

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PACIANO DE LA TORRE ALIAS MOKONG, ACCUSED-APPELLANT.

G.R. Nos. 90804-05. July 01, 1991

Ponente: PARAS, J.

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PARAS, J.:

Paciano de la Torre was charged on two counts with violation of the Dangerous Drugs Act of 1972, namely: (1) Criminal Case No. C-2790, for having been found on July 7, 1988 in possession, custody and control of 198 foils of marijuana leaves placed in a 1,300 gram milk can and 1 bundle of marijuana leaves attached to their branches weighing 50 grams, and (2) Criminal Case No. C-2791, for having sold 2 foils of dried marijuana leaves on July 6, 1988. He was acquitted in Criminal Case No. 2790 but convicted in Criminal Case No. 2791 in the Decision of the trial court, the pertinent portions of which reads as follows:

"For the charge of selling marijuana, the prosecution presented a case of a successful 'test-buy' operation on July 6, 1988 where the accused was entrapped into selling and delivering to NARCOM operatives two (2) packets of dried marijuana leaves in consideration of twenty pesos (P20.00) paid to him. His defense to this is plain denial, asserting by his uncorroborated testimony that at the time he was just at their house, that nothing untoward happened, and that he did not sell marijuana to S/Sgt. Deocampo or Magwale. Further, the accused implies that he could not have been entrapped as he already knew S/Sgt. Deocampo to be a NARCOM agent having been so informed by the latter himself when they last met in June 1988." (p. 20, Rollo)

xxx xxx xxx

"WHEREFORE, in view of the foregoing considerations, judgment is rendered -

A. in Crim. Case No. C-2790:

1. Dismissing the criminal information against the accused Paciano de la Torre, nicknamed Mocong, and acquitting him of the charge of Possession of Prohibited Drugs defined and punished under Section 8, Article II, of Republic Act No. 6425, as amended (The Dangerous Drugs Act of 1972);

B. in Crim. Case No. C-2791:

1. Finding beyond reasonable doubt the accused Paciano de la Torre, nicknamed Mocong, GUILTY as charged for the Sale and Delivery of Prohibited Drug as defined and punished under Section 4, Article II Republic Act No. 6425, as amended (The Dangerous Drugs Act of 1972), and imposing on him the penalty of LIFE IMPRISONMENT AND A FINE OF TWENTY THOUSAND PESOS (P20,000.00); provided that, in the service of the imprisonment meted, the accused shall be granted the benefits of Art. 29 of the Revised Penal Code, if applicable; and

C. With costs de oficio."

(p. 24, Rollo)

The prosecution's evidence upon which the finding of guilt beyond reasonable doubt was based is narrated by the trial court thus:

"Narcotics Command operatives for Region 6 after conducting surveillance in Pres. Roxas, Capiz came to suspect the accused as a violator of the dangerous drugs law; accordingly in the morning of July 6, 1988 team members S/Sgt. Dionisio Magwale and S/Sgt. Dande Deocampo approached the accused at his house in Campo Poblacion of said place on a 'test-buy' operation where, over a bamboo slats fence, S/Sgt. Deocampo posing as a buyer transacted with the accused for the purchase from him of marijuana, with S/Sgt. Magwale as observer; after agreeing on the sale S/Sgt. Deocampo gave to the accused a P20.00 bill and the latter went inside their house, and when he returned shortly the accused handed to S/Sgt. Deocampo two (2) packets of the supposed marijuana sold, and which later were confirmed to be marijuana leaves by the NARCOM operatives on field examination and by a forensic chemist in laboratory tests (Exhs. 'E' & 'E-4'); when asked, the accused answered that he had plenty more of the stuff available for disposal; the NARCOM agents then applied for and were issued a search warrant (Exh. 'A') by Judge Orlando Relano in the morning of July 7, 1988 covering the said house and premises of the accused; in serving this they first passed by and requested the assistance of the barangay captain and four (4) PC men served the warrant and, in the company of the accused and his mother, conducted the search particularly in the second floor of their house, the yard and a nipa hut within the premises and two (2) meters away from the house; the search yielded one (1) milk can (Exh. 'E-2') with one hundred ninety-nine (199) packets containing dried marijuana leaves and a plastic bundle (Exh. 'E-3') containing dried marijuana leaves; the items seized were inventoried and receipted (Exh. 'B') and signed (Exh. 'B-1 & Exh. 'B-3'); the conduct of the search certified to (Exh. 'C'), and these were signed among others by the barangay captain, the accused and his mother, the NARCOM agents brought the accused and the seized items before Judge Orlando Relano to whom they submitted a return of the search (Exh. 'D'), and requested for the custody of the items (Exh. 'D-2') for laboratory tests, which was granted (Exh. 'D-4') and receipted for (Exh. 'D-6'); the items seized during the search and that sold by the accused during the 'test-buy' the day before were forthwith brought to the PC/INP Crime Laboratory Service in Iloilo City and examined by its forensic chemist P/Lt. Zenaida Sinfuego; the laboratory tests conducted on the specimens now marked as Exh. 'E-2', 'E-3', and 'E-4' showed that these were marijuana (Exh. 'E' & Exh. 'E-5').

(pp. 2 to 3, Decision; pp. 4-30 TSN June 7, 1989; pp. 4 to 22 TSN May 24, 1989; pp. 3-23 TSN Feb. 15, 1989; pp. 8-25 TSN Feb. 16, 1989)." (pp. 4-5, Appellee's Brief; p. 83, Rollo)

He now seeks a reversal of the judgment of conviction assigning the following errors:

I

THAT THE TRIAL COURT ERRED IN CONSIDERING THE INCONSISTENCIES TESTIMONIAL EVIDENCE OF THE PROSECUTION WITNESSES IN THE CONVICTION OF THE ACCUSED-APPELLANT IN CRIMINAL CASE NO. C-2791;

II

THAT THE TRIAL COURT ERRED IN NOT BELIEVING THE TESTIMONIAL EVIDENCE OF THE ACCUSED-APPELLANT AND HIS WITNESSES;

III

THAT THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT IN CRIMINAL CASE NO. C-2791. (p. 39-A, Rollo)

As can be gathered from the foregoing assigned errors, the issue in this appeal is again the credibility of witnesses, that is, whether or not the trial court was correct in giving more weight to the testimony of the

prosecution witnesses than to the testimony of the accused-appellant and his witnesses.

In the matter of credibility of witnesses, the rule is well-settled that "unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties." (People v. Ablaza, 30 SCRA 173; People v. Lamosa, 173 SCRA 518) We apply this legal tenet to the case at bar. But even if such principle were not invoked the fact is that the appellant failed to controvert the more credible evidence of the prosecution. The prosecution, through its four (4) witnesses, namely: NARCOM agents Sgts. Lavitan, Dande Deocampo and Dionisio Magwale and barangay captain Avelino Bawafe, had positively established, by clear and convincing evidence, that appellant had committed the offense of selling marijuana to the NARCOM agents. The alleged inconsistencies and contradictions in the testimony of the prosecution witnesses, pointed out by the appellant in his brief, to wit:

1. S/Sgt. Magwale testified that he and S/Sgt. Deocampo applied for the issuance of a search warrant on July 6, 1988 immediately after the test buy operation while S/Sgt. Deocampo testified that they applied for said warrant, Exh. 'A', on July 7, 1988 (supra, page 7, Brief);
2. S/Sgt. Deocampo testified that in each wrapper of the two (2) foils of marijuana, Exh. 'E-4', he bought from the accused-appellant, he affixed his handwriting to identify said Exh. 'E-4' (supra, page 7, Brief) whereas, on the other hand, on cross examination, T/Sgt. Lavitan testified that when S/Sgt. Deocampo gave to him Exh. 'E-4', he examined himself Exh. 'E-4' and had not noticed any marking or seen any writing on the wrappers of said exhibits (supra, page 10, Brief);
3. That during the test-buy on July 6, 1988, S/Sgt. Magwale when asked by the trial court testified that their team leader, T/Sgt. Lavitan, was staying in their safehouse almost 300 meters away from the house of the accused-appellant (supra, page 4, Brief) which testimony was contradicted by S/Sgt. Deocampo in his testimony on cross-examination that T/Sgt. Lavitan was in Roxas City (39 kilometers from the Municipality of President Roxas, Capiz) who instructed them to conduct a test-buy operation at President Roxas, Capiz on July 6, 1988 (supra, page 8, Brief);
4. S/Sgt. Magwale testified that accused-appellant surrendered a bundle of dried marijuana leaves, Exh. 'E-3', to S/Sgt. Deocampo (supra, page 3, Brief) whereas, according to the Barangay Captain it was S/Sgt. Magwale who found or discovered Exh. 'E-3' on top of the bamboo post of the nipa hut (supra, page 5, Brief) refer to minor and insignificant details which cannot destroy the credibility of the said prosecution witnesses. (People v. Manalo, 135 SCRA 84; People v. Dava, 149 SCRA 582; People v. Ranola, 172 SCRA 43) In fact such minor inconsistencies guarantee sincere and candid evidence (not manufactured perjury) of what must have actually happened.

The accused's evidence consists of mere denials which constitute self-serving negative evidence. Thus, these denials cannot be given greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. (People v. Rodriguez, 172 SCRA 742)

We, therefore, find no justification to overturn the following findings of the trial court -

"The Court considers, however, that these four (4) eye-witnesses could not possibly have a fully uniform perception nor recall of things and that - their differences on these and other details notwithstanding - they are all in positive agreement that packaged and loose marijuana contained in the milk can and bundle were recovered during the search. It should be noted that the discrepancies mentioned refer to testimonies on events occurring after the 'test-buy' operation. But independently of and isolated from this, the testimonies of S/Sgts.

Deocampo and Magwale anent and centered on the sale and purchase of marijuana on July 6, 1988 are homogeneous, unsullied, and credible. Warnings have been made against law enforcers who, in frustration or to enhance their service image, would connive and fabricate cases against notorious drug violators. That cannot be said in these charges where the NARCOM agents sought first judicial processes and involved in their operations the barangay captain and local PC men whom they met for the first time just minutes before they set off after the accused.

"Thus taking the foregoing into account and after scrupulously separating the evidentiary grain from the chaff, the Court still finds that there is strong and convincing evidence that the accused sold and delivered to NARCOM operatives on July 6, 1988 two (2) packets of marijuana for the purchase price of twenty pesos (P20.00). The search for and recovery of a hefty amount of marijuana from the accused a day later and from the same place, confirms this sale and the nefarious activities of the accused. His possession of such bulk cannot but indicate his intention to sell, distribute and deliver marijuana. (vide: Pp. v. Toledo, 140 SCRA 25).

"The defenses set up by the accused are weak and hollow. His bare denial that he did not sell marijuana to the NARCOM operatives on July 6, 1988 cannot be hoped on to overcome their positive assertions. 'The well-entrenched principle is that greater weight is given to the positive testimony of the prosecution witness than the accused's denial.' (Pp. v. Khan, 161 SCRA 406)." (pp. 21-22, Rollo)

In a last ditch effort to avoid criminal liability, appellant claims that the prosecution filed the cases against him to cover-up for the money taken by the team in the amount of P6,380.00 (p. 2 Appellant's Brief).

Appellant's allegation is completely unfounded. The evidence on record shows that the searching team did not conceal the money. It was reported and handed to the barangay captain, duly accounted for and repeatedly counted in the open. (pp. 21-23, TSN, Feb. 16, 1989). Furthermore, as pointed out by the Solicitor General, credit must be accorded to the testimonies of the buy-bust operation and searching team. To legalize the operation and avoid suspicion, they sought judicial process in applying for a search warrant, involving in the search no less than the barangay captain. The seized items in the possession of appellant confirmed that the latter was engaged in the sale and distribution of marijuana. (p. 13, Brief for the Appellee)

WHEREFORE, the decision of the trial court is AFFIRMED.

SO ORDERED.

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

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