

NINETEENTH DIVISION

[CA-G.R. CR NO. 01980, February 13, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN REY G. MATIRA, ACCUSED-APPELLANT.

DECISION

QUIJANO-PADILLA, J.:

Subject of this appeal is the Joint Judgment^[1] dated June 18, 2012 of the Regional Trial Court (RTC), Branch 34, Tacloban City, in Criminal Cases Nos. 97-02-95 and 97-02-96, finding accused-appellant Allan Rey G. Matira guilty of violating Sections 4 and 8, Article II of Republic Act (RA) No. 6425, as amended or the Dangerous Drugs Act of 1972. Section 4 of RA No. 6425 pertains to illegal sale of dangerous drugs, while Section 8 pertains to illegal possession of dangerous drugs.

The Informations charging herein accused-appellant of illegal sale and illegal possession of dangerous drugs read this wise, respectively:

For Criminal Case No. 97-02-95 (Violation of Sec. 4, Art. II, RA No. 6425):

"That on or about the 29th day of January, 1997, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, wilfully (sic), unlawfully and feloniously sell, deliver or distribute eight (8) sticks of marijuana cigarettes having a total weight of 2.1 grams, to PO1 WILLIAM S. GO (poseur-buyer), a member of NARCOM Operatives, at P50.00 with Serial No, QN519634, marked money.

CONTRARY TO LAW."^[2]

For Criminal Case No. 97-02-96 (Violation of Sec. 8, Art. II, RA No. 6425):

"That on or about the 29th day January, 1997, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did, then and there, wilfully (sic), unlawfully and feloniously have in his possession folded white handkerchief with brown lines containing marijuana fruiting tops weighing 6.6 grams, a prohibited drug.

CONTRARY TO LAW."^[3]

The facts, as presented by the prosecution, rely mainly on the testimonies of its witnesses PO1 William Go^[4], SPO2 Antero Ripalda^[5], and Police Inspector Victoria

de Guzman.^[6]

Witness PO1 Go testified that, on January 28, 1997, around 5:00 o'clock in the afternoon, at the gate of Asian Development Foundation College (ADFC), he was introduced by a confidential informant to accused-appellant Matira. PO1 Go claimed that he posed as a user who wanted to buy some marijuana cigarettes worth fifty pesos (P50.00), but he was informed by accused-appellant that he did not have enough supply and he was told to return the next day at the same time in Froy and Char Store.

PO1 Go narrated that, on the next day, January 29, 1997 at 8:00 o'clock in the morning, he informed their Commander, P/Supt. Senador Jacob, about the intended purchase of marijuana from accused-appellant. He then received instructions from his commander to coordinate with PO2 Versoza and SPO2 Ripalda.

Then, in the afternoon at around 5:00 o'clock PO1 Go went to the agreed place, at Froy and Char Store. Meanwhile, his companions PO2 Versoza and SPO2 Ripalda positioned themselves about fifteen meters from Froy and Char Store. PO1 Go waited a while, and as soon as accused-appellant arrived, the former asked the latter if he could buy marijuana worth one hundred pesos (P100.00). But accused-appellant turned down the request and answered that he only had fifty-peso worth of marijuana. Hence, PO1 Go handed his marked fifty peso bill and accused-appellant handed him a crumpled piece of paper containing eight sticks of marijuana, which he knew to be actual marijuana cigarette sticks through smelling. At that juncture, he then scratched his head, as a pre-arranged signal. As soon as the signal was seen by his companions, PO2 Versoza and SPO2 Ripalda immediately approached the scene and arrested accused-appellant.

After the arrest, PO1 Go and his companions brought accused-appellant to their office. PO1 Go claimed that he was in possession of the marijuana cigarettes while going to their office, and that he gave the same to SPO3 Rodulfo Casio, the Intelligence Investigator who, made a marking of letter "A" on the piece of paper containing the marijuana cigarettes. He added that it was PO2 Versoza who was instructed to deliver the contrabands to the crime laboratory for examination and analysis. He then identified the fifty peso bill which he used as marked money. He claimed that he placed his initials on the said marked money as witnessed by a Barangay Chairman. This marked money, according to PO1 Go, was one of the two fifty peso bills given to him by P/Supt. Jacob.

The testimony of witness SPO2 Ripalda, meanwhile, corroborated PO1 Go's testimony. He claimed that he saw accused-appellant handed something to PO1 Go, and when PO1 Go gave the pre-arranged signal, he and PO2 Versoza immediately arrested accused-appellant. SPO2 Ripalda, moreover, added that after they arrested accused-appellant, PO2 Versoza, his companion, searched accused-appellant's pockets. PO2 Versoza, according to SPO2 Ripalda, recovered the marked money from accused-appellant's right pocket, and they also recovered from his pocket an undetermined quantity of marijuana leaves that were wrapped in a paper, which was further wrapped in a handkerchief. He described that the handkerchief has dark brown lining in its sides with small brown squares. He identified the handkerchief which contained dried leaves and seeds. He also identified the marijuana cigarettes, which according to him, he saw only in the office after the arrest. He said that he was able to identify the marijuana cigarettes because PO1 Go marked them with

initials in the office. He also said that he saw PO1 Go prepared, at their office, before the buy bust operation the marked money on which the latter signed his initials on a fifty peso bill.

Witness SPO2 Ripalda also added that the confiscated contrabands were submitted for chemical analysis and he came to know this because he saw their Commanding Officer signed the request for examination and that he knows it was PO2 Versoza who delivered the request to the crime laboratory.

PO2 Versoza was, however, not presented during trial.

On the other hand, the testimony of witness Police Inspector de Guzman centered on her finding that the contents of the contrabands submitted for examination were positive for marijuana, a prohibited drug. She testified that she received a paper marked with Exhibit "A" and inside were eight sticks of marijuana cigarettes. She claimed that she was the one who placed the markings Exhibit "A-1" and series on each stick on the day she examined the contents thereof. She also testified that the marijuana fruiting tops she tested was contained in a handkerchief marked with the letter "B", and she did not know who made such marking. She added that she was able to examine the contents of the handkerchief on January 31, 1997 a day after she received the same.

The defense centered on the testimonies of accused-appellant^[7] corroborated by the testimonies of his mother^[8] and one Jonathan Duran.^[9] They also presented Nimfa Paciencia^[10] and, as hostile witness, P/Supt. Senador Jacob.^[11]

Accused-appellant Matira denied that he met with PO1 Go on January 28, 1997 at around 5:00 o'clock in the afternoon because he attended his class at ADFC. He also testified that on January 29, 1997, he passed by the Froy and Char Store across his school to buy a candy before attending his classes. And, when he was crossing the street toward ADFC, he was arrested by a police officer by pointing a gun at his back and was told that someone wanted to talk to him. He later on knew that the police officer who arrested him was PO1 Go. He said that his arrest was witnessed by a classmate, Jonathan Duran. PO1 Go then boarded accused-appellant in a tricycle driven by PO1 Go's companion, who could not be identified by accused-appellant whether such driver was a police officer or not. At that time, accused-appellant requested Jonathan Duran to accompany him, so Duran also boarded the tricycle. Accused-appellant and PO1 Go were inside the tricycle's sidecar, while Duran boarded at the back of the driver.

Accused-appellant then narrated that PO1 Go brought him near Holy Infant College, where PO1 Go dropped by and entered in a house, which he learned later on to be the residence of P/Supt. Jacob. He did not disembark the tricycle, and after five minutes, PO1 Go went out of the house and brought him to the police station in Kampetic police station. Upon arrival in Kampetic police station, accused-appellant instructed Duran to inform his mother of his plight. He narrated that when he was brought inside the station, there was only one police officer who was inside, whom he knew later as SPO3 Casio. He was detained in a cell for about an hour and then later brought out and was instructed to empty his pockets of all his belongings. When he was asked to sign a paper, he refused to do so. He then was brought back inside the cell. While in the detention cell, accused-appellant saw PO1 Go rolling

some leaves into some papers and writing on a fifty peso bill. He also saw SPO2 Ripalda entered the station and asked PO1 Go whether Matira was already arrested, to which PO1 Go answered "he is already here."

Accused-appellant believed that his fabricated arrest was because of money. He recalled that there was a similar case filed against him before where SPO2 Ripalda was the complainant which was dismissed by the prosecutor's office.

Witness Duran corroborated accused-appellant's testimony. He testified that while he was near Froy and Char Store, he saw a tricycle that suddenly stopped and a man, alighting from it, suddenly pointed a .45 caliber gun at the back of accused-appellant. Duran said that he later on learned the name of accused-appellant's arrestor to be PO1 William Go. He said that he accompanied accused-appellant when the latter was boarded in and handcuffed to the tricycle. He further testified that Go told him to tell and ask accused-appellant's mother for P100,000.00.

Meanwhile, the testimony of witness Amelia Matira, accused-appellant's mother, centered on how PO2 Ripalda tried to make negotiations with her on the release of her son in exchange for money. She refused to give any money, so her son was brought to the Prosecutor's Office for inquest proceedings.

Hostile witness P/Supt. Jacob, on the other hand, testified he instructed his officers, Go, Ripalda, and Versoza to do their job and conduct the needed buy-bust operation after he was told by the latter that they have suspected drug pushers or users in their area. He said that he received information of accused-appellant's arrest in the morning of January 29, 1997, but later on changed his testimony that the arrest was done in the afternoon. He also testified that he saw accused-appellant after the arrest when his men dropped by his rented house near Holy Infant College, there he saw his men boarded a jeep and a tricycle. He could not, however, remember where accused-appellant was boarded. He also admitted that the request for laboratory examination was not personally signed by him but the same was signed by his first sergeant.

The defense also presented witness Paciencia, a staff of Tacloban City Prosecution Office, to testify on the existence of I.S. No. 96-30-35, a criminal complaint for violation of the Dangerous Drugs law against herein accused-appellant wherein SPO2 Ripalda was the complainant. She also presented a Resolution of Prosecutor Homeres dismissing the said criminal complaint.

After joint trial, the trial court convicted accused-appellant of illegal sale and possession of marijuana under Sections 4 and 8, respectively, of Article II of R.A. No. 6425 as amended in a Joint Judgment that ruled as follows:

"WHEREFORE, premises considered, the herein accused ALLAN REY G. MATIRA is hereby found GUILTY of the crime charged in CRIMINAL CASE NO. 97-02-95 (Violation of Section 4, Article II, R.A. 6425 as Amended) and is likewise found GUILTY of the offense charged in CRIMINAL CASE NO. 97-02-96 (Violation of Section 8, Article II, R.A. 6425 as Amended), and is hereby sentenced as follows:

For CRIMINAL CASE NO. 97-02-95: To suffer a penalty of imprisonment ranging from SIX (6) MONTHS of *Arresto Mayor* as minimum to TWO (2)

YEARS, FOUR (4) MONTHS AND ONE (1) DAY of *prision correccional* as maximum.

For: CRIMINAL CASE NO. 97-02-96:

To suffer a penalty of imprisonment ranging from SIX (6) MONTHS of *arresto mayor* as minimum to ONE (1) YEAR AND ELEVEN (11) DAYS of *prision correccional* as maximum.

The prohibited/dangerous drugs subject matters of these cases are hereby ordered forfeited. The Branch Clerk of Court of this Court is hereby ordered to safe keep the said prohibited/dangerous drugs until the finality of this Judgment and until further disposition.

COSTS against the accused.

SO ORDERED."^[12]

In convicting the accused, the trial court relied on and gave credence to the testimony of prosecution witnesses on the conduct of a test-buy and a buy-bust operation. The trial court even used as proof the contrabands that were seized from accused-appellant as it noted how these contrabands were properly wrapped by a paper and a handkerchief. It then underscored that the same contrabands that were seized from accused-appellant were the same contrabands that were found to be positive of marijuana as evidenced by the laboratory examination report. The trial court did not give credence on the defense's assertion of frame-up because it found the claim of extortion to be incredible. Thus, the trial court concluded that every element of the crime of illegal sale and illegal possession was proven.

Aggrieved by this ruling, accused-appellant, through this appeal, comes to this Court assigning to the trial court these errors:

- "1. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE SELF-SERVING AND CONCOCTED TESTIMONIES OF THE TWO POLICEMEN THAT THERE WAS A BUY-BUST OPERATION AGAINST THE ACCUSED ON JANUARY 29, 1997 AT 5:00 P.M.
2. THE TRIAL COURT SERIOUSLY ERRED IN PRESUMING REGULARITY IN THE PERFORMANCE OF THE POLICEMEN TO ESTABLISHED (SIC) NON-COMPLIANCE WITH MANDATORY PROCEDURES IN DRUG OPERATION.
3. THE TRIAL COURT ERRED IN NOT FINDING THAT THE FIRST CRUCIAL LINK IN THE CHAIN OF CUSTODY WAS NOT PROPERLY ESTABLISHED.
4. THE TRIAL COURT SERIOUSLY ERRED IN NOT ADMITTING THE TESTIMONY OF POLICE OFFICER VERZOSA AS HEARSAY FOR HIS FAILURE TO TESTIFY IN COURT THAT HE ALLEGEDLY RECOVERED THE MARKED MONEY AND MARIJUANA FRUITING TOPS FROM THE POSSESSION OF ACCUSED.