

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GATUDAN BALAG-EY AND EDWIN ALIONG Y SUNGOT, APPELLANTS.

*G.R. No. 141532. April 14, 2004*

Ponente: PANGANIBAN, J.

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### PANGANIBAN, J.:

Those who engage in the illicit trade of dangerous drugs and who prey on misguided members of society must be caught and put behind bars. To do this, however, the prosecution must prove their guilt beyond reasonable doubt. Without such proof, acquittal is the only recourse.

#### The Case

Gatudan Balag-ey and Edwin Aliong appeal the October 20, 1999 Decision[1] of the Regional Trial Court (RTC) of Baguio City (Branch 6) in Criminal Case No. 16100-R, in which they were found guilty of illegal possession and attempted sale of prohibited drugs. The dispositive portion of the assailed Decision reads:

"Wherefore, the Court finds accused Gatudan Balag-ey and Edwin Aliong guilty beyond reasonable doubt of the offense of illegal possession of and attempt to sell marijuana with a total weight of 18,352.82 grams in violation of Section 21, Article IV in relation to Section 4, Article II of Republic Act 6425, as amended by Republic Act 7659 as charged in the Information which is included in the offense of sale or delivery of marijuana proved and hereby sentences each of them to the penalty of Reclusion Perpetua and to pay the fine of P500,000.00 each, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"The accused Gatudan Balag-ey and Edwin Aliong, being both detention prisoners, are entitled to be credited 4/5 of their preventive imprisonment in the service of their sentence in accordance with Article 29 of the Revised Penal Code.

"The 18,352.82 grams of bricks of marijuana contained in the cigarette box with the marking Philip Morris are forfeited in favor of the State to be destroyed immediately in accordance with law." [2] (Citations omitted)

Appellants were charged in an Amended Information[3] dated December 9, 1998, as follows:

"That on or about the 28th day of September, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding x x x each other, without any authority of law, did then and there willfully, unlawfully and feloniously have in their possession and attempt to sell twenty (20) bricks of dried marijuana leaves/fruited tops, a prohibited drug, weighing about 18,352.82 grams (actual weight) more or less, to SPO1 DANILO P. NATIVIDAD, a member of the Philippine National Police, 14th Narcotics Regional Office, who acted as poseur buyer, for P1,000.00 per kilo, in violation of the aforecited provision of law." [4]

During their respective arraignments on December 21, 1998[5] and January 21, 1999,[6] appellants, with the assistance of their counsels de parte,[7] pleaded not guilty to the charge. After trial in due course, the court a quo rendered the assailed Decision. It also denied appellants' Motion for Reconsideration.[8]

## The Facts

### Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"About 10:30 in the morning of September 28, 1998, the 14th Narcotics Regional Office (NARCOM) with office at DPS Compound, Baguio City, received a confidential information from Roger Imasa that a certain Gatudan of La Trinidad, Benguet, was engaged in the sale of marijuana. He was allegedly looking for buyers. Police Senior Inspector Rodolfo Castel formed a team for the possible arrest of Gatudan. SPO1 Danilo Natividad was designated as poseur buyer with SPO1 Pedro Rabago and PO2 Emerson Lingbawan as back-up. SPO1 Natividad was given the boodle money.

"Later in the morning of the same day, SPO1 Natividad and Imasa were able to locate Gatudan at the Universal Martial Arts Gym along Zandueta Street, Baguio City. Imasa introduced SPO1 Natividad to Gatudan as a friend and a drug user. After a brief conversation, Gatudan agreed to sell to SPO1 Natividad all of his available marijuana, about 20 kilos in all, at P1,000.00 per kilo. They agreed to meet at five in the afternoon in front of Jollibee at the Session Road. The buy-bust team was alerted and briefed.

"About 4:30 in the afternoon of the same day, Imasa, SPO1 Natividad, SPO1 Rabago and PO2 Lingbawan proceeded to Jollibee Session Road on board a taxi. SPO1 Rabago and PO2 Lingbawan positioned themselves in the vicinity while SPO1 Natividad proceeded to wait in front of Jollibee.

"Not long after, Gatudan alighted from a Tamaraw FX Taxi. His companion, co-accused Aliong, remained inside the taxi with the cigarette box marked Philip Morris at the back compartment of the taxi. After seeing Gatudan, SPO1 Natividad approached him and inquired about the deal. Gatudan told him that the stuff was ready and opened the [back] compartment of the taxi. He noticed the plastic straw and opened the cigarette box containing the marijuana bricks. After confirming the contents, SPO1 Natividad gave the pre-arranged signal by removing his bull cap.

"SPO1 Rabago and PO2 Lingbawan rushed to the scene. After identifying themselves as police officers, they arrested Balag-ey and Aliong. They (Balag-ey and Aliong) were informed of their constitutional rights. The box was confiscated and SPO1 Natividad put his initials on it for identification. They were brought to the NARCOM office in the same Tamaraw FX taxi driven by Vicente Garbo.

"At the NARCOM office, they issued a receipt of the property seized, prepared the booking sheet and arrest report of Gatudan. SPO1 Natividad executed his Affidavit regarding the buy-bust and arrest of Gatudan and Aliong as well as the Joint Affidavit of the back-up team.

"Preliminary findings of Alma Margarita Villaseñor, forensic chemist of the PNP Crime Laboratory in Camp Bado Dangwa, La Trinidad, Benguet, found the bricks to be positive for marijuana. A more detailed laboratory examination embodied in Chemistry Report No. D-011-98 confirmed the findings about the 20 bricks of marijuana with a total weight of 18,352.82 grams." [9] (Citations omitted)

### Version of the Defense

Vehemently denying that he was arrested during the alleged buy-bust operation, Appellant Balag-ey states his version of the facts in this manner:

"x x x [Balag-ey] was surprised when policemen in civilian [clothes] suddenly arrested him at around 5:00 p.m. of September 28, 1998, at the Universal Martial Arts Gym. The policemen immediately handcuffed him, and brought him to the NARCOM office. Upon [his] arrival at the NARCOM office, he saw Roger Imasa and accused-appellant Edwin Aliong in handcuffs.

"The NARCOM agents interrogated him and insisted that he divulge the name of the supplier of marijuana

from Sagada. Accused Balag-ey retorted that he had no knowledge of the matters being asked of him and that he was merely a student at the Universal Martial Arts Gym. However, the NARCOM agents persisted and continued to inquire for the identity of the alleged supplier of the marijuana. He was even threatened that he will rot in jail, if he failed to disclose the identity of the marijuana supplier. During his custody, accused Balag-ey was never informed of his constitutional rights and he was not provided with any counsel.”[10]

For his part, Appellant Aliong narrates the facts in this wise:

“1. [Aliong] is a martial arts instructor teaching kick boxing, combat aikido, boxing, among others at his gym at No. 49-B, Zandueta Street, Baguio City. His gym is known as the Universal Martial Arts Organization;

“2. He knows one Roger Imasa, a known asset of the x x x NARCOM, his kumpadre and one of the Martial Arts instructors at the Universal Martial Arts Organization;

“3. Likewise, he knows his co-accused, Gatudan Balag-ey. Gatudan Balag-ey is his friend way back during the 1980’s;

“4. Sometime in 1997 and again in 1998, Gatudan Balag-ey visited him at his gym. Considering that they are friends, he allowed Gatudan to practice in his gym;

“5. One time, x x x Gatudan Balag-ey asked him if he would like to have money. He asked how and Gatudan said that he knew of somebody who was looking for a buyer of marijuana.

“6. He then told Gatudan that he hates that kind of job. He even advised Gatudan to avoid that kind of job because that is difficult;

“7. He mentioned his conversation to his friend, Roger Imasa, the NARCOM asset. Roger then told him that if he likes, they would cause the arrest of Gatudan;

“8. Roger Imasa then told him to introduce him to Gatudan. Roger told him that he introduced him as someone who knows a buyer. Thereafter, he introduced Roger Imasa to Gatudan Balag-ey and when the two were introduced, they talked to each other;

“9. In the afternoon of September 28, 1998, Roger Imasa, the NARCOM [a]sset, convinced him to tell Gatudan to go somewhere. Gatudan refused. He and Roger Imasa then went to the Hangar Market. Roger then went out and when he came back, he was carrying one [carton box]. He never saw the contents of the [carton];

“10. Roger then loaded the [carton] in an [FX] Taxi. [Thereafter,] Roger told the taxi driver to bring them to the DPS Compound. However, they dropped by at the Jollibee Session Road. Roger then went out of the taxi and then told him to wait. Thus, he just sat down inside the F[X] Taxi. After 5 minutes, a man who introduced himself as a police officer went inside and sat down. He was told to sit at the front seat. About 4 men who introduced themselves as police officers went near the taxi;

“11. After the men who introduced themselves as police officers came inside the taxi, Roger Imasa was nowhere to be found. Then they proceeded to the NARCOM Office at DPS Compound, where someone -- later to be identified as Police Officer Lingbawan -- asked his companions[:] ‘Kumusta?’ (How is it?), to which one of his companions answered. ‘Palpak’ (It was a failure). The one who answered ‘it was a failure’ was the alleged poseur buyer, Police Officer Natividad;

“12. He was thereafter told to ‘just relax.’ Police officer Lingbawan then convinced him to testify that Gatudan Balag-ey was with him inside the taxi. Thereafter, Officer Lingbawan convinced him that if he would cooperate, he will become an asset and that if he refuses to cooperate, he will be implicated just the same. Thus, he agreed to become an asset and [he said] that ‘Gatudan Balag-ey was with him inside the taxi.’ For this reason, he was made to sign [an] Affidavit. Incidentally, it was the NARCOM officers who prepared the said affidavit and they merely told him to sign the same;

“13. For the record, he never saw the contents of the box and it was only at the NARCOM Office that he was informed of its contents;

“14. He was then made to stay at the NARCOM Office. The next day, September 29, 1998, he was released. And he was released because he was totally innocent of the transaction between Gatudan Balag-ey, the ‘CI’ Roger Imasa and the alleged poseur buyer, Police Officer Danilo Natividad.”[11] (Citations omitted)

#### Ruling of the Trial Court

Disregarding the defenses proffered by appellants, the trial court ruled that they had been caught, in flagrante delicto, selling or delivering 20 bricks of marijuana weighing 18,352.82 grams to the poseur-buyer -- SPO1 Natividad.

In the case of Balag-ey, the court a quo found it difficult to believe that police operatives would plant evidence against him. It also discredited his claim that he had been arrested at the Universal Martial Arts Gym along Zandueta Street, rather than at a Jollibee fast-food restaurant chain along Session Road (“Jollibee-Session Road”).

With regard to Aliong, the RTC held that he, together with Balag-ey, had loaded a cigarette box containing marijuana in a taxi, brought it to Jollibee-Session Road, and delivered it to the poseur-buyer. Thus, the trial court brushed aside the claim of Aliong that he had no knowledge of Balag-ey’s marijuana transaction.

Hence, this appeal.[12]

#### The Issues

Appellant Balag-ey raises the following supposed errors for our consideration:

“I

The trial court erred in giving full weight and credence to the testimonies of the arresting officers despite glaring inconsistencies and improbabilities.

“II

The trial court erred in finding that the guilt of Accused-appellant Gatudan Balag-ey for the crime charged has been proven beyond reasonable doubt.”[13]

Appellant Aliong, on the other hand, alleges the following errors:

“I

Whether or not the honorable trial court was correct in convicting the accused despite the conflicting testimonies of the prosecution witnesses. The police officers testified that accused and Gatudan Balag-ey rode together in the FX taxi while the alleged driver testified that it was herein Accused-appellant Aliong and another person who rode in the said FX Taxi.

“II

Whether or not the honorable trial court is correct in convicting the accused despite the testimonies of the police officers that herein accused-appellant has no knowledge of the alleged buy-bust operation. The testimonies of the police officers [show] that it was the accused, Gatudan Balag-ey, who owned the marijuana delivered to the alleged poseur-buyer, Danilo Natividad. Thus, it is incorrect for the honorable trial court to hold herein Accused-appellant Aliong in conspiracy with Gatudan Balag-ey.

“III

Considering the peculiar facts obtaining in the case at bar, whether or not the honorable trial court is correct in

convicting the accused appellant despite the fact that the alleged cooperating individual ('CI'), Roger Imasa, was not presented as a witness.

"IV

Whether or not the honorable trial court is correct in convicting the accused despite clear and hard evidence that no buy-bust operation was actually conducted as shown by the fact that no money changed hands between the alleged poseur buyer and the accused, Gatudan Balag-ey. This is further shown by the fact that no 'marked money' was produced and marked in court as evidence."<sup>[14]</sup>

In short, appellants question (1) the credibility of the prosecution witnesses, (2) the sufficiency of the prosecution evidence, and (3) the existence of the buy-bust operation.

#### The Court's Ruling

The appeal is meritorious.

First Issue:

##### Credibility of the Prosecution Witnesses

Appellant Balag-ey impugns the veracity of the testimonies of the arresting officers that he was caught in the act of selling marijuana at Jollibee-Session Road. He maintains that he was arrested at the Universal Martial Arts Gym located on Zandueta Street.

As a rule, the trial court's findings of fact and conclusions on the credibility of witnesses are accorded high respect<sup>[15]</sup> and due weight,<sup>[16]</sup> unless it has overlooked material and relevant points that would have led it to rule otherwise. In the present case, however, the RTC committed glaring factual oversights that impel us to depart from this general doctrine.<sup>[17]</sup>

The witnesses of Balag-ey -- Diosdado Mapala<sup>[18]</sup> and Angie Liza Ladiwan<sup>[19]</sup> -- testified that on the afternoon of September 28, 1998, they saw appellant in handcuffs, being led by police officers downstairs at the Universal Martial Arts Gym. Hence, they had the impression that he was arrested there. Nonetheless, the trial court ruled that their testimonies were consistent with the fact that the arresting officers had brought appellant to the gym after his arrest in this wise:

"Seventh, the testimonies of Diosdado Mapala and Angie Liza Ladiwan cannot be given weight by the court to show that Gatudan was arrested at the Universal Martial Arts Gym at Zandueta Street.

"Diosdado Mapala was not inside the Universal Martial Arts Gym at that time and so he could not say what happened inside the said Gym [or] if Gatudan was really arrested there. Mapala himself said that he was outside the Gym in front of a certain grocery and was crossing the road when he noticed Gatudan in handcuffs being accompanied by male persons coming from the direction of Universal Martial Arts Gym.

"This does not establish [with] certainty that Gatudan was arrested inside the Universal Martial Arts Gym, [b]ecause it could happen that Gatudan was arrested in Jollibee Session Road and then brought back to the Universal Martial Arts by the police and when he was coming out that was the time and occasion when Diosdado Mapala saw Gatudan in handcuffs."<sup>[20]</sup> (Italics supplied)

There is no evidence on record, however, that the arresting officers did bring Balag-ey to the gym after his arrest. Quite the contrary, SPO1 Natividad categorically averred that Gatudan had not been brought to the Universal Martial Arts Gym at any time after his alleged arrest. The police officer testified on direct examination as follows:

"Prosecutor Vergara [to SPO1 Natividad]:

Q

Aside from physical examination, did you bring him anywhere else?

A

No more, sir.

Q

He was not brought back to the gymnasium, Mr. Witness.

A

No sir.”[21] (Italics supplied)

Moreover, Garbo, the taxi driver, categorically said that when his taxi was hailed on the afternoon of September 28, 1998, Balag-ey was not Aliong’s companion. Garbo likewise testified that the police officers had not gone to the Universal Martial Arts Gym after that incident. Pertinent portions of his testimony are herein quoted:

“[Atty. Molintas:]

Q

You mean you do not know the identity of the person who was with Aliong at that time he was arrested?

A

No sir.

Q

You cannot describe him to be a short person who is with dark complexion?

A

Somewhat dark and short, sir.

Q

When Edwin Aliong was arrested in Session [R]oad, was this companion of his not brought to the NARCOM office?

A

No sir.

Q

Do you know where he went after Aliong was arrested?

A

No sir.

Q

Aside from the NARCOM officers and Edwin Aliong whom they brought to the NARCOM office, were there other companions of the NARCOM officers who followed you in another vehicle towards the NARCOM office?

A

None, sir.

Q

You said you went to Hilltop with the NARCOM officers. From the Hilltop where you went, have you seen this Universal Martial Arts Gym?

A

No x x x, sir.

Q

Anyway, the NARCOM officers told you to wait and after some time, they came back, is that your testimony?

A

Yes sir.

Q

When they came back and boarded your vehicle, they have another person or they arrested another person, is that correct?

A

I did not notice, sir.

Q

This person you mentioned a while ago who identified himself as Gatudan Balag-ey, you said that you saw him at the Fiscal's Office when you were investigated, would that be correct?

A

Yes sir.

Q

That was the first time you saw him, would that be correct?

A

Yes sir.

Q

You did not see him at that time of the arrest of Edwin Aliong?

A

Inside the taxi sir, no sir.

Q

You mean when Edwin Aliong was arrested, Gatudan Balag-ey was not inside the taxicab?

A

No x x x, sir.

Q

And in fact, Gatudan Balag-ey could not be the companion of Edwin Aliong because Gatudan Balag-ey is quite tall and fair in complexion while the companion of Edwin Aliong was quite dark and short, would that be correct?

A

Yes sir.

COURT:

The court would like to be clear on that. You are telling this court then that the two persons who boarded that box in your taxi, one of whom was Aliong but the other is not Balag-ey, is that what you are telling the Court?

A

No, sir. But his features, it is not like him.

COURT:

Continue

Atty. Molintas:

Q

In fact, you testified on this matter before Fiscal Vergara when you were investigated in his office, would that be correct?

A

Yes sir.

Q

Could you tell the Court who prepared that Affidavit which you identified earlier as your Affidavit?

A

It was prepared at the NARCOM office.

Q

After they prepared that, they released you on the same date on September 28, 1998, would that be correct?

A

Yes sir.

Q

In other words, you were made to sleep at the NARCOM office on September 28, 1998?

A

I did not sleep there, sir.

Q

So where did you sleep on the night of September 28, 1998?

A

In our house, sir.

Q

At the NARCOM office, you said earlier that you never met Gatudan Balag-ey, would that be correct?

A

Yes sir.

Q

In your Affidavit, a name Gatudan Balag-ey was indicated, do you know who included this name Gatudan in your Affidavit?

A

The person who investigated me whose name I do not know wrote that, sir.

Q

Because the truth is, you never knew Gatudan Balag-ey and you never met him on September 28, 1998, correct?

A

Yes sir.”[22]

x x x x x x x x

“[Atty. Dumawing:]

Q

So the 6th paragraph of your Affidavit which states and I quote, “That when we arrived in front of Jollibee, one male alighted from the taxi and proceeded inside the Jollibee and when they returned he has already one male companion and they went near my taxi and his (Gatudan) male companion checked the contents of the box and later announced that he is a Narcotics agent until other members of the Narcotics agents arrived and arrested my passengers and proceeded to Narcotics Office at DPS Compound, Baguio City x x x’ is not entirely correct, is it not, Mr. Witness?

A

Yes sir because when I was relating, they were typing it.

Q

Now, the Court wants to be very clear on that, so that there will be no mistakes about it. You are telling us then that it was not Gatudan Balag-ey who alighted from your taxi, then came back with another companion to check the contents of the box in the taxi?

A

No sir.”[23]

Even Along said in his testimony that for fear of being implicated, he was forced to declare that Balag-ey had

been arrested with him at Jollibee-Session Road. He testified thus:

“[Atty. Dumawing:]

Q

So, after you arrived at the NARCOM Office at the DPS Compound, what happened, if any?

A

They told me, ‘Edwin, just relax.’ Then they talked to each other.

Q

Do you know what they were talking about?

A

No, sir, because I went out.

Q

What happened after that?

A

After they talked, Li[ng]bawan called me.

Q

Do you remember for how long they were talking?

A

About more than 5 minutes, sir.

Q

And where were you during all these 5 minutes that they were talking?

A

I was outside, sir.

Q

Outside of...?

A

Outside of the NARCOM office, sir.

Q

So, when this Li[ng]bawan finally called you, what did he tell you, if any?

A

Li[ng]bawan was convincing me to testify that Gatudan Balag-ey was with me inside the taxi.

Q

What did you say to his proposal, Mr. Witness?

A

I refused because I told him Gatudan Balag-ey was not my companion.

Q

What was the response of Li[ng]bawan when you refused?

A

He talked to me and even hit my conscience. He told me to think it over because I should think of the number of persons who could be destroyed by that box of marijuana, that it might include my children or even my relatives. And he told me that it was already confirmed that Gatudan Balag-ey is a pusher and he asked me to cooperate.

Q

What else did he tell you, if any, in order to convince you?

A

He told me that if I cooperate, I will be officially included as an asset.

Q

What else?

A

No more, sir.

Q

He did not threaten you?

A

He told me that if I don't cooperate, I will be implicated just the same.

Q

So, what was your response to Li[ng]bawan when he said that?

A

I told him that Gatudan Balag-ey might take revenge against me.

Q

When you told that to Li[ng]bawan, what did he say, if any?

A

He told me not to worry because they will take care of me.

So, what followed next, Mr. Witness?

When he told me that, I agreed to be an asset [and] to say that Gatudan Balag-ey was with me inside the taxi.

Why did you finally agree to testify falsely against Gatudan Balag-ey?

PROS. VERGARA:

Already answered.

COURT:

May answer.

WITNESS:

A

Because Li[ng]bawan told me that Gatudan Balag-ey is a confirmed pusher. So, because as I said I hate that kind of activity, I agreed.

Q

Mr. Witness, you executed an [a]ffidavit earlier marked by the prosecution as Exhibit 'H.' Who prepared this [A]ffidavit?

A

The NARCOM officers, sir.

Q

Who particularly among the NARCOM officers?

A

What I know is it was Li[ng]bawan who prepared it because he was the one talking to me and he was the one who showed it to me.

Q

Did you understand all the contents of this [A]ffidavit of yours?

A

No sir, only the first part.

Q

What particular part of this [A]ffidavit did you understand, Mr. Witness?

A

Only that portion which says that Gatudan Balag-ey was with me inside the taxi. And when I saw that, I did not mind the rest anymore.

Q

By the way, what is your highest educational attainment, Mr. Witness?

A

Second year high school, sir.

Q

Now, Mr. Witness, are the contents of this [A]ffidavit true as far as you know?

A

No, sir.

Q

Now, Mr. Witness, despite knowing that the contents of this [A]ffidavit are not true, why did you sign it?

A

Because the NARCOM officer told me that if I will not sign it, I will be implicated.

COURT: (to witness)

Q

Did you realize that by your testimony now you have actually implicated yourself because in your testimony you are the one who brought the box of marijuana to Jollibee Restaurant in that taxi?

A

What I agreed with Roger Imasa was to bring that carton of marijuana to the NARCOM office, sir.

COURT:

Continue.

ATTY. DUMAWING:

Q

Mr. Witness, have you seen the contents of that box?

A

No, sir.

Q

Did you ever personally hold that box?

A

No, sir.

Q

Now, Mr. Witness, you finally agreed to testify against Gatudan Balag-ey. What did Li[ng]bawan do, if any, after that?

A

He told me to call up the gym and inform them that a NARCOM officer will go to the gym and that they should show that officer who Gatudan is.

Q

What did you do after that?

A

I called my wife by phone and relayed to her what Li[ng]bawan told me, that when they arrive at the gym they will point Gatudan to them.

Q

So, after you called your gym, as instructed by Li[ng]bawan, what did the NARCOM people do, if any?

A

I told Lingbawan that I made a call. After that, they talked for a while and then they left.

Q

Do you know where they proceeded to?

A

What I know is they proceeded to the gym because that is where they asked me to make a call.

Q

So, what happened after they left?

A

After 30 minutes, they came back with Gatudan Balag-ey, sir.”[24] (*Italics supplied*)

Because of the vacillating statements of Aliong, the trial court regarded his testimony as dubious and highly suspect. Still, it should not have been dismissed outright, as he had been able to give an adequate explanation for his testimonial change. Besides, he had nothing to gain from testifying that Balag-ey had not been with him during the alleged buy-bust operation.

The foregoing points show the lack of credibility of the prosecution's that Balag-ey was arrested while in the act of selling marijuana at Jollibee-Session Road.

Balag-ey also protests the denial of his right to counsel during his custodial investigation. Section 12 of Article III of the Constitution provides that any person under custodial investigation for the commission of an offense should have a right to independent and competent counsel at very phase of the investigation -- from its inception to its end. [25]

Both PO1 Natividad and PO3 Emerson Lingbawan affirmed that Balg-ey had not been assisted by counsel at any stage of the investigation. During cross-examination, they testified as follows:

“Atty. Molintas [to PO1 Natividad]:

Q

How about Gatudan, did you provide him [with] a lawyer at that time?

A

We did not provide him because he did not give his affidavit or any confessional statement?

Q

Is that your procedure? You only get a lawyer to assist him if you intend to get his confession?

A

Yes sir.

Q

You do not provide him a counsel so that ...

A

We apprised [him of] his constitutional rights but ...

Q

Yes. The question is -- you do not find it necessary or you do not know that the law require[s] that you provide him a lawyer?

A

But he did not require any lawyer.

Q

Maybe you did not ask him to give any but do you know that the law requires you as a detaining officer to provide him a lawyer?

A

Yes, your Honor, we told him but ...

Q

The question is, do you know that you are required to provide him a lawyer immediately after his arrest?

A

Yes sir.

Q

And despite that, you did not provide him any lawyer?

A

No more sir.

Q

In fact you have a very big Memorandum in your office regarding Republic Act 7438?

A

Yes sir.

Q

And you allowed Garbo to get in touch with a lawyer and submit an affidavit and in fact you did not recommend that he be prosecuted?

A

Because he gave a voluntary affidavit that is why when the investigator took it after reading the affidavit he conferred with his own lawyer.

Q

And that affidavit was prepared by your investigator?

A

Yes sir.

And likewise you did not recommend the prosecution of Aliong because he also gave his affidavit?

Yes sir.”[26]

xxx xxx xxx

“Atty. Dumawing [to PO3 Lingbawan]:

Q

Between 5:00, a little past 5:00 and until the afternoon of September 29, 1998, these two accused were under your custody?

A

Yes sir.

Q

And while they were under your custody they were not assisted by counsel?

A

None sir.

Q

Notwithstanding the fact that you informed them of their constitutional rights?

A

We only informed their relatives sir.”[27]

The violation of Balag-ey’s right to counsel during his custodial investigation excludes, from the ambit of the trial court’s evidence, his alleged extrajudicial admission that he was the owner of the seized marijuana.[28]

Second Issue:

Sufficiency of Prosecution Evidence

Balag-ey and Aliong were charged with violation of Section 4 in relation to Section 21 of RA 6425, as amended by RA 7659[29] -- an offense they allegedly committed by “conspiring, confederating and mutually aiding each other, without any authority of law, [and by] hav[ing] in their possession and attempt[ing] to sell twenty (20) bricks of dried marijuana leaves/fruited tops, a prohibited drug x x x.”

The aforementioned Section 4 penalizes “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 a broker in any of such transactions.” This provision is violated by the commission of any of the acts specified therein or a

combination thereof.[30] Moreover, the prevailing doctrine is that “possession of prohibited drugs” is a necessary element in the offense of selling them, except where the seller is also found in possession of another quantity of prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.[31]

On the other hand, the aforecited Section 21 punishes an attempt or a conspiracy, among others, in the “[s]ale, administration, delivery, distribution and transportation of dangerous drugs.” This is one of the few instances when the law specifically punishes mere conspiracy.[32]

Having charged the accused with conspiracy, it was incumbent upon the prosecution to prove that Balag-ey and Aliong had come to an agreement concerning the possession and the sale of marijuana and had decided to execute the agreement.[33]

Furthermore, in a prosecution for the sale of dangerous drugs, it is material and indispensable (1) to prove that the accused sold and delivered the prohibited drug to another, as well as to present in court the corpus delicti as evidence; and (2) to prove that the accused knew that what was sold and delivered was a dangerous drug.[34] The attempt to sell the drugs may be established by overt acts showing that the accused knowingly commenced the commission of the crime.[35]

The flaws and the insufficiency of the evidence against Balag-ey have been discussed earlier. We shall now take up the sufficiency of the evidence against Aliong.

Aliong was not identified by the entrapping police officers as one of those who had offered to sell marijuana to SPO1 Natividad. It was neither alleged nor established that the two had been in contact prior to the supposed buy-bust operation. It was not shown that the former had, at any time, known that the contents of the Philip Morris cigarette box were prohibited drugs. It was not he, but his companion, who loaded the box into the baggage compartment of the taxi,[36] according to the testimony of Garbo, the taxi driver. As to who the companion of Aliong had been was not adequately proven. When the testimonies of the latter and of Prosecution Witness Garbo are taken together, it becomes reasonably doubtful that the companion referred to was Balag-ey.

Hence, except for the fact that Aliong was on board the taxi from where the box of marijuana was seized, and that he was the one who paid extra fare to the driver while they waited for the return of the former’s companion, there is no evidence that Aliong conspired with Balag-ey and attempted to sell the prohibited drugs. The rule is settled that, without any other evidence, mere presence at the scene of the crime is not by itself sufficient to establish conspiracy.[37]

After questioning Aliong, even the entrapping police officers initially cleared him of complicity. Indeed, they found no reason to indict him together with Balag-ey in the original Information.[38] SPO1 Natividad, in particular, testified as follows:

“Atty. Molintas (to PO1 Natividad):

Q

About Aliong, when was he released?

A

He spent the night in our office and then he was released after the investigator said that he has no knowledge of the marijuana.

Q

Your investigator says that he has no knowledge but this time you are the poseur-buyer. What was the participation of Aliong when the negotiation was being made?

A

According to Aliong, he only accompanied the suspect Gatudan sir.

Q

The question is, during the negotiation the first time you went to the Universal Martial Arts [Gym], the truth is, he was not there?

A

He was not there sir.

Q

You only saw him at Session Road?

A

Yes sir.

Q

Inside the taxicab?

A

Inside the taxicab sir.

Q

When you met Gatudan at Session Road, did Aliong alight from the taxicab?

A

No sir.

Q

Did you ask the taxi driver who paid the taxi fare at that time?

A

No sir.

Q

Until now you do not know?

A

Yes sir.

Q

So, what we are made to understand is, after doing your part as poseur-buyer, you did not participate anymore in the investigation of the case?

A

I assisted the investigator when we inventoried the marijuana sir.

Q

That's it[?] Nothing more?

A

Nothing more sir. The investigation and the documentation, I did not participate [therein] anymore.

Q

[Do you] suggest, Mr. Witness that the person you actually met at the Universal Martial Arts Gym and [with whom you] negotiated about the [sale] of marijuana was a certain Edwin Aliong?

A

No sir, Gatudan.

Q

[Do you] also suggest that Gatudan was not there in the morning?

A

He was there sir. The only [one] I knew is Gatudan.

Q

[Do you] also suggest, Mr. Witness, that at Session Road, in front of the Jollibee, the persons riding the taxicab were Roger [I]masa, Edwin Aliong and Gatudan was not there?

A

No sir, Gatudan and Aliong.”[39]

x x x x x x x x

“Atty. Dumawing [to SPO1 Natividad]:

Q

Now, Mr. Witness, is it not a fact that before you conduct a buy-bust operation you subject the person or a suspect to surveillance?

A

Yes, sir.

Q

And in this particular case, Mr. Witness, you never subjected accused Edwin Aliong to surveillance?

A

No, sir.

Q

You also know what they call an Order of Battle. Will you tell the Honorable Court what that is?

A

It is a NARCOM watch list of persons who are engaged in the traffic of drugs.

Q

And is it not a fact that the name of Edwin Aliong does not appear in your Order of Battle?

A

Yes, sir.

Q

Mr. Witness, when this case was filed by your office with the Prosecutor's Office, you only charged Gatudan Balag-ey?

A

Yes, sir.

Q

You did not initially includ[e] Edwin Aliong?

A

Yes, sir, because to our knowledge, after the investigation was finished in our office, Roger Imasa revealed to us that Edwin Aliong is his sub-agent.

Q

So that is the reason why you did not include him initially in the charge, is it not?

A

That is one reason, sir.”[40] (Italics supplied)

The above admissions, taken together with the acts of Aliong --prior to, contemporaneous with, and subsequent to his arrest -- fail to establish any conspiracy.

Even the charge of illegal possession of prohibited drugs was not established beyond reasonable doubt. The elements of this offense are the following: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[41] Admittedly, the third requisite was not convincingly established by the prosecution.

In view of the lapses in the prosecution's case, the quantum of evidence needed to convict Aliong and Balag-ey -- proof beyond reasonable doubt -- has not been adequately established by the prosecution. Our minds cannot rest easy on their supposed guilt. We reiterate the conventional wisdom that it is better to free ten guilty persons than to convict an innocent one.[42]

Third Issue:

Buy-Bust Operation

Both appellants argue that no buy-bust operation took place on September 28, 1998, as shown by the inability of

the prosecution to present in court the alleged police informant and the marked money. Likewise, they point out that even the prosecution's witnesses testified that money had not changed hands during the alleged transaction.

Well-established is the rule that the presentation of a confidential informant in a buy-bust operation is not always required,[43] especially when the sale was actually witnessed and adequately proved by other prosecution witnesses.[44] This rule admits of exceptions, however, as when the appellant vehemently denies selling prohibited drugs; and when there are material inconsistencies in the testimonies of the arresting officers.[45]

For like reason, the presentation of the buy-bust money[46] and proof of its actual payment[47] -- pieces of evidence that are otherwise not indispensable -- become necessary if the constitutional presumption of innocence is to be overcome. In the present case, the material inconsistencies in the testimonies of the prosecution witness and the non-presentation of the buy-bust money raise reasonable doubts about the occurrence of a buy-bust operation.

The unrelenting drive against illegal drugs is indeed commendable. Those who engage in the illicit trade of marijuana and who prey on the misguided members of society must be caught and prosecuted properly. While courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Dangerous Drugs Law will prosper only after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is likewise duty-bound to uphold the constitutional presumption of innocence.

WHEREFORE, the appeal is GRANTED, and the assailed Decision REVERSED. Appellants Gatudan Balag-ey and Edwin Aliong y Sungot are hereby ACQUITTED on reasonable doubt.

Let them be immediately released from their place of confinement, unless there is any other legal or valid cause to detain them further. The director of the Bureau of Corrections shall report to this Court, within ten (10) days from notice of this judgment, on his action in obedience to this directive. No costs.

### **SO ORDERED.**

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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[1] Penned by Judge Ruben C. Ayson.[2] Assailed Decision, pp. 14-15; rollo, pp. 37-38.

[3] Signed by Prosecutor I Rolando T. Vergara and approved by City Prosecutor Erdolfo V. Balajadia.

[4] Records, p. 18.

[5] See Order dated December 21, 1998; records, p. 25.

[6] See Order dated January 21, 1999; id., p. 35.

[7] Atty. Jose Molintas for Balag-ey and Atty. George M. Dumawing Jr. for Aliong.

[8] See Order dated December 7, 1999; records, pp. 182-191.

[9] Appellee's Brief, pp. 3-5; rollo, pp. 276-278.

[10] Brief for Appellant Balag-ey's, p. 6; id., p. 191.

[11] Brief for Appellant Aliong's, pp. 8-10; id., pp. 231-233.

[12] This case was deemed submitted for decision on June 5, 2003, upon receipt by the Court of appellee's

Consolidated Brief, signed by Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Phrincess Marloween A. Bajarias. Appellant Balag-ey's Brief -- signed by Attys. Amelia C. Garchitorena, Marvin R. Osias and Beatriz Teves-de Guzman of the Public Attorney's Office (PAO) -- was received by this Court on February 3, 2003; while Aliong's Brief, signed by Atty. Bartolome L. Baldas Jr., was filed on February 11, 2003. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[13] Brief for Appellant Balag-ey, p. 9; rollo, p. 194. Original in upper case.

[14] Brief of Appellant Aliong, p. 10; id., p. 233. Original in upper case.

[15] *People v. Corre Jr.*, 363 SCRA 165, 176, August 15, 2001; *People v. Templa*, 363 SCRA 291, 298, August 16, 2001.

[16] *People v. Doctolero Sr.*, 363 SCRA 404, 413, August 20, 2001.

[17] *People v. Alilin*, 379 SCRA 647, 650, March 21, 2002; *Abuyen v. People*, 371 SCRA 521, 527, December 5, 2001; *People v. Nicolas*, 381 Phil. 753, 758, February 4, 2000.

[18] TSN, July 12, 1999, pp. 25-26 and 30.

[19] TSN, July 13, 1999, pp. 3-7.

[20] RTC Decision, p. 13; rollo, p. 36.

[21] TSN, May 19, 1999, p. 22.

[22] TSN, June 7, 1999, pp. 21-24.

[23] Id., pp. 25-26.

[24] TSN, July 20, 1999, pp. 17-21.

[25] *People v. Felixminia*, 379 SCRA 567, 576, March 20, 2002.

[26] TSN, May 19, 1999, pp. 28-29.

[27] TSN, June 15, 1999, p. 29.

[28] TSN, May 19, 1999, p. 21.

[29] Effective December 31, 1993.

[30] *People v. Montilla*, 285 SCRA 703, 715, January 30, 1998.

[31] *People v. Lacerna*, 344 Phil. 100, 120, September 5, 1997; *People v. Angeles*, 218 SCRA 352, 364-365, February 2, 1993; *People v. Catan*, 205 SCRA 235, 243, January 21, 1992.

[32] *People v. Zheng Bai Hui*, 338 SCRA 420, 481, August 22, 2000.

[33] The elements of conspiracy are as follows: 1) two or more persons came to an agreement; 2) the agreement concerned the commission of a felony or an offense; and 3) the execution of the felony or offense was decided upon. (*People v. Lago*, 411 Phil. 52, 59, June 6, 2001). See also Article 8 of the Revised Penal Code.

[34] *People v. Lacerna*, supra, p. 121, citing *People v. Manzano*, 227 SCRA 780, 785, November 16, 1993; *People v. Uy*, 338 SCRA 232, 241-242, August 16, 2000; *People v. Montano*, 337 SCRA 608, 618-619, August 11, 2000.

[35] Article 6 of the Revised Penal Code.

[36] TSN, June 7, 1999, p. 27.

[37] *People v. Absalon*, 350 SCRA 287, 297, January 25, 2001.

[38] Signed by Prosecutor II Victor I. Dizon and approved by City Prosecutor Erdolfo V. Balajadia; records, p. 1.

[39] TSN, May 19, 1999, pp. 30-32.

[40] TSN, May 26, 1999, pp. 3-4.

[41] *People v. Lacerna*, *supra*.

[42] *People v. Obrero*, 387 Phil. 937, 956, May 17, 2000; *People v. Comesario*, 366 Phil. 62, 69, April 29, 1999; *People v. Geron*, 346 Phil. 14, 17, October 17, 1997.

[43] *People v. Doria*, 361 Phil. 595, 622, January 22, 1999.

[44] *Ibid*.

[45] *Ibid*.

[46] *People v. Fabro*, 382 Phil. 166, 177, February 10, 2000; *People v. Khor*, 366 Phil. 762, 794, May 19, 1999; *People v. Cueno*, 359 Phil. 151, 162, November 16, 1998.

[47] *People v. Cuba*, 336 SCRA 389, 396, July 24, 2000.

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