PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL ELLOREG DE LOS SANTOS, GEORGE CASAMIS AND FELIPE ELLOREG, ACCUSED, JOEL ELLOREG DE LOS SANTOS, APPELLANT.

G.R. No. 126998. September 14, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Where the inculpatory circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other with his guilt, then the evidence does not meet the test of moral certainty. Necessarily, a judgment of acquittal must issue.

The Case

Joel Elloreg De los Santos[1] appeals the Decision[2] of the Regional Trial Court of Parañaque (Branch 260) in Criminal Case Nos. 95-1001 to 95-1004. The assailed Decision convicted him of illegal possession and sale of dried marijuana flowering tops and sentenced him to reclusion perpetua. Its decretal portion reads as follows:

> "WHEREFORE, this Court finds JOEL ELLOREG DELOS SANTOS GUILTY beyond reasonable doubt of the crime of violation of Sections 4 and 8, Republic Act 6425 as amended and sentences him to reclusion perpetua and to pay a fine of P500,00.00. FELIPE ELLOREG and GEORGE CASAMIS are hereby acquitted.
>
> "The Branch Clerk of Court is hereby directed to immediately surrender the marijuana to the Dangerous Drugs Board."[3]

On January 2, 1995, Second Assistant Prosecutor Elizabeth Yu-Guray filed four separate Informations[4] against the appellant and his cousins George Mariano Casamis and Felipe Casamis Elloreg. Appellant was charged with sale and possession of marijuana; and the two other accused, with possession of the substance.

In the first Information on possession of marijuana, Appellant De los Santos was charged thus:

> "That on or about the 13th day of December 1994, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any prohibited drug, did then and there willfully, unlawfully ad feloniously have in his possession and under his control and custody 2.575 kilograms of dried marijuana flowering tops which is a prohibited drug."[5]

The second Information charged appellant with the sale of marijuana, allegedly committed as follows:

> "That on or about the 13th day of December 1994, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously give away, distribute and sell to a customer P30.00 worth of dried marijuana flowering tops which is a prohibited drug, in violation of the above-cited law."[6]

When arraigned on January 30, 1995, De los Santos, Casamis and Elloreg -- all of whom were assisted by

Counsel de Parte Dante O. Garin -- pleaded not guilty.[7]

After trial, the lower court promulgated its Decision on April 15, 1996, convicting Appellant Joel E. De los Santos and acquitting Felipe Elloreg and George Casamis.

Hence, this appeal.[8]

The Facts

Version of the Prosecution
In its Brief,[9] the Office of the Solicitor General presents the following narration of the facts:

> "In the morning of December 13, 1994, PO3 Jose Soreta ['PO3 Soreta'], while on duty at the Parañaque Police Station, admitted a woman named 'Linda' who claimed that her live-in partner was engaged in the sale of marijuana at their dwelling at No. 59, Sitio GSIS, Barangay San Martin de Porres, Parañaque. Linda related that she was often beaten by her live-in partner, 'Joe'.
>
> "Without delay, PO3 Soreta formed a surveillance team from operatives of the Intelligence and Drug Enforcement Unit, Parañaque Police Station, composed of SPO1 Gaspar Macatunggal ['SPO1 Macatunggal'],[10] SPO2 Nestor Serrona ['SPO2 Serrona'] and PO3 Soreta. At around 11:00 a.m., the surveillance team personally visited the site to check and verify the information received.
>
> "Once the site was confirmed as a possible venue in the sale of illegal drugs, SPO1 Macatunggal, PO3 Soreta and SPO2 Serrona went back to the police station and planned a buy-bust operation. The buy bust was to be held in the afternoon of the same day. SPO1 Macatunggal was to act as the poseur-buyer while PO3 Soreta and SPO2 Serrona were to act as his backups.
>
> "At around 4:30 p.m., SPO1 Macatunggal situated himself at No. 59, Sitio GSIS, Barangay San Martin de Porres and summoned xxx 'Joe'. The site was actually a narrow alley ['iskinita'], about a meter wide, amidst a densely populated area which allows only a person to pass through. Meanwhile, PO3 Soreta and SPO2 Serrona distanced themselves to about twenty (20) meters away and stood vigilant.
>
> "Seconds later, a male person came into view and approached SPO1 Macatunggal. SPO1 Macatunggal declared that he was referred by Linda to see 'Joe' so he could buy marijuana. The man thereafter introduced himself as 'Joe" and forthwith asked how much marijuana sticks [would] be bought. 'Joe' intimated that the marijuana [was] P3.00 per stick. SPO1 Macatunggal contracted [to] buy ten (10) sticks and immediately handed P30.00 in the denomination of one (1) P10.00 bill and one (1) P20.00 bill.
>
> "Joe thereafter instructed SPO1 Macatunggal to wait as he ushered towards the interior of the alley. When Joe returned, he delivered the ten (10) sticks of marijuana to SPO1 Macatunggal.
>
> "To signify the consummation of the sale, SPO1 Macatunggal deliberately scratched his head, being the pre-arranged signal for the back-ups to now come in.
>
> "However, when PO3 Soreta and SPO2 Serrona loomed closer, Joe was alerted of the cover-up and began to run towards his house.
>
> "A chase ensued. It did not take long, however, when Joe was overtaken and caught by SPO1 Macatunggal near the door of the former's house. This time, SPO2 Serrona recovered the buy bust money in the amount of P30.00 from Joe.
>
> "While SPO1 Macatunggal held Joe, PO3 Soreta and SPO2 Serrona darted their eyes towards the door of appellant's house and saw the other accused, George Casamis and Felipe Elloreg, in the act of rolling marijuana into sticks. Hence, they, too, were apprehended by the police officers. The marijuana bricks and handrolled cigarettes found in the vicinity were confiscated.

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> "A request for laboratory examination on the confiscated marijuana bricks and cigarettes was thereafter forward[ed] to the Forensic Chemistry Division of the National Bureau of Investigation.
>
> "Accordingly, Report No. DDM-94-802 from the Forensic Chemistry Division divulged the following, viz:
>
> SPECIMEN:1. Dried flowering tops contained in three (3) separate plastic bags with marking; and
>
> 2. One thousand two hundred eighty two (1,282) handrolled cigarettes contained in fifteen (15) separate plastic bags with markings altogether placed inside a nylon bag allegedly confiscated from the possession of one JOEL DE LOS SANTOS Y ELLOREG, 25 years old, single, jobless of No. 59 Sitio GSIS, San Martin De Porres, Parañaque, Metro Manila.
>
> TIME SUBMITTED: December 14, 1994 at 11:50 a.m. By: P/A Constantino Esguerra
>
> CHARGED CASE: Re-Violation of R.A. 6425 as amended.
>
> PURPOSE OF THE LABORATORY EXAMINATION:
>
> To determine whether or not the specimens submitted are Marijuana.
>
> Total Net Weight Specimens No. 1 = 2.575 kilograms
>
> Total Net Weight Specimen No. 2 = 580.3703 grams
>
> Microscopic, chemical and chromatographic examinations conducted on the above mentioned specimens all gave POSITIVE RESULTS for MARIJUANA. xxx"[11]

Version of the Defense

Alleging that he was falsely charged and erroneously convicted, appellant controverts the account of the prosecution and summarizes the testimonies of the defense witnesses as follows:

> "ERLINDA NAPOLES: She was the common-law wife of the [a]ppellant. On November 5, 1994, a certain Anthony Alvarez went to their house on the occasion of [a]ppellant's birthday. On December 10, 1994, at about 3:00 p.m., Alvarez again [went] to their house, this time with a bag. He talked with her husband and after two hours, he left, leaving behind the bag which she thought contained clothes. The next day, December 11, 1994, Alvarez returned to their house and opened the bag in the presence of [a]ppellant. He left, still leaving the bag at their house. On December 12, 1994, she talked with [a]ppellant about the bag and the [a]ppellant told her that the bag contained marijuana and Alvarez wanted to use their house as a place to sell the stuff but he refused. The [a]ppellant told her to go to the police and make a report. On December 13, 1994, at about 2:00 p.m., she went to the Bicutan police station and made her report. She was brought to the police station at Coastal where many policemen were gathered to accompany her to their house. When they reached their house, the policemen took not only the contents of the bag but also the [a]ppellant, in spite of the [a]ppellant's protestations that the bag was owned by Alvarez. When the policemen and the [a]ppellant went out of the house, they passed by George Casamis and Felipe Elloreg who were then seated by the door of their neighbor's house. Felipe asked the [a]ppellant in chabacano what was happening and where he was being brought. The policemen also took the two to the police station.
>
> "JOEL ELLOREG DELOS SANTOS ([a]ppellant): This [was] the first time that he was charged with a crime. He came to know Anthony Alvarez about six months before at the basketball court, within 1994. On December 10, 1994, at about 4:00 p.m., Alvarez came to their house and asked to leave his bag at their house as he had to go home to his province, Pangasinan, but he had to go first to some place in Parañaque. On December 11, 1994, in the afternoon, Alvarez came to their house and afterwards told him that the contents of the bag was marijuana worth a big sum of money. He told Alvarez to take away the bag as he and his wife were afraid to

have the marijuana contained in the bag in their house. Alvarez, however, told him he had nowhere else to leave the bag and he left, saying he would come back later for the same. When he did not return to get the bag. Appellant and his wife decided to report the same to the police. On December 13, 1994, his wife went to Bicutan police station and then to the Coastal headquarters of the Parañaque police. When his wife and many police men arrived at their house, he let them in and he showed the bag of Alvarez to them. However, the policemen took not only the bag but also him with them saying he should allegedly tell his story at the police station. When they were out of the house, they passed by his cousins Felipe Elloreg and George Casamis who asked him in Zamboangueno (chabacano) what was happening and where he was being taken. The policemen, when informed that they were his cousin, decided to also bring the two to the police station. When they were at the police station at Coastal, one of those who came to his house to arrest him told the three of them, in the presence of the other participating policemen, that they should come up with P10,000 in order that they would be released. He told them that he had no money, not even P1,000.00. Thus, they were told that they would rot in hail. Thereafter, criminal charges were filed against him and his cousins.

"FELIPE ELLOREG: He was a high school graduate and was never charged with a crime before. He came to Metro Manila to look for work. In November, 1994, he found work as construction worker at Corinthian Garden. In the afternoon of December 13, 1994, at about 4:00 p.m., he and George Casamis were near their neighbor's door, along the alley, when the policemen arrested him and George and brought them to Coastal, together with the [a]ppellant. At Coastal, they were asked if the marijuana was the [a]ppellant's. When they answered they did not know, they were placed in jail. He was told that he would stay in jail for 36 hours and after that he could leave. But he was not able to leave the jail because the policemen asked for P10,000.00 as it was allegedly Christmas time and he was not able to produce the amount. He saw the bag allegedly containing marijuana at the Coastal in the possession of the policemen. He answered, in reply to questions from the Court that he did not know marijuana and was not using marijuana.

"GEORGE CASAMIS: He finished third year high school and was never charged with any crime before. He came to Metro Manila in November 1994 and he landed a job as laborer at Corinthian Gardens in Quezon City. In the afternoon of December 13, 1994, he and his cousin Felipe Elloreg were seated along the alley near the door of the house of Aling Ising, a neighbor, when policemen arrested the [a]ppellant inside his house. When the policemen and the [a]ppellant passed them, he asked what happened and the [a]ppellant, their cousin, told them he was invited by the police to go to their headquarters. Then he heard the policemen [ask] the [a]ppellant who they were and when the [a]ppellant replied that they were his cousins, they also arrested them and brought them to the police station[; when] they answered they did not know to whom the bag belonged, they were detained by the police."[12]

Trial Court's Ruling

In convicting appellant, the trial court held that he was arrested in a lawful "buy-bust" operation. It gave credence to the testimonies of the three arresting policemen, because they had no reason to falsely indict appellant and were presumed to have regularly performed their duties. It also stressed that it was appellant's common-law wife who had informed the police that De los Santos was selling illegal drugs. Thus, the trial court ruled:

"Assessing the evidence, the Court is convinced that on December 13, 1994, dried flowering plants and hand rolled cigarettes were found in the possession of accused, Joel delos Santos pursuant to a buy-bust operation conducted by the police. It is not for the Court to question why they conducted the buy bust operation, for whatever explanation given by accused is not important. Where the marijuana came from is immaterial. The information that accused Joel delos Santos was engaged in selling illegal drugs came from his live-in partner, no less. The policemen were able to purchase ten marijuana cigarettes for P30.00. The testimony of SPO1 Gaspar Macatuggal was corroborated by SPO2 Nestor Serrona and SPO3 Joey Soreta. These policemen did not know the accused. Nor was there any motive for them to testify falsely against accused for which reason their testimony must be accorded full faith and credit. As they are officers of the law, they are entitled to the presumption of regularity in the performance of their duties. (People vs. Merabueno, 239 SCRA 197).

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> Likewise, there was no reason for them to point an accusing finger on the accused considering that they were unknown to each other. (People vs. Ruelo, 237 SCRA 737).
>
> "While it may be true that there are inconsistencies in the testimony of the witnesses, they are neither substantial nor of such nature as would cast a grave doubt on their credibility. (People vs. Flores, 243 SCRA 374).
>
> "On the other hand, the defense of the accused cannot be given weight or credence. That it was the live-in partner no less of Joel delos Santos who reported the matter to the police authorities perhaps because she was being beaten up. This is corroborated by accused himself who testified that he and his wife had quarrels.
>
> "The Court is not unaware of the nefarious activities of some police officers who in their desire to mulct money from innocent and unwary victims plant incriminating evidence such as marijuana, unlicensed firearms, etc. on their persons. The Court would like to presume that this might have happened[;] however, the evidence presented negates such a presumption. The quantity of the marijuana which is 2.575 kilos and 580.3703 grams is too much to be deliberately parted with by any evil minded officer of the law."
>
> In acquitting Elloreg and Casamis, the lower court declared:
>
> "With respect to the two other accused, Felipe Elloreg and George Casamis, the Court is convinced that they did not commit the offense. On the witness stand, the Court observed their demeanor and is convinced that they were merely dragged into the situation because they are relatives of the accused. Their testimony appears credible. They did not appear to have any knowledge of the situation. It is just too bad that they were apprehended with the accused Joel delos Santos."[13]

Issues

Appellant submits the following issues for the resolution of this Court:

> "1. Whether or not there was a lawful warrantless arrest of the Appellant and his cousins and whether or not there was a lawful warrantless search of his house.
>
> "2. Whether or not the Appellant is guilty of illegal possession of marijuana [under] Section 8 of Article II, R.A. 6425, as amended.
>
> "3. Whether or not the Appellant is guilty of sale of marijuana [in] violation of Section 4 of Article II, R.A. 6425, as amended.
>
> "4. Whether or not the penalty imposed is correct."

In the main, the Court will resolve the sufficiency of the prosecution evidence. As will be shown later, the evidence does not prove appellant's guilt beyond moral certainty; hence, there is no need to discuss the other issues.

This Court's Ruling

The appeal is meritorious.

Main Issue

Sufficiency of Prosecution Evidence

Well-settled is the rule that the prosecution must prove the guilt of the accused beyond reasonable doubt.[14] To be believed, its evidence "must not only proceed from the mouth of a credible witness but it must also be credible in itself, such that common experience and observation of mankind lead to the inference of its probability under the circumstances."[15] Verily, guilt cannot be shown by mere speculations or even probabilities, whether the offense be malum prohibitum or malum in se.[16]

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In the present case, the prosecution failed to discharge this burden. Its three main witnesses were not credible, and their accounts did not meet the test of "common experience and observation of mankind."

Basis of the Alleged Buy-Bust Operation

Crucial to the resolution of this appeal are two questions: Why did Erlinda Napoles go to the police station, and what did she tell the police?

According to the prosecution, Erlinda Napoles,[17] the common-law spouse of appellant, went to the police station to denounce him for engaging in the illegal sale of marijuana. Because of this information, the three policemen allegedly conducted a buy-bust operation, which later resulted in the arrest of appellant. Significantly, without the alleged report of Napoles, there would have been no reason for a buy-bust operation.

Linda does not deny that she went to the police. She testified, however, that she went there only to report that a friend left in their house a bag containing marijuana; she never said that appellant was engaged in the illegal trade of the substance. According to her, the police went to their place in order to retrieve that bag and its content and, thus, the alleged buy-bust operation was a mere fabrication.

We must stress that the alleged report of Linda was not entered in the police blotter or in any other police document. The police did not even take a sworn statement from her. There is no official record, therefore, to substantiate the policemen's recollection of Linda's report.

In giving credence to the version of the police, the trial court surmised that she reported her husband "perhaps because she was being beaten up. This is corroborated by accused himself who testified that he and his wife had quarrels."[18]

We disagree. True, the trial court's assessment of the credibility of witnesses and their testimonies, as a rule, is binding on appellate courts, absent any fact or circumstance of weight and substance that may have been overlooked, misapprehended or misapplied.[19] In the present case however, the lower court misapprehended and overlooked Linda's subsequent conduct and clear testimony.

In line with the trial court's reasoning, she should have done either of two things: testify for the prosecution or desist from testifying at all. In both instances, her aim would have been the imprisonment of appellant, consistent with her purported intention when she allegedly squealed on him. She, however, testified unhesitatingly in his favor. And the prosecution has not been able to explain why. In doing so, she not only belied the story of the police; she also demolished the reasoning of the trial court.

If Linda had reported his alleged nefarious activities to the police because he had been abusing her, a woman in her circumstances would only have been expected to damn him even more. Indeed, there was no reason for her to squeal on appellant, only to plead for his innocence during the trial. Besides, no evidence, other than the bare allegation of the police, was presented showing that appellant had in fact been beating her. Even the trial court merely stated that "perhaps" he was doing so. Both appellant and Linda admitted that they had had quarrels, but there was no showing that he had ever employed violence – physical or verbal – against her. Furthermore, there was no showing that appellant forced her to take the witness stand, for he had been in detention from the date of his arrest.

It must be stressed that the police pounced on appellant and his cousins, only because Linda had gone to the police. Without her report, there would have been no case. To repeat, we find no reason for her to implicate appellant, only to sing a different tune later during the trial. Neither, as will be discussed below, can the three arresting policemen hide under the presumption of regularity in their performance of official duty.

Contradictions in the Prosecution Account

According to the prosecution witnesses, they effected the arrest of appellant pursuant to the information given by Linda that he was engaged in the illegal sale of marijuana. Acting on this information, the three policemen immediately went to his residence on a surveillance mission and returned to their office before noon. Around four in the afternoon, they went back to his house, conducted a buy-bust operation, and arrested him. In the process, they also arrested the two other accused, because they were allegedly seen inside his house in the act of rolling marijuana leaves. This account, however, was based on contradictory and improbable testimonies.

First, where was appellant arrested, and who among the three police officers went inside his house? SPO1 Gaspar Macatuggal testified that he arrested appellant outside the latter's house, and that he did not go inside.

> "Q After you have made that pre-arranged signal by scratching your head, what did your companions do, if any?
> A They approached us.
>
> Q After Serrona and Soreta approached you, what happened?
> A Joe ran when he noticed them approaching.
>
> Q And after accused Joel Delos Santos ran, what did you do next?
> A We ran after him and were able to catch him.
>
> Q After that, what else did you do?
> A When my two companions approached and caught him, he got from him the money.
>
> Q So, after Police Officer Serrona recovered the buy-bust money in the amount of P30.00, one P10.00 and one P20.00, what else did you do?
> A I was holding Joel[,] and my two companions went inside the house.
>
> Q And after accused Joel delos Santos entered his house after the P30.00 was recovered, what else did you do?
>
> ATTY. GARIN:
>
> The witness did not say that Joel entered his house. It was the two companions who went inside the house, not Joel.
>
> FISCAL PADILLA:
>
> I stand corrected.
>
> Q After your companions, Serrona and Soreta[,] entered the house of Joel, what happened next?
> A When my companions [went] in, I was outside and I did not know."[20]

During cross-examination, he categorically stated that he did not go inside appellant's house:

> "Q Mr. Witness, after the consummation of the buy bust operation, when you introduced yourself as a policeman, you will stand by your statement that you did not arrest accused Joel delos Santos inside his house?
>
> A Yes, sir.
>
> Q Outside of his house?
> A Along the alley.
>
> Q But not within the house premises?
> A Yes, sir.
>
> Q How far away was he from his house?

A Approximately ten (10) meters.

Q Ten (10) meters from the house when you arrested him?
A Yes, sir."[21]

Contrary to Macatuggal's statement that appellant was ten meters from the house when arrested, Nestor Serrona maintained that appellant was arrested "almost at the door of the house." Serrona testified:

"Q Where was delos Santos when he was actually restrained?
A Almost at the door of the house, sir.

Q He was not able to enter the house?
A The door was open but he was not able to enter.

Q When you rushed in, did your momentum carry you inside the house?
A No, sir."[22]

Jose Soreta, on the other hand, gave still another version, testifying that the arrest was effected inside the house and that Macatuggal went inside.

"Q How about Macatuggal, what did he do?
A He was holding alias Joe who ran and both of them went inside the house and we also went inside the house and saw two men wrapping marijuana.

Q You pursued the said alias Joe up to the inside of his house?
A Yes, sir."[23]

Indeed, the three contradicted each other on where appellant was arrested. They could not even agree on who among them went inside the house. As earlier stated, these were matters that should have been readily apparent to participants and witnesses alike. The Office of the Solicitor General explains the discrepancy by saying that it is not important where the arrest was made, as the area was highly congested, and the door of appellant's house "opens the entire view of the small interior of the house."[24] This explanation is not satisfactory. Macatuggal's statement that he arrested appellant "ten meters from the house" is clearly incompatible with Soreta's version that the arrest was made "inside the house."

Second, the discrepancy in the testimonies of the three police officers was not limited to these details; it extended to a more fundamental question: was a surveillance operation conducted at all?

Macatuggal and Serrona testified that after receiving the information, they, together with Soreta, proceeded to appellant's house on a surveillance mission that same morning. Thereafter, they returned to their office and received from their chief the directive to conduct a buy-bust operation in the afternoon. Macatuggal testified:

"Q After Police Officer Serrona received the said information, what happened next, if any?
A SPO2 Serrona called me and PO3 Joey Soreta; together with him, we formed a team.

x x x x x x x x x
Q After Serrona, Soreta and you were formed as a team, what did you do?
A We went to the place mentioned by our informant.

x x x x x x x x x
Q After that, what happened next?
A We went back to our office and we agreed to come back and conduct a buy-bust operation."[25]

Soreta, however, contradicted the statement of his two colleagues. He declared that after receiving the

information, the next thing that they did was to conduct a buy-bust operation in the afternoon. He did not mention that they went to the place first to conduct a surveillance. He declared:

> "Q Upon receipt of that certain information, that the husband of this Linda was selling prohibited drugs, what did you do next, if any?
> A I joined the buy bust operation of Macatuggal and Serrona.
>
> Q And who was the target of that buy bust operation by Macatuggal?
> A One alias 'Joe', sir.
>
> Q The same person reported by Linda?
> A Yes, sir.
>
> Q About what time did you conduct the buy bust?
> A 4:30 in the afternoon, sir."[26]

Furthermore, the testimonies of Serrona and Macatuggal regarding what they did during the alleged surveillance operation becloud the veracity of their accounts even more. Serrona testified:

> "Q What did this Linda [tell] you?
> A She reported that her live-in partner was allegedly engaged in the sale of marijuana.
>
> Q Upon receiving that information, what did you do next, if any?
> A I and Police Officer Soreta and Macatuggal proceeded to the address of her live-in partner to exactly pinpoint the address of the house.
>
> Q And what place are you referring to?
> A Sitio GSIS, no. 59, San Martin.
>
> Q After you proceeded to that place, what happened next, if any?
> A After pinpointing the exact address, we returned xxx to our office.
>
> Q After having established residence of the persons engaged in the sale of marijuana, what happened next, if any?
> A We were directed by our [c]hief to conduct [a] buy bust operation."[27]

More specifically, the object of their surveillance that morning was elicited by the defense counsel during the cross-examination of Serrona:

> "Q In other words, your surveillance was merely for asserting where the house could be located. You did not conduct surveillance on the person of delos Santos?
> A Yes, sir."[28]

Macatuggal, on the other hand, described their operation in this wise:

> "Q After Serrona, Soreta and you were formed as a team, what did you do?
> A We went to the place mentioned by our informant.
>
> Q What did you do there?
> A We went to the place pointed to us and the place where the transaction [would] be held.
>
> Q After that, what happened next?
> A We went back to our office and we agreed to come back and conduct a buy-bust operation."[29]

According to the two, their objective in conducting the alleged surveillance operation was merely to "pinpoint the address of the house." They allegedly received their information only that morning, and they did not know what

appellant looked like. Yet, during their alleged surveillance operation, they did not even try to identify or find out more about him – for instance, if he had weapons or associates; the activity of people within the vicinity and those coming in or out of it; his contacts, strengths and modus operandi; or the entry and exit points in the place. According to them, they went there merely to "pinpoint the address." Assuming that Linda gave them other details about the activities of appellant, there was no showing that they made any attempt that morning to verify the information.

Clearly, the inconsistencies and the improbabilities in the testimonies of the prosecution witnesses seriously assail the veracity of their main contention: that appellant was lawfully arrested as a result of a buy-bust operation.

Credibility of the Policemen

Furthermore, it must be emphasized that the trial court did not find the testimonies of the three arresting policemen completely truthful. In upholding the credibility of George Casamis and Felipe Elloreg and subsequently acquitting them, the trial court effectively ruled that the three prosecution witnesses were unreliable.

According to the policemen, George and Felipe were arrested because they were inside appellant's house at the time, rolling marijuana leaves into sticks. Serrona specifically testified:

> "Q You said that you arrested the two (2) other persons.
> Where did you arrest these two (2) persons?
> A They were inside the house of Joel delos Santos.
>
> Q Why did you arrest these two (2) persons?
> A We saw them in the act of rolling marijuana."[30]

Corroborating the foregoing, Soreta stated:

> "Q How about Macatuggal, what did he do?
> A He was holding alias Joe who ran[,] and both of them inside the house and we also went inside the house and saw two men wrapping marijuana.
>
> x x x x x x x x x
> Q Upon arrival, you saw two persons wrapping marijuana?
> A Yes, sir.
>
> Q After that, what happened?
> A We apprehended them."[31]

Macatuggal, on the other hand, simply stated that the two were arrested inside appellant's house.[32]

As stated earlier, the trial court disbelieved the foregoing testimonies and gave credence to those of George and Felipe. According to George Casamis, when the three policemen who purportedly arrested the appellant passed by, he and his cousin Felipe were seated along the alley. They were neither inside appellant's house nor in the act of handling marijuana leaves. But the policemen, upon learning from appellant that the two were his cousins, also arrested them. George Casamis testified:

> "Q Now, where were you when you said the policemen [picked] up Joel Delos Santos?
> A "Doon lang po kami sa may daanan, kasi po and mga bahay doon ay dikit-dikit lang," sir.
>
> Q Now, when you said "kami," to whom are you referring xxx?
> A Felipe Elloreg, sir.
>
> Q Now, upon seeing Joel Delos Santos picked up by the policemen, what happened next?

x x x x x x x x x
A I asked Joel why he was being arrested.

Q What was the reply of Joel?
A He said that he was being invited by the policemen to the headquarters, sir.

Q What transpired next?
A And I heard that the policemen ask Joel who we were, sir.

Q And how did Joel reply to the question of the police?
A Joel answered that we were cousins, sir.

Q After Joel told [the police] that you are relatives, what happened next?
A Suddenly, the policemen picked up me and Felipe Elloreg and they said that we should explain it [at] the headquarters."[33]

Worse, the two were asked to pay P10,000 for their release. This was clear from Elloreg's testimony:

"Q Did you ask the policemen why you were arrested?
A Yes, sir.

x x x x x x x x x
Q What was the reply?
A They were asking for P10,000.

Q And were you able to produce the P10,000 they were asking?
A No, sir.

Q What was the P10,000 for?
A I did not know what it was for. They said it was Christmas time.

Q Now, when you failed to produce the money asked of you, what transpired next?
A We were put inside the detention cell."

The trial court's conclusion that the testimonies of George Casamis and Felipe Elloreg were credible ineluctably showed that the three arresting police officers extorted money from innocent persons and lied; worse, they testified on such fabricated evidence. In view of these circumstances, the presumption -- that the policemen regularly performed their duties as public officers -- has been effectively overturned. In attributing unlawful conduct to innocent persons, they themselves breached that presumption.

Significantly, the prosecution presented the same testimonial evidence against the three accused. It is odd, however, that the trial court convicted appellant but acquitted the two others. Even more bizarre is that only ten sticks of marijuana were allegedly confiscated from appellant who was convicted; while the rest of the contraband weighing more than two kilos was found in the possession and control of the two other accused, who were acquitted. There is no reason why the testimonies of the policemen should be accepted against appellant, but not against the two other accused. Indeed, an examination of the records clearly shows that the prosecution evidence should not be accepted against any of the three accused.

Common sense and experience, not to add logic, favor the account of Linda that she went to the police station in order to report that someone had left in their house a bag containing marijuana. She and appellant decided to inform the police, who they hoped would retrieve the contraband from their house.[34] But the police did more than that: without lawful basis, they arrested appellant and his two cousins.

We find no reason to reject Linda's testimony. But we find several grounds to reject the accounts of the

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policemen. The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence.[35] More important, their contention that Linda squealed on appellant is belied by her conduct and testimony. Moreover, the inconsistencies and the improbabilities in their testimonies cast doubt on their story that appellant was arrested in a buy-bust operation.

Verily, the Court has repeatedly held that "where the circumstances shown to exist yield two (2) or more inferences, one of which is consistent with the presumption of innocence while the other or others may be compatible with the finding of guilt, the Court must acquit the accused: for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction."[36] Indeed, a corollary to the constitutional presumption of innocence is the rule that "the circumstances of the case must exclude all and each and every hypothesis consistent with [appellant's] innocence."[37]

WHEREFORE, the assailed Decision is hereby REVERSED and SET ASIDE. On reasonable doubt, Appellant Joel Elloreg De los Santos is hereby ACQUITTED. The director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Sometimes spelled as "delos Santos" or "Delos Santos."

[2] Written by Judge Helen Bautista-Ricafort.

[3] Assailed Decision, p. 5, rollo, 26.

[4] Docketed as Criminal Case Nos. 95-1001 to 95-1004; rollo, pp. 7-10.

[5] Rollo, p. 7.

[6] Rollo, p. 8.

[7] Records, p. 19.

[8] The case was deemed submitted for resolution on May 12, 1999, when the Court received the appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.

[9] Signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Roman G. Del Rosario and Sol. Ma. Theresa Dolores C. Gomez-Estoesta.

[10] Also spelled in the TSN as "Macatuggal" and "Macatugal."

[11] Appellee's Brief, pp. 6-12; rollo, pp. 94-100.

[12] Appellant's Brief, pp. 6-8; rollo, pp. 54-56; signed by Atty. Corazon D. Soluren.

[13] Assailed Decision, p. 4; rollo, p. 25.

[14] People v. Perucho, GR No. 128869, April 14, 1999, p. 17; People v. Llaguno, 285 SCRA 124, January 28, 1998; People v. Paguntalan, 242 SCRA 753, March 27, 1995; People v. Rugay, 291 SCRA 692, July 2, 1998.

[15] People v. Manambit, 271 SCRA 344, April 18, 1997, per Panganiban, J.; People v. Dayag, 56 SCRA 439,

March 29, 1974; People v. Salazar, 272 SCRA 481, May 14, 1997.

[16] See People v. Dela Rosa, 284 SCRA 158, January 16, 1998; People v. Albao, 287 SCRA 129, March 6, 1998.

[17] Hereafter referred to as ‘Linda.”

[18] RTC Decision, p. 4; rollo, p. 25. (emphasis added)

[19] People v. Sumbillo, 271 SCRA 428, April 18, 1997; People v. Quinao, 269 SCRA 495, March 13, 1997; People v. Nuestro, 240 SCRA 221, January 18, 1995.

[20] TSN, February 13, 1995, pp. 8-9; Records, pp. 136-137.

[21] TSN, February 13, 1995, pp. 14-15; Records, pp. 142-143.

[22] TSN, March 27, 1995, p. 17; Records, p. 170.

[23] TSN, May 10, 1995, p. 4; Records, p. 187. Soreta was even more emphatic on cross-examination:

Q And Macatuggal went inside the house in pursuit of delos Santos?

A He went inside the house, sir.

x x x x x x x x x

Q You are very positive of that?

A Yes, sir.” (TSN, May 10, 1995, p. 10; Records, p. 193.)

[24] Appellee’s Brief, p. 26; rollo, p. 114.

[25] TSN, February 13, 1995, p. 5; Records, p. 133.

[26] TSN, May 10, 1995, p. 3; Records, p. 186.

[27] TSN, March 29, 1995, p. 4.

[28] Ibid., p. 13.

[29] TSN, February 13, 1995, p. 5; Records, p. 133.

[30] TSN, March 27, 1995, p. 8; Records, p. 161.

[31] TSN, May 10, 1995, p. 4; Records, p. 187.

[32] TSN, February 13, 1995, p. 11; Records, p. 139.

[33] TSN, January 8, 1996, pp. 7-9; Records, pp. 313-315.

[34] In People v. De Gracia (233 SCRA 716, July 6, 1994, per Regalado, J.), the Court ruled:

“While mere possession without criminal intent is sufficient to convict a person for illegal possession of firearm, it must still be shown that there was animus possidendi or an intent to possess on the part of the accused. x x x Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon.”

Although that case pertained to illegal possession of firearms, we believe that it can be applied by analogy to cases involving the Dangerous Drugs Act. Thus, although the marijuana was in the house and in the possession of

appellant at the time, the conduct of Linda and that of appellant showed that there was no animus possidendi on their part.

[35] People v. Pastores, 227 SCRA 424, October 27, 1993.

[36] People v. Fider, 223 SCRA 117, June 3, 1993, per Feliciano, J.

[37] People v. Del Rosario, 234 SCRA 246, July 20, 1994, per Melo, J.

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