

FIRST DIVISION

[G.R. No. 150624, February 24, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PABLO DULAY,
APPELLANT.**

D E C I S I O N

AZCUNA, J.:

This is a petition for review on *certiorari* of the decision of the Regional Trial Court of Rosales, Pangasinan, Branch 53, in Criminal Case No. 3879-R, finding appellant Pablo Dulay guilty beyond reasonable doubt of illegal sale of marijuana in violation of Section 4, Article II of Republic Act (RA) 6425, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay a fine of Five Hundred Thousand Pesos (P500,000).

The Criminal Complaint^[1] against appellant reads:

xxx xxx xxx

That on or about 12:50 o' clock in the afternoon of July 18, 1998, in front of his house/canteen along the National Road, Carmen West, Rosales, Pangasinan, Philippines and within jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell One (1) Brick of Marijuana Dried Leaves wrapped with newspaper and plastic tape weighing approximately One (1) Kilogram to Narcotics Group Agent who posed as a buyer and in for consideration of One Hundred Peso Bill (P100.00) bearing Serial No. PU893829 and containing Boodle Money inside without authority to do so.

CONTRARY TO LAW.

When arraigned on March 1, 1999, appellant pleaded not guilty.^[2] Thereafter, trial ensued.

The Prosecution's Evidence

PO3 Maximo N. Javonillo, Jr., a narcotics agent stationed at Barangay Cili, Binalonan, Pangasinan, testified that at around 9:00 a.m. of July 18, 1998, a confidential informant reported at their office that a certain Pablo was engaged in selling marijuana, a prohibited drug. Javonillo's companion, PO2 Edgar C. Torres, was familiar with the name of the suspect because he had been arrested in a previous operation. After determining the veracity of the information, PO3 Javonillo informed his commanding officer, Major Benson^[3] Leleng about the report. Major Leleng instructed PO3 Javonillo to conduct a buy-bust operation against the suspect. An entrapment team was formed, and it was agreed that PO3 Javonillo would act as the

poseur-buyer, while PO2 Teogenes N. Perez and PO2 Torres would provide him security.^[4]

That same morning, the entrapment team, together with the informant, went to Carmen, Rosales, Pangasinan, and arrived there about midday. They immediately coordinated with the policemen at Carmen Sub-station. Thereafter, they proceeded to the area of operation along the highway in Carmen West, Rosales, Pangasinan. Appellant's house, which was used at the same time as a canteen, was fronting the highway.

PO3 Javonillo and his companions arrived at the vicinity of the canteen at about 12:30 p.m., and they positioned themselves strategically. At that time, there were about five to six jeepneys parked in front of the canteen and few customers were inside the canteen. Javonillo and the confidential informant approached appellant, who was standing in front of the canteen. The informant introduced Javonillo to appellant as someone interested and willing to buy marijuana. Appellant asked Javonillo how much marijuana he wanted to buy and told him that he had one (1) brick of marijuana which cost P1,500. Javonillo told appellant that he wanted to buy one (1) brick of marijuana. Appellant asked him to wait for a minute. Appellant then entered his house and returned with something wrapped in newspaper. Appellant handed the stuff to Javonillo who examined it. After ascertaining that it was marijuana, Javonillo gave appellant boodle money covered with a genuine P100-bill. After appellant received the money, Javonillo immediately executed his pre-arranged signal to his companions by scratching his head with his left hand. PO2 Torres and PO2 Perez immediately rushed to the place where appellant was. They informed appellant of his constitutional rights, and then arrested him. They recovered the P100-bill and the boodle money from appellant.^[5]

In court, PO3 Javonillo identified by its serial number, PU893829, the P100-bill^[6] as the same money they used during the buy-bust operation. Javonillo also identified the brick of marijuana on which he had written his name and signature as the same brick that he confiscated from appellant. ^[7]

Police Superintendent Theresa Ann Bugayong Cid, the forensic chemist and regional chief of the PNP Crime Laboratory, Regional Office at San Fernando City, testified that the Chief of the First Regional Anti-Narcotics Office requested^[8] for laboratory examination of the confiscated brick of suspected marijuana dried leaves weighing 986.9 grams. Representative samples taken from the specimen were observed under a microscope, and then subjected to the Duquinoil Levine test. As stated in the report^[9] of Police Superintendent Cid, the examination gave a "POSITIVE result to the test for marijuana."^[10]

The Defense's Evidence

Appellant Pablo Dulay, 48 years old, married, a canteen owner and a resident of Carmen West, Rosales, Pangasinan, denied the charge against him and gave a different version of the incident.

Appellant testified that on July 18, 1998, at around 12:30 p.m., he was in his canteen with his wife and some waitresses. After he served two male customers,

they paid him. He turned over the payment to his wife who gave him the change which he handed to said customers. When the two male customers started to leave, appellant called their attention to a plastic bag that they left behind. The customers took the plastic bag and proceeded outside. The customers then ran after leaving the plastic bag on top of the charcoal stand located outside the canteen's fence.

Thereafter, three policemen, Javonillo, Torres and Perez, entered the canteen bringing with them the plastic bag left outside by the aforesaid customers. The policemen embraced appellant and took his wallet, got the money in his wallet and returned the wallet to him. Appellant asked them why they did that to him. The policemen answered that the thing inside the plastic bag belonged to appellant. Appellant did not look at the content of the plastic bag, but denied ownership of the same.

The policemen brought appellant to their office in Binalonan, identified themselves, and showed appellant that the content of the plastic bag was marijuana. The policemen insisted that the plastic bag was appellant's. Appellant told the policemen that they brought it along with them. Said response angered the policemen. Appellant was detained in the municipal jail, and was subsequently brought to Balungao, Pangasinan. Appellant executed a counter-affidavit.^[11]

Appellant denied that he owned the marijuana, and insisted that the marijuana was brought by the narcotics agents. He claimed that it was a frame-up by the police.^[12]

Appellant testified that the incident on July 18, 1998 was not the first time that he was apprehended for illegal possession of marijuana. The first case against him was dismissed. When he was arrested a second time, he was convicted and he applied for probation. This case involves his third apprehension.^[13]

The Trial Court's Ruling

On January 12, 2001, the trial court rendered a decision convicting appellant of the crime charged, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds the accused Pablo Dulay guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. Accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The dried marijuana leaves subject matter of this case is hereby declared forfeited in favor of the Government, and it is hereby directed that the same be turned over to the Dangerous Drugs Board for proper disposal.

SO ORDERED.^[14]

The Appeal

Appellant made the following assignments of error:

I

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 4, ARTICLE II OF R.A. 6425 AS AMENDED.

II

THE COURT A *QUO* GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.^[15]

Our Ruling

Appellant contends that the trial court failed to consider some flaws in the testimony of prosecution witness PO3 Javonillo which affected his credibility, and that the trial court failed to give weight to his defense of denial.

Appellant points out that PO3 Javonillo made inconsistent statements in his testimony. Javonillo allegedly claimed during direct examination that their confidential informant mentioned the name Pablo as the one engaged in selling marijuana, and that the name Pablo Dulay was known to his companion, PO2 Torres. However, on cross-examination, PO3 Javonillo testified that the informant mentioned only the name alias Bening and that it was the name Bening which was known to his companion, PO2 Torres.

We find that the aforementioned inconsistency refers to a minor matter and does not prove that appellant did not commit the crime charged. Whether the informant named Pablo or one alias Bening as the drug pusher, the suspect was identified during the buy-bust operation to be appellant Pablo Dulay.

Appellant further contends that PO3 Javonillo initially testified that the brick of marijuana was wholly wrapped, and thereafter testified that it was partly wrapped. PO3 Javonillo also claimed that he opened a part of said brick of marijuana and smelled a small quantity. However, Police Superintendent Cid, the forensic chemist, testified that when the brick of marijuana was brought to their office, it was wrapped in newspaper and taped, without any opening.

A review of the transcript of stenographic notes showed that PO3 Javonillo testified that the brick of marijuana was wholly wrapped in newspaper, but partly wrapped with plastic tape;^[16] hence, appellant misapprehended said testimony. Moreover, it is probable that after PO3 Javonillo opened a part of the brick to smell its content, the police authorities took precaution in safeguarding said content by closing the opening before bringing the brick of marijuana to the laboratory for testing.

The aforementioned inconsistencies refer merely to collateral matters, which do not touch upon the commission of the crime itself or detract from the positive identification of appellant as the culprit, and therefore, do not affect the veracity and weight of prosecution witness PO3 Javonillo's testimony.^[17]

Appellant also contends that it is contrary to human experience for him allegedly to sell marijuana openly in a public place, that is, in front of his canteen along the

national highway, at midday, where many people can witness it.

We disagree.

The fact that appellant was caught selling marijuana under the said circumstances shows that a busy place and selling a prohibited drug at midday are not to be considered hindrances to such activity. It is of judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public or private places, with no regard for time.^[18] Drug pushers have become increasingly daring and blatantly defiant of the law.^[19]

It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary^[20] suggesting ill-motive on the part of the police officers^[21] or deviation from the regular performance of their duties.^[22] In this case, there is no evidence showing that prosecution witness PO3 Javonillo was impelled by improper motive in testifying against appellant or that he deviated from the regular performance of his duties. Moreover, the trial court believed the testimony of PO3 Javonillo who was described to have testified "in a clear, convincing and forthright manner."^[23] The findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the trial court overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case.^[24] We have carefully reviewed the records of this case, and found no reason to alter the findings of the trial court. Hence, the testimony of prosecution witness PO3 Javonillo is accorded full faith and credit.

In the prosecution of the offense of illegal sale of prohibited drugs, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.^[25]

In this case, the testimonial evidence of prosecution witness PO3 Javonillo proved that appellant sold to him (as poseur-buyer) one (1) brick of marijuana for P1,500. PO3 Javonillo testified, thus:

xxx xxx xxx

Q And what did you do after you proceeded to the front of the house of accused Pablo Dulay?

A The confidential informant introduced me, sir.

Q And how were you introduced by the confidential informant to the accused, Pablo Dulay?

A That I was interested and willing to buy marijuana, sir.

Q And what did the accused, Pablo Dulay, say or do after the confidential informant introduced you to him?

A He told me if how much should I buy, sir.