

## THIRD DIVISION

[ G.R. No. 110983, March 08, 1996 ]

**REYNALDO GARCIA, AARON DE LA ROSA, SAM CASTOR AND  
ROLLY DAMOS, PETITIONERS, VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

#### **PANGANIBAN, J.:**

Reiterated by this Court in resolving this case is the settled rule that the findings of fact of a trial court, especially when affirmed by the Court of Appeals, are entitled to great respect and are accorded the highest consideration, absent any clear showing of abuse or arbitrariness. The applicability of the Indeterminate Sentence Law in convictions for violation of the Dangerous Drugs Law - first enunciated in the 1994 case of *People vs. Simon* - is adhered to.

Petitioners are before this Court seeking a review by way of certiorari of the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> in CA-G.R. CR No. 12987 which affirmed with modification their conviction<sup>[3]</sup> for violation of Section 8, Article II of the Dangerous Drugs Act (R.A. 6425, as amended). The dispositive portion of the Decision reads as follows:<sup>[4]</sup>

"WHEREFORE, the appealed decision is hereby AFFIRMED with modification in the sense that the accused are sentenced each to an indeterminate penalty of six (6) years and one (1) day, as minimum, to seven (7) years, as maximum, instead of a straight penalty of six (6) years and one (1) day."

The respondent Court subsequently denied petitioners' motion for reconsideration.<sup>[5]</sup> Hence this petition.

#### **The Antecedent Facts**

Petitioners Reynaldo Garcia, Sam Castor, Aaron de la Rosa and Rolly Damos were charged in the Regional Trial Court of Kalookan City for violation of Section 27, Article IV of Republic Act No. 6425 (Pot Session) in a criminal Information which reads:<sup>[6]</sup>

"That on or about the 26th day of MARCH 1990, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, and gathered together as a group holding a 'Pot Session,' did then and there willfully, unlawfully and feloniously (sic) have in their possession one roach of marijuana cigarette, using, smoking and passing the same to be (sic) prohibited drug."

Upon arraignment, all the accused, with the assistance of counsel *de officio* from the Public Attorney's Office, pleaded not guilty. Trial on the merits proceeded and was duly concluded.

The evidence adduced during the trial show that at about 11:30 p.m. on March 27, 1990, Patrolmen Rodrigo Malaya, a custodial officer, and Ruel Garcia, an intelligence officer, of the Kaloocan City Police Station were walking along Third Avenue, Grace Park, Kaloocan City, on their way to see a friend. While the policemen were approaching the corner of Del Mundo Street, they saw a group of persons, three of whom were seated inside the sidecar of a parked tricycle, while the other two were seated on the motorcycle itself. As the corner of Third Avenue and Del Mundo Street is a place where drug addicts and other criminal elements were known to congregate, the two policemen decided to observe the movements of the five persons from a distance of about ten meters. They noticed the five persons were passing to one another a lighted cigarette. Smelling the scent of burning marijuana, the two policemen then approached the five and introduced themselves by showing their respective identification cards. Pat. Malaya saw the suspected lighted marijuana cigarette in the hand of Reynaldo Garcia and immediately confiscated it. The five suspects were apprehended and brought to the Kaloocan City Police Station for further investigation. But one of the five men escaped on their way to the Police Station.

Pat. Malaya then brought the cigarette to the National Bureau of Investigation (NBI) for examination. The chemical and technical analysis made on the same gave positive results for marijuana.<sup>[7]</sup>

The Report submitted by the NBI Forensic Department (Exh."G") contained the following findings:<sup>[8]</sup>

"Weight of specimen:

before examination = 0.2608 Gram

after examination = 0.2348 Gram

Microscopic, chemical and chromatographic examinations made on the above mentioned specimen gave POSITIVE RESULTS for MARIJUANA."

Thus, in an Information dated March 28, 1990 filed with the Regional Trial Court, Kaloocan City, petitioners were charged, as earlier stated, with violation of Section 27, Article IV of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972. On December 18, 1990, during the initial trial of the case, the prosecution conceded that the proper charge should have been the lesser offense (violation of Sec. 8, Art. II of the same law), considering that there were only four persons charged in the information.<sup>[9]</sup> So, with the conformity of the defense, the trial court caused the amendment of the charge contained in the Information from violation of Section 27, Article IV to violation of Section 8, Article II of the said law.

On August 30, 1991, the Regional Trial Court promulgated its decision finding petitioners guilty beyond reasonable doubt of using and possessing a lighted marijuana cigarette, which is penalized under Section 8, Article II of R.A. 6425, as amended. The trial court imposed a straight penalty of six years and one day, as follows:<sup>[10]</sup>

"WHEREFORE, in view of the foregoing, this Court finds the accused SAM CASTOR y SY, AARON DELA ROSA y BONGAT, REYNALDO GARCIA y CASTRO and ROLLY DAMOS, guilty beyond reasonable doubt of using and possessing a lighted marijuana cigarette (Violation of Section 8, Article II, of Rep. Act No. 6425, as amended), which is necessarily included in the offense for (sic) violation of Section 27, Art. IV, of Republic Act No. 6425, as amended (Pot Session), and hereby sentences each of the four accused to suffer imprisonment of SIX (6) YEARS and ONE (1) DAY and to pay a fine of P6,000.00. The four accused are also directed to pay the costs.

"The subject partially burned marijuana cigarette is hereby forfeited in favor of the Government and the Sheriff of this Court is hereby directed to turn over the same to the Dangerous Drugs Board for its disposition.

"The accused Rolly Damos shall be credited with the period he underwent preventive imprisonment in the service of his sentence, provided the conditions mentioned in Art. 29 of the Revised Penal Code, as amended, are complied with."

From the said decision, petitioners appealed to the Court of Appeals, which affirmed the judgment of conviction rendered by the trial court but modified the penalty to six years and one day, as minimum to seven years, as maximum.

### **The Issues**

In their Petition before this Court, the accused assigned the following errors:<sup>[11]</sup>

"1. Respondent Court of Appeals gravely erred in holding that (sic) greater weight is given to mere positive identification rather than denials duly corroborated on material points.

"2. Respondent Court of Appeals gravely erred in convicting the accused not on the strength of the evidence for the prosecution but on the weakness of the defense.

"3. Respondent Court of Appeals gravely erred in not appreciating the doubt in favor of the accused.

"4. Respondent Court of Appeals gravely erred in convicting the accused despite absence of proof beyond reasonable doubt."

In fine, all the above "errors" can be summed up as a challenge to the factual findings made by the respondent Court. Also, though not raised by the parties, it is necessary to re-examine the penalty imposed, in light of recent jurisprudence.

### **The Court's Ruling**

At the outset, we reiterate the well-entrenched rule that the findings of the trial court regarding the issue of credibility of witnesses and their testimonies,

particularly when affirmed by the Court of Appeals, are entitled to great respect and are accorded the highest consideration by the Supreme Court. The matter of assigning value to declarations on the witness stand is best and most competently performed by the trial judge, who unlike appellate magistrates, can weigh such testimony in full view of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more advantageous position to discriminate between the true and false representations.<sup>[12]</sup>

The petitioners contended that the testimony of Patrolman Rodrigo Malaya "was not in accord with normal human conduct, activity and human capacity." The crime was allegedly committed at almost midnight and the place was quite dark as it was lighted only by a lamp post. Petitioners further alleged that it was next to impossible for Patrolman Malaya to see the people inside the tricycle as the vehicle's occupants were hidden by its roof and sidings. Also, Pat. Malaya had testified that he was facing the back of the tricycle and therefore the accused inside the tricycle's sidecar had their backs to him.<sup>[13]</sup>

As pointed out by the Solicitor General, the prosecution witness, Patrolman Malaya, categorically testified that there was light coming from the Meralco post located near the parked tricycle by which he could see petitioners smoking and passing to one another a roach of marijuana.<sup>[14]</sup> Ironically, it was the defense counsel himself who, on cross examination, elicited from the prosecution witness information contrary to his own position:

- "Q In that corner which you mentioned, was there a Meralco post with light at the time?  
A. There was sir.  
Q Is that tricycle parked near that Meralco post?  
A Yes, sir.  
Q So that the tricycle was being lighted by said light coming from the Meralco post?  
A That's right, sir.<sup>[15]</sup>

It must also be emphasized, argued the Solicitor General, that there was no showing whatsoever that the back of the tricycle's sidecar in which three of the petitioners sat, was covered with a metal or galvanized iron sheet or anything that could have obstructed the view of the witness.

Given the presence of light from the Meralco lightpost, and his vantage point while observing the activities of the accused (who had their backs to and were completely unaware of the presence of the policemen), the prosecution witness evidently saw the accused clearly, and this is borne out by his positive identification of the four accused in the courtroom in the course of his testimony on direct examination.<sup>[16]</sup>

The prosecution witness also testified on what he had smelled at the scene of the incident:

- "Q Did you know what they were smoking at that time?  
A Yes, sir.  
Q What were they smoking?