

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO TADEPA Y MERIQUILLO, DEFENDANT-APPELLANT.***G.R. No. 100354. May 26, 1995*

Ponente: BELLOSILLO, J.

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In the apprehension of illegal drug dealers, law enforcers have resorted to entrapment or buy-bust operations where ways are devised and means employed to ensnare and capture the malefactors in flagrante delicto while engaged in their illicit trade. Entrapment has since received judicial sanction as long as it is carried out with legal and constitutional circumspection.[1] It must be distinguished from inducement or instigation where the criminal intent originates from the mind of the instigator and the accused, in effect, is lured into the commission of the offense charged in order to prosecute him. In instigation the instigator practically induces the would-be offender into the commission of the offense and becomes a co-principal.[2]

In determining whether what took place was an entrapment or an instigation, the manner in which the initial contact between the poseur-buyer and the alleged pusher was made is material. All the elements of the sale transaction must be clearly and adequately shown starting from the initial contact between the buyer and the pusher until the sale is consummated with the delivery of the illegal drug subject of the sale.[3]

To secure a conviction, the prosecution must prove the guilt of the accused beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[4] Nevertheless the burden of proof still rests on the state. The accused, if he so chooses, need not present evidence. He merely has to raise a reasonable doubt and whittle away from the case of the prosecution. The constitutional presumption of innocence demands no less.

In the case at bench, to prove that accused Dionisio Tadepa sold 25 sticks of marijuana to a peace officer, the prosecution presented two witnesses: Buy-bust Operation Team Leader Sgt. Luis Alfiler of NARCOM, Region 8, stationed in Ormoc City, and Forensic Chemist Capt. Liza Madeja-Sabong who certified that the specimens submitted to her for examination were indeed marijuana leaves.

Sgt. Alfiler testified that on 12 May 1989, acting on a tip from an informer, he organized a three-man buy-bust team to entrap the accused. Pat. Noel Triste was designated as the poseur-buyer. At around four-thirty in the afternoon, the buy-bust team proceeded to the Ormoc Bus Terminal where they saw the accused sleeping inside a passenger jeep. Accordingly, Pat. Triste approached the accused while Team leader Sgt. Alfiler stayed behind some seven (7) to eight (8) meters away. Sgt. Alfiler saw Pat. Triste give to the accused two (2) P20-bills and a P10-bill although he did not hear the actual conversation between Pat. Triste and the accused. The accused then left the place briefly, and upon his return, handed over to Pat. Triste marijuana sticks wrapped in an empty Marlboro pack. After finding the goods to be marijuana, Pat. Triste executed the pre-arranged signal. Forthwith, Sgt. Alfiler together with the third member of the team closed in and arrested the accused from whom they

recovered one (1) marked P20-bill. The 25 sticks delivered by the accused were then sent to the PC Crime Laboratory in Palo, Leyte, where Forensic Chemist Capt. Sabong after conducting a series of tests confirmed them to be marijuana.

The accused, for his part, narrated that on 12 May 1989, at around four-thirty in the afternoon, he was awakened by four (4) gun-toting men who gave him a P50-bill and ordered him to give the money to a certain "Jojo" who was then at the side of the city stage. He did as he was told, and in return, "Jojo" handed him something wrapped in a stapled newspaper. After giving the package to the group, he went back to sleep. Later he was again awakened, this time by the sudden handcuffing of his wrists. He was brought to a hotel where he was questioned by a certain "Alfiler" after which he was taken to the INP Ormoc Station where he was detained for peddling marijuana.

On 10 October 1989 the Regional Trial Court of Ormoc City, Br. 12,[5] found the accused guilty beyond reasonable doubt of violation of Sec. 4, Art. II, R.A. 6425, as amended, and sentenced him to an indeterminate penalty of twelve (12) years, five (5) months and one (1) day of reclusion temporal minimum, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal maximum, as maximum. On 21 June 1991 the Court of Appeals affirmed the conviction but increased the penalty to reclusion perpetua considering that the accused was found guilty of selling marijuana and thus cannot just be meted an indeterminate sentence. Nevertheless the appellate court refrained from entering judgment and certified and elevated instead the records to this Court for review pursuant to Sec. 13, Rule 124, Rules on Criminal Procedure. But while the appellate court correctly observed the erroneous imposition of an indeterminate penalty, the proper imposable penalty, as provided in R.A. 6425, as amended, is life imprisonment and not reclusion perpetua which, it has been stressed, is distinct in duration, nature and accessory penalties.[6] The trial court does not have the discretion to change the penalty expressly mandated by law. Its duty is simply to interpret and apply the law.

In the case at bench, we are not convinced that the state has presented sufficient evidence to engender that moral certitude exacted by the fundamental law to prove the guilt of the accused. Accordingly, we reverse his conviction on reasonable doubt. The prosecution built its case solely on the testimony of Team Leader Sgt. Alfiler who admitted that he was some seven (7) to eight (8) meters away from where the actual transaction took place. As a consequence, he said that he did not hear the conversation which transpired between Pat. Triste and the accused. We find this testimony of Sgt. Alfiler insufficient evidence considering that the accused in effect claimed that he was not merely lured but in fact directed under threat to buy marijuana from the real drug pusher amounting not merely to entrapment but to instigation. In *People v. Lapatha*,[7] this Court held that where there is instigation the defendant would have to be acquitted.

Thus the failure of the prosecution to present Pat. Triste, the alleged poseur-buyer, is fatal. In *People v. Polizon*[8] we said -

We agree with the appellant's contention that the non-presentation of Boy Lim, the alleged poseur-buyer, weakens the prosecution's evidence. Sgt. Pascua was not privy to the conversation between Lim and the accused. He was merely watching from a distance and he only saw the actions of the two. As pointed out by the appellant, Sgt. Pascua had no personal knowledge of the transaction that transpired between Lim and the appellant. Since appellant insisted that he was forced by Lim to buy the marijuana, it was essential that Lim should have been presented to rebut accused's testimony.

The ruling in *People v. Yabut*[9] is further instructive -

Well established is the rule that when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt,

then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. In the present case, accused-appellant's version of the circumstances leading to his apprehension constitutes a total denial of the prosecution's allegations. In this regard this Court has ruled that when there is such a divergence of accounts -

x x x it becomes incumbent upon the prosecution to rebut appellant's allegation by presenting x x x the alleged poseur-buyer. This it failed to do giving rise to the presumption that evidence willfully suppressed would be adverse if produced (Rule 131, Sec. 5 [e]). This failure constitutes a fatal flaw in the prosecution's evidence since the so-called (poseur-buyer) who was never presented as a witness x x x is the best witness for the prosecution x x x x

Both the trial court and the appellate court gave much weight to the testimony of Sgt. Alfiler. However the prosecution did not present as witness Pat. Triste, the alleged poseur-buyer. Such omission casts serious doubt on appellant's guilt because without the testimony of the poseur-buyer there is no convincing evidence to show that the accused was a marijuana peddler and not merely a victim of instigation. Thus in *People v. Fider*[10] we decreed that "[w]e have held in many cases that the testimony of the poseur-buyer becomes material and well-nigh indispensable when the accused denies having committed the prohibited act," and failure to present him is fatal.[11]

In fine, we find the uncorroborated testimony of the state's star witness Sgt. Alfiler, even if coming from a police officer who enjoys the presumption of regularity, insufficient to induce moral certainty. For, the presumption of regularity of performance of duty of a peace officer cannot prevail over the constitutional presumption of innocence of the accused. The public prosecutor should have been so minded that corroborating evidence was necessary to complete the testimony of Sgt. Alfiler; but no corroborative evidence was submitted.

We thus hark back to the constitutional doctrine that the state carries the burden of proof in establishing the guilt of the accused beyond reasonable doubt, and it is not incumbent upon him to disprove his guilt. If the state fails in its burden the accused must be discharged.

WHEREFORE, the Decision of the Court of Appeals sustaining the conviction of the accused by the trial court is REVERSED and accused DIONISIO TADEPA y MARIQUILLO is ACQUITTED on reasonable doubt and for insufficiency of evidence. His immediate release from custody is ordered unless he is held for another lawful cause.

### **SO ORDERED.**

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.  
Quiason, J., on official leave.

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[1] *People v. Juma*, G.R. No. 90391, 24 March 1993, 220 SCRA 432.

[2] *People v. Gatong-o*, G.R. No. 78698, 29 December 1988, 168 SCRA 716.

[3] *People v. Crisostomo*, G.R. No. 97427, 24 May 1993, 222 SCRA 511.

[4] Sec. 2, Rule 133, Rules of Court.

[5] Judge Francisco H. Escano, Jr., presiding.

[6] *People v. Mejorada*, G.R. No. 102705, 30 July 1993, 224 SCRA 837.

[7] G.R. Nos. 63074-75, 9 November 1988, 167 SCRA 159.

[8] G.R. No. 84917, 18 September 1992, 214 SCRA 56.

[9] G.R. No. 82263, 26 June 1992, 210 SCRA 394, citing *People v. Salcedo*, G.R. No. 86975, 18 March 1991, 195 SCRA 345.

[10] G.R. No. 105285, 3 June 1993, 223 SCRA 117.

[11] *People v. Malakas*, G.R. No. 92150, 8 December 1993, 228 SCRA 310.

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