342 Phil. 836

THIRD DIVISION

[G.R. No. 111824, August 11, 1997]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISA BAGUS Y DACAYAN ACCUSED-APPELLANT.

D E C I S I O N

FRANCISCO, J.:

Appellant Eliza D. Bagus was charged in an information,[1] dated December 17, 1990, for violating Section 4 of Republic Act 6425. When arraigned, appellant entered a plea of "Not Guilty". Trial, thereafter, ensued. On September 7, 1992, the trial court[2] found the appellant guilty as charged and sentenced her "to suffer life imprisonment, to pay a fine of P 20,000.00 and pay the costs."[3] Aggrieved, appellant interposed the instant appeal maintaining her innocence and arguing that the evidence against her "is doubtful".[4]

The facts of the case as narrated by the Office of the Solicitor General are as follows:

> "The evidence for the prosecution shows that on December 12, 1990, about 9:00 a.m., at the Bagong Silang police Sub-Station, Kalookan City, Lt. Norberto Surara conducted a "briefing" wherein a team composed of P/Cpl. Perfecto Sobejana, Pat. Alfredo Antonio and P/Aide Bonifacio Lapuz, who was designated as the poseur-buyer, was formed in order to Gatchalian (TSN, January 24, 1992, pp.16-17). On the same day, at 5:00 p.m. said team police officers went to Barrio San Lorenzo, Tala, Kalookan City and saw Danilo Gatchalian, who was smoking and acting suspiciously (TSN, January 24, 1993, p. 8; TSN, August 14, 1991, p. 9). Pat. Antonio asked Gatchalian "to bring out everything out inside his pocket" and he (Gathalian) brought out five (5) tea bags of Marijuana from the pocket of his pants (TSN, August 14, 1991, p.9). The size of each tea bags of marijuana was one inch by one inch (TSN, October 16, 1991, p. 16). Gatchalian was arrested by the police officers and he informed them that he had purchased the five (5) tea bag of marijuana from Rodel San Pedro (TSN, August 14, 1991, p. 10). The police officers agreed to pursue their plan to conduct a buy-bust operation AGAINST San Pedro (TSN October 16,1991, p. 7). Hence, they proceeded to the house of San Pedro at Barrio San Roque, Tala Kalookan City, where from a distance, Gatchalian pointed appellant to them. Appelant is the wife of San Pedro and was then standing near the aforesaid house (TSN, October 16, 1991, p. 8; TSN January 14, 1992, p. 10). Since San Pedro could not be seen by the police officers, they agreed to conduct the buy-bust operation against appellant (TSN, October 16, 1991, pp. 9-10). While the (sic) P/Cpl. Sobejana, Pat. Antonio and Gatchalian hid in strategic places, P/Aide Lapuaz approached appellant and told her that she was a friend of her

husband and would like to buy two (2) tea bags of marijuana (TSN, October 16, 1991, p. 9 ; TSN October 30, 1991 p. 7; TSN, January 24, 1992, p, 10). P/Aide Lapuz handed the marked P 20.00 bill to appellant, who went inside the house and gave Lapuz two (2) tea bags of marijuana in return (TSN, January 24, 1991, p. 10). When P/Aide Lapuz, by raising his hand , signalled to P/Cpl. Sobejana and Pat. Antonio that the sale of marijuana had been consummated, appellant ran out of the house and tried to escape, but Lapuz overtook and arrested her (TSN, October 16, 1991, p. 11). Appellant "confessed" that her husband was the drug pusher and pointed to the police officers the sixty- five tea bags of marijuana hidden under the dogs cage inside the house (TSN, October 16, 1991, pp. 12-13; TSN, January 24, 1992, p.13). Thereafter, the police officers, brought appellant to their head quarters at Bagong Silang Police Sub-Station, Kalookan City (TSN, August 14, 1991, p. 15).

"The seventy-two (72) tea bags of marijuana (5) were taken from Danilo Gatchalian and sixty-seven (67) from the appellant, each of which had the same size of one inch by one inch, were sent to the Natioanl Bureu of Investigation for laboratory examination, which showed that they were positive for marijuana (TSN, July 17, 1991, p.5).

"In her defense, appellant presented herself, Alfredo Santos and Fernando Bagus, Jr. as witnesses."

"Appellant's main defense is denial. She denied that a buy-bust operation was conducted by the police officers against her on December 12, 1990 (TSN, April 24, 1992, p. 7). She gave a different version of the incident. She testified that on December 12,1990, from 5:00 p.m. to 6:00 p.m., two (2) security guards of Daily Security Forces , who were Resty delos Santos and Rodel Gingco, and an unidentified man, who was handcuffed, arrive at her house at Barrio San Roque, Tala, Kalookan City (TSN, April 24, 1992, pp. 7-8). Restry delos Santos, Rodel Ginco and the handcuffed man were looking for appellant's husband, Rodel San Pedro (TSN April 24, 1992, p. 8). Not finding Rodel San Pedro in his house, they (Santos, Gingco, and the handcuffed man) brought appellant to the Bagong Silang Police Station for investigation, where he was detained for three (3) days (TSN, April 24, 1992, pp. 9-10). She did not know why the law enforcers testified against her (TSN, April 24, 1992, p.12).[5]

"[Defense] Witness, Alfredo Santos, testified that on or about December 12, 1990, between 5:00 to 6:00 p.m. three (3) male persons, one of them was in handcuffs, arrived at the house of their neighbor, the appellant herein. He knows the two (2) as security guards of the Daily Security Force (Tala Security Force) but not the one in handcuffs. At the time of their arrival, he was picking camote tops at the yard of the appellant and he was around three(3) meters away from the latter.

"The security guards were looking for Rodel San Pedro , live-in partner of appellant but they were informed by the latter that he (R. San Pedro) was out; One of the security guards entered the house of appellant and later came out saying that Rodel San Pedro was not there.

"Pointblank, witness declared that he did not witness any buy busting that take place during the time. Neither did he see any plastic bag of marijuana taken within the premises nor in chicken cage, nor dog house, by the by the security guards.

"Further testifying, witness started that he knows, as neighbor of appellant, that the latter has no dog house or chicken cage or any dog or chicken. Likewise, there are no tree/s around the place of the appellant and from the time the two (2) security guards and the person in handcuffs arrived and up to the time they left together with the appellant, he was at the yard of the latter.

"On cros-examination, same witness testified, that –

"He knows appellant about three (3) years, since the time that she became his neighbor; his family relationship with appellant's is harmonious, as what he knows, appellant was invited by the two (2) security guards of Tala Security Force at the Tala Security Force at the Tala Headquarters; and that, he did not have a chance to see appellant at the office of the security personnel."[6]

The appeal is impressed with merit.

The Court Generally respect the trial court's finding on the credibility of the witnesses, but where certain facts of substance and value are overlooked which if considered would affect the result of the case then such finding is not conclusive to us,[7] as in this present appeal.

In the case of bench, there was three (3) alleged eyewitnesses, viz: P/Cpl. Sobejana Pat Cpl. Sobejana, Pat. Antonio, and poseur-buyer Lapuz. While these witnesses planned and conducted, as a group, the supposed entrapment of herein appellant the Court is disturbed on the material differences of their accounts. Hereunder are the substantial parts of the testimony of P/Cpl. Sobejana contrasted with the testimony of Pat. Antonio, thus:

P/Cpl. Sobejana

Pat. Antonio

1. On the source of the information of the alleged drug deal.

Q	Tell us, Mr. Witness?
A	While we were at the said police station, a civilian informer came to us and informed that there is a tip that a marijuana deal will take place at Tala?
Q	Caloocan City?
A	Yes, your Honor.
Q	And that was a telephone call?
A	No, your Honor. We do not have a telephone.

(TSN, Oct. 16, 1991, p. 4)

Q While thereat, do you remember if your office received a call from an informer that a drug deal will take place at Tala?

A We received the information from a certain person from Tala, sir.

Q Who received that call from that informer?

A. Lt. Surara, sir.

Q Was that through telephone call?

A Yes, sir. (TSN, Aug. 14, 1991, p. 4)

2. On the type of vehicle used in going to the target place.

Q What did you do. Mr. Witness, after you informed him of that alleged drug deal that will take place in Tala, Caloocan City?

A Yours truly, together with Pat. Antonio and P/A Bonifacio Lapuz were dispatched at Tala, Caloocan City.

Q Did you proceed there with a vehicle or what ?

A Yes, your Honor. We boarded on my owner-type jeep. (Id., p.5.)

Q How did you proceed to the place of operation at Barrio San Lazaro, Tala, Kalookan City?

A We were on board the mobile of Bagong Silang Police Sub-Station, sir.

Q There were three of you inside that mobile car?

A Yes, sir. (Id., p.8.)

3. On the Source of the tea bags taken from Mr. Gatchalian

Q What was revealed to you by Mr. Gatchalian ?

A That the confiscated tea-bags of marijuana were sold by Eliza Bagus.

Q So to that effect you went to the residence of Elisa Bagus, is that what you mean?

A After making a plan for the operation, we proceeded to the place or to the residence of Elisa Bagus, Sir. (TSN, Oct. 30, 1991, p. 6)

Q Did that person Danilo Gathalian inform the name of that source?

A Yes, sir.

Q And who was that person, the source of those teabags of marijuana?

A What I know, It was certain Rodel San Pedro, Sir. (Id., p. 10)

4. On where the additional teabags of marijuana were found.

WITNESS After trembling, she confessed that her live-in

(A)	partner is the pusher and pointed to us under the shack under the dog's cage where we could find the marijuana stuff.
Q	When she pointed the place, how far were you from her?
A	We were very close.
Q	So she pointed to the dog's cage where you could find those teabags?
A	Yes, sir. (TSN, Oct. 16, 1991, p. 12)
Q	Did she tell you the source of the marijuana which was handed to Police Aide Lapuz?
A	She pointed where the marijuana was hidden, sir.
Q	And did you find the other marijuana?
A	It was retrieve, sir because she pointed it .
Q	Whereat?
A	Under the Chicken coop which is inside the house, sir (Id., p. 14)
5.	On the source and denomination of the buy-bust money.
Q	What was the money or what denomination was that money?
A	It was a P 20.00 bill.
Q	How could you identified that?
A	If presented I could identify it .
Q	Mr. Witness, who provided that P20.00 as the money that would be used in that buy-bust operation against Rodel?
A	It was the money of Police Aide Lapuz, sir. (Id., p.7)
Q	How about the money that will be used by the poseur-buyer, what was done to it?
A	There was money delivered, sir, one P 20 bill and one P 10 bill.
Q	To whom did Lt. Surara give those two money bill.
A	To Police Aide Bonifacio Lapuz, sir. (Id., p.7)
6.	On what the appellant was doing in the subject area.
Q	By the way, when you first saw Elisa Bagus, exactly were was she?
A	She also identified their shanty/house, sir.
Q	What was she doing then?