

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORO ANGELES Y VILLAFRIA, ACCUSED-APPELLANT.

G.R. Nos. 95761-62. February 02, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Teodoro Angeles y Villafria was charged before the Regional Trial Court of Davao City, Branch 15, in two separate informations both dated January 25, 1989 with (a) illegal possession of marijuana in violation of Section 8, Article II of the Dangerous Drugs Act of 1972 (Republic Act No. 6425, as amended); and (b) illegal sale of marijuana in violation of Section 4 of Article II of the said Act.

The aforementioned informations pertinently state that said offenses were allegedly committed as follows:

Criminal Case No. 17,484-89

"That on or about January 24, 1989, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously had (sic) in his possession three (3) cellophane packs of marijuana dried leaves which is a prohibited drug." [1]

Criminal Case No. 17,485-89

"That on or about January 24, 1989, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously dealt (sic) with the sale of one cellophane pack containing marijuana dried leaves weighing more or less 2.5 grams at P20.00, which is a prohibited drug." [2]

Appellant, duly assisted by his counsel, pleaded not guilty to both charges when arraigned on June 13, 1989. [3] Thereafter, or on July 31, 1989, joint trial on the merits of the two cases commenced and on May 2, 1990, both cases, as consolidated, were submitted for decision.

On August 1, 1990, the trial court rendered its decision [4] finding herein appellant guilty of both charges. Appellant was sentenced to suffer six (6) years and one (1) day of imprisonment and to pay a fine of six thousand pesos (P6,000.00) in Criminal Case No. 17,484-89; while in Criminal Case No. 17,485-89, he was sentenced to suffer the penalty of reclusion perpetua and to pay a fine of thirty thousand pesos. (P30,000.00). [5]

Appellant is now before us seeking the reversal of said judgments of conviction.

The Solicitor General, while agreeing fully with the lower court's finding of guilt with respect to the charge of illegal possession of marijuana, recommends the reversal of appellant's conviction in the charge of illegal sale of the prohibited drug. [6] We have accordingly undertaken a thorough review of the records and a painstaking scrutiny of the evidence adduced in this case in order to arrive at a conscientious appreciation of the positions respectively advanced by the parties.

We cull from the records that at about 10:00 o'clock in the morning of January 24, 1989, Sgt. Carlos Guillen was

in the headquarters of the 11th Narcotics Command Unit Office at Camp Capt. Domingo Leonor in Davao City, together with Sgts. Benedicto Redoble, Ludovico Cuaton and David Lastimosa, when a confidential informant arrived and told Guillen that a certain "Jun Kuwago," the herein appellant, whose house is in front of the San Pedro Hospital at Guerrero Street in Davao City, was still active in the peddling of marijuana in that area.[7]

Sgt. Guillen forthwith reported the "tip" to his commanding officer, Major Tangan Kadalim, who then formed a team to conduct a buy-bust operation. Sgt. Guillen was designated to act as the poseur-buyer and was given a P20.00 bill to be used in buying marijuana. The others, namely, Sgts. Redoble, Cuaton and Lastimosa, were tasked to provide support.[8]

After the briefing, the team went to their target area at Guerrero Street and, upon reaching the place at about 1:00 o'clock in the afternoon, proceeded to position themselves in accordance with their plan. Sgt. Guillen posted himself in front of the gate of appellant's house and pretended to act as a would-be buyer. Sgt. Redoble, meanwhile, stationed himself inside the canteen of the San Pedro Hospital, and Sgt. Cuaton stood in front of the said hospital. Sgt. Lastimosa, on the other hand, kept watch in an alley at the back of appellant's house.[9]

At approximately 1:15 P.M. appellant came out of his house, whereupon Guillen asked him. "Pare, mayroon ba tayo diyan?" Appellant then reached into his pocket and handed to Guillen one cellophane pack containing dried marijuana leaves, and, in turn, the latter gave the payment of P20.00. Shortly after the exchange, Guillen made the pre-arranged signal, indicating that the sale had been consummated, by scratching his head with his right hand.[10]

Upon seeing the pre-arranged signal, Sgts. Redoble and Cuaton went into action. However, before they could reach Guillen and the appellant, the latter spied the two officers and forcibly extricated himself from the clutches of Guillen who by then had grabbed and was firmly holding appellant's forearm. In the process, appellant was able to run away towards the back of his house, with the three officers in hot pursuit. Sgt. Lastimosa was alerted by the commotion and, shortly thereafter he saw the fleeing Angeles whom he then promptly seized and held by the arms.[11]

The NARCOM operatives proceeded to frisk appellant and recovered from him an additional three cellophane packs containing dried marijuana leaves. Sgt. Guillen also recovered the P20.00 bill that he had earlier handed to Angeles. They then brought appellant and the confiscated items to their headquarters in Camp Capt. Domingo Leonor for investigation.[12]

Appellant predictably presented an altogether different version of what transpired in that incident of January 24, 1989. He testified that at around 1:00 P.M. of that day, he was sleeping in his house at Guerrero Street when he heard repeated knockings on the main door thereof. He got up to answer the same and when he opened the door, he was suddenly collared and brought out of the house by two men, one of whom was pointing a gun at him. After struggling for some time, he was able to free himself and he ran back inside his house. He passed through the kitchen door but his path was blocked, again by two men, who then placed him under arrest. He later identified them as Sgts. Guillen and Cuaton. After being handcuffed, he was brought back into his house where he was manhandled by the arresting officers.[13]

The NARCOM agents allegedly proceeded to search appellant's house for illegal firearms but were not able to find any. When appellant threatened to file charges against the officers, he was taken to the PC Headquarters where he was further interrogated and forced to sign a written statement. Appellant, however, refused to sign the same and, thereafter, he was indefinitely detained thereat.[14]

Tan Dian Huwa, in corroboration of the testimony of appellant, testified that at about 1:00 P.M. of January 24,

1989, he was watching a television show at the house of appellant's neighbor when his attention was caught by a commotion in appellant's house. He saw Angeles being chased by three armed men and the former was caught by them a few feet away from him. Appellant was allegedly mauled and then brought inside his house where he was further manhandled. Later, the men left together with appellant, with the latter in handcuffs.[15]

After having carefully and judiciously calibrated the respective contentions and evidence of the contending parties with the circumspection that the gravity of the charges in this case demands and deserves, we are satisfied and convinced that the findings of the court below are in accord with the law and the settled jurisprudence on the matter. Appellant's conviction of the charges against him must perforce stand.

1. In his brief, appellant contends that he was a victim of a frame-up and, for this reason, ascribes error on the part of the trial court in disregarding the evidence submitted by the defense and in convicting him of the offenses charged.

He points out, in particular, to the fact that Sgt. Guillen saw him only for the first time when he came out of his house in Guerrero Street and argues therefrom that, since the said officer did not know him by face, it is highly improbable that Guillen would immediately offer to purchase marijuana from him. Furthermore, he insists that it is unbelievable that he would sell the prohibited drug to Guillen since he personally knew the latter to be a NARCOM agent. He testified that at one time in 1987, Sgt. Guillen and another police officer attempted to arrest him at Gaisano Center in Davao City.

Appellant's contentions are specious and unmeritorious. While it may be true that Sgt. Guillen did not then know the name or identity of appellant, there is certainly nothing uncommon or irregular in the said officer's assumption that the person who came out of the house was the notorious drug-pusher that they were looking for, a well-reasoned assumption in the light of after-events.

Firstly, Sgt. Guillen testified that he saw Angeles inside the latter's house while he was posted at appellant's gate pretending to be a would-be buyer, and that Angeles also saw him and was obviously observing him.[16] It was after about fifteen minutes that appellant came out of the house and walked towards him. Guillen could thus perfectly identify that person as Angeles and reasonably assume that the latter came out, at the sight of a prospective customer, precisely to sell the prohibited drug.

Secondly, Sgt. Guillen's experience and extensive training gained through his participation in countless buy-bust operations must have surely and undoubtedly developed in him the perceptive instinct of a trained narcotics agent in distinguishing a wily drug-pusher from an ordinary person, hence his inquiry directed to appellant, as to whether the latter had marijuana to sell, couched in the jargon known to drug users and pushers.

Appellant's assertion that he would not have dealt with Sgt. Guillen since he knew him to be a law enforcer is equally untenable for, aside from the fact that Guillen firmly refuted such allegation on rebuttal, what is of importance here is not an existing familiarity between the poseur-buyer and the seller but their agreement concerning the sale of marijuana and their acts pursuant thereto constituting the sale and delivery of the illicit drug.[17]

Besides, aside from the risk of bungling the eventual entrapment of appellant, it would have been foolhardy on the part of Sgt. Guillen to agree to his designation and act as poseur-buyer if it were indeed true that he had earlier tried to arrest appellant since the latter would be aware of his identity. That is why we have heretofore discredited the practice of appellants raising the defense that, since they know that the prosecution witnesses are police officers, it is improbable that they would sell marijuana to them. For, as we have pointed out, aside from lack of corroboration, such a pretense can be so easily contrived since all that the malefactor has to do is to affect

supposed knowledge of the identity of the peace officer and seek refuge in that self-serving contention.[18]

In this regard, it has been held that "(t)he success of every buy-bust operation depends largely on the concealed identity of the poseur-buyer such that it has become a standard operating procedure to designate as poseur-buyer one who is a total stranger to suspected sellers of prohibited drugs in the area of operation. This belies appellant's pretension that the authorities involved could be so incompetent as to be oblivious of such a self-evident fact."[19]

Furthermore, peddlers of illicit drugs have been known, with ever-increasing casualness and recklessness, to offer and sell for the right price their wares to anybody, be they strangers or not.[20] What we said in *People vs. Bagawe*,[21] bears reiteration:

"Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall (*People vs. Rubio*, G.R. No. 66875, June 19, 1986, 142 SCRA 329; *People vs. Sarmiento*, G.R. No. 72141, January 12, 1987, 147 SCRA 252), in front of a store (*People vs. Khan*, *supra*) along a street at 1:45 p.m. (*People vs. Toledo*, G.R. No. 67609, November 22, 1985, 140 SCRA 259), and in front of a house (*People vs. Policarpio*, G.R. No. 69844, February 23, 1988)."

The foregoing considerations decidedly confute the submissions of the Solicitor General, wherein he expressed uncertainty as to whether appellant did sell marijuana to Sgt. Guillen who was purportedly a stranger to him, and on the basis of which doubts he recommended that the factual findings of the trial court, which is entitled to the highest respect since we find no circumstance undermining the correctness of the same, be set aside and appellant's conviction for the sale of marijuana be overturned. We are definitely as conscious of our grave responsibility over unwarranted convictions as the Solicitor General, but we also hold the same concern with respect to improvident acquittals which would exacerbate the drug menace to our society and nullify the efforts to contain, or at least minimize, this pernicious narcoticism cancer in our society.

Appellant further asserts that the apprehending officers were motivated by hate and revenge in arresting him, citing the following testimony of Sgt. Guillen:

"Q

We will go back, you did not know Angeles according to you before that and you just went to the place where he was staying, how did you know that?

A

There is no other Angeles selling marijuana in that place except accused Angeles.

Q

That is the reputation (sic) you received about him?

A

Yes, sir.

Q

That is why you have decided that he should be apprehended?

A

Yes, sir."[22]

Contrary to appellant's pretension, there can be no other conclusion from the foregoing testimony of Sgt. Guillen than that the NARCOM agents were precisely motivated by the demands of their duty to entrap a notorious trafficker of illegal drugs. When Sgt. Guillen was personally given the information that a drug pusher was plying his illegal trade in the vicinity of Guerrero Street, he immediately informed his superior of the matter. The latter lost no time in forming a buy-bust team and properly briefing it of its mission.

With the failure of appellant to present clear and convincing evidence of any dubious or ill motives on the part of the arresting officers to impute such a serious crime to him, we, therefore, find no compelling reason to depart from the well-entrenched principle that credence is generally accorded to the testimonies of prosecution witnesses who are law enforcers as they are presumed to have regularly performed their duties in a regular manner.[23]

The defense interposed by herein appellant is that he was the victim of a frame-up. Like alibi, this defense has been invariably viewed by courts with disfavor for it can just as easily be concocted and is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[24] As the testimonies of the witnesses for the prosecution were clear and pointed positively to the guilt of appellant, his defense must fail, consisting as it does of mere negative statements.

The settled rule is that greater weight is given to the positive narration of facts by prosecution witnesses than to the negative testimonies of the defense.[25] This is especially more so where, as in the case under consideration, the prosecution has presented as its witnesses law enforcers who, to repeat, have the benefit of the presumption of regularity on their part and with no countervailing evidence of any circumstance in refutation thereof.

Appellant also adverts to supposed inconsistencies in the testimony of Sgt. Guillen on what appellant considers to be prevarications as to who pinpointed the location of his house. He says that, at one point, Guillen testified that it was he himself who pointed out the house where appellant lived and yet, later, he said that it was the informer who indicated appellant's residence. Again, we find no merit in this contention.

It will be recalled that the police informer had earlier told Sgt. Guillen at the NARCOM Headquarters of the location of appellant's house at Guerrero Street, hence, Guillen's testimony on that specific point. On the other hand, when Guillen narrated that he pinpointed appellant's residence, he was referring to the time when the buy-bust operatives were already at their target area and it was there that he located Angeles' house after conducting prior surveillance. At any rate, even if the testimony of Guillen on this particular matter be considered as inconsistent, the same is too insignificant to stir a ripple of doubt on his credibility.

2. In addition to what we have already discussed with respect to the recommendation of the counsel for the People for the acquittal of appellant on the charge of selling marijuana, we wish to make some further observations.

We have held that what is material in prosecutions for illegal sale of marijuana is the submission of proof that the sale of the illicit drug transpired between the poseur-buyer and the seller thereof, and the presentation further of the marijuana as evidence in court.[26]

Sgt. Guillen's testimony as to how appellant sold to him one pack of marijuana was narrated by the said officer during his direct and cross-examination in a categorical and straightforward manner, and which warrants repeating. According to him, he posted himself in front of the gate of appellant's house for about fifteen minutes and pretended to act like a prospective buyer. When appellant spotted him, he later came out of the house.[27] Guillen then asked appellant, "Pare, mayroon ba tayo diyan?" whereupon appellant reached into his pocket and handed over to Guillen one pack of dried marijuana leaves. Guillen, in turn, gave appellant P20.00 as payment thereof and signalled the consummation of the transaction to his companions.[28]

Sgt. Redoble amply corroborated Guillen's aforesaid testimony that there was an exchange of marijuana between Guillen and appellant. He testified that he was about twenty meters away from the gate of appellant's house and, from that distance, he could clearly see Guillen and appellant. Redoble and Cuaton, the other NARCOM agents, then moved in for the arrest of appellant after Guillen gave the pre-arranged signal indicating the completion of the transaction.[29]

When appellant made an attempt to elude arrest, he was caught at the back of his house by the NARCOM agents. There, they confiscated from him another three packs of marijuana, together with the P20.00 bill which Guillen earlier gave to appellant. Accordingly, it may then be asked: If appellant had never sold or been in possession of marijuana when he was in front of Guillen, what reason was there for him to suddenly run away to the back of his house where he was eventually apprehended?

In all, four packs of dried marijuana leaves were seized from appellant and these were later turned over to the PC Crime Laboratory in Davao City for analysis.[30] During the trial, the confiscated packs containing marijuana were submitted in court by the prosecution as evidence. All four packs were respectively marked as Exhibits "D-1," "D-2," "D-3" and "D-4." The P20.00 bill, with Serial No. 282029, was likewise introduced in evidence and marked as Exhibit "A." [31]

Lt. Salome Jose, a forensic analyst at the PC Crime Laboratory in Davao City, testified that she conducted an analysis on all the four packs by taking samples of each pack and on which she applied the Duquenois-Levine test and subjected them to microscopic examination. According to her Chemistry Report No. D-016-89, all the specimens submitted for analysis were positive for marijuana.[32]

The Solicitor General further postulates that the P20.00 bill presented by the prosecution as evidence is of doubtful nature since the same has not been shown to have been properly marked, hence "there is absolutely nothing to show that it was marked money and that it was used to buy marijuana from appellant." [33] Once again, we disagree. In fact, we have our misgivings on this conjectural stance anchored on the vagary of a possibility and which sounds more like a brief for appellant.

The question as to whether the buy-bust money was marked or not is immaterial in determining whether there has been a violation of Section 4, Article II of the Dangerous Drugs Act. To stress once again, proof of the transaction suffices to constitute a violation thereof, coupled with the presentation in court of the corpus delicti. In such a case, not even the absence or non-presentation of the marked money would create a hiatus in the evidence for the prosecution.[34]

Verily, the fact that appellant had indeed unlawfully sold and had possession of marijuana is evident from all the foregoing considerations and his conviction on the separate charges of illegal possession and illegal sale of the illicit drug must necessarily be affirmed. We cannot do otherwise and thereby be recreant to our sworn duties to the People who are likewise entitled to justice in equal measure as herein appellant.

At this juncture, it bears mention that the general rule is that possession of marijuana is absorbed in the sale thereof. The exception thereto is where, aside from his sale and delivery of the marijuana to the buyer pursuant to the sales transaction, the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.[35] Accordingly, in the cases at bar, appellant was properly charged with, and correctly convicted of, the separate crimes of illegal sale and illegal possession of marijuana.

However, the trial court erred in imposing upon appellant the penalty of reclusion perpetua in Criminal Case No. 17,485-89. Under the Dangerous Drugs Act of 1972, specifically Section 15 of Article III thereof, the proper

imposable penalty for illegal sale of a prohibited drug is life imprisonment, not reclusion perpetua, and a fine ranging from P20,000.00 to P30,000.00.

WHEREFORE, subject to the above modification as to the imposable penalty of life imprisonment and which we hereby impose on accused-appellant Teodoro Angeles y Villafria in Criminal Case No. 17,485-89, the assailed decision is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

[1] Original Record, Criminal Case No. 17,484-89, 1.

[2] Ibid., Criminal Case No. 17,485-89, 1.

[3] Ibid., Criminal Case No. 17,485-89, 14.

[4] Per Judge Jesus v. Quitain.

[5] Original Record, Criminal Case No. 17,484-89, 77-78.5

[6] Brief for the Plaintiff-Appellee, 9; Rollo, 88.

[7] TSN, November 21, 1989, 50-52; July 31, 1989, 3-4; September 12, 1989, 32-33; November 21, 1989, 68.

[8] Ibid., id.

[9] TSN, November 21, 1989, 52-54; July 31, 1989, 5-6; September 12, 1989, 34-35; November 21, 1989, 69.

[10] Ibid., November 21, 1989, 54, 63-65.

[11] TSN, November 21, 1989, 55; July 31, 1989, 6-7; September 12, 1989, 35-37; November 21, 1989, 70.

[12] Ibid., id., 55-56; *ibid.*, id., 7; *ibid.*, id., 36-37; *ibid.*, id., 70.

[13] TSN, April 4, 1990, 104-107.

[14] Ibid., id., 108-109.

[15] Ibid., March 29, 1991, 85-91.

[16] TSN, November 21, 1989, 54, 63-64.

[17] *People vs. Borja*, 182 SCRA 581 (1990); *People vs. Consuelo*, 184 SCRA 402 (1990); *People vs. Como*, 202 SCRA 200 (1991).

[18] *People vs. De Jesus*, 205 SCRA 383 (1992); *People vs. Castillo*, 208 SCRA 62 (1992).

[19] *People vs. Como*, *supra*.

[20] *People vs. Bernardino*, 193 SCRA 448 (1991); *People vs. Rumeral*, 200 SCRA 194 (1991); *People vs. Fabian*, 204 SCRA 730 (1992).

[21] 207 SCRA 761 (1992).

[22] Brief for the Accused-Appellant, 4-5; Rollo, 54-55.

[23] *People vs. Arceo*, 202 SCRA 170 (1991); *People vs. Ramos, Jr.*, 203 SCRA 237 (1991); *People vs. De Jesus*,

supra.

[24] *People vs. Del Pilar*, 188 SCRA 37 (1990); *People vs. Vocente, et al.*, 188 SCRA 100 (1990); *People vs. Umali, et al.*, 193 SCRA 493 (1991).

[25] *People vs. Doctolero, et al.*, 193 SCRA 632 (1991); *People vs. De la Torre*, 198 SCRA 663 (1991); *People vs. Caballes*, 199 SCRA 152 (1991).

[26] *People vs. Macuto*, 176 SCRA 762 (1989); *People vs. Napat-a*, 179 SCRA 403 (1989); *People vs. Sanchez*, 192 SCRA 649 (1991).

[27] TSN, November 21, 1989, 54.

[28] *Ibid.*, *id.*, 63-64.

[29] TSN, July 31, 1989, 5-6, 22-23; September 12, 1989, 35.

[30] TSN, November 21, 1989, 55-57; July 31, 1989, 7, 11; September 12, 1989, 35-37; November 21, 1989, 70.

[31] TSN, March 13, 1990, 75-76, 81.

[32] *Ibid.*, *id.*, 75-77; Rollo, 5.

[33] Brief for Plaintiff-Appellee, 14; Rollo, 88.

[34] *People vs. Simbulan, et al.*, G.R. No. 100754, October 13, 1992.

[35] *People vs. Catan*, 205 SCRA 235 (1992).

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