

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOLO BARITA Y SACPA, DENVER GOLSING Y DELFIN, DIONISIO CUISON Y FONTANILLA, ACCUSED-APPELLANTS.**

*G.R. No. 123541. February 08, 2000*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

Before us is an appeal from the decision[1] of the Regional Trial Court (RTC) of Baguio City, Branch 6, finding accused-appellants Diolo Barita, Denver Golsing and Dionisio Cuison guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act 6425 otherwise known as the Dangerous Drugs Act as amended by Section 13 of Republic Act 7659.[2]

Diolo Barita (BARITA), Denver Golsing (GOLSING) and Dionisio Cuison (CUISON) were charged with violation of Section 4, Article II of Republic Act 6425 in an information that reads:

"That on or about the 9th day of June 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously sell and deliver more or less 2,800 grams of dried marijuana leaves with flowering tops knowing fully well that said leaves of marijuana is a prohibited drug, in violation of the above mentioned provision of law.

CONTRARY TO LAW."[3]

On October 25, 1984, all three accused were arraigned and pleaded not guilty to the crime charged.[4]

The lower court summarized the facts as follows:

"The evidence shows that on June 9, 1994 at about 12:00 o'clock noon Police Supt. Felix Cadalli of the 14[th] Narcotics Regional Field Unit, Camp Bado Dangwa, La Trinidad, Benguet received a report from a civilian informer that one alias Jun, a taxi driver, who usually waits for passengers at Nelbusco Terminal, Otek St., Baguio City is the middleman of those selling marijuana at Justice Village, Baguio City.

After evaluating the information, P/Supt. Cadalli organized a buy-bust team composed of P/Insp. Virgilio Pelaez as team leader, PO3 Teofilo Juanata as poseur-buyer, SPO1 Edelfonso Sison as driver and PO3 Rolando Gamit as back-up. A briefing ensued wherein Insp. Pelaez, PO3 Gamit and SPO1 Sison were instructed to proceed to Justice Village, and wait and position themselves strategically thereat so that they could witness the transaction between their poseur-buyer and the drug pushers. Supt. Cadalli gave PO3 Juanata two pieces of P100.00 bills together with machine copies thereof and pieces of paper cut into the size of money bills such that if put together with one of the two P100.00 bills on top and the other at the bottom, the whole bunch will have the appearance of a bundle of money to be used in the purchase of marijuana for entrapment purposes. The two P100.00 bills were previously the subject of an Authentication (Exh. E) dated June 3, 1994 before Prosecutor Octavio Banta. Juanata was instructed by Cadalli to proceed with the civilian informer to the Nelbusco Terminal at Otek St., Baguio City to contact alias Jun, the middleman.

In accordance with instructions, Pelaez, Gamit and Sison left for Justice Village at about 3:00 p.m. on board the red car owned and driven by Sison. In turn, Juanata and the civilian informer boarded a passenger jeepney and proceeded to the Nelbusco Terminal. There, they were able to see alias Jun waiting for passengers inside his taxi. Juanata was introduced by the civilian informer to alias Jun, later identified as Dionisio Cuison, as a buyer of marijuana. And the latter told them that the stocks of marijuana were available at Justice Village. The three proceeded to Justice Village on board Jun's taxicab.

Meanwhile, the Narcom team of Pelaez waited at the road junction of Justice Village and Marcos Highway. Not long after, they spotted the taxi driven by accused Cuison carrying Juanata and the civilian informer and followed it unnoticed. The taxi stopped by the side of the road at Justice Village. The red car of Sison following passed by the taxi and then took a U-turn at the dead end of the road such that when the red car was parked, those inside it were facing the taxi parked around 20 meters away.

Soon after he parked his taxi, accused Cuison alighted and talked to some persons. When he returned, he informed Juanata that they have to wait because the sellers of marijuana were not around yet. After about five minutes, two persons walked towards the taxi. Accused Cuison went out of the taxi to meet them. And they talked. After which Juanata was introduced by Cuison to the two as a marijuana buyer. Juanata introduced himself as Jojo while the two introduced themselves as Diolo, later identified as Diolo Barita and Denver, later identified as Denver Golsing. Juanata ordered three kilos of marijuana and was told by accused Golsing that a kilo costs P800.00. Then accused Barita and Golsing told them to wait as they will get the marijuana.

After about 5 minutes, accused Golsing and Barita returned. Accused Barita was carrying a transparent plastic bag which he handed to Juanata. After examining the contents of the plastic bag (Exh. G), consisting of three bundles (Exhs. H, I, J), two wrapped in a brown paper (Exhs. H and I) and the third wrapped in a newspaper page (Exh. J), and determining the contents thereof as marijuana, Juanata handed the boodle money to accused Golsing and immediately gave the pre-arranged signal by removing his cap.

Forthwith, the group of Insp. Pelaez rushed to where the transaction took place, identified themselves as Narcom agents, and arrested accused Barita, Golsing and Cuison. The accused together with the marijuana confiscated and the boodle money recovered were brought to the 14th Narcotics Regional Field Unit at Camp Dangwa. The accused were turned over for investigation while the marijuana was turned over to the evidence custodian after Juanata, Gamit and Sison inscribed and signed their initials on the transparent plastic bag (Exh. G) as well as on the wrappers of the three bundles (Exhs. H, I, J) contained therein to identify the confiscated items and avoid tampering. The Booking Sheet and Arrest Reports (Exhs. B, C, D) of the accused were made."<sup>[5]</sup>

On November 6, 1995, the RTC rendered its decision finding all the accused guilty beyond reasonable doubt for violating Section 4, Article II of Republic Act 6425 as amended, the dispositive portion of which reads:

"WHEREFORE the Court finds the accused Diolo Barita y Sacpa, Denver Golsing y Delfin and Dionisio Cuison y Fontanilla Guilty beyond reasonable doubt as principals by direct participation and/or by indispensable cooperation of the offense of Violation of Section 4, Article II of Republic Act 6425 as amended by Section 13 of Republic Act 7659 (Sale of 2.8 kilos of marijuana, a prohibited drug) as charged in the Information and hereby sentences each of them to suffer the penalty of Reclusion Perpetua and to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the proportionate costs.

The marijuana confiscated from the accuses (Exhs. G, H, I, J) being the subject and instrument of the crime is declared confiscated and forfeited in favor of the state and referred to the Dangerous Drugs Board for immediate destruction.

The accused Diolo Barita, Denver Golsing and Dionisio Cuison, being detention prisoners are entitled to be credited in the service of their sentence 4/5 of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code.

SO ORDERED."[6]

Hence, this appeal where each of the accused-appellants filed their respective appellant's briefs.

In support of his appeal, BARITA denies any participation in the alleged sale of marijuana. He claims that no buy-bust operation was conducted and that the accusation against him was all part of a frame-up. To prove this, BARITA alleges that the prosecution evidence is replete with numerous flaws and glaring inconsistencies considering that:

1.)

Records (requests for physical examination made by P/Supt. Felix G. Caddali, Jr.) reveal that the buy bust team allegedly arrested five (5) persons[7] yet the prosecution witnesses insist that only three (3), herein accused-appellants, were arrested. Considering that the prosecution witnesses made no explanation concerning this, their testimonies should not be given credence. Moreover, the prosecution witnesses attempted to hide the fact of the arrest of the other two who were arrested, SIBAYAN and BINDADAN. According to them, since the prosecution witnesses were not able to give a sufficient explanation why only three accused were charged, they concocted the buy-bust operation.

2.)

None of the accused-appellants reside or are from Justice Village , the place where the alleged sale took place and could not have committed the crime.

3.)

There is a reasonable doubt as to the existence of the civilian informer for if there really was one, the NARCOM agents would not have taken his report without question.

4.)

The events leading to the buy-bust are contrary to human experience and opposed to common sense inasmuch as the alleged sale of marijuana was not definite to happen and that Jun supposedly knew the sellers of marijuana yet upon arrival at Justice Village , he had to inquire about them thereat.

5.)

The prosecution witnesses' accounts differ with respect to whether or not Jun alighted from the taxicab at the time when the alleged pushers neared the taxicab. .

6.)

PO3 Juanata's testimony is doubtful since he could not testify as to where his companions were at the time of the sale, which negates the existence of a buy-bust plan.

7.)

There is a divergence of testimony as to where the sale took place.

8.)

The prosecution witnesses gave different versions as to where the alleged sellers proceeded after they went to get the marijuana.

9.)

The testimonies given with respect to the buy-bust money is shrouded with contradictions.

10.)

There is a divergence of testimony as to the ownership of the red car used in the buy-bust operation.

11.)

There is a divergence of testimony as to the existence of a safehouse.

12.)

There is a divergence of testimony as to the participation of PO3 Gamit in the arrest of the accused-appellants.

13.)

The taxicab was released without an order from the trial court and such release was never explained.

14.)

The joint affidavit of arrest does not contain the name of P/Insp. Virgilio Pelaez, the team leader, as one of the affiants.

It is contended that the foregoing inconsistencies and unexplained facts in the testimonies of the prosecution witnesses cast doubt on their credibility. BARITA also claims that the trial court convicted the accused-appellants based on the weakness of their defense and not on the strength of the prosecution's evidence. Moreover, BARITA questions the identity of the marijuana presented in court considering that the description of the marijuana in the joint affidavit of arrest and the written request for laboratory examination differ and that the chain of custody of the confiscated marijuana leaves was not clearly established. Finally, BARITA alleges that the weight of the alleged marijuana leaves was not duly proved in light of the fact that the forensic chemist admitted that she only tested small quantities of the specimens given to her and that she could not determine whether the whole specimen was marijuana.[8]

Accused-appellants GOLSING and CUISON raise substantially identical arguments for the reversal of the decision of the RTC in their briefs. Thus, for the purpose of this appeal, we resolve to discuss their arguments jointly.

We find no merit in the appeal.

Accused-appellants' defenses consist of questioning the credibility of the witnesses for the prosecution and "frame-up".

It is well established in this jurisdiction that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the court a quo overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.[9] We find no reason to depart from this rule in the present case.

Accused-appellants were arrested by virtue of a buy-bust operation conducted by the 14th Narcotics Regional Command Field Unit. The buy-bust operation was established by prosecution witnesses PO3 Teofilo S. Juanata, Jr. (JUANATA), Rolando Gamit (GAMIT) and Idelfonso Sison (SISON), the apprehending officers, who positively identified BARITA and GOLSING as the two men who sold the marijuana and CUISON (the taxi driver) as the middleman in the sale. JUANATA, who acted as poseur buyer, testified that:

"PROS: CENTENO:

Q:

Who was your companion in going to the Nel Bosco Terminal after the briefing was conducted by Felix Cadalig?

A:

Our Civilian Informer, sir.

Q:

Do you know the name of this Civilian Informer?

A:

No, sir.

Q:

Until now?

A:

No, sir, it was my first time to see him.

Q:

Were you able to reach the Nel Bosco Terminal?

A:

Yes, sir.

Q:

How about the group of Pelaes, Gamit and Sison, do you know where they went?

A:

They proceeded to Justice Village, Marcos Hightway, Baguio City, sir.

Q:

Now, what time did you reach the Nel Bosco terminal located at Otek St., Baguio City on June 9, 1994?

A:

4 p.m., sir.

Q:

And what was your purpose in going to the Nel Bosco Terminal on that day?

A:

To look for alias Jun, sir.

Q:

Were you able to locate alias Jun at Nel Bosco Terminal?

A:

Yes, sir, he was there because he is a taxi driver.

Q:

What happened when you saw alias Jun at the Nel Bosco Terminal which happened to be a taxi driver?

A:

I was introduced by the civilian informer as a prospective marijuana buyer, sir.

Q:

And what happened after this civilian informer introduced to you to alias Jun to be a prospective buyer of marijuana?

A:

Jun answered that he knows somebody who sells marijuana at Justice Vil., Marcos Highway, sir.

Q:

If this alias Jun will be seen again by you, will you be able to identify him?

A:

Yes, sir.

Q:

Will you please look inside the courtroom and tell us if this alias Jun present?

A:

(Witness pointing to a person in blue t-shirt who identified himself as Dionisio Cuison)

xxx xxx xxx

PROS:CENTENO:

Q:

Now, after alias Jun left you and the civilian informer inside the taxi cab, what happened next Mr. Juanata?

A:

He returned, sir.

Q:

How many times lapsed when you noticed that alias June just returned to the place after he left you?

A:

About five minutes, sir.

Q:

Was he alone when he returned to your place?

A:

Yes, sir, he was not able to see the person selling marijuana.

Q:

So what happened when you saw alias Jun returned alone because he was not able to locate the person selling marijuana?

A:

We waited for a while, sir.

Q:

At that time when you were already at Justice Village waiting for a while as you said, did you know the other members of the buy bust team?

A:

I was not able to see them but I know they were their positioned, sir.

Q:

How long did you wait at Justice Village after alias Jun returned without having located the seller of marijuana as you said?

A:

About 5 minutes, sir.

Q:

And what happened after the lapse of five minutes?

A:

Two male persons arrived, sir.

Q:

Will you tell us the appearance of these two male persons walking?

A:

They look like bachelors, sir.

Q:

Aside from walking toward your place, what else did you observe if any?

A:

Alias Jun alighted from the taxi cab and met the two male persons sr.

Q:

How about you, what did you do when you saw that alias Jun alighted from the taxi cab and met these two persons?

A:

I remained inside the taxi, sir.

Q:

Was alias Jun able to meet these two persons?

A:

Yes, sir, they talked, sir.

Q:

How far was that place where you saw alias Jun and the two male persons talking from the place where you were seated inside the taxi cab?

A:

More or less five minutes, sir.

Q:

After you saw alias Jun and the two male persons talking as you said, what happened next?

A:

Alias Jun introduced me to that two male persons, sir.

Q:

How far were you from these two male persons when alias June introduced you to them?

A:

They approached the taxi, sir and I was introduced as a marijuana buyer.

Q:

After you were introduced by alias Jun to these two male persons that you were a marijuana buyer, what happened next?

A:

Denver said that a kilo of marijuana cost P800.00, sir.

Q:

By the way, what was the name you gave to these two male persons when you were introduced by alias Jun to them?

A:

I introduced myself as Jojo, sir.

Q:

And how did the two male persons introduced themselves to you?

A:

Diolo and Denver, sir.

Q:

If this Denver would be seen again by you, would you be able to identify him?

A:

Yes, sir.

Q:

If Denver is in the courtroom, will you please point to him?

A:

(Witness pointed to a person inside the courtroom who identified himself as Denver Golsing)

Q:

How about this other person who introduced himself to you as Diolo, if you will see him again, will you be able to identify him?

A:

Yes, sir.

Q:

Will you please point to him?

A:

(Witness pointed to a person inside the courtroom who identified himself as Diolo Barita)

Q:

You said a while ago that after you were introduced to these two male persons by this Jun, Denver told you that a price of a kilo of marijuana is P800.00, so what did you tell Denver when he told you that a price of a kilo of marijuana is P800?

A:

I told them that I will buy three kilos, sir.

Q:

At the time Denver was telling you that the cost of a kilo of marijuana is P800, where was Diolo?

A:

At this side, sir.

Q:

What was he doing at the time Denver was telling you that the cost of a kilo of marijuana was P800.00?

A:

He was there listening, sir.

Q:

After you told Denver that you wanted to buy 3 kilos of marijuana after you were told that the cost of a kilo is P800, what happened next?

A:

The two of them left, sir.

Q:

How about alias Jun, where did he go?

A:

He was left there, sir.

Q:

So the person who left were Denver and Diolo?

A:

Yes sir.

Q:

How about your civilian informer, where was he during all the time that you were ordering 3 kilos of marijuana?

A:

He was near inside the taxi cab, sir.

Q:

do you know where Denver and Diolo went after they left the place where you were told that a cost of a kilo of marijuana is P800?

A:

I don't know, sir.

Q:

What happened after Denver and Diolo left the place where you were with Jun and the civilian informer?

A:

They returned after five minutes, sir.

Q:

I am just curious Mr. Juanata, everytime you answer a question regarding the time element, you have been uniformed in saying that the interval is always five minutes.

After the lapse of five minutes, you said they returned to the place, who returned to the place?

A:

Denver and Diolo, sir.

Q:

Did you see these two persons approach the place where you were with Jun at that time?

A:

I saw them, sir.

Q:

Will you tell us the appearance at that time they were returning to your place?

A:

Diolo was carrying a plastic bag, sir.

Q:

Could you tell us the size of this plastic bag being carried by Diolo at that time?

A:

(Witness demonstrating a with the size of about 2 feet in height)

Q:

How about the bulk?

A:

Two feet by ½ feed in width.

Q:

How about Denver, what was the appearance at that time?

A:

He was not carrying anything, it was only Diolo who was carrying something, sir.

Q:

If you see that plastic bag again which was carried by Diolo on June 9, 1994 at Justice Village, Baguio City, will you be able to identify the same?

A:

Yes, sir.

Q:

Were these two persons, Diolo and Denver able to reach the place where you were on June 9, 1994?

A:

Yes, sir.

Q:

What happened when they reached the place where you were?

A:

I alighted from the taxi cab and then Diolo handed to me the plastic bag, sir.

Q:

After Diolo handed to you the plastic bag, what did you do?

A:

I opened the contents of the object wrapped in a newspaper, sir.

COURT:

You are saying therefore that inside the plastic bag was an object wrapped in a newspaper?

A:

Yes, sir.

COURT:

Continue, counsel.

PROS. CENTENO:

Q:

Now, this plastic bag, is it transparent or not?

A:

Yes, sir, transparent.

Q:

What happened after you opened these items wrapped in a newspaper page found inside the transparent bag?

A:

I saw a marijuana wrapped inside the newspaper and then I gave the money to Denver and also, I gave my pre-arrange signal to the back up team, sir.

Q:

By the way, what was supposed to be the pre-arrange signal to be given to the back up team?

A:

by removing my yellow cap, sir.

Q:

And after you have delivered the money to Denver at the same time giving your signal by removing your yellow cap as you said, what happened?

A:

I introduced myself as a Narcom Agent and gave my name as PO3 Teofilo Juanata, Jr.

Q:

What happened after you gave your pre-arrange signal and at the same time you introduced yourself as a Narcom Agent to the persons?

A:

The back up team arrived and we apprehended them, sir.

Q:

Who were the persons whom you apprehended upon arrival of the back up team?

A:

Jun, Denver and Diolo, sir.

Q:

The persons you earlier identified in Court?

A:

Yes, sir."[10]

JUANATA's testimony is corroborated by the testimonies of GAMIT[11]and SISON[12]who gave similar accounts of the events that transpired. The alleged inconsistencies and/or flaws in the testimonies of the prosecution witnesses pointed out by accused-appellants are insufficient to overturn the judgment of conviction against them inasmuch as the testimonies of these witnesses are consistent with each other on material points. Their testimonies sufficiently establish all the facts necessary for the conviction of the accused for what is material and indispensable is the submission of proof that the sale of the illicit drug took place between the seller and the poseur-buyer.[13] At any rate, the inconsistencies pointed out by the accused-appellants are trivial in nature and do not prove that they did not commit the crime charged.

Furthermore, the testimonies of the three police officers carry with it the presumption of regularity in the performance of official functions.[14] Accused-appellants failed to convincingly prove that in testifying against them, these witnesses were motivated by reasons other than their duty to curb the sale of prohibited drugs. In the absence of such ill motive, it is presumed that none exists.

Aside from proving the fact of the sale, the prosecution also successfully established the identity of the packages taken from the accused-appellants in court through the testimonies of JUANATA,[15] GAMIT,[16]SISON[17] and Forensic Chemist P/Ins. Alma Margarita Villaseñor (VILLASEÑOR).[18] In addition, JUANATA's testimony traces the chain of custody of the packages to the effect that after arresting the accused-appellants, they were brought to Camp Dangwa together with the confiscated marijuana. The marijuana was turned over to the Investigation Division after the apprehending officers properly initialed the bags. Thereafter, a request for laboratory exam was prepared and SPO1 Modesto Carrera delivered the three packages to the PNP Crime Laboratory Service assigned to Camp Dangwa.[19] The said office received the three packages, which were properly identified in court by VILLASEÑOR.[20]

It was also proved that the substance sold by the accused-appellants was approximately 2,800 grams of marijuana. On the witness stand, VILLASEÑOR, who was qualified as an expert witness,[21] testified that she subjected samples taken from the three packages to three examinations all of which resulted in a positive finding that the samples she tested were marijuana. She also weighed the packages and established that their total weight came out to 2,810.5 grams.[22] Her findings were placed in the chemistry report[23], which states that "Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for the presence of Marijuana, a prohibited drug."

We are not persuaded by the claim of accused-appellants that in order for them to be convicted of selling 2,800

grams of marijuana, the whole specimen must be tested considering that Republic Act 7659 imposes a penalty dependent on the amount or the quantity of drugs seized or taken. This Court has ruled that a sample taken from one of the packages is logically presumed to be representative of the entire contents of the package unless proven otherwise by accused-appellant.[24]

Likewise, accused-appellants' defense of "frame-up" does not convince us of their innocence. Such defense has been invariably viewed by this Court with disfavor for it can easily be concocted but difficult to prove and is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[25] BARITA's[26] and GOLSING's[27] attempt to prove the "frame-up" by claiming that they were abused by the police officers[28] in order to confess to the crime is belied by the testimony of defense witness, Dr. Vladimir Villaseñor (DR. VILLASEÑOR). DR. VILLASEÑOR testified that BARITA, GOLSING and CUISON did not exhibit any signs that they were maltreated after he examined them and that none of them sustained any physical injuries.[29] Similarly, BARITA's claim that he was arrested by the police in order to extort P200,000.00 from him is not worthy of belief. No evidence aside from his bare assertions was presented to establish such as fact. Neither of his co-accused, GOLSING or CUISON substantiated this allegation. In the absence of clear and convincing evidence to prove the alleged "frame-up" or extortion, such defenses must fail.

Finally, the fact that the requests for physical examination show that five persons were examined does not discredit the testimonies of the prosecution witnesses that only three persons were arrested at Justice Village. As aptly observed by the trial court:

"Apparently, only Barita, Golsing and Cuison were caught in the actual act of the selling the marijuana along the road in Justice Village. Sibayan and Bindadan were not caught on the road as they were in their houses. Sibayan and Bindadan were invited and taken into custody afterwards when implicated by Barita when the latter was asked to point to the house of his companions where they got the marijuana.

This explains why Dr. Villaseñor examined five persons instead of only the three accused. This also explains why Juanata, Sison and Gamit insisted only three accused as they really arrested only the three accused in the actual act of selling marijuana.

This is supported by the fact that only Barita, Golsing and Cuison have booking sheet and arrest reports (Exh. B, C and D). There were no booking sheet and arrest reports of Sibayan and Bindadan presented by both the prosecution and the defense.

If there were any booking sheet and arrest reports of Sibayan and Bindadan, the defense would have demanded their production in court by Subpoena duces tecum. Why did not defendants do so?

Further, the two requests for physical examination (Exhs. 1 and 2) would show that Barita, Golsing and Cuison were arrested together as they were lumped together in one request for physical examination (Exh. 1 for defense). And that Sibayan and Bindadan were not taken together with the aforesaid 3 accused as the request for their physical examination was in a separate paper (Exh. 2 for defense).

In any event, a close scrutiny of the physical examination papers signed by Barita, Cuison, Golsing, Sibayan and Bindadan (Exh. 8 to 12) would show that the alleged case against them is 'suspected drug pushers' or 'Violation of Section 4 Article II RA 6425.'

Hence, even assuming 5 persons were arrested for drug pushing, the 3 accused herein, Barita, Golsing and Cuison were definitely among those arrested. So, instead of contradicting or destroying the truth and veracity of the drug pushing charge against the 3 accused, the physical examination papers actually confirm and strengthen the case against them because the same would show that they were really arrested for drug pushing."[30]

Any person who sells or acts as a broker in the sale of marijuana shall be punished with reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos[31] if 750 grams or more of marijuana is sold.[32] In the present case, BARITA, GOLSING and CUISON (as broker) were correctly meted the penalty of reclusion perpetua and a fine of five hundred thousand pesos (P500,000.00) by the RTC considering that the prosecution has clearly established that they delivered and sold 2,800 grams of marijuana to JUANATA, the poseur-buyer. Moreover, the RTC also correctly ordered the confiscation and forfeiture of the marijuana in favor of the state for its immediate destruction as this is in accordance with law.[33]

WHEREFORE, the appealed decision of the Regional Trial Court is hereby AFFIRMED.

**SO ORDERED.**

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Penned by Judge Ruben C. Ayson

[2] "SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.- The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million 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 broker in any of such transactions.

Notwithstanding the provisions of Section 20 of this Act to the contrary, 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."

[3] Rollo, p. 11.

[4] Record, p. 40.

[5] Decision, pp. 1-4; Rollo, pp.30-33.

[6] Decision, pp. 20-21; Rollo, pp. 49-50.

[7] Herein accused-appellants together with a John Sibayan and a Reynald Bindadan.

[8] Appellant's Brief – Barita, pp. 10-53; Rollo, pp. 88-131.

[9] People vs. Chua, G.R. No. 127542, March 18, 1999 at p. 9.

[10] T.S.N., January 10, 1995, pp. 16-17 and pp. 22-29.

[11] T.S.N., January 24, 1995, pp. 10-14; T.S.N., January 26, 1995, pp. 8-22.

[12] T.S.N., February 15, 1995, pp. 7-15; T.S.N., February 16, 1995, pp. 2-13.

[13] People vs. Lacbanes, 270 SCRA 193 at p. 200 [1997]; People vs. Salazar, 266 SCRA 607 at pp. 615-616 [1997].

[14] People vs. Salazar, Supra.

[15] T.S.N., January 19, 1995, pp. 15-23.

[16] T.S.N., January 24, 1995, pp. 15-19.

[17] T.S.N., February 15, 1995, pp. 14-17.

[18] T.S.N., January 19, 1995, pp. 41-43.

[19] T.S.N., January 10, 1995, pp. 28-34.

[20] T.S.N., January 19, 1995, pp. 41-43.

[21] T.S.N., January 19, 1995, pp. 40.

[22] T.S.N., January 19, 1995, pp. 43-47.

[23] Exhibit M; Exhibits Folder, p. 13.

[24] People vs. Tang Wai Lan, 276 SCRA 24 at p. 33 [1997].

[25] Espino vs. Court of Appeals, 288 SCRA 558 at p. 564 [1998].

[26] BARITA claims that his head was submerged in a drum of water and that he was boxed, mauled and kicked in the stomach by the police officers.

[27] GOLSING claims that he was boxed by the police officers.

[28] T.S.N., April 18, 1995, pp. 12, 19 and 22; T.S.N., April 19, 1995, p. 57; T.S.N., May 30, 1995, p.17.

[29] T.S.N., April 19, 1995, pp. 65-70 and 75-77.

[30] Decision, pp. 12-14; Rollo, pp. 41-43.

[31] § 4, Republic Act No. 6425 as amended by Republic Act. No. 7659.

[32] § 20, Republic Act No. 6425 as amended by Republic Act. No. 7659; People vs. Doria, 301 SCRA 668 at p. 718 [1999].

[33] Ibid.

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