the serial numbers were confirmed by Captain Castillo from his record (TSN, pp. 23-25, May 4, 1984). The initial of Sgt. Tahir Ahamad was also found from the confiscated five-peso bills (TSN, p. 9, April 9, 1986). Sgt. Ahamad searched the stall of appellant and found twenty (20) sticks of marijuana cigarettes in a trash can placed under the small table where appellant displayed the wares she was selling (TSN, p. 7, April 9, 1986). Appellant was thereafter brought to the station (TSN, p. 23, May 4, 1984).

At the station, appellant executed a statement confessing to her crimes which she swore to before Assistant City Fiscal Domingo Cabali, Jr. (TSN, pp. 5-6, June 20, 1984; Exhibit 'G').

The marijuana sticks confiscated were sent to the Philippine Constabulary Crime Laboratory (PCCL) for analysis. These were confirmed to be marijuana as evidenced by the Chemistry Report No. MD-363-82 of Marlene Salangad, a Forensic Chemist of the PCCL (See Exhibit 'B'; TSN, p. 3, Jan. 13, 1986)." (Rollo, pp. 92-94)

On the other hand, the version of the appellant as summarized by the trial court, is as follows:

"xxx [O]n November 29, 1982, between 9:00 and 10:00 o'clock in the evening she was at the corner of 3rd St., and Rizal Avenue, West Tapinac, Olongapo City, selling cigarettes and fruits; that she does not have any table, all she had was a small wooden 'papag' to show her wares and sell them; that she was sitting on the small 'papag' when Capt. Castillo came and introduced himself followed by three or four others who were more or less 6 to 8 meters away. She was surprised why they were there, and that she was invited by Capt. Castillo to the NARCOM office for investigation to which invitation she said 'yes' after which she was taken to the NARCOM office. Before she was taken thereto, the other men searched the buri bags where she used to place her fruits (records does (sic) not show what fruits she was selling) and also her small cigarettes (sic) stand; that they did not find anything under the 'papag'; that when she was ordered to board the car, Castillo told her 'sakay na ho, Mama Rose' (please board now, Mama Rose); that she was told to bring along her cigarette stand; that inside her brown wallet, she has fifty (P50.00) pesos consisting of five pesos and ten pesos; that it was Sudiagal who took her wallet and Sudiagal took five (5) peso bills and told her that four (4) five peso bills are the same money which was used to buy marijuana from her; that she told the officer that the money was hers as she has been saving some for the rentals. She claimed that she affixed her signatures on the four (4) five peso bills because she was forced by Tahir Ahamad by saying 'Mama Rose', you sign this, if you are not going to sign this, something will happen to you, you will get hurt'; that because she is an old woman, she got scared so she signed. When Tahir Ahamad told her to sign, Ahamad was talking to her in a normal manner and seated in front of her; that she cannot remember having signed anything because she was nervous, Capt. Castillo investigated her and thereafter was brought to the Fiscal's Office. She signed a document at the Fiscal's Office; that she was asked if the contents of the document is (sic) true to which she answered 'No, sir'; that she was not assisted by a counsel while being investigated. She also testified that she stayed at Narcom for five (5) days; that Capt. Castillo alone investigated her for four (4) hours and that she likewise was not assisted by counsel at the Fiscal's Office. She claimed that when she was told by the Fiscal to just sign the document, Fiscal Cabali did not say anything when she said that the contents of the document are not true." (Rollo, pp. 72)

Appellant raises the following assignment of errors:

I

"THE FINDINGS OF FACTS ARE SO UNCLEAR AND DOUBTFUL, MAKING THE CONCLUSIONS OF THE TRIAL COURT WITHOUT FACTUAL AND LEGAL LEG TO STAND ON.

II

THE EVIDENCE OBTAINED AND THE PERSON ARRESTED WITHOUT THE BENEFIT OF A WARRANT OF ARREST AND SEIZURE MAY NOT BE USED AGAINST THE ACCUSED AND ANY CONVICTION FROM SUCH EVIDENCE IS NOT VALID AND A GROUND FOR REVERSAL.

III

THE TRIAL COURT RELIED HEAVILY ON THE CONFESSION OF THE APPELLANT AND THE CONFESSION WAS EXTRACTED IN VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS 'TO REMAIN SILENT AND TO COUNSEL'.

IV

WHEN NOT ALL THE ELEMENTS OF THE OFFENSE ARE PRESENT AND PROVEN, CONVICTION IS NOT PROPER.

V

THE REQUISITES IN ORDER TO CONVICT ON CIRCUMSTANTIAL EVIDENCE ARE NOT PRESENT AND NOT COMPLIED WITH." (Rollo, p. 59)

At the outset, it may be observed that two informations were filed against the appellant and the lower court imposed two sentences on appellant, one for sale and the other for possession of marijuana. This Court must emphasize that, assuming arguendo, the findings of guilt for both offenses are correct, the trial judge nevertheless erred in imposing a separate sentence for possession because possession of marijuana is inherent in the crime of selling them. (People v. de Jesus, 145 SCRA 521 [1986]; People v. Andiza, 164 SCRA 642 [1988])

After a careful scrutiny of the records, this Court holds that appellant's guilt in Criminal Case No. 5991 (sale of marijuana) has not been proven beyond reasonable doubt.

First, the extrajudicial confession extracted from the accused on November 29, 1982 is inadmissible in evidence for being violative of the Constitutional mandate that any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. (Art. III, Section 12(1), Constitution)

The preliminary statement read to the appellant when her sworn statement was executed appears as follows:

"SALAYSAY NA KUSANG LOOB NA IBINIBIGAY NI ROSALINDA RAMOS Y DAVID KAY CAPTAIN ARTURO M. CASTILLO PC SA HARAP NI SGT. TAHIL AHAMAD DITO SA HIMPILAN NG CANU, OLONGAPO CITY NGAYON 29 NG BUWAN NG NOBYEMBRE 1982.

TAGASIYASAT: Gng Rosalinda Ramos, ikaw ay nasa ilalim ng isang pagsisiyasat ukol sa paglabag sa ipinagbabawal na gamot. Bago kita tanungin ay nais kong malaman mo ang iyong mga karapatan sa ating bagong saligang batas at ito ay ang mga sumusunod:

1. Ikaw ay may karapatan na huwag sumagot sa aking mga itatanong sa iyo sa pagsisiyasat na ito,
2. Ikaw ay may karapatan na kumuha ng isang abogado upang makatulong sa iyo sa pagsisiyasat na ito at
3. Ano man ang iyong sasabihin sa pagsisiyasat na ito ay maaaring gamitin laban o pabor sa iyo saan mang hukuman dito sa ating bansa.

TANONG: Ngayon alam mo na ang iyong mga karapatan sa ating bagong saligang batas ikaw ba ay kusang loob na magbibigay ng isang salaysay na pawang katotohanan at pawang katotohanan lamang sa pagsisiyasat na ito?:

SAGOT: Opo." (Exhibit G)

This Court finds that such recital of rights falls short of the requirement on proper appraisal of constitutional rights. We quote the ruling in *People v. Nicandro* (141 SCRA 289 [1986]):

"When the Constitution requires a person under investigation 'to be informed' of his right to remain silent and to counsel, it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. As a rule, therefore, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Article IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands. In other words, the right of a person under interrogation 'to be informed' implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been 'informed' of his rights. Now, since the right 'to be informed' implies comprehension, the degree of explanation required will necessarily vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered."

Although the right to counsel is a right that may be waived, such waiver must be voluntary, knowing and intelligent (*People v. Caguioa*, 95 SCRA 2 [1980]).

To insure that a waiver is voluntary and intelligent, the Constitution now requires that for the right to counsel to be waived, the waiver must be in writing and in the presence of the counsel of the accused. (Art. III, Section 12(1), Constitution) There is no such written waiver in this case, much less was any waiver made in the presence of counsel.

Fiscal Cabali, who administered the oath on the appellant's extrajudicial confession, and the police officers who took it down should know by now that the procedure they followed results in incompetent evidence. If the purpose is to get proof which can stand up in court, they should follow the requirements of the Constitution.

Second, the alleged poseur buyer, who also happens to be the alleged informant, was never presented during trial. The presence and identity of the poseur-buyer is vital to the case as his very existence is being disputed by the accused-appellant who denies having sold marijuana cigarettes to anyone. (*People v. Ale*, 145 SCRA 50 [1986]) Without the testimony of the poseur-buyer, there is no convincing evidence pointing to the accused as having sold marijuana. (*People v. Fernando*, 145 SCRA 151 [1986]) In this case, the alleged informant and the alleged poseur-buyer are one and the same person. We realize that narcotics agents often have to keep their identities and those of their informants confidential. For a prosecution involving the sale or distribution of drugs to prosper in this particular case, however, the informant has to testify.

The testimony of the poseur-buyer is rendered compelling by the fact that the police officers were situated three blocks away from where the alleged sale took place. They did not see the actual sale of marijuana. Thus, Sgt. Sudiactal testified:

"Q - Before you arrested the accused, where did you position yourselves?

A - We were at the Black and White Open Bar, sir.

Q - How far is that from the place where the accused was selling cigarettes?

A - It is about three blocks, sir.

Q - You did not actually see the accused selling marijuana?

A - Yes, Sir xxx." (TSN, May 4, 1984, p. 8)

xxx xxx xxx

Q. Did you actually see the buying of the marijuana?

A. No, Ma'm.

Q. So, you did not see anything?

A. Yes, Ma'm.

Q. None of the three of you, Sgt. Sudiactal and Captain Castillo witnessed the actual buy of the three sticks of marijuana?

A. Yes, Ma'm.

Q. Your basis of the alleged buy by the informant is his word that he bought it from the suspect?

A. Yes, Ma'm." (TSN, April 9, 1986, pp. 125-126)

It is a known fact that drug dealings are hard to prove in court. Precisely because of this difficulty, buy-bust operations have to be conducted and every effort is taken such that the suspected pusher is caught in flagrante selling prohibited drugs. For the culprit to be convicted, the element of sale must be unequivocally established. In this case, the alleged poseur-buyer who could have categorically asserted that she bought marijuana from the appellant was not presented by the prosecution. And Sgts. Ahamad and Sudiactal could not attest to the fact of sale because they were three blocks away. The sale of marijuana was therefore not positively proven.

Despite the absence of the testimony of the poseur-buyer, the court a quo, however, relied on circumstantial evidence in concluding that there was indeed a sale:

"In this case, the accused admitted that she was the only one selling cigarettes at the corner of 3rd Street; the informant told the NARCOM Officers that their 'suspect' is a cigarette vendor positioned thereat. The two (2) 'test buy' yielded positive results as the informant was able to buy four (4) handrolled sticks of marijuana cigarettes from her, two at a time. The accused did not ask the reason why when she was invited for investigation. This act negates innocence and against human nature, especially after having introduced themselves as NARCOM agents. In her control and possession, twenty (20) sticks of similar handrolled marijuana cigarettes were recovered from a trash can under her small table. Her counsel on cross-examination asked Sgt. Tahil Ahamad the following (TSN, April 9, 1986, p. 14) 'and in order to search that trash can under the table, you have to ask or request 'Mama Rose' to get out of the way in order to check the contents of the waste can?' The question was answered, 'We asked permission from her to stand up so we can look into the contents of her small table, sir.'

"When investigated, the accused gave her statement which in fact was a confession where she admitted having sold marijuana cigarettes. She was taken before the Fiscal to subscribe the same. While she alleged that she told the Fiscal (Fiscal Cabali) that the contents of her statement are not true, why then did she sign it before the said Fiscal? Why did she not insist that her denial be registered on the document so as to repudiate it? Fear could not be a valid reason as she has already boldly spoken out when she said the contents were not true. The 'marked money' were recovered from her possession. She did not deny that the four (4) five peso bills were taken from her wallet. She was addressed as 'Mama Rose' not once but twice by the apprehending officers. Her counsel during the cross-examination of the prosecution witnesses and direct examination of the accused called and addressed her as 'Mama Rose', and the informant identified her not only as Rosalinda Ramos but also as 'Mama Rose.'" (At pp. 73-74, Rollo)

This Court finds that the cited circumstantial evidence do not establish beyond reasonable doubt that there was a sale of marijuana. Considering the severe penalty of reclusion perpetua imposed on those who sell or distribute drugs, we have to insure that evidence of culpability must pass the test of the strictest scrutiny. We also have to take into account the oft-repeated defense in violations of the Dangerous Drugs Act that the drugs or the marked money were planted by police officers. More direct and positive evidence is essential.

The failure of the appellant to ask why she was being invited for investigation by the NARCOM officers does not ipso facto indicate her guilt. Fear could have prevented her from propounding inquiries to the officers.

Nor does the fact that marked money was found in her possession show incontrovertibly that she is the seller of marijuana. The appellant is a cigarette vendor. By the nature of her job, there is a constant exchange of goods for money. It may be far-fetched but it is possible that she came into possession of the marked money because she accepted it in the course of legitimate sales of cigarettes. Again, it is only the poseur-buyer who could testify that she gave marked money to the appellant in exchange for marijuana sticks.

The fact that the appellant signed the extrajudicial confession despite her insistence that its contents were not true does not necessarily signify guilt. As earlier stated the extra-judicial confession cannot be accepted as evidence. It is useless for purposes of proof of sale of prohibited drugs.

Lastly, this Court fails to see how, from her being addressed as Mama Rose by the witnesses and appellant's counsel and the alleged informant-poseur buyer, the sale of marijuana can be inferred.

Rule 133, Section 5 of the Rules of Court provides:

Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inference are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

For not successfully meeting the above requirements, the enumerated circumstantial evidence cannot be a ground for conviction for the sale of marijuana.

With respect to Criminal Case No. 5990, however, this Court upholds the lower court's finding that the appellant is guilty of possession of marijuana.

Rule 113 Section 6 (b) of the 1985 Rules of Criminal Procedure provides:

SEC. 6. Arrest without warrant. - when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(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.

Meanwhile, Section 12 of Rule 126 states:

SEC. 12. - Search incident to a lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

Sgts. Sudiactal and Ahamad testified that there was an informant who apprised them of the presence of a drug pusher at the corner of 3rd Street and Rizal Avenue, Olongapo City. Acting on such information and in their presence, their superior, Captain Castillo, gave the informant marked money to buy marijuana. The informant, now turned poseur buyer, returned with two sticks of marijuana. Captain Castillo again gave said informant marked money to purchase marijuana. The informant-poseur buyer thereafter returned with another two sticks of marijuana. The police officers then proceeded to the corner of 3rd Street and Rizal Avenue and effected the arrest of appellant.

From the above facts, it may be concluded that the arresting police officers had personal knowledge of facts implicating the appellant with the sale of marijuana to the informant-poseur buyer. We hold therefore that the arrest was legal and the consequent search which yielded 20 sticks of marijuana was lawful for being incident to a valid arrest.

The fact that the prosecution failed to prove the sale of marijuana beyond reasonable doubt does not undermine the legality of the appellant's arrest.

It is not necessary that the crime should have been established as a fact in order to regard the detention as legal. The legality of detention does not depend upon the actual commission of the crime, but upon the nature of the deed when such characterization may reasonably be inferred by the officer or functionary to whom the law at the moment leaves the decision for the urgent purpose of suspending the liberty of the citizen (*People v. Molleda*, 86 SCRA 667 [1978]).

The obligation to make an arrest by reason of a crime does not presuppose as a necessary requisite for the fulfillment thereof the indubitable existence of a crime (*People v. Ancheta*, 68 Phil. 415 [1939]).

The appellant argues that if the twenty sticks of marijuana were in a trash can and it was not shown by clear and convincing evidence that the said trash can belongs to the appellant, then she cannot be considered as being in possession of marijuana.

In disposing of this contention, this Court quotes with approval the following arguments of the Solicitor-General:

"Appellant's defense falls against the categorical testimony of the NARCOM agents that the trash can was found under the table where her legitimate wares were being sold. This fact was not denied by appellant. Therefore, she was the only person who had access to the trash can. The same was under her immediate physical control. She had complete charge of the contents of the trash can under the table to the exclusion of all other persons. In law, actual possession exists when the thing is in the immediate occupancy and control of the party. But this is not to say that the law requires actual possession. In criminal law, possession necessary for conviction of the offense of possession of controlled substances with intent to distribute may be constructive as well as actual (*Black's Law Dictionary Abridge*, 5th Edition, pp. 606-607). It is only necessary that the defendant must have dominion and control over the contraband. These requirements are present in the situation described, where the prohibited drugs were found inside the trash can placed under the stall owned by appellant. In fact, the NARCOM agents who conducted the search testified that they had to ask appellant to stand so that they could look inside the trash can under the 'papag' of the appellant. Hence, the trash can was positioned in such a way that it was difficult for another person to use the trash can. The trash can was

obviously not for use by her customers.

"Appellant's arguments are inherently weak and improbable and cannot stand against the clear evidence pointing to her actual possession of the prohibited drug. The raw facts testified to by the NARCOM agents were corroborated by appellant and their conclusion - that she had possession of the marijuana sticks found in the trash can - is consistent with law and reason.

"Appellant further contends that it is hard to believe that she would keep the marijuana sticks in a trash can since it is a precious commodity to pushers and users thereof.

"The above argument is misleading. The value of the marijuana is not the primary consideration in the concealment of the contraband. The primary consideration is escaping detection and arrest. Obviously, the modus operandi was to dissimulate the act of selling and possession of marijuana sticks which carries the capital penalty (sic). Appellant could not display it among her regular wares of cigarettes and fruits for sale. She had to hide them from public view, but near enough to have access to them. The trash can, to her thinking, would be the last place to look for the precious commodity. Unfortunately, she was found out. The argument that it was an 'unlikely place' to hide the precious contraband is in fact the very consideration in choosing it as the hiding place for the contraband." (At pp. 97-100, Rollo)

We rule, therefore, that the twenty sticks of marijuana are admissible in evidence and the trial court's finding that the appellant is guilty of possession is correct.

The lower court, however, erred in imposing a fixed penalty of six (6) years and one (1) day for possession of marijuana. Section 1 of the Indeterminate Sentence Law (Republic Act 4103 as amended) provides that in imposing a prison sentence for an offense punished by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum which shall not be less than the minimum term prescribed by the same. The penalty prescribed by the Dangerous Drugs Act for possession of marijuana is imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from P6,000 to P12,000.

WHEREFORE, the appealed decision in Criminal Case No. 5990 is AFFIRMED but MODIFIED. The appellant is sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) day to nine (9) years and to pay a fine of six thousand (P6,000) pesos. The appealed decision in Criminal Case No. 5991 is REVERSED and SET ASIDE and the appellant is acquitted on grounds of reasonable doubt.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.

Cortes, J., no part.

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