

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DONALD DISMUKE Y PAMARITO, ACCUSED-APPELLANT.

G.R. No. 108453. July 11, 1994

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-108453/>

DAVIDE, JR., J.:

In an information[1] filed with the Regional Trial Court of Valenzuela, Metro Manila, and docketed therein as Criminal Case No. 994-V-92, accused Donald Dismuke y Pamarito was charged with the violation of Section 4, Article II of R.A. No. 6425, as amended, committed in this wise:

"That on or about the 8th day of February 1992 in Valenzuela, MM. 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 deliver, sell and give away to one PO2 Nelson Labrador two tea bags of marijuana flowering tops for one Twenty peso bill with SN QB65721, knowing the same to be a prohibited drug under the provision of the above-cited law.

CONTRARY TO LAW."

The accused pleaded not guilty at his arraignment on 24 February 1992.

After trial on the merits, the lower court promulgated on 28 August 1992 its decision[2] finding the accused guilty of the crime charged and sentencing him to suffer the penalty of reclusion perpetua, to pay a fine of P20,000.00, and to pay the costs.

In the main, the prosecution's case drew its support from the uncorroborated testimony of PO3 Nelson Labrador of the Northern Police District Anti-Narcotics Unit (NPD-ANU). He had joined the National Police Service on 5 November 1991.[3] According to him, at about 3:00 p.m. of 8 February 1992 (barely three months after he had joined the service), he was at the office of the NPD-ANU at Sangandaan, Caloocan City, when an informer arrived and told him that a certain "Donald" was selling marijuana.[4] He then decided to conduct a buy-bust operation, with himself acting as the buyer, and with PO3 Eliseo Gargaritano and PO3 Wilfredo Lumba as the other team members. Together with the informer, they proceeded to Consuelo Street, Doña Ata Subdivision, Marulas, Valenzuela, Metro Manila. They arrived at their destination at about 5:00 p.m. and while cruising around, their informer pointed to a man near a sari-sari store as Donald, the accused in this case. Labrador, who was in plainclothes, approached Donald and told the latter of his "intention to buy P20.00 worth of marijuana." Since Donald "trusted" him, he (Labrador) "gave him the buy/bust money" and Donald in turn gave the former "two teabags of marijuana." [5] Then, pursuant to the team's pre-arranged signal, Labrador held Donald's right hand. Responding thereto, the other members of the team came out from their strategic locations, identified themselves, and assisted Labrador in arresting Donald. The team then brought Donald to the NPD-ANU office in Sangandaan, Caloocan City, where he was turned over to the unit's investigator, a certain Reynaldo Lichido, for proper disposition and investigation. The latter prepared a referral-letter to the PC Laboratory for examination of the tea bags.

Labrador, however, could only produce in court a photocopy of the alleged marked money (Exhibit "E") because the bill itself was allegedly in the custody of PO3 Gargaritano. The bill had supposedly been marked by Gargaritano on the "Saligang Batas" portion thereof.[6] The latter, despite subpoenas sent to him, failed to appear, thereby causing the postponement of the hearing and prompting the trial court to issue orders requiring him to show cause why he should not be held in contempt of court.[7] Although he subsequently appeared, the prosecution did not present him as a witness in the case.

Through Ms. Tita V. Advincula, a forensic chemist of the PNP Central Laboratory Section, Central Police District, Manila, the prosecution also proved that the contents of the two heat-sealed transparent plastic bags (Exhibits "B-1" and "B-2"), which were transmitted to her office by PNP Inspector Asuncion S. Santos of the District Dangerous Drug Enforcement Division of the Northern Police District Command, were found positive "for marijuana, a prohibited drug." [8]

On the other hand, through the testimonies of the accused and Dennis Pinpin, the defense presented a different version of the incident. According to the accused, in the afternoon of 8 February 1992, he and his friends, namely, Dennis Pinpin, Ricky Pinpin, and Erwin Soriano were at Consuelo Street, Marulas, Valenzuela, helping their friend, Allan Olequino, transfer residence.[9] Suddenly, a tricycle stopped, and PO3 Nelson Labrador and his two companions, Erning and Vicente, alighted from the tricycle. Labrador asked who among them had quarreled with his brother. Labrador's companions pointed to the accused and so Nelson told him to board the tricycle and picked up a piece of wood which he brandished at him. The three forced him to board the tricycle. The accused protested that he had not done anything, but he was told to do his explaining at the police headquarters. He was not, however, brought to the headquarters but to a place near the barangay hall at F. Bautista Street in Marulas where he was questioned about the identities of the pushers in the area. When he failed to name or pinpoint any pusher, he was taken to the Sangandaan police headquarters where PO3 Labrador took out two plastic teabags of marijuana which Labrador threatened to use against him if he would still refuse to name the pushers. Nonetheless, he insisted that he did not know any pusher. He was detained at the said headquarters for about two days. Thereafter, he was brought before a fiscal in Caloocan City after being warned not to say anything against them.[10]

The accused further testified that during his school days at the Valenzuela Municipal High School in 1990, he intervened in a fight between his neighbor and Noel Labrador, a brother of PO3 Labrador. When he failed to pacify them, he boxed Noel, hitting him on the chin. This incident came to the knowledge of the school principal who then called them to a conference, which PO3 Labrador attended. He had personally known PO3 Labrador for a long time because the latter's residence is at F. Bautista Street, Marulas, Valenzuela, which is merely within "walking distance" from where he, the accused, lived.[11]

Dennis Pinpin, a neighbor, friend, and former schoolmate of Donald, corroborated the latter's testimony on the incident of 8 February 1992.[12] He also testified that he was the one who had a misunderstanding with Noel Labrador in 1990. He reported the matter to Donald who tried to settle their differences but Donald ended up fighting with Noel. He, Donald, and Noel were called to the principal's office and were reprimanded by the principal. At the said conference, Noel's parents and PO3 Labrador were present. Thereafter, Noel threatened them by saying that the fight was not yet over.[13]

The lower court found the testimony of PO3 Labrador to be credible and positive and dismissed the accused's claim that he was framed and that the charge was ill-motivated. It said:

"The alleged quarrel happened in 1990 almost two years ago and was allegedly patched up and settled by the school principal in the presence of PO2 Nelson Labrador. If it is true that there was a fight/quarrel, the Labradors will not wait that long a time to take the alleged vindictive move." [14]

In his Appellant's Brief, the accused asserts that the trial court erred:

"I

X X X IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCREDIBLE TESTIMONY OF THE PROSECUTION LONE EYEWITNESS.

II

X X X IN ADMITTING IN EVIDENCE THE TWO TEA BAGS OF MARIJUANA WHICH WAS PLANTED BY POLICE OFFICER NELSON LABRADOR IN BLATANT VIOLATION OF THE ACCUSED[S] CONSTITUTIONAL RIGHTS.

III

X X X IN NOT HOLDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT."[15]

At the heart of these assigned errors is the issue of credibility of witnesses. It is well-settled that this Court will not interfere with the judgment of the trial court in passing on the credibility of the witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted.[16] The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[17]

A careful review of the records of this case and a meticulous evaluation of the evidence of the parties reveal vital facts and circumstances which the trial court overlooked or misapprehended and which if taken into account would alter the result of this case.

For one thing, the accused personally knew PO3 Labrador; they had met in 1990 in the principal's office of the Valenzuela Municipal High School during a confrontation between PO3 Labrador's brother, Nelson, on the one hand, and Dennis Pinpin and the accused on the other, after the accused had intervened in the fight between Nelson and Dennis and boxed Nelson on his chin. It is, therefore, most unlikely that the accused would sell a prohibited drug to a brother of former foe who, after the confrontation, had warned that the fight was not yet over.[18] This incident could have provided PO3 Labrador with a motive against the accused. The trial court is of the view that it could not have, because the incident happened two years earlier, the dispute was settled by the principal, and if Labrador desired revenge, he would not have waited for two years. We do not agree. While time may heal wounds of conflict, it does not necessarily extinguish the desire for vengeance, which may just hibernate until the circumstances become favorable.

In the instant case, the favorable circumstances could have arisen when PO3 Labrador joined the PNP in November of 1991. Within three months thereafter, he conducted the alleged buy-bust operation against the accused solely on the basis of an alleged tip from an informer given two hours before he conducted the operation. It may be noted that PO3 Labrador did not testify that he had obtained other derogatory information against the accused or that he had known the accused to be a drug dealer, pusher, or user. His conduct in this case tainted the presumption of regularity in the performance of his duty.

For another, we have serious doubts on the existence of the alleged marked money. There is no evidence as to who provided it and as to when and where it was allegedly marked by PO3 Gargaritano. What Labrador produced was a mere photocopy of the alleged marked money (Exhibit "E"). He claimed that the marked money itself was

in the possession of Gargaritano. If it was in Gargaritano's possession, we cannot understand why he was not called anymore to the witness stand to testify for the prosecution when he finally appeared in court in compliance with its orders.

While the presentation in evidence of the marked money in drugs cases resulting from buy-bust operations may not be indispensable,[19] the peculiar circumstances of this case, heightened by the attempt of the alleged poseur-buyer to present a photocopy of what he claims to be the buy-bust money and the unexplained failure of the prosecution to call to the witness stand the claimed custodian of the marked money although the latter had already appeared in court, only taint further the veracity of PO3 Labrador's story.

Exhibit "E" is not admissible in evidence under the best evidence rule.[20] To be admissible as secondary evidence, the prosecution should have shown that the original marked money has been lost or destroyed or cannot be produced in court or that it is in the custody of the adverse party.[21] The prosecution did not.

Then too, the prosecution failed to prove that the specimens examined by the forensic chemist were the ones purportedly sold by the accused to PO3 Labrador. According to the latter, when they arrived at their headquarters after the buy-bust operation, he turned over the accused to their investigator, a certain Reynaldo Lichido, for proper disposition and investigation. Lichido also "immediately prepared the referral to the PC Laboratory for examination in order to be sure if the specimen is positive." [22] What the forensic chemist examined were the contents of "two transparent plastic bag [sic] containing flowering tops with rolling papers suspected to be marijuana" transmitted by PNP Inspector Asuncion Santos, Officer-in-Charge of the District Dangerous Drugs Enforcement Division of the Northern Police District Command.[23] Both Lichido and Santos were not presented by the prosecution to testify in this case. Thus, there is no evidence to prove that what were allegedly sold by the accused to PO3 Labrador were actually the ones turned over to Lichido, that what the latter received were turned over to Santos, and that what Santos transmitted to the forensic chemist were those allegedly sold by the accused. The failure to establish the evidence's chain of custody is damaging to the prosecution's case.

On the whole then, the scanty evidence for the prosecution casts serious doubts as to the guilt of the accused. It does not pass the test of moral certainty and is insufficient to rebut the presumption of innocence which the Bill of Rights guarantees the accused. It is apropos to repeat the doctrine that an accusation is not, according to the fundamental law, synonymous with guilt; the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt.[24]

In the light of the above disquisition, it is apparent that the law enforcement agency charged with the enforcement of the Dangerous Drugs Act is partly to be blamed for the result of this case, assuming that it does have a case against the accused. In *People vs. Tantiado*, [25] we exhorted "the law enforcement agencies, especially those assigned to enforce the Dangerous Drugs Act, to carefully prepare their plans for buy-bust operations and to efficiently and effectively carry them out, ever mindful of the possibility that their blunders may not only frustrate the efforts to eradicate the drug menace but worse, embolden drug lords, pushers or users into defying the authorities." Equally at fault is the prosecuting arm of the Government, whose ineptitude in prosecuting the case warrants that its attention be likewise directed, as in the *Tantiado* case and the recent case of *People vs. Camba*, [26] to what was said in *People vs. Esquivel*: [27]

"In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state."

Again, just like in *People vs. Camba*,^[28] we cannot help but notice that the trial court imposed the penalty of reclusion perpetua which was not the penalty provided for by law at the time the offense charged was allegedly committed. Although the penalty imposable is now immaterial, we call the trial court's attention to the fact that the penalty then imposable was life imprisonment, if only to underscore the need to impose only the penalty which the law prescribes.

WHEREFORE, the appealed decision of Branch 171 of the Regional Trial Court of Valenzuela, Metro Manila, in Criminal Case No. 994-V-92 is REVERSED and, on the ground of reasonable doubt, accused-appellant DONALD DISMUKE y PAMARITO is hereby ACQUITTED. His immediate release from detention is hereby ordered, unless further detention for any lawful cause is warranted.

Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Original Records (OR) 1. The information is dated 10 February 1992.

[2] OR, 53-58; Rollo, 13-18. Per Judge Adriano R. Osorio of Branch 171.

[3] TSN, 24 April 1992, 9; TSN, 13 May 1992, 10.

[4] TSN, 24 April 1992, 10.

[5] Id., 9-10.

[6] TSN, 24 April 1992, 11.

[7] Orders of 9 March 1992 (OR, 10) and 8 April 1992 (OR, 20).

[8] Exhibit "C"; OR, 34; TSN, 24 April 1992, 4-6.

[9] TSN, 6 July 1992, 2-3.

[10] Id., 3-4.

[11] TSN, 6 July 1992, 5-6.

[12] TSN, 27 July 1992, 4-7.

[13] Id., 9-10.

[14] OR, 57; Rollo, 17.

[15] Rollo, 37.

[16] *United States vs. Ambrosio*, 17 Phil. 295 [1910].

[17] *People vs. Tismo*, 204 SCRA 535 [1991]; *People vs. Lee*, 204 SCRA 900 [1991]; *People vs. Simon*, 209 SCRA 148 [1992]; *People vs. Jumamoy*, 221 SCRA 333 [1993]; *People vs. Kyamko*, 222 SCRA 183 [1993].

[18] TSN, 27 July 1992, 10.

[19] *People vs. Pascual*, 208 SCRA 393 [1992].

[20] Section 3, Rule 130, Rules of Court.

[21] Sections 5 and 6, Rule 130, Rules of Court.

[22] TSN, 24 April 1992, 12.

[23] Exhibit "A"; OR, 32.

[24] People vs. Dramayo, 42 SCRA 59 [1971]; People vs. Garcia, 215 SCRA 349 [1992].

[25] 213 SCRA 365 [1992].

[26] G.R. No. 97960, 10 May 1994.

[27] 82 Phil. 453, 459 [1948].

[28] Supra.

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.