

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID BANAWOR, MARCOS KANGITIT AND LINGLINGON BINWAG, ACCUSED.

G.R. No. 131927. September 20, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

DAVID BANAWOR Y DUHALNGON, MARCOS KANGITIT Y BOLIGON and LINGLINGON BINWAG were charged before the Regional Trial Court of Bayombong, Nueva Vizcaya,[1] with having conspired together on 24 September 1996 in the illegal sale and delivery of 10.7 kilos of dried marijuana leaves in violation of Sec. 4, Art. II, of RA 6425,[2] as amended.

Of the three (3) accused only David Banawor and Marcos Kangitit were arraigned and tried since Linglingon Binwag has remained at large.

On 23 October 1997 the trial court found the accused Banawor and Kangitit guilty as charged. Banawor, on account of his being eighteen (18) years old, was sentenced to reclusion temporal in its medium period, or a prison term of fourteen (14) years, eight (8) months and one (1) day as minimum, to seventeen (17) years and four (4) months as maximum, plus a fine of P650,000.00. Kangitit, on the other hand, was sentenced to death by lethal injection, with costs against both accused.[3]

The facts: On 22 September 1996 Cecilio Arimbuyutan, undercover operative or "asset" of the National Bureau of Investigation (NBI), reported to the NBI Bayombong District Office that the group of David Banawor, Marcos Kangitit and Fermin Bubok was involved in trafficking of marijuana in Ifugao. NBI Region II Director Arturo Figueras then instructed Arimbuyutan to conduct a test-buy. Complying with the order, Arimbuyutan requested his friend Johnny Binomnga to accompany him in buying marijuana from the group of Banawor without revealing to Binomnga that he had a mission order. Arimbuyutan believed that since Binomnga was a native of Ifugao, the group of Banawor would not be suspicious of Arimbuyutan. On 23 September 1996 they proceeded to O-ong, Hingyon, Ifugao. Upon reaching the place, Arimbuyutan asked Banawor for a sample of his product as he intended to show it to a buyer. Banawor, together with Kangitit and Bubok, sold to Arimbuyutan a kilo of marijuana for P650.00.

Back at the District Office, Arimbuyutan turned over the marijuana to Director Figueras. The marijuana was then sent to the NBI Central Office in Manila for laboratory examination, which yielded a positive result. Subsequently, Director Figueras devised a plan to effect the arrest of Banawor's group and put an end to their nefarious activity. Several agents from the Bayombong District Office, the Cagayan Valley Regional Office (CAVRO) and the Narcotics Division of the Central Office in Manila were mobilized for the operation. After conferring with the agents, Director Figueras again dispatched Arimbuyutan to purchase marijuana from the group of Banawor. Arimbuyutan was given P5,000.00 to buy ten (10) kilos of marijuana.

On 24 September 1996 Arimbuyutan asked Binomnga again to accompany him to O-ong. Arriving at the

residence of Banawor, Arimbuyutan showed Banawor the money. In turn, Arimbuyutan was pointed to ten (10) bricks consisting of ten (10) kilos of marijuana. Also present were Kangitit and Bubok. Then Arimbuyutan inquired if he could make a partial payment of only P2,000.00 but Banawor refused and instead asked Arimbuyutan to hand over the P5,000.00 shown to him and proposed to escort him to his destination to collect the balance of P1,500.00. Arimbuyutan agreed and gave to Banawor and his companions the P5,000.00 which they then and there divided among themselves.

Banawor and his companions then got the tricycle that was used to transport the "hot" merchandise. When Arimbuyutan told them that he was going to Bagabag, Nueva Vizcaya, Banawor loaded the carton containing the marijuana in the sidecar of the vehicle and then sat with it. Beside Banawor was Binomnga. Kangitit drove the tricycle with Arimbuyutan sitting behind him.

Meanwhile, two (2) groups of NBI agents were posted along the highway in Villa Coloma, Bagabag, Nueva Vizcaya. A group composed of agents from the District Office and the CAVRO was to warn the other group composed of agents from the Narcotics Division of the approaching vehicle carrying Arimbuyutan and the "hot" cargo. When the first group spotted the tricycle and saw the pre-arranged signal of Arimbuyutan who removed his hat to indicate that the marijuana was on board, they radioed the blocking group. NBI Senior Agent Victor Lorenzo, who was with the second group, signaled the tricycle to stop, but Kangitit accelerated its speed. Two (2) NBI vehicles gave chase and cornered the tricycle about two hundred (200) meters from the position of the second group. Several agents rushed to the vehicle and arrested Banawor and Kangitit. NBI Senior Agent Melchor Dizon then confiscated the box of marijuana and placed appropriate markings thereon.

Later, the operatives brought Banawor and Kangitit to the NBI Bayombong District Office where the government agents prepared the necessary complaint and supporting affidavits against the pushers. The bricks of marijuana were sent to the NBI Forensic Chemistry Division in Manila for laboratory examination and the result was positive.

But Banawor claimed he was a victim of instigation by Arimbuyutan and that the real owner of the marijuana was Binwag. On his part, Kangitit denied knowledge of the transaction. He alleged that while traversing the road a certain Julio Damugdog boarded his tricycle and then alighted after travelling a kilometer. Later, he was flagged down by Arimbuyutan. He agreed to transport Arimbuyutan and his companions Banawor and Binomnga to Bagabag for P500.00 without knowing the contents of the carton that was on board the tricycle.

Testifying for the defense, Binomnga narrated that in the morning of 23 September 1996 Arimbuyutan arrived in his house and requested him to look for marijuana to be given to the Japanese husband of Arimbuyutan's niece. Arimbuyutan and Binomnga then went to Lagawe, Ifugao. Upon arrival in Lagawe, Arimbuyutan stayed behind while Binomnga proceeded to O-ong, Hingyon, Ifugao, using Arimbuyutan's motorcycle. When Binomnga arrived in O-ong he saw Banawor on the road. Binomnga then pleaded to Banawor to look for marijuana but Banawor replied that he did not know where to get it. Banawor was however assured by Binomnga that his friend Arimbuyutan would give him (Banawor) P50.00 per brick of marijuana. Eventually, Banawor agreed: "I will look for marijuana but it will not come from me." Binomnga then left, fetched Arimbuyutan from Lagawe and both of them left for home.

Continuing, Binomnga said that the following day, 24 September 1996, Arimbuyutan suggested that they return to O-ong to see Banawor, which they did. Banawor told them that the marijuana was in the house of Binwag. So, Arimbuyutan and Binomnga went to that house and handed P5,000.00 to the two (2) sellers of marijuana, one of whom was a certain Romy while the other was unknown to Binomnga. The money was divided between the sellers. Then Arimbuyutan told the sellers to hold the carton of marijuana in the meantime while he looked for a

ride.

Binomnga claimed that while he, Arimbuyutan and Banawor were on the road, Kangitit appeared in his tricycle. Banawor flagged him down and offered P300.00 for the trip to Lagawe. Initially, Kangitit refused to take Arimbuyutan, Binomnga and Banawor to Lagawe since he (Kangitit) was supposed to go there to buy feeds for his pigs. However, Kangitit relented. When they reached Lagawe, Arimbuyutan entreated Kangitit to bring them to Bagabag, promising to pay him P500.00 for the whole trip. It took time before Kangitit could agree. While approaching Bagabag, their vehicle was blocked by a car. A passenger of the car in plainclothes alighted, poked a gun at them, and then examined the contents of the carton. When Kangitit learned about the marijuana, he became angry and confronted Banawor in Ifugao, "Why did you not tell me that your baggage is (sic) marijuana?" The man with the gun boxed Kangitit on both sides of his body, then handcuffed him. Suddenly another one hit Kangitit on his left cheek and then something that seemed to be electrically charged was pressed against the right side of his neck. Banawor and Binomnga were likewise handcuffed.

Extending full faith and credence to the testimony of Arimbuyutan, the trial court convicted both David Banawor and Marcos Kangitit of the crime charged, as it found his testimony straightforward, consistent and credible. Banawor did not appeal, perhaps because the penalty imposed on him was only reclusion temporal in its medium period due to his minority; only the conviction of Kangitit is before us on automatic review since he was sentenced to death.

Accused-appellant Marcos Kangitit imputes error to the trial court for allegedly relying on the testimony of Arimbuyutan despite glaring substantial contradictions, and disregarding his defense of complete denial of participation in the illicit sale of marijuana. Kangitit asserts that the testimony of Arimbuyutan is diametrically contradicted by the testimony of Binomnga, and since the testimony of Arimbuyutan is uncorroborated while that of Binomnga is substantiated by the testimonies of Banawor, Kangitit himself and his wife, Binomnga's testimony deserves more weight.

Accused-appellant maintains that he was supposed to buy feeds for his hogs in Lagawe on 24 September 1996 when a certain Julio Damugdog boarded his tricycle and alighted only after travelling a kilometer. Then he was flagged down by Arimbuyutan who hired his tricycle for P300.00 to Lagawe. Banawor, who was with Arimbuyutan, loaded a carton in his sidecar and that upon reaching Lagawe Arimbuyutan offered an additional P200.00 to transport them to Bagabag. Accused-appellant asserts that he learned that the carton contained marijuana only when it was opened by the NBI agents.

The core issue indeed is the credibility of Arimbuyutan. In this regard, findings of the trial court as a rule are accorded great weight and respect since it had the opportunity to observe the demeanor of the witnesses as they testified, hence, availed of the various aids to determine whether the witnesses were telling the truth or concocting lies.[4] Unless substantial facts and circumstances have been overlooked or misunderstood, which if considered would materially affect the result of the case, the findings of the trial court should be sustained.[5] In the present case, an examination of the records discloses that no such facts and circumstances of substance were overlooked or misunderstood by the trial court. Arimbuyutan testified in this manner -

PROS. ORDOÑEZ: As Under Cover Operative of the NBI, do you know one by the name of David Banawor?

A:

I know, sir.

Q:

Kindly tell us how were you able to know him?

A:

When I went to O-ong, Hingyon, Ifugao, to gather information, I saw this group, sir.

Q:

When was that when you went to O-ong, Hingyon, Ifugao?

A:

September, 1996, sir.

Q:

Now what did you do when you came to know David Banawor?

A:

I asked them if they knew who are (sic) selling marijuana, sir.

Q:

And what was the answer they gave, if any?

A:

They said, "we are selling marijuana," sir.

Q:

So when they said that to you, as an under cover operative, what did you do next if any?

A:

I went to Director Figueras informing him that there was somebody who is (sic) selling marijuana, sir.

COURT:

But you stated a while ago that you saw a group of persons from when you inquired where there is (sic) somebody who is (sic) selling marijuana and you said also that somebody replied; now who is that somebody (who?) replied that they are (sic) selling marijuana, if you know?

A:

David Banawor, Fermin Bubok and Marcos Kangitit, sir (underscoring supplied).

Q:

And when you reported to Director Figueras, what did he tell you if any?

A:

He told me to return there to buy sample, sir.

Q:

So did you return to Hingyon, Ifugao?

A:

Yes, sir.

Q:

And what did you do when you arrived there?

A:

x x x I looked for this David Banawor then I asked him for a sample to have it seen by the buyer, sir.

Q:

And did he show you a sample of that marijuana?

A:

Then they gave me one (1) kilo and I paid them P650.00, sir.

Q:

x x x after paying the amount of P650.00 for that one (1) kilo of marijuana as sample, what did you do next?

A:

Then I went back to Director Figueras and gave that sample to him for laboratory examination, sir.

Q:

And what happened next after that sample was tested for laboratory examination?

A:

After it was found out that the sample was positive for marijuana then Director Figueras gave P5,000.00 and ordered me to return in (sic) Ifugao which amount to be used in procuring another marijuana, sir. When I arrived there, I showed them (referring to Banawor) the amount, they in turn showed me the 10 kilos of marijuana. I also told them if I could pay just a partial amount of P2,000.00.

Q:

Did they agree to your proposal?

A:

No, sir.

Q:

What did they say?

A:

They said, "if you could give us P5,000.00 advance, we will give you the marijuana and bring you to your destination, sir.

Q:

And who said that to you?

A:

It was David Banawor, sir.

Q:

Did you agree to that condition they gave you?

A:

Then I agreed to their request, sir. I gave them the P5,000.00 and they divided the amount among themselves.

Q:

You said, they divided the amount among themselves, who were they who divided the amount you gave?

A:

David Banawor, Marcos Kangitit and Fermin Bubok, (underscoring supplied) x x x x After that, they got the motorcycle which they were using in transporting, sir x x x x When we were already aboard the tricycle, I told them that I will (sic) give the balance of P 1,500.00 in Bagabag, Nueva Vizcaya after Lamut sir.

Q:

And so what did they do with the marijuana after you have already agreed that the balance of P1,500.00 will (sic) be paid in Bagabag?

A:

Then they took me aboard the tricycle up to Bagabag, Nueva Vizcaya where the NBI posted themselves, sir.

Q:

Before that, what did David Banawor do with the 10 kilos of marijuana?

A:

He loaded the marijuana inside the tricycle, sir x x x x In the compartment of the sidecar, sir x x x x

Q:

Now when you saw NBI Agents while you were approaching in Bagabag and while riding on the tricycle, what did you do?

A:

We had a pre-arranged signal between us that if I will (sic) remove my hat, it's understood that the marijuana is

(sic) already in the tricycle, sir x x x x Then we were flagged down by NBI Agents, sir.

Q:

And what did Marcos Kangitit do as a driver of the tricycle when they flagged down the tricycle?

A:

He drove the tricycle faster, sir x x x x We were chased and cornered in between these two (2) vehicles, sir.

Q:

And what did the tricycle driver Kangitit do after they were chased by the NBI?

A:

He stopped the tricycle when we were cornered, sir x x x x When the NBI approached the tricycle, they opened the carton and they saw marijuana there, sir.

Q:

And who among the agents opened the carton?

A:

Agent Dizon, sir.

Q:

And what did Agent Dizon do after opening the carton?

A:

They got the tricycle including Marcos Kangitit and the marijuana, sir.

COURT:

What about David Banawor, what did they do with him?

A:

They were handcuffed including Marcos Kangitit, sir x x x x

Q:

You stated that the 10 kilos of marijuana was loaded in the tricycle, did you ever come to know how many bricks of marijuana were loaded in the carton?

A:

Ten (10) bricks, sir x x x x[6]

Arimbuyutan was grilled during the cross-examination but never wavered in his testimony that Banawor and Kangitit belonged to the group peddling marijuana on 23 and 24 September 1996 -

Q:

When you went to O-ong, Hingyon, Ifugao, whom did you see there?

A:

David Banawor and Marcos Kangitit, sir x x x x

Q:

You want to tell the Hon. Court that on that date September 23 you met David Banawor and Marcos Kangitit, not only David Banawor?

A:

I saw both of them and they were the ones transporting, sir x x x x

Q:

And when you submitted as you claimed the one kilo to Director Figueras, did you mention the source of the one kilo that you got?

A:

Yes, sir.

Q:

You mentioned Fermin Bubok, is it not?

COURT:

As what?

ATTY. BAGUILAT: As the source of the one (1) kilo or less, your honor.

A:

The three of them, sir x x x x David Banawor, Fermin Bubok and Marcos Kangitit, sir x x x x

Q:

Did you pay Fermin Bubok?

A:

I gave them P650.00, sir.

Q:

You gave it to Fermin Bubok?

A:

To them, sir x x x x Their group, sir.

COURT:

Who are the members of this group that you were talking about?

A:

Fermin Bubok, Marcos Kangitit and David Banawor, sir x x x x

Q:

Now, the following day September 24, what did you do x x x x in relation to this case as you said that you are (sic) an undercover of the NBI?

A:

I reacted because I found out that it was positive for marijuana, then I returned to get the 10 kilos as promised, sir.

Q:

You said pangako or promise, who made that promise to you, is (sic) it Johnny Binomnga Jr., your companion?

A:

They, sir, Marcos Kangitit, David Banawor and Fermin Bubok x x x x

Q:

When did they promise that to you?

A:

They told me "if you return to get the 10 kilos, we will give you but we need the money."

Q:

And with that understanding, you went back to your Director and you got the P2,000.00?

A:

Five Thousand (P5,000.00) Pesos was given to me by Director Figueras, sir.

Q:

When did you get that P2,000.00?

A:

That P2,000.00, I was making an arrangement to (sic) them that I will (sic) just give the P2,000.00 as my partial payment but they refused, sir.

Q:

When was (sic) that thing transpired?

A:

September 24, 1996, sir.

Q:

When they did not get that, you only have P2,000.00 with you?

A:

I had with me the P5,000.00 but I only showed them the P2,000.00 as I was arranging with them to have a partial payment but they refused. So, I told them to bring me to my destination so that I could get the P5,000.00.

Q:

And on that date September 24, you went to O-ong, Hingyon, Ifugao with Johnny Binomnga, Jr., is it not?

A:

Yes, sir.

Q:

And who were the people you met there when you negotiated the 10 kilos?

A:

David Banawor, Fermin Bubok and Marcos Kangitit, sir x x x x[7]

Summing up, after receiving information that Banawor, Kangitit and Bubok were selling marijuana in O-ong, Arimbuyutan conducted a test-buy of marijuana on 23 September 1996 upon orders of Director Figueras. He asked Binomnga to accompany him, being a native of Ifugao who could dispel suspicion by the group of Banawor. Arimbuyutan was able to buy a kilo of marijuana from Banawor's group for P650.00. The item was tested positive for marijuana. The following day, 24 September 1996, Arimbuyutan went again to O-ong together with Binomnga to purchase ten (10) kilos more of marijuana upon further instruction of Director Figueras. Arimbuyutan gave an initial payment of P5,000.00 with the agreement that Banawor and Kangitit would transport him to Bagabag and there collect the balance of P1,500.00. The bricks of marijuana contained in a carton, while being transported in consonance with a trap set up by the NBI, were confiscated by NBI Agents of the Nueva Vizcaya District Office, the CAVRO and the Narcotics Division in Manila. Consequently, Banawor and Kangitit were arrested. The ten (10) bricks weighing 9.660 kilograms were tested positive for marijuana.

Arimbuyutan who, according to the trial court, testified in a categorical, straightforward and spontaneous manner, and who remained consistent on cross-examination, is a credible witness.[8] His testimonies on the actual sales transactions may have been uncorroborated but they weathered intense cross-examination and passed the test of credibility. Moreover, accused-appellant failed to show any ill motive on the part of Arimbuyutan to testify falsely and impute a serious offense to him and Banawor. Where there is no evidence to indicate that a principal prosecution witness was actuated by improper motive, the presumption is that he was not so actuated. He would not prevaricate and cause damnation to one who brought him no harm or injury.[9]

As against these categorical assertions of Arimbuyutan is the lean claim of Binomnga that no marijuana was given

by Banawor to Arimbuyutan on 23 September 1996. To the trial court this allegation of Binomnga was utterly baseless -

While the accused and Binomnga, Jr., their witness, denied that there was a test-buy, the presence of NBI Agents from the Narcotics Division in Manila belie such denial. It stands to reason that, considering the expenses and loss of man-power elsewhere that the NBI had to face in bringing the Narcotics and CAVRO agents to this province to conduct such operation, the operation would not have been initiated and launched at all if there was no firm foundation for such operation. The only way to assure success of such operation involving agents from Manila was to conduct a test-buy, firstly, to determine the identity of the dealers of the dangerous drug, and, secondly, to verify if the same dealers still had some stocks of the contraband after the test-buy. Without this basic foundation being laid first, the agents would be faced with a definite failure. Hence, the Court believes that such test-buy was actually conducted. And the Court also believes that Banawor, Kangitit and Bubok were the sellers of the drug in the test-buy. The trap set up by the NBI which resulted in the arrest of the accused herein and the confiscation of the marijuana could not have been the result of happenstance nor coincidence. The manner in which the entrapment was set up could have resulted only from certainty of success due to advance information. The defense claim, therefore, that there was no test-buy seems to have no leg to stand on.[10]

Binomnga also attempted to lend succor to Banawor by shielding him with the defense that Arimbuyutan had instigated the whole incident, as well as to completely exclude accused-appellant from the indictable scenario by claiming that he was a total stranger to the illegal transactions. But, as correctly perceived by the trial court, Binomnga's reason for siding with accused-appellant was -

x x x The Court believes that Binomnga, Jr. joined the safari for marijuana under the belief that there was something profitable for him emanating from Arimbuyutan's project. The belief must have been engendered (and cultivated by his friend, Arimbuyutan) before the test-buy was conducted on September 23, 1996 when Binomnga was informed by Arimbuyutan that he was looking for marijuana so that he could give the same to a Japanese. The sweet smell of money must have been going around Binomnga's head when he learned that a Japanese was interested in marijuana. It is not farfetched that to clinch the full consent of Binomnga to accompany his friend in this "adventure," Arimbuyutan promised him some monetary reward upon the completion of their mission so that when on the following day, September 24, 1996, Binomnga instead of receiving a reward, was unceremoniously handcuffed by the NBI agents like a common criminal he must have felt betrayed by his friend, Arimbuyutan, and decided to lash back at him and the agents of the law. Since the only way to do this was to testify against Arimbuyutan and his "patrons," the NBI agents, by traversing the testimonies of these prosecution witnesses, he did so.[11]

The trial court noted that as a result of Binomnga's effort to project himself as an independent and unbiased witness, his testimonies became inconsistent. For instance, he only named a certain Romy as one (1) of the two (2) alleged owners of the marijuana he knew in his initial testimony.[12] At the next hearing, he named a certain Martin as another owner.[13] In the same testimony he said that, with reference to the incident on 24 September 1996, "[a]fter sharing each one the money, Boyet (Arimbuyutan) told to the two (2) persons 'you hold this carton and I will look for a ride, sir.'"[14] In the next breath, Binomnga changed his tune when he said, "Boyet instructed David Banawor saying 'you hold this and bring it out, sir.'"[15] Still, he claimed that before the carton was loaded in the tricycle, nobody inspected the contents thereof.[16] Later, however, he contradicted himself when he said, "Cecilio Arimbuyutan first checked the carton before I handed the money, sir." [17] Quite apparently, as the trial court rightly observed, Binomnga's inconsistencies in his testimonies were the result of an attempt to tailor the same to conform with the pre-fabricated defense of the accused-appellant.

Accused-appellant insists that it was not a contract of illegal sale of marijuana which he entered into with Banawor, Arimbuyutan and Binomnga but rather a contract of transportation. Again, we are in full accord with

the finding of the trial court that accused-appellant could not feign ignorance of the unlawful transactions and thus was equally liable with Banawor. We shall quote, quite extensively, the well-reasoned observations of the trial court:

With respect to Kangitit's posture of innocence, no credence can likewise be extended to it. As already pointed out, the buy-bust operation was a well-planned operation by an old and experienced law-enforcement organization manned by well-trained agents who are mostly lawyers and CPAs. It is, therefore, unlikely that those who organized and participated in the entrapment of the culprits would leave anything to chance. Hailing a passing tricycle of Kangitit, as claimed by him, is leaving the success of the operation to chance. In an entrapment operation like the one conducted in this case, no little detail is too unimportant to be considered, no contingency is too insignificant to be disregarded, no possible problem is too little to be unworthy of attention. In an entrapment in cases like this one, the agents are putting their life on the line. Hence, every little detail of the possible movements of the persons they seek to entrap and their own movements are scrutinized and the agents prepare their counter measure to every possible contingency on the basis of this scrutiny. It is thus unbelievable that the NBI operatives would leave the matter of transporting the contraband and their quarries to the vagaries of fortune. The Court believes that since Arimbuyutan could not pay the deficiency in the sum of P1,500.00, which was part of the entrapment plan, it was in accord with human nature for the dealers of marijuana not only to accompany the contraband but likewise to provide the needed transportation to ensure the payment of the difference in the purchase price. They could not afford to wait for the deficiency in the payment made of the price and due to this fact refuse to deliver the marijuana because keeping the marijuana while waiting for the deficiency of payment would be dangerous considering that an outsider, Arimbuyutan, already knew of the existence and location of the marijuana. They idiomatically had a very hot potato in their hands. They had to unload the marijuana, so to speak, but before doing so, they wanted to make sure that the full purchase price was paid to them. It was, therefore, necessary for the accused to deliver the marijuana and to obtain the purchase price. It was thus to their best interest that the contraband be speedily transported to Bagabag and to get rid thereof as early as possible. That the accused provided the transportation is, therefore, a logical step for said accused. When the entrapment was being planned, the organizers and participants knew that greed would be a very important and a decisive factor in the operation. Unfortunately for the accused, their greed delivered them to the hands of their captors.

Also, that Kangitit was in conspiracy with Banawor is demonstrated by the fact that when his vehicle was being flagged down in Bagabag by the NBI Agents, instead of stopping, the tricycle driven by him (Kangitit) increased its speed. The vehicles of the agents had to chase the tricycle and corner it before it stopped. If the driver of the tricycle did not know the nature of the carton's content, he would have outrightly stopped the tricycle upon being signalled to stop. He did not; instead, he increased the speed of his vehicle. An innocent man, given the same factual environment, would have stopped his vehicle. That he did not stop and, instead, drove his vehicle faster has not been denied by Kangitit. All he testified to was that his vehicle was blocked by the car of the agents. That the chasing incident actually transpired can be inferred from Kangitit's testimony that the agents maltreated him. His maltreatment, if true, must have resulted from his action of ignoring the lawmen when they tried to flag the vehicle which was followed by his hostile attitude towards them when he already alighted from the vehicle. It is noted that Banawor and Binomnga, Jr. did not receive the same violent treatment from the hands of the agents, albeit they were also handcuffed. As the two did not testify that they were maltreated, the presumption is that they were not violated.

It may be argued that Kangitit did not stop because he did not know that the men who were stopping him were agents of the law. A prosecution witness who participated in capturing the accused testified that they were wearing the chaleco uniform with the acronym NBI at the back. It is of public knowledge that when the NBI agents conduct an operation, they usually wear the chaleco with the letters NBI at the back to avoid mis-encounter with other law-enforcement agents like the police operatives within the same area. More, as between the testimony of an NBI agent and those of Binomnga, Jr. and Banawor, that of the NBI man is more acceptable because it is more in accord with the SOP followed by the Bureau while that of Banawor is

self-serving and that of Binomnga, Jr. is highly suspicious.[18]

In addition, the testimony of accused-appellant suffers from infirmities. First, he declared that on 24 September 1996 he went out of his house on board his motorcycle to buy feeds in Lagawe. A few meters away he allegedly picked up Julian Damugdog who rode with him for about a kilometer. Yet, he never presented Damugdog to confirm his version of the incident. Second, he claimed that when Arimbuyutan flagged him down, the latter offered to hire his vehicle for P300.00, which he supposedly declined. However, for no conceivable reason at all, he changed his mind and permitted Arimbuyutan and his companions to ride in his tricycle. Third, such claim contradicted the testimony of Binomnga that it was Banawor who hailed his tricycle.

From the facts spread on record we conclude that the guilt of accused-appellant for illegal sale and delivery of marijuana punished under RA 6425 on 24 September 1996 has been proved beyond reasonable doubt. However, despite the well-argued ponencia, the trial court erred in imposing the death penalty and at the same time failed to impose fine on accused-appellant. As amended by RA 7659,[19] Sec. 20, Art. IV, of RA 6425 now provides inter alia that the penalty imposed in its Sec. 4, Art. II, shall be applied if the dangerous drugs (either prohibited or regulated) is, with respect to marijuana, 750 grams or more. Here, the marijuana involved weighed 9.660 kilograms. As now provided in Sec. 4, the sale and delivery of prohibited drugs, marijuana being one of them, carries with it the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand (P500,000.00) pesos to ten million (P10,000,000.00) pesos. Inasmuch as the law prescribes two (2) indivisible penalties, a resort to Art. 63 of the Revised Penal Code is necessary.[20] There being no mitigating nor aggravating circumstance that attended the commission of the offense, the lesser penalty of reclusion perpetua should be imposed. Moreover, the fine of P650,000.00 imposed by the trial court on David Banawor alone should likewise be imposed on accused-appellant in solidum.

WHEREFORE, the Decision finding accused-appellant MARCOS KANGITIT Y BOLIGON guilty of illegal sale and delivery of marijuana under Sec. 4, Art. II, of RA 6425, as amended, and sentencing him to death is MODIFIED as to penalty. Accused-appellant is sentenced instead to reclusion perpetua and ordered to pay a fine of P650,000.00 solidarily with his co-accused David Banawor. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.
Ynares-Santiago, J., on leave.

[1] Information dated 25 September 1996; Records, p. 20.[2] The Dangerous Drugs Act of 1972.[3] Decision penned by Judge Jose B. Rosales, RTC-Br. 27, Bayombong, Nueva Vizcata; Rollo, pp. 45-46.[4] *People v. Laurente*, G.R. No. 116734, 29 March 1996, 255 SCRA 543.[5] *People v. Sotto*, G.R. Nos. 106083-84, 29 March 1996, 255 SCRA 344; *People v. Malazarte*, G.R. No. 108179, 6 September 1996, 261 SCRA 482.[6] TSN, 11 March 1997, pp. 3-9.[7] TSN, 12 March 1997, pp. 8-12.[8] *People v. Galimba*, G.R. Nos. 111563-64, 20 February 1996, 253 SCRA 722.[9] *People v. Simon*, G.R. No. 56925, 21 May 1992, 209 SCRA 148.[10] Rollo, p. 40.[11] Rollo, pp. 43-44.[12] TSN, 5 June 1997, p. 7; TSN, 3 July 1997, p. 3.[13] TSN, 10 June 1997, p. 3.[14] *Id.*, p. 2.[15] *Id.*, p. 3.[16] *Id.*, p. 4.[17] TSN, 3 July 1997, p. 3.[18] Rollo, pp. 41-43.[19] The Death Penalty Law.[20] *People v. Montilla*, G.R. No. 123872, 30 January 1998, 285 SCRA 703.

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