

## SECOND DIVISION

[ G.R. No. 121572, March 31, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL ELAMPARO Y FONTANILLA, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

On May 31, 1995, the Regional Trial Court of Caloocan City,<sup>[1]</sup> convicted appellant of the crime of illegal possession of drugs, imposing upon him the penalty of *reclusion perpetua* and ordering him to pay a fine of P9,000,000.00.

As summarized by the solicitor General, the facts of this case which we find to be supported by the records are as follows:<sup>[2]</sup>

"On February 12, 1995, at about 5:00 in the morning, prosecution witness Police Officer Romeo Baldonado, while attending to his duties as supervising policeman of the Kalookan Police Station, received a report from an informant that 'some people are selling shabu and marijuana somewhere at Bagong Barrio, Caloocan City' (TSN, April 11, 1995, p. 3; TSN, April 4, 1995, p. 3). Said informant stated that he himself succeeded in buying said drugs (ibid., p. 3).

Hence, Police Officer Baldonado formed a 'buy-bust' operation team with himself as team leader and Police Officers Ernesto Andala, Roniello Reantillo and Bismark Gaviola as members (TSN, April 4, 1995, p. 4). Said team proceeded to the area reported to at Progreso P. Gomez, Bagong Barrio, Kalookan City at around 5:45 in the morning of the same day (ibid., p. 3). Ky-le

Upon arrival at the area, prosecution witness Gaviola, together with the informant 'asset' stood at the corner of P. Gomez Street, Bagong barrio, Kalookan City, since the said spot was identified to be the 'market' or where the buyers of marijuana await a runner (seller). Thereafter, a runner later identified to be Erwin Spencer approached the poseur-buyer, Gaviola, who was asked 'Iiscore ba kayo' (TSN, April 5, 1995, p. 22). Having answered, 'Iiscore kami', Spencer then left and returned after five minutes with the marijuana (ibid., p. 22). Gaviola then handed over the marked money and arrested Spencer, but who freed himself and ran (TSN, April 4, 1995, p. 7).

Then, the 'buy-bust' team pursued Spencer, who ran inside a bungalow-type house with steel gate (ibid., p. 8). Having trapped Spencer inside the house, the police officers frisked him and recovered the marked

money (ibid., p. 9). The police officers likewise found appellant repacking five (5) bricks of 'marijuana' wrapped in a newspaper on top of the round table inside the house's sala (TSN, April 11, 1995, p. 7). Appellant was then arrested and he confessed that the source of the 'marijuana' was Benguet (TSN, April 4, 1995, p. 10).

Spencer and appellant were later taken to the precinct where they were delivered to the inquest fiscal for further investigation (TSN, April 11, 1995, p. 8). The arresting officers then executed an affidavit on the incident and made a request for the National Bureau of Investigation to conduct examination of the drugs seized (TSN, May 3, 1995, p. 2). The NBI Report confirmed the drugs seized to be 'marijuana' weighing five (5) kilos (ibid., p. 3)."

On February 15, 1995, the City Prosecutor charged appellant with the crime of illegal possession of drugs under the following Information:<sup>[3]</sup>

"That on or about the 12th day of February 1995 in Kalookan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control 5.208 kgs. of Marijuana, knowing the same to be a prohibited drugs (sic).

CONTRARY TO LAW."

On March 1, 1995, appellant, duly assisted by counsel *de officio*, entered a plea of not guilty.<sup>[4]</sup>

During trial, the prosecution presented as its witnesses (1) PO2 Bismark Gaviola, the poseur-buyer, (2) SPO2 Romeo Baldonado, one of the police officers who took part in the buy-bust operation, and (3) Juliet Gelacio Mahilum, a forensic chemist at the National Bureau of Investigation (NBI). Mahilum testified that she conducted three types of examination on the five (5) bricks of marijuana flowering tops (chemical examination, microscopic examination, and chromatographic examination) and that each of the five (5) bricks gave positive results for marijuana.<sup>[5]</sup>

For the defense, appellant and Angelo Bernales, a boarder at appellant's house, testified. Their version of the incident is as follows:<sup>[6]</sup>

"JOEL ELAMPARO y FONTANILLA, the accused herein, gave a very different version of the incident. At around 6:00 to 7:30 in the morning of February 12, 1995, he was at their house when somebody knocked at their door. His father opened the same and was informed that somebody was looking for him. He went out and saw Erwin Spencer with handcuffs and being held by an arresting officer. He likewise sighted PO3 Bismark Gaviola holding a big box. When he persistently questioned Erwin Spencer as to why he was arrested, the arresting officers got mad at him

prompting them to likewise bring him to the police station where he was detained. The arresting officers demanded the amount of P15,000.00 for his release. He remained in jail as he refused to accede to their demand. On the other hand, Erwin Spencer was released two (2) days after they were jailed for the latter gave money to the police officers. (TSN, pp. 1-8, May 9, 1995).

ANGELO BERNALE (sic), a student, testified that he is renting a small room at the accused' (sic) house located at No. 2 P. Gomez St., Bagong Barrio, Kalookan City. On February 12, 1995, at about 6:00 to 7:00 o'clock in the morning he was about to go out of the accused' (sic) house to bring breakfast to his father when he sighted Erwin Spencer in handcuffs, in the company of three policemen one of whom was holding a box. Then he saw the policemen knocked at the door of the accused' (sic) house. Shortly thereafter, the accused was taken away by the policemen."

After trial, the court rendered its decision,<sup>[7]</sup> disposing as follows:

"WHEREFORE, premises considered, this Court finds accused JOEL ELAMPARO Y FONTANILLA, GUILTY beyond reasonable doubt for violation of Section 8, Art. II of R.A. 6425, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and a fine of NINE MILLION (P9,000,000.00) PESOS, pursuant to Section 17 of the Death Penalty. With Costs.

SO ORDERED."

Hence, the present appeal. Appellant now contends that the trial court erred in -<sup>[8]</sup>

I. ...GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND DISREGARDING THE THEORY OF THE DEFENSE.

II. ...FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 4 [SHOULD BE SEC. 8] OF R.A. 6425.

III. CONTENDING ARGUENDO THAT THE ACCUSED IS GUILTY OF THE OFFENSE CHARGED, THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF MINORITY.

In his brief, appellant assails the credibility of the prosecution witnesses. He contends that it is highly unusual for arresting officers to act on an 'information' of an unknown source without confirming the veracity of the report, and that it is incredible that a peddler of marijuana would be so brazen as to approach total strangers and offer to sell them marijuana. Appellant insists that he was charged with illegal possession of marijuana because he failed to pay the police officers the amount of P15,000.00 for his release, unlike Spencer, who paid said amount. Appellant assails the legality of his arrest inside the house of his father for failure of

the apprehending officers to secure a search warrant. Lastly, appellant contends that if found guilty, the privileged mitigating circumstance of minority should be appreciated in his favor.

The Office of the Solicitor General, for the State, contends that further surveillance was unnecessary because the police "asset" had personal knowledge of the open buying and selling of "marijuana" in the area, having purchased his "marijuana" a few hours before reporting the matter to the police. Appellant also misrepresented himself in saying that Spencer was released without charges considering that a separate investigation was conducted against the latter. The OSG contends that appellant's arrest was an incident to a lawful hot pursuit made against Spencer. Appellant, in the course of the pursuit was surprised in plain view to be repacking the five (5) bricks of marijuana. The OSG concedes, however, that the privileged mitigating circumstance of minority should be appreciated in favor of appellant.

Considering the assigned errors and the foregoing contentions, we find that here the issues pertain, first, to the assessment of credibility of witnesses; second, the validity of appellant's arrest; and third, the correctness of the penalty imposed by the trial court.

As to the first issue, it is well-settled that the assessment of credibility of witnesses is within the province of the trial court which had an opportunity to observe the witnesses and their demeanor during their testimonies. Unless the trial court overlooked substantial facts which would affect the outcome of the case, we accord the utmost respect to their findings of facts. As compared to the baseless disclaimers of appellant, the narration of the incident by the prosecution witnesses appears worthy of belief, coming as it does from law enforcers who are presumed to have regularly performed their duty in the absence of proof to the contrary.<sup>[9]</sup>

Appellants claims that it is highly suspect that Spencer would offer to sell marijuana to total strangers. However, in many cases, drug pushers did sell their prohibited articles to prospective customers, be they strangers or not, in private as well as in public places, even in the daytime. Indeed, some drug pushers appear to have become exceedingly daring, openly defiant of the law. Hence, what matters is not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting sale and delivery of prohibited drugs.<sup>[10]</sup> As found *a quo*, it was the consummated sale between PO2 Gaviola and Spencer which led to the eventual arrest of appellant.

As to the warrantless search, Section 2 Article III of the 1987 Constitution prohibits a search and seizure without a judicial warrant. Further, Section 3 thereof provides that any evidence obtained without such warrant is inadmissible for any purpose in any proceeding.

However, not being absolute, the right against unreasonable searches and seizures is subject to exceptions. Thus, for example, Section 12 of Rule 126, of the Rules on Criminal procedure, provides that a person lawfully arrested may be searched for "dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

Five generally accepted exceptions to the right against warrantless searches and