

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL GERONA Y GOC-ONG, GREGORIO DIANO, JR. Y ARCAYAN, AND CONCORDIO BIHAG, ALIAS "CORDIO" (AT-LARGE), ACCUSED-APPELLANTS.

G.R. No. 100230. November 08, 1993

Ponente: BIDIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-100230/>

BIDIN, J.:

Raul Gerona, Gregorio Diano, Jr. and Concordio Bihag, alias "Cordio" were charged before the Regional Trial Court of Cebu, Branch 14, with violating Section 4, Article II in relation to Section 21, Article IV of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, in an information which reads as follows:

"That on or about the 28th day of April, 1990, at about 11:00 A.M., more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with one another, with deliberate intent, did then and there deliver, sell and give away one bundle of marijuana dried leaves more or less 50 grams wrapped in a newspaper, a prohibited drug, to a person who posted himself as buyer without authority of law.

"CONTRARY TO LAW." (Rollo, p. 6.)

When arraigned, accused Gerona and Diano entered a plea of not guilty. Accused Bihag, who has evaded arrest, has not been arraigned and remains at large. Trial on the merits ensued with respect to accused Gerona and Diano. Subsequently, the trial court rendered a decision finding the two accused guilty of the crime charged. The dispositive portion of the trial court's decision states:

"WHEREFORE, judgment is hereby rendered finding the two accused Raul Gerona y Goc-ong and Gregorio Diano, Jr. y Arcayan, guilty beyond reasonable doubt of having violated Section 4, Article II in relation to Section 21, Article IV of Republic Act No. 6425 as amended, and they are hereby sentenced to reclusion perpetua or life imprisonment (sic), and a fine of P20,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"Considering, however, that both are still comparatively young -- Raul Gerona is only 24 years old while Gregorio Diano, Jr. is only 21 -- and considering moreover that the present indictment is their first offense, the Court feels that they should be given a second chance at life. The Court accordingly recommends that executive clemency be extended to them after they shall have served at least ten years of their sentences in prison.

"SO ORDERED." (Rollo, p. 25)

Both accused Gerona and Diano initially appealed the judgment of conviction but later on, accused Gerona filed a motion to withdraw appeal which was granted by this Court in a Resolution dated May 26, 1993 (Rollo, pp.

87-88).

The antecedent facts, as stated by the trial court, are as follows:

"On April 28, 1990, having confirmed through earlier surveillances that a notorious marijuana distributor or seller named Concordio Bihag, alias 'Cordio,' was the source of considerable trade or traffic of dried marijuana leaves at Pit-os, Talamban, Cebu City through his 'boys' or 'runners,' among whom were a certain Alo, a certain Boy, a certain Tiwa, and the two accused in this case, Raul Gerona and Gregorio Diano, Jr., Lt. Emmanuel M. Ughoc, officer-in-charge of the 7th Narcotic Regional Unit, Cebu City, constituted into a buy bust operation, S/Sgt. Ibrahim Mohammadshaid, Sgt. Ricardo Inding and CIC Teodosio Rosaroso of said unit for the purpose of arresting the said Concordio Bihag and his marijuana 'boys' or 'runners.' Designated by Lt. Ughoc as 'poseur buyer' was Sgt. Ricardo Inding who put on the appearance of a drug dependent or user. Earlier on, Sgt. Inding had placed on surveillance Concordio Bihag and his marijuana 'boys' or 'runners.' In these previous surveillances, Inding had observed that Bihag did not deal directly with prospective buyers - he invariably dealt via his 'boys' or 'runners': Alo, Tiwa, Boy and the two accused herein Raul Gerona and Gregorio Diano, Jr. Inding first befriended Alo, Tiwa and Boy during his first surveillance. To these three Inding indicated his desire to buy marijuana in volumes or big quantities directly from the marijuana owner or the 'big boss' himself, Concordio Bihag. Inding told these three: 'Gusto unta ko nga mokuha ug volume mga marijuana ug dili ko gusto nga moagi pa ako ug runner. Gusto ko nga modirekta.' Translation: 'I should like to buy marijuana in volumes or big quantities, and I don't want to buy through peddlers or runners. I want to buy directly from the owner or 'big boss' himself.' Alo, Boy and Tiwa replied that 'It is our secret' (i.e., they wanted either to keep their operations in secret, or to conceal the identity of their 'big boss'). Inding observed, though, that when a buyer goes to Concordio's runner 'I (Inding) noticed only that the runners will give the money to Concordio Bihag and thereafter Concordio Bihag will disappear and minutes later he will come back and give to the runners some bundles of marijuana.' It was from these 'boys' or 'runners' that Inding learned Concordio Bihag's name. (T.S.N. of September 4, 1990, p. 17).

"On his second surveillance on April 26, 1990 Inding did not find Tiwa, Alo and Boy at the store. So he looked for these three at the basketball court at Pit-os, supposing he would find them there. He did not find them at the basketball court, either. Instead, he found in the basketball court the two accused Raul Gerona and Gregorio Diano, Jr. playing basketball with other teenagers. He joined their game and befriended Raul Gerona and Gregorio Diano, Jr. or 'Greg.' He asked these two where Alo, Tiwa and Boy were, telling these two that he had a transaction with Alo, Tiwa and Boy. But Gerona and Diano asked him what his transaction to the three was. 'So I informed them that I want to get some marijuana dried leaves.' And they said 'Kami na lang bay kay mao ra man gihapon kanang ilang kuhaon nga marijuana parehas ra man ang among presyo.' Translation: 'Just buy from us, friend, because the marijuana they will get from Bihag we can also sell to you at the same price.' Inding saw Bihag in a waiting shed in Pit-os some 100 meters from the basketball court. On that date, he bought P100.00 worth of marijuana from Gerona, who got it from Bihag.

"Having indeed ascertained or confirmed that Concordio Bihag was the source of marijuana dried leaves in Pit-os, and that Bihag was assisted in this nefarious business by his 'boys' or 'runners,' on the late morning of April 28, 1990 S/Sgt. Ibrahim Mohammadshaid, Sgt. Ricardo Inding, and CIC Teodosio Rosaroso and four civilian agents, soon after their constitution into a 'buy-bust' team, went to Pit-os on board a mini-cruiser to catch or entrap Concordio Bihag and his 'boys' or 'runners' who could be caught in the act of selling marijuana. The members of the team got off some 200 meters away from the waiting shed where in previous surveillances Inding had observed Bihag to have been transacting business through his 'boys' or 'runners.' Inding then proceeded to the waiting shed while S/Sgt. Mohammadshaid and CIC Rosaroso positioned themselves some 20 meters away. (CIC Rosaroso knew Bihag, and Bihag knew Rosaroso, some years before).

"Not long after he had reached the waiting shed where Bihag was sitting on a bench, Inding gave the pre-arranged signal-(he got a handkerchief from his pocket and waved it) - that he had consummated the sale or delivery of marijuana leaves. Mohammadshaid and Rosaroso rushed forward. Upon seeing the approaching

lawmen, especially Rosaroso whom he (Bihag) had previously known, Bihag scampered away, with Rosaroso in pursuit. Inding then grabbed Gerona while Mohammadshaid grabbed Diano.

"According to Inding, just before Mohammadshaid and Rosaroso rushed forward in response to his pre-arranged signal, he was approached by the accused Raul Gerona and Gregorio Diano, Jr., to whom he expressed his desire to buy dried marijuana leaves worth P100.00. Gerona asked for the money (i.e. marked money) and, on receiving it, gave it to his (Gerona's) co-accused Diano, who thereupon approached the third accused in this case, Concordio Bihag, who was then seated in a bench in the waiting shed, and handed Bihag the money. Bihag then got a bundle of marijuana leaves wrapped in a newspaper placed near him and gave it to Diano. Upon receiving the bundle Diano delivered it to Gerona who in turn handed it to Inding.

"Inding categorically declared that he received from Gerona and Diana the bundle of dried marijuana leaves weighing 50 grams (Exhibit 'C'). The raiding team also recovered 200 grams of dried marijuana leaves wrapped in a paper (Exhibit 'D') on the bench occupied by Bihag.

"Lt. Myrna P. Areola, PC-Criminal Laboratory forensic chemist testified that the substance found in Exhibit 'C' and 'D' were positive for marijuana.

"In exculpation, the accused Raul Gerona and Gregorio Diano testified that on the morning of April 28, 1990 they were playing basketball in the basketball court at Pit-os when overcome by thirst, they went to the store of Ruben Miñoza, Jr. to buy soft drinks. When they reached the store they found Concordio Bihag there. They bought some soft drinks and while taking the soft drinks, Sgt. Inding arrived and asked for Bihag. They pointed to Bihag inside. Inding then called for Bihag and the latter came out with two packs of dried marijuana leaves which he handed to Inding. After taking delivery of the two packs, Inding gave P100.00 to Bihag.

"Inding opened the pack and smelled its contents. Gerona and Diano were also asked to smell the pack, and they did. Their companions in the store likewise smelled the contents of the packs.

"Inding thereafter put back the contents into the pack, got a handkerchief from his pocket, and wiped his face with it. Moments later, Inding's fellow police officers rushed into the store. Inding took hold of Bihag, but as Bihag was bigger than Inding, Bihag succeeded in shaking himself free from Inding's hold, and in scampering away. Gerona and Diano were then rounded up by the lawmen, along with Bihag's other 'boys' or 'runners,' Eper, Boy, Alo and Tiwa.

"Since they failed to get their principal quarry the members of the raiding team then made Gerona and Diano board their service vehicle, took off towards Bacayan, Talamban, and asked Gerona and Diano to point to the house of Bihag there.

"The members of the team however did not find Bihag in his house. So they brought Gerona and Diano, and Bihag's other 'boys' or 'runners' to the NARCOM headquarters. These other 'boys' or 'runners' were nonetheless released on the same day, April 28, 1990.

"Gerona and Diano alleged that they protested their arrest by the members of the raiding team, but Sgt. Inding told them that they would be simply utilized as witnesses. Both insisted that they did not commit the crime imputed to them.

"Agustin Padayao, who claimed to be an uncle by affinity of the third accused, Concordio Bihag, sought to corroborate Gerona and Diano's testimonies" (Rollo, pp. 19-22).

Accused-appellant Diano is now before Us seeking the reversal of the judgment of conviction rendered by the trial court. In his Brief, he made the following assignment of errors:

"I. THE COURT-A-QUO ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF ACCUSED GREGORIO DIANO, JR., RAUL GERONA AND WITNESS AGUSTIN PADAYAO.

"II. THE COURT-A-QUO ERRED IN GIVING TO (SIC) MUCH WEIGHT TO THE TESTIMONY OF SGT. RICARDO INDING."

From the foregoing, it is at once apparent that the only issue involved herein is the credibility of witnesses.

Once again, the present appeal affords Us the occasion to reiterate the well-entrenched rule that findings of the trial court on the issue of credibility of the witnesses' testimonies are accorded great weight and respect on appeal because the trial judge has first hand opportunity to examine and observe the conduct and demeanor of the witnesses, while testifying in court (*People vs. Marcos*, 185 SCRA 154 [1990], citing *People vs. Rodriguez*, 172 SCRA 742 [1989], *People vs. Tejada*, 170 SCRA 497 [1989], *People vs. Abonada*, 169 SCRA 530 [1989], *People vs. Turla*, 167 SCRA 278 [1988], *People vs. Aboga*, 147 SCRA 404 [1987]). Unless it be clearly shown that the trial court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case (*People vs. Simbulan*, 214 SCRA 537 [1992]), appellate courts are wary of disturbing the credence, or lack of it, accorded by the trial court to the testimony of witnesses. In the present case, there is nothing on record to warrant deviation from the general rule. The instant appeal must therefore fail.

Accused-appellant Diano implores this Court to give more weight to his testimony and that of his co-accused Gerona and their witness Padayao over the testimonies of the prosecution witnesses particularly the narration of events by Sgt. Inding. Appellant contends that the version of the prosecution as regards the participation of the two accused in the buy-bust operation is highly improbable coupled with the fact that not a single stick of marijuana was found in the possession of either accused.

Appellant, however, was not indicted for possession of the prohibited merchandise. On the contrary, he was charged and convicted under the provisions of Section 4, Article II of Republic Act No. 6425 in relation to Section 21, Article IV of the same law as a broker in the sale of marijuana. The express wordings of the above-stated provisions are as follows:

"Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed (underscoring supplied).

x x x

"Sec. 21. Attempt and Conspiracy. - The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:

- a) Importation of dangerous drugs;
- b) Sale, administration, delivery, distribution and transportation of dangerous drugs;
- c) Maintenance of a den, dive or resort for prohibited drug users;
- d) Manufacture of dangerous drugs; and
- e) Cultivation or culture of plants which are sources of prohibited drugs."

The wordings of the law clearly negate the theory of improbability espoused by accused-appellant Diano. The facts as recited in Sgt. Inding's testimony is consistent with the charge leveled against the two accused as brokers or commission agents in the sale of marijuana by confederating and mutually helping each other in the sale and

delivery of one bundle of dried marijuana leaves. Moreover, the version of the prosecution fits the *modus operandi* of the third accused Bihag. Accused Bihag is known to conduct his business of selling marijuana through the use of his "boys" or "runners". These "boys" or "runners" act as the middlemen between Bihag and the buyer, such that they deal directly with the latter and get their commission from the proceeds of the sale. Accused Gerona and Diano were just two of Bihag's runners. There is therefore nothing surprising in Sgt. Inding's declaration that the marked money and the marijuana passed from one hand to another (from Inding to Gerona to Diano to Bihag, and vice versa) in the course of the transaction.

In the light of what the prosecution established about Bihag's operation, it is far more difficult to lend credence to the proposition of the defense that the participation of the two accused to the buy-bust operation was limited to pointing out where Bihag was to Sgt. Inding, and after the consummation of the sale between Sgt. Inding and Bihag, to smelling the contents of the pack containing the dried marijuana leaves. It is inconsistent with ordinary human experience for a buyer of prohibited drugs to explicitly request everyone present at the store to smell the merchandise right after the consummation of what supposedly was a discreet and illicit transaction.

Furthermore, appellant's presence during the negotiation and actual delivery, indicates a conspiracy or common purpose with the other accused to sell marijuana (*People vs. Natipravat*, 145 SCRA 483 [1986]), his protestations to the contrary notwithstanding.

Thus, as between a mere denial of the accused-appellant and the positive identification and detailed declarations of the prosecution witnesses, the trial court committed no error in according greater weight to the latter (*People vs. Marcos*, 185 SCRA 154 [1990] citing *People vs. Melgar*, 157 SCRA 718 [1988], *People vs. Marilao*, 177 SCRA 271 [1989]).

Additionally, there is nothing in the record to suggest that the police officers were compelled by any ulterior motive or ill-will in arresting or testifying against the accused other than to accomplish their mission (*People vs. Como*, 202 SCRA 200 [1991]). Courts generally give full faith and credit to police officers for they are presumed to have performed their duties in a regular manner in the absence of proof to the contrary (Rule 131, Section 5 (m), Rules of Court; *People vs. Marcos*, *supra*, citing *People vs. Lamog et al.*, 172 SCRA 342 [1989], *People vs. Gamayon*, 121 SCRA 642 [1983], *People vs. Policarpio*, 158 SCRA 85 [1988], *People vs. Natipravat*, *supra*; *People vs. De Jesus*, 145 SCRA 52 [1986]; *People vs. Khan*, 161 SCRA 406 [1988]). Finally appellant's co-accused, Raul Gerona withdrew his appeal opting to avail of parole which is indicative of the veracity of the offense charged (See *People vs. Flores*, 23 SCRA 309 [1968]).

All told, we find no reversible error in the judgment of conviction.

Regarding the imposition of the appropriate penalty, however, the Court would like to remind the trial courts to be more careful in imposing the proper penalty in accordance with the strict letter of the law. The penalty prescribed by Section 4, Article II of Republic Act No. 6425 for the commission of the described offense is life imprisonment to death and a fine ranging from twenty to thirty thousand pesos, and not reclusion perpetua. Life imprisonment and reclusion perpetua are two distinct penalties and are not interchangeable for the latter carries with it the accessory penalties enumerated in Article 41 of the Revised Penal Code (*People vs. Blas*, 209 SCRA 339 [1992]; *People vs. Marcos*, 212 SCRA 748 [1992]). Furthermore, reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon; whereas life imprisonment does not appear to have any definite extent or duration (*People vs. Baguio*, 196 SCRA 459 [1991]).

WHEREFORE, the judgment appealed is hereby AFFIRMED with the MODIFICATION of the imposable penalty which is life imprisonment and a fine of TWENTY THOUSAND PESOS (P20,000.00) instead of reclusion perpetua.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.