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SECOND DIVISION

[G.R. Nos. 71942-43. November 13, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLITO DE JESUS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 6425; POSSESSION OF MARIJUANA, INHERENT IN THE CRIME OF SELLING.—** The trial court erred in penalizing de Jesus separately under the two informations: As the Solicitor General stated: "The trial court's severe stand against traffic in drugs is understandable. But the assumption is that the legislature will not indulge in absurdities. Since possession of prohibited drugs is inherent in the crime of selling them, it is to be assumed that, in punishing selling, the legislature took into account the need to possess them first. The penalty for selling — life imprisonment to death — is already quite harsh. The legislature should not have intended to attach a further penalty of 12 years to 20 years for possession. It would be superfluous especially if the accused have been imposed a death sentence for selling."

2. **REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; COMPLETELY DISREGARDED ABSENT ANY SHOWING THAT ACCUSED WAS DULY INFORMED OF HIS RIGHTS TO SILENCE AND TO COUNSEL.—** The appellant's defense that he was beaten up by the police and forced to admit the sale of marijuana is negated by his testimony that he suffered no injuries. However, we completely disregard the extrajudicial confession, there being no showing by the prosecution that there was sufficient compliance with the constitutional duty to inform the accused of his rights to silence and to counsel, without which there could be no intelligent waiver of said rights. (See *People vs. Nicandro*, 141 SCRA 289).

3. **ID.; ID.; WEIGHT AND SUFFICIENCY THEREOF; POSITIVE TESTIMONY OF PROSECUTION WITNESS GIVEN GREATER WEIGHT IN CASE AT BAR.—** Pat. Jesus Nadonga who acted as poseur-buyer clearly and positively identified appellant de Jesus as the seller of the marijuana. The

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appellant's defense is that he was not there at the scene of the crime. He was recuperating from a tooth extraction. The denial and explanations cannot overcome the positive evidence. (*People vs. Chavez*, 117 SCRA 221; *People vs. Dondoy*, G.R. No. 63728, September 15, 1986). We agree with the lower court when it cited the well-established rule that greater weight is given to the positive testimony of the prosecution witness than to the accused's denial (*People vs. Mostoles, Jr.*, 124 SCRA 906).

4. **ID.; ID.; ALIBI; UNAVAILING WHERE IT WAS NOT PHYSICALLY IMPOSSIBLE FOR ACCUSED TO BE AT THE SCENE OF CRIME.**— Regarding the alibi offered by the appellant, as stated in the case of *People vs. Dondoy, supra*: "It is well-settled that against the positive identification of the accused, alibi is unavailing (*People vs. Terrobias,* 103 SCRA 321) and that as a minimum requirement for the theory of alibi to be accepted, the accused must also demonstrate that it was physically impossible for him to be at the scene of the crime (*People vs. Bihasa*, 130 SCRA 62; *People vs. Muñoz*, 107 SCRA 313; *People vs. Capillas*, 108 SCRA 173; and *People vs. Sambangan*, 125 SCRA 726)." De Jesus testified that he was resting outside their house at Bisig ng Nayong Street at about the time of the incident. It was not impossible for him to be at the scene of the sale of marijuana as it was transacted in the same street.

5. **ID.; ID.; CREDIBILITY OF WITNESS; FINDINGS OF TRIAL COURT ACCORDED HIGHEST DEGREE OF RESPECT.**— We have carefully examined the records and we find no reason to depart from the trial court's appreciation of the evidence of the prosecution and that of the defense. The trial court stressed the inconsistencies and incredulities in the testimony of De Jesus, his evasive answers, and failure to respond spontaneously. It believed the prosecution witnesses. On the credibility of the witnesses, it is a well-established rule that we have usually accorded the highest degree of respect to the findings of the trial court, the latter being in the position to observe the demeanor and manner of testifying of the witnesses.

6. **ID.; ID.; GUILT OF THE ACCUSED, ESTABLISHED BEYOND REASONABLE DOUBT IN CASE AT BAR.**— We give credence to the narration of the incident by the prosecution witnesses, more so as they happen to be law enforcers who are presumed to have regularly performed their duty in

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the absence of proof to the contrary. (Rule 131, Sec. 5(m), Rules of Court). Furthermore, there is nothing in the records to suggest that they were motivated by any reason other than to accomplish their mission. And finally, the accused manifested before trial his willingness to plead guilty to the lesser offense of unlawful possession of marijuana but the prosecuting fiscal objected and insisted on the prosecution of both offenses. All considered, we hold that the guilt of appellant de Jesus has been established beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
The Citizen Legal Assistant Office for accused-appellant.

DECISION

GUTIERREZ, JR., *J.*:

Carlito de Jesus (alias "Carling") appeals from the decision of the Regional Trial Court, Branch 124 in Caloocan City, convicting him in Criminal Case No. C-21861 for violating Sec. 4 of Republic Act No. 6425 (Dangerous Drugs Act of 1972 as amended) and in Criminal Case No. C-21862 for violating Sec. 8 of the same Act and sentencing him to:

(1) Life imprisonment — together with all the accessory penalties provided by law — and a fine of P30,000.00 in Criminal Case No. 21861; and

(2) TWELVE (12) Years and a fine of P12,000.00 in Criminal Case No. 21862.

The two informations filed against the accused respectively alleged:

Criminal Case No. C-21861

"That on or about the 17th day of January, 1984 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver to Pat. Jesus Nadonga, a poseur buyer for P10.00 five (5) sticks of

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marijuana cigarettes, a prohibited drug under the provisions of the above-cited law."

Criminal Case No. C-21862

"That on or about the 17th day of January, 1984 in Caloocan City, Metro Manila 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 32 sticks of marijuana cigarettes knowing the same to be a prohibited drug under the provisions of the above-cited law."

The prosecution's evidence upon which the lower court based its finding of guilt was summarized by the court as follows:

"x x x Tipped of drug-trafficking at the Bisig Ng Nayon area, a heaven for drug users/pushers, the anti-narcotics group of the Caloocan City Police conducted a campaign thereat on January 17, 1984. Apprehended on that occasion — it was around one o'clock in the afternoon — was accused Carlito de Jesus *alias* 'Carling.' Aside from selling five sticks of marijuana (worth P10.00) to police officer Jesus Nadonga, who had posed as a drug-buyer, accused Carlito de Jesus *alias* 'Carling' was also found in possession of 32 sticks of marijuana — when frisked by the police. Those sold by and confiscated from accused Carlito de Jesus *alias* 'Carling' were examined by the forensic — chemistry unit of the National Bureau of Investigation — and were found 'positively marijuana.' Immediately after his apprehension, accused Carlito de Jesus *alias* 'Carling' owned the crime charged — and even gave a statement which he acknowledged before the inquest fiscal."

On the other hand, the defense adduced evidence as follows:

"x x x Carlito de Jesus *alias* 'Carling' had a tooth-extraction on the date he was arrested — and, therefore, he could not have perpetrated the crimes charged as he was then resting when apprehended. Carlito de Jesus *alias* 'Carling' did not give any statement to the police — he was merely coerced by the police into signing a prepared statement. Fistic blows were rained on him by the police soon after his arrest — on the way to and at the police headquarters. Nonetheless, no step was taken by him and his family relative to what happened to him (particularly the alleged injuries inflicted)."

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In this appeal, the accused de Jesus raised the following assignment of errors:

I

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED ON TWO SEPARATE INFORMATIONS (FOR VIOLATION OF SECTION 4 AND SECTION 8, ART. II, R.A. 6425 AS AMENDED) DESPITE THE FACT THAT THE LATTER OFFENSE IS AN ESSENTIAL ELEMENT AND INHERENT IN THE OFFENSE FOR VIOLATION OF SECTION 4, ART. II OF R.A. 6425 AND THEREFORE DEEMED ABSORBED IN THE FORMER OFFENSE;

II

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED DESPITE THE INSUFFICIENCY OF EVIDENCE AND DESPITE THE PRESENCE OF GRAVE DOUBTS SURROUNDING THE CIRCUMSTANCES OF HIS ARREST THAT STRONGLY MILITATE AGAINST THE CAUSE OF PROSECUTION;

III

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED DESPITE THAT THE PROSECUTIONS EVIDENCE FAILED TO MEET THE STANDARD OF MORAL CERTAINTY REQUIRED TO CONVICT HIM OF THESE TWO (2) OFFENSES.

On the first assigned error, the appellant claims that possession of marijuana as prohibited under Sec. 8 of Republic Act No. 6425 is absorbed in the offense of selling marijuana as prohibited in Sec. 4 of the same Act. He, therefore, contends that there should have been only one charge which is that of unlawful sale of marijuana.

The fiscal filed two separate informations because when the appellant was bodily searched, after he was apprehended for selling 5 marijuana sticks, 32 more such sticks were found in his pants back pocket. Thus, he was also charged for possession of prohibited drugs.

The lower court justified conviction on the basis of two informations by stating:

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"As a last-ditch effort to lighten the resulting criminal liability, the defense tried to convince the Court that the charge in Criminal Case No. 21861 has absorbed that in Criminal Case No. 21862. Considering the gravity of the offenses charged — taking note of the ill-effects of dangerous drugs and the proliferation thereof — such interpretation should not be countenanced. Use of prohibited drugs is bad in itself. But pushing, vending, selling or circulating the same is worse. Such act is worse than murder — and the perpetrator/ perpetrators thereof should be meted out the maximum penalty allowable, if only to deter others from doing the same. Let this be a warning for those who deal with dangerous drugs — that the law will give them the severest blow possible. *Dura lex, sed lex.*"

We agree with the appellant's first assigned error, sustained by the Solicitor General, that the trial court erred in penalizing de Jesus separately under the two informations:

As the Solicitor General stated:

"The trial court's severe stand against traffic in drugs is understandable. But the assumption is that the legislature will not indulge in absurdities. Since possession of prohibited drugs is inherent in the crime of selling them, it is to be assumed that, in punishing selling, the legislature took into account the need to possess them first.

The penalty for selling — life imprisonment to death — is already quite harsh. The legislature should not have intended to attach a further penalty of 12 years to 20 years for possession. It would be superfluous especially if the accused have been imposed a death sentence for selling."

The second and third assigned errors center on the issue of whether or not the prosecution evidence is sufficient to prove guilt beyond reasonable doubt in Criminal Case No. C-21861.

The appellant contends that the court erred in giving full weight to his extrajudicial confession taken during custodial investigation. He repudiated this confession during trial on the ground that it was extorted by force, coercion, and intimidation.

The appellant's defense that he was beaten up by the police and forced to admit the sale of marijuana is negated by his testimony that he suffered no injuries. However, we completely

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disregard the extrajudicial confession, there being no showing by the prosecution that there was sufficient compliance with the constitutional duty to inform the accused of his rights to silence and to counsel, without which there could be no intelligent waiver of said rights. (See *People v. Nicandro,* 141 SCRA 289).

With the extrajudicial confession completely disregarded, there is still more than enough evidence to sustain a judgment of conviction.

Pat. Jesus Nadonga who acted as poseur-buyer clearly and positively identified appellant de Jesus as the seller of the marijuana. The appellant's defense is that he was not there at the scene of the crime. He was recuperating from a tooth extraction. The denial and explanations cannot overcome the positive evidence. (*People v. Chavez*, 117 SCRA 221; *People v. Dondoy*, G.R. No. 63728, September 15, 1986). We agree with the lower court when it cited the well-established rule that greater weight is given to the positive testimony of the prosecution witness than to the accused's denial (*People v. Mostoles, Jr.*, 124 SCRA 906).

Regarding the alibi offered by the appellant, as stated in the case of *People v. Dondoy, supra*:

"it is well-settled that against the positive identification of the accused, alibi is unavailing (*People v. Terrobias*, 103 SCRA 321) and that as a minimum requirement for the theory of alibi to be accepted, the accused must also demonstrate that it was physically impossible for him to be at the scene of the crime (*People v. Bihasa,* 130 SCRA 62; *People v. Muñoz*, 107 SCRA 313; *People v. Capillas*, 108 SCRA 173; and *People v. Sambangan*, 125 SCRA 726)."

De Jesus testified that he was resting outside their house at Bisig ng Nayon Street at about the time of the incident. It was not impossible for him to be at the scene of the sale of marijuana as it was transacted in the same street.

We have carefully examined the records and we find no reason to depart from the trial court's appreciation of the evidence of the prosecution and that of the defense. The trial court stressed the inconsistencies and incredulities in the testimony of De

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Jesus, his evasive answers, and failure to respond spontaneously. It believed the prosecution witnesses, On the credibility of the witnesses, it is a well-established rule that we have usually accorded the highest degree of respect to the findings of the trial court, the latter being in the position to observe the demeanor and manner of testifying of the witnesses.

We give credence to the narration of the incident by the prosecution witnesses, more so as they happen to be law enforcers who are presumed to have regularly performed their duty in the absence of proof to the contrary. (Rule 131, Sec. 5(m), Rules of Court).

Furthermore, there is nothing in the records to suggest that they were motivated by any reason other than to accomplish their mission. As stated in *People v. Patog* (G.R. No. 69620, September 24, 1986) —

> "Where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit." (See also *People v. Campana*, 124 SCRA 271).

And finally, the accused manifested before trial his willingness to plead guilty to the lesser offense of unlawful possession of marijuana but the prosecuting fiscal objected and insisted on the prosecution of both offenses.

All considered, we hold that the guilt of appellant de Jesus has been established beyond reasonable doubt.

WHEREFORE, the judgment in Criminal Case No. C-21861 for the sale of prohibited drugs is AFFIRMED. The judgment in Criminal Case No. C-21862 for possession, custody, and control of prohibited drugs is REVERSED and SET ASIDE.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Paras, JJ.*, concur.