

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO YAP AND ROBERTO MENDOZA, ACCUSED-APPELLANTS.**

G.R. Nos. 87088-89. May 09, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Resolving this appeal, we affirm the judgment, dated 11 March 1988, of the Regional Trial Court, Branch 56, National Capital Judicial Region, Metro Manila,[1] finding, after joint trial, accused Marcelino Yap guilty of illegal sale of marijuana in Criminal Case No. 23814, and accused Roberto Mendoza of illegal possession of the same drug in Criminal Case No. 23815, pursuant to the Dangerous Drugs Act (RA No. 6425, as amended).

The evidence for the prosecution substantially discloses:

Both accused herein are inmates of the Makati Municipal Jail.

On 1 May 1986, at about 8:00 o'clock in the evening, Appellant YAP, who was detained at the "brigada" of the Makati Municipal Jail, went to the "isolation room" where Appellant MENDOZA was detained and sold to the latter for P20.00 six (6) sticks of marijuana cigarettes. Unknown to them, Patrolman Reynaldo Agarao and Patrolman Conrado Muy, then on duty as jail guards, personally witnessed their movements from a distance of ten (10) meters away (TSN, 16 December 1987, p. 10). They saw Appellant YAP holding something in his right hand and when he approached Appellant MENDOZA, each exchanged something with the other. The guards immediately accosted the two (2) accused and found in the hands of Appellant MENDOZA six (6) sticks of handrolled cigarettes (Exhibit "A"), and in the hand of Appellant YAP they found a P20.00 bill (Exhibit "G"). Arrested, and thereafter taken to the Investigation Room and frisked therein, one (1) more stick of marijuana cigarette was found in the pocket of Appellant YAP's pants.

Upon investigation by Pat. Emeterio Malanyaon, Jr., of the Anti-Narcotics Division that same evening, Appellant YAP refused to give any written statement. Appellant MENDOZA did so, however, wherein he admitted the sale to him by Appellant YAP of the six (6) sticks of marijuana cigarettes for P20.00. At the lower left-hand corner of the second page of said sworn statement appears the following annotation: "Assisted by Atty. Romeo de Belen - CLAO." The Statement was signed and sworn to before the Fiscal on 5 May 1986, as shown on the left-hand margin of the same page. In its Decision, the Trial Court observed that this particular document was not objected to by the in defense when presented and when offered in evidence by the prosecution (At p. 5; TSN 16 December 1987, p. 150).

The six (6) sticks of marijuana were sent to the NBI for laboratory examination and were found positive for marijuana (Exhibits "C" & "C-1").

Appellant YAP's version, on the other hand, is that the only reason why Pat. Muy caused him to be charged for drug pushing was because he had refused to cooperate and point to one Eduardo Lastico, a designated "mayor" in the Makati Jail, as the mastermind of drug pushing within the prison premises. When he refused to do so, he was

beaten up and a firearm was discharged near his ear, after which he lost consciousness. When he regained his senses, he was already at the Narcotics Division. He further claims that he saw the P20-bill (Exhibit "G") for the first time when Pat. Muy testified in Court and that he was not really investigated but confined in the Investigation Room where he remained isolated.

Mario Mangampo, another inmate and Appellant YAP's co-accused in a Robbery with Homicide case, tended to substantiate Appellant YAP's version when he testified that in the evening of the incident Pat. Muy had caused a commotion when he fired a gun. Thereafter, he saw Appellant YAP taken out of the "brigada" and sent to the Investigation Room. In other words, what he wanted to convey was that there was no incident of any previous exchange between the two Appellants.

For his part, Appellant MENDOZA maintains that he was threatened and coerced by Pat. Muy to execute his Affidavit. His version, given during the trial, is that in the evening of 1 May 1986, he was awakened by defense witness, Mario Mangampo, and told that he was being summoned by Pat. Muy and told to testify against Appellant YAP, which he refused to do because he knew nothing against him.

After assessment of the evidence before it, the Trial Court rejected Appellant YAP's version for being incredible and refused to give credence to Appellant MENDOZA's assertion that he was merely threatened into executing his Affidavit (Exhibit "D"). The Trial Court opined that, considering their position and responsibilities as law officers, neither Pat. Muy nor Pat. Agarao would maliciously fabricate such serious charges against both Appellants nor employ force and intimidation against either of them. Hence, the judgment of conviction that it meted out and the sentence that it imposed, adjudging:

"WHEREFORE, finding accused Marcelino Yap in Criminal Case No. 23814 guilty beyond reasonable doubt for violation of Section 4 of Republic Act No. 6425, he is hereby sentenced to life imprisonment and to pay a fine of twenty-five thousand pesos (P25,000.00).

"Finding accused Roberto Mendoza in Crim. Case No. 23815 guilty beyond reasonable doubt for violation of Section 8, Par. 2, of Republic Act No. 6425, he is hereby sentenced to suffer an indeterminate imprisonment of six (6) months and one (1) day to eight (8) years and to pay a fine of eight thousand pesos (P8,000.00).

"After finality of this decision, the marijuana cigarettes (Exhs. A, A-1 to A-6), shall have to be turned over to the Dangerous Drugs Board for proper disposition in accordance with law.

"SO ORDERED.

"Makati, Metro Manila, November 3, 1988."

Hence, this appeal.

Required to submit Briefs, the last one was submitted by the People on 13 December 1989 (p. 75, Rollo). The Court dispensed with Appellants' Reply Brief in its Resolution of 14 March 1990 (p. 80, *ibid.*), and thereafter the case was deemed submitted for deliberation.

Appellants, represented by the CLAO (changed to the Public Attorney's Office [PAO]), now interpose the following

Assigned Errors

"I. The trial court erred in believing that the prosecution has adequately substantiated the respective offenses charged against both accused.

"II. The trial court erred in admitting the extra-judicial confession of accused Roberto Mendoza although it

was taken in violation of his constitutional rights.

“III. The trial court erred in convicting both accused-appellants despite the fact that their guilt has not been proven beyond reasonable doubt.”

Additionally, the defense argues that inasmuch as both Appellants are detention prisoners it is most unlikely that they would have been buying and selling marijuana openly and casually instead of discreetly and clandestinely, and that Appellant YAP could not have come into possession of the prohibited drugs owing to the strict measures employed in the Makati jail on the screening of visitors of inmates.

After a review of the oral and documentary evidence, we find the defense submissions unconvincing. Patrolmen Agarao and Muy witnessed the marijuana cigarettes and the payment therefor exchange hands between Appellants. When the latter were frisked, the goods were found on both of them plus an additional marijuana stick in the pocket of Appellant YAP's pants. The motives of the said jail guards in testifying the way they did cannot be questioned. They are officers of the law entitled to the presumption of regularity in the performance of their official duties (Sec. 5(m), Rule 131, Rules of Court; *People vs. de Jesus*, Nos. 71942-43, 13 November 1986, 145 SCRA 521). They could have had no other motive to testify the way they did except to enforce the laws, particularly, the Dangerous Drugs Act, as is their bounden duty.

Appellants' argument that with restricted visits to inmates, they have no way of possessing the marijuana, as charged, overlooks the resourcefulness with which even jailbreaks have been staged with the use of crude gadgets fashioned from even the most innocuous of utensils and materials. Besides, by their very nature, marijuana in the form of cigarettes can easily be hidden and carried from place to place unobtrusively.

Appellant YAP's posture that he was charged only because of his refusal to cooperate with prison authorities in pinpointing Eduardo Lastico as the mastermind of the marijuana traffic in the municipal jail is tantamount to accusing the jailguards of maliciously fabricating the charges against them. Aside from the presumption of regularity in the performance of their duties, Appellant YAP's assumptions are pure speculation. Notably, after the patrolmen concerned had spotted something awry going on between Appellants, they immediately accosted them, frisked them, and lost no time in causing their investigation that very same evening. Further, Appellant YAP's contention that a firearm was discharged near his ear inside the Investigation Room to cow him to submission strains credulity, indeed.

Similarly, Mangampo's statement that the investigation of Appellants was triggered only by the shot that Pat. Muy had fired before the incident deserves no credence for being without any basis whatsoever.

Coming now to Appellant MENDOZA, his denials that he was assisted by counsel and accorded his constitutional rights when he gave his extrajudicial confession, are belied by the records. Surely, the CLAO attorney would not have affixed his signature had Pat. Muy, as alleged, threatened and coerced Appellant MENDOZA into giving his sworn statement. Significantly, too, if Appellant YAP was not forced to sign any statement when he refused to do so, there is no reason why Appellant MENDOZA would not have been similarly treated. Moreover, it bears repeating that said Affidavit was not objected to by the defense when it was offered in evidence by the prosecution.

At any rate, even without such confession, the prosecution evidence can easily stand on its own.

In the last analysis, Appellants' denials, as well as submissions, cannot overcome the positive and categorical testimonies of the two jail guards, which are entitled to full faith and credence in the absence of any contrary indication.

We now consider the penalties imposed.

In the People's Brief, the Solicitor General submits that the fine of P25,000.00 imposed on Appellant YAP by the Trial Court should be reduced to P20,000.00 since that amount is the maximum allowable under Section 4 of RA No. 6425 or the Dangerous Drugs Act. That was the old provision. It has been amended since by PD No. 1675, which took effect on 17 February 1980 and, therefore, brings the present crime, committed on 1 May 1986, within its coverage. The amended provision reads:

“Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. x x x ”

Considering the foregoing amendatory provision, therefore, the fine of P25,000.00 imposed by the Trial Court is proper.

In so far as Appellant MENDOZA is concerned, the Trial Court found him guilty beyond reasonable doubt of violation of Section 8, paragraph 2, of RA No. 6425 and sentenced him

“x x x to suffer an indeterminate imprisonment of six (6) months and one (1) day to eight (8) years and to pay a fine of eight thousand pesos (P8,000.00).”

The Solicitor General now avers that the penalty that should be imposed is not that provided for in paragraph 2 Section 8 of RA No. 6425, but that provided in paragraph 1 thereof because Appellant MENDOZA “was not convicted of possessing Indian hemp.” Hence, according to the Solicitor General, the indeterminate penalty to be imposed should be not less than six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and a fine ranging from six (6) thousand to twelve (12) thousand pesos.

This is only half accurate. The law specifically states that “Indian hemp” is also otherwise known as “marijuana” (Section 2(i), RA No. 6425; Section 1, (1)[i], BP Blg. 179). Also, the crime was committed on 1 May 1986 so that the latest amendment to Section 8 is applicable, that is, BP Blg. 179, which took effect on 2 March 1982, providing that:

“Sec. 8. Possession or Use of Prohibited Drugs. - The penalty of imprisonment ranging from twelve years and one day to twenty years and a fine ranging from twelve thousand to twenty thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug except Indian hemp in regard to which the next following paragraph shall apply.

“The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use Indian hemp.”

While the penalty recommended by the Solicitor General tallies with that provided for in the aforequoted second paragraph, Appellant MENDOZA's conviction should be for violation of Section 8, paragraph 2 of RA No. 6425, as amended, as held by the Trial Court, and not paragraph 1 thereof, as the Solicitor General opines.

WHEREFORE, we affirm the judgment appealed from, with the modification that accused-appellant, Roberto Mendoza, is hereby sentenced to suffer an indeterminate penalty of six (6) years and one (1) day to eight (8) years. The fine, payable by him, remains at P8,000.00. Each accused-appellant shall pay one-half (1/2) of the costs.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Judge Nemesio S. Felix.

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