

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SATURNINO SOLON Y JABENES, AND ROBERTO SALI Y YU,
ACCUSED-APPELLANTS.**

G.R. No. 106639. May 31, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

SATURNINO SOLON y Jabenes and ROBERTO SALI y Yu were charged with violation of Sec. 4, Art. II, R. A. 6425, as amended, otherwise known as The Dangerous Drugs Act of 1972. Both were convicted after trial and sentenced to life imprisonment and pay a fine of P20,000.00 each, with subsidiary imprisonment in case of insolvency, and to pay the costs.[1]

The antecedent facts leading to the filing of the Information against the accused: On 26 February 1990, Sgt. Amos Foncardas, a NARCOM agent and team leader of the operations team, 9th Narcotics Regional Unit, Zamboanga City, received a report from a resident of Sto. Niño that a certain Saturnino Solon alias "Mekang" was peddling marijuana in Sto. Niño. On 28 February 1990 after carrying out surveillance operations on Solon, Sgt. Foncardas instructed Sgt. Pedro S. Mamuad, Jr., to conduct a test-buy. As a result, Sgt. Mamuad, Jr., was able to purchase two (2) sticks of marijuana from Solon. The successful test-buy prompted Sgt. Foncardas to organize the actual buy-bust operation.

Thus on 1 March 1990 at about six-thirty in the evening Sgts. Foncardas, Mamuad, Jr., and Manuel Alarcon, Jr., proceeded to Sto. Niño. Sgt. Foncardas gave three (3) marked P5.00-bills to Sgt. Mamuad, Jr., who was designated as poseur-buyer. Upon arriving in Sto. Niño, Sgt. Mamuad, Jr., went to Yolly's Store to buy a cigarette and thereafter conversed with two (2) persons standing near the store.[2] He narrated the succeeding events as follows -

Q:

After you bought the cigarette at the store, what happened?

A:

I approached alias "Mekang."

Q.

Then after you have approached (him), what transpired?

A:

I told him that I will be going (sic) to buy marijuana worth P15.00.

Q:

At that time you have said that you will (sic) buy marijuana worth P15.00, where was his companion?

A:

His companion was on his side.

Q:

After you have talked to alias "Mekang" that you will (sic) buy worth P15.00 (of) marijuana, what transpired next?

A:

I gave him the P15.00.

Q:

Did he receive it?

A:

Yes, sir.

Q:

Then after that, what happened next?

A:

He looked at his companion Robert Sali and after that Robert Sali pulled out the marijuana from his pocket.

x x x x

Q:

After you said that alias "Mekang" looked at Robert Sali, what transpired next?

A:

I was given by Robert Sali the eight sticks of marijuana.[3]

Then Sgt. Mamuad, Jr., lit a cigarette which was the pre-arranged signal for the consummation of the transaction. Forthwith, Sgts. Foncardas and Alarcon, Jr., rushed to Sgt. Mamuad, Jr., and apprehended the two (2) suspects. Later, at the PC Crime Laboratory, Forensic Chemist Athena Elisa P. Anderson identified the eight (8) sticks of cigarettes as marijuana.[4]

In their defense, Solon and Sali denied peddling marijuana cigarettes. They claimed that they were illegally arrested by the NARCOM agents. Appellant Solon testified that in the afternoon of 1 March 1990 while he and co-appellant Sali were on their way home, they were suddenly accosted by two (2) persons on board a motorcycle who identified themselves as NARCOM agents. Another person, Sgt. Mamuad, Jr, arrived and immediately searched them. The search yielded nothing. They were then taken to the NARCOM headquarters in Upper Calarian but were not investigated. Solon also denied having sold two (2) hand rolled marijuana sticks to Sgt. Mamuad, Jr., on 28 February 1990, the day of the alleged test-buy. Appellant Sali for his part corroborated the testimony of Solon, adding that nothing was taken from him when he and Solon were searched immediately after their arrest.[5]

In support of the defense, witness Voltaire Siason claimed that in the afternoon of 1 March 1990, while at Andang

Store in Sto. Niño, he saw Solon and Sali walking towards Yolly's Store which was about 10 to 15 meters away. Moments later he saw two persons on board a motorcycle approach the appellants. He also saw Sgt. Mamuad, Jr., coming from Arwin Store proceeding towards the appellants. Afterwards he saw Solon and Sali being handcuffed and led away.

Siason likewise recounted that earlier, on 23 February 1990, a Friday, he himself was also arrested by the same NARCOM agents for no reason at all. He was only set free after his father, a policeman, negotiated for his release.

Another defense witness, Elnora Forniza, corroborated the testimony of Voltaire Siason on the circumstances surrounding the arrest of Solon and Sali.[6]

Appellants filed separate briefs. In his brief, appellant Solon contends that the prosecution failed to establish his guilt beyond reasonable doubt. The site of the alleged buy-bust operation was well lit and public where people would come and go. Consequently, any activity, legal or illegal, could be easily observed by those passing by. He argues that even assuming that he was a drug pusher it was highly improbable for him to risk selling under such conditions. He also contends that the informant should have been presented as a witness since the latter was allegedly not a regular informant of the NARCOM. Other than the self-serving testimony of Sgt. Mamuad, Jr., the prosecution did not present any other evidence on the alleged test-buy operation on 28 February 1990 which the NARCOM agents used as justification for their entrapment on 1 March 1990. No record was made of the alleged test-buy operation conducted on 28 February 1990. There is also nothing on record to show that the two (2) sticks of marijuana obtained during the test-buy actually existed.

Appellant Sali on the other hand argues that the prosecution failed to prove conspiracy; it was not fully established that he and Solon came to an agreement to sell marijuana. He also claims that he did not give the marijuana to the poseur-buyer but to his companion Solon. Sali further argues that at most he could only be charged with illegal possession of marijuana. He contends that the lower court erred in not considering the fact that during the custodial investigation wherein he and Solon were asked incriminating questions they were not assisted by counsel.[7]

After a thorough perusal of the records, the Court is convinced to a moral certainty that appellants committed the crime imputed to them. The testimony of Sgt. Mamuad, Jr., the poseur-buyer, was clear and convincing. It proved that indeed appellants sold eight (8) sticks of marijuana cigarettes to him for P15.00. The crime of drug pushing merely requires the consummation of the sale whereby the pusher hands over the drugs to the buyer in exchange for money.[8]

It was indubitably established that Sgt. Mamuad, Jr., gave the marked money to Solon after which Sali gave the eight (8) sticks of marijuana to Sgt. Mamuad, Jr. These same sticks obtained from appellants were found positive for marijuana. The marked bills presented by the prosecution in open court were the very same bills which were paid to the accused. Furthermore, the testimony of Sgt. Mamuad, Jr., was corroborated by Sgt. Foncardas who testified that he saw the appellants hand something to Sgt. Mamuad, Jr., which later turned out to be marijuana.

The claim of both appellants that they were arrested without any valid ground cannot be given credence. Their defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of The Dangerous Drugs Act.[9] Such denial cannot prevail over their positive identification as peddlers of marijuana,[10] as well as over the detailed and unshaken testimonies of the apprehending officers who caught them red-handed. Besides, it has not been shown that the government agents had any ulterior motive to testify falsely against appellants.[11]

There is nothing unusual with selling prohibited drugs to complete strangers openly and in public places.[12] This Court has decided a number of cases where the buy-bust operation was undertaken in such public areas as markets and billiard halls even in broad daylight.[13] Drug pushers do not confine their nefarious trade to known customers. Complete strangers are accommodated provided they have the money to pay.[14]

There was no need to present the informant in court since the sale of the marijuana was adequately proven by the prosecution witnesses who were members of the buy-bust team, particularly the poseur-buyer.[15] At best the testimony of the informant if presented would be merely corroborative.

It is argued that the court a quo erred when it ignored the testimonies of defense witnesses Voltaire Siason and Elnora Forniza corroborating appellants' claim that the two (2) NARCOM agents approached them ahead of the poseur-buyer who only arrived later. Apparently, the purpose of the appellants is to convince us that the poseur-buyer's version was a fabrication. But we are not persuaded. Where no false motive has been imputed against the NARCOM agents the presumption is strengthened that the agents were in the regular discharge of their duties when the appellants were entrapped and thereafter charged with drug pushing.[16]

The testimonies of Siason and Forniza cannot prevail over that of the poseur-buyer, more so with the admission of Sali in his appellant's brief that he handed the marijuana to Solon. In effect, Sali has admitted that their arrest was preceded by the transfer of eight (8) sticks of marijuana cigarettes from them to the poseur-buyer in consideration of P15.00. This is consistent with the testimony of Sgt. Mamuad, Jr.

The Solicitor General correctly argues that Sali's allegation that he was not assisted by counsel during custodial investigation is completely unfounded. There is no concrete showing that Sali ever underwent interrogation while in police custody. On the contrary, his co-appellant declared in open court that they were not questioned when they were brought to the police station. At any rate, assuming that they were indeed investigated, no admission allegedly extracted from them in the absence of counsel was subsequently used against them.

Appellant Sali further asseverates that he should not be convicted of selling prohibited drugs since he gave the marijuana not to the poseur-buyer but to his companion Solon. Again, assuming this to be true and in refutation of what Sgt. Mamuad, Jr., narrated, still circumstances would show that Sali and Solon acted in concert pursuant to a common objective to peddle marijuana. Sali is the keeper of the eight (8) sticks of marijuana cigarettes while Solon is the actual seller. With this arrangement it is clear that Sali is an indispensable party to the transaction. Conspiracy having been established, both Sali and Solon are answerable as co-principals regardless of the degree of their participation.[17]

Considering that the precise weight of the eight (8) sticks of marijuana cigarettes cannot be determined from the records, and in order to give more substance to the principle that all reasonable doubt must be construed in favor of the accused, we find it judicious to conclude that the weight of the eight (8) sticks of marijuana cigarettes is below 250 grams.[18] As a consequence, the penalty imposed on the appellants in the appealed decision is reduced from life imprisonment to prison correccional. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed on the accused, there being no modifying circumstance, shall be taken from the medium period of the impossible penalty, while the minimum shall be taken from the penalty next lower in degree in any of its periods. Consequently, we hold that appellants must be sentenced to four (4) months and twenty (20) days of arresto mayor maximum, as minimum, to four (4) years and two (2) months of prison correccional medium, as maximum.

WHEREFORE, the decision of the court a quo finding accused SATURNINO SOLON y Jabenes and ROBERTO SALI y Yu guilty as charged is **AFFIRMED** with the **MODIFICATION** that the accused-appellants shall suffer an indeterminate prison term of four (4) months and twenty (20) days of arresto mayor maximum, as minimum, to

four (4) years and two (2) months of prison correctional medium, as maximum. The subsidiary imprisonment imposed by the court a quo in case of insolvency as well as the fine of P20,000.00 to be paid by both accused is DELETED.

It appearing that both accused have been detained since their arrest on 2 March 1990[19] or for a period of over five (5) years already, which is beyond the period of their maximum sentence herein imposed, their IMMEDIATE RELEASE from custody is ORDERED unless they are lawfully held for another cause.

Costs de officio.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Quiason, J., on official leave.

[1] Decision penned by Judge Tibing A. Asaali, Regional Trial Court of Zamboanga, Br. 17, 14 February 1992, p. 14.

[2] TSN, 29 June 1990, pp. 4-7.

[3] TSN, 27 June 1990, pp. 10-11.

[4] TSN, 11 June 1990, p. 10; 27 June 1990, pp. 10-12.

[5] TSN, 22 August 1990, pp. 3-5, 11.

[6] TSN, 17 July 1990, pp. 3-8; 19 July 1990, pp. 4-6.

[7] Brief for Appellant Sali, pp. 3, 5, 6-7.

[8] *People v. Ramos*, G.R. No. 103631, 8 June 1993, 223 SCRA 298, 302, citing *People v. Marcos*, G.R. No. 91646, 21 August 1992, 212 SCRA 748.

[9] *People v. Angeles*, G.R. Nos. 95761-62, 2 February 1993, 218 SCRA 352, 361, citing *People v. del Pilar*, G.R. No. 86360, 28 July 1990, 188 SCRA 37.

[10] *People v. Alejandro*, G.R. No. 94644, 17 August 1993, 225 SCRA 347, 351.

[11] *People v. Mauyao*, G.R. No. 84525, 6 April 1992, 207 SCRA 732, 741.

[12] *People v. de la Cruz*, G.R. No. 101315, 12 May 1993, 221 SCRA 788, 793.

[13] *People v. Nario*, G.R. No. 94863, 19 July 1993, 224 SCRA 647, 650.

[14] *People v. Marcelino*, G.R. NO. 85247, 30 July 1993, 224 SCRA 770, 773.

[15] *People v. Lopez*, G.R. No. 102381, 29 September 1992, 214 SCRA 323, 328.

[16] See Note 13.

[17] *People v. Armada, Jr.*, G.R. No. 100952, 26 August 1993.

[18] In the Matter of the Petition for Habeas Corpus of Oscar de Guzman, G.R. No. 117376, 8 December 1994, in relation to *People v. de Guzman*, G.R. No. 76742, 7 August 1990, where only two (2) sticks of marijuana were seized from the accused-appellant.

[19] See RTC Records, p. 6.

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