

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMEO VALMORES, CELERINO TORREMOCHA, VICENTE POLO,
ROGELIO POLO AND CRISTOBAL CASQUEJO, ACCUSED, ROMEO
VALMORES, CELERINO ...**

G.R. No. 58635. June 24, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

On November 20, 1980, Sgt. Francisco R. Sevileno, a bonafide member of the 7th RFO, Philippine Constabulary Anti-Narcotics Unit (CANU), Task Force Bagong Buhay; Cpl. Martin Cabatingan, a member of the Integrated National Police (INP) of Cebu City and Detached Service with the aforesaid CANU Task Force; and an informant, sailed from Cebu City to Tagbilaran City because of reports they had received that the selling of marijuana in Talibon and Tagbilaran City is rampant.

Upon arrival at Tagbilaran City on November 21, 1980, they checked in at the Executive Hotel. About ten o'clock that evening, Cpl. Cabatingan was introduced to appellant Romeo Valmores by the informant, saying that Valmores was looking for buyers of marijuana. Valmores replied that he could not produce immediately the marijuana because it is still in an island in Talibon, Bohol. However, they agreed on the price of the marijuana.

On November 25, 1980, the informant told Cpl. Cabatingan that the marijuana was already in Talibon. Accompanied by Sgt. Sevileno, Sgt. Fortunato Quijon, Jr., CIS Domingo Velez, Pfc. Rogelio Rojas, and a member of the National Intelligence Service Agency (NISA) posing as the financier, Cpl. Cabatingan left Cebu for Talibon.

Upon arrival at Talibon, appellant Romeo Valmores introduced to Cpl. Cabatingan, in the presence of the NISA man who posed as the financier, appellant Celerino Torremocha, as the person who would accompany them to get the marijuana. They rode in a tricycle to the place where the marijuana was kept and arriving at San Jose, Talibon, Bohol, the three—Cpl. Cabatingan and appellants Romeo Valmores and Celerino Torremocha—walked to a nipa hut and there they saw the marijuana. In said hut they met Rogelio Polo and Vicente Polo. Cpl. Cabatingan told Rogelio and Vicente Polo that he was the representative of the financier. Thereafter, Vicente Polo got the marijuana which was contained in a nylon sack. The sack containing the marijuana was weighed in a scale which registered 5 3/4 kilos.

Cpl. Cabatingan then told the accused that he would leave the marijuana as he would go back to his financier at the poblacion of Talibon to get the money. Romeo Valmores accompanied Cpl. Cabatingan and arriving at Talibon they went to the public market where the man posing as financier was waiting. The other members of the team of Cpl. Cabatingan were around the place. At that juncture, Cpl. Cabatingan gave a signal to the team by raising his left hand with clenched fist and the right hand holding the wrist of his left arm, which means that "the transaction is over and to arrest Romeo Valmores."

The team arrested appellant Romeo Valmores who was then talking to the man who posed as the financier. After the arrest of Valmores, Cpl. Cabatingan, together with the man who posed as the alleged financier, the informant, Sgt. Sevileno, Sgt. Quijon, Jr., Sgt. Velez and Pfc. Rojas proceeded to the nipa hut where the marijuana was kept.

Upon arrival at the place, the team arrested Vicente Polo, Rogelio Polo and Celerino Torremocha. They were all taken to the INP station at Talibon, Bohol, together with the nylon sack containing marijuana and the weighing scale.

During the investigation, Rogelio Polo told Cpl. Cabatingan that the owner of the marijuana is a certain Cristobal Casquejo.

Casquejo was brought to the station for investigation and he revealed that he bought the marijuana for P1,000.00 at Kitawtaw, Bukidnon.

The marijuana inside the nylon sack was brought to the Philippine Constabulary crime laboratory camp in Cebu City for examination by the Forensic Chemist, Myrna Areola. Thereafter, she submitted a report (Exhibit B) which reads:

"CHEMISTRY REPORT NO. C-104-80

CASE: Dangerous Drug

SUSPECT: ROMEO VALMORES

TIME AND DATE RECEIVED: 27 1000H November 1980

REQUESTING PARTY/UNIT: Commanding Officer

CANU/TFBB

7th Regional Field Office

Fuente Osmeña, Cebu City

SPECIMENS SUBMITTED:

Three (3) stalks with dried leaves and seeds of alleged Marijuana plants taken from a nylon sack marked 'SAN JOSE, TALIBON, BOHOL, 26 Nov '80 FAQ'

.....

PURPOSE OF LABORATORY EXAMINATION:

Determination of Marijuana.

.....

FINDINGS:

Positive for Marijuana."

On November 28, 1980, an information for violation of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, was filed with the Court of First Instance of Bohol against Romeo Valmores, Cristobal Casquejo, Vicente Polo, Rogelio Polo and Celerino Torremocha. After hearing, the trial court rendered judgment finding them guilty of the crime charged and sentenced each—

". . . to suffer a penalty of imprisonment of RECLUSION PERPETUA to its full extent which shall not exceed

30 years together with all the accessory penalties thereto attached and provided for by law and each accused shall pay a fine of Twenty Thousand Pesos (P20,000.00) Philippine Currency without subsidiary imprisonment in case of insolvency therefor pursuant to and in accordance with paragraph 3 of Article 39 of the Revised Penal Code as amended by Republic Act 5465 and to pay the costs of this proceedings. The effects of the crime which are the sack of marijuana marked Exhibit 'A', weighing scale marked (Exh. C), knives Exhibits D and E, and the motorcycle of Romeo Valmores shown in the picture Exhibit 'K' which is at present impounded by the elements of the CANU at its headquarters at Fuente Osmeña, Cebu City, are ordered confiscated in favor of the government."

From the said decision, Vicente Polo and Rogelio Polo did not appeal. However, Romeo Valmores, Celerino Torremocha and Cristobal Casquejo did, claiming that the lower court erred (1) in not finding that the prosecution failed to adduce sufficient evidence to show that accused-appellant Cristobal Casquejo was neither the owner nor the possessor of the prohibited drugs subject matter of the charge nor a co-conspirator with the other accused-appellants in dealing therewith and therefore he should be absolved from the crime charged; (2) in not finding that the so-called "commission" by accused-appellants Romeo Valmores and Celerino Torremocha of the crime charged was the result of an inducement which is illegal; (3) in not finding that at most, if ever, accused-appellants Valmores and Torremocha were mere possessors of the prohibited drugs complained of and therefore can only be penalized (if at all) not under PD No. 1675 but under the second paragraph of Section 8, Article II, Republic Act No. 6425, as amended by PD No. 44; and, (4) in failing to consider that all of the accused-appellants were only charged under Republic Act 6425, as amended by Presidential Decree No. 44, not under Presidential Decree No. 1675 pursuant to which they are now penalized.

We agree with appellant Casquejo that there is dearth of evidence to show that he was the owner or possessor of the prohibited drugs in question; neither was he a co-conspirator with the other appellants. The only evidence of the People against him were the testimonies of Sgts. Quijon and Cabatingan. It was Vicente Polo who told them that Casquejo was the owner of the marijuana leaves and when they investigated Casquejo, the latter orally admitted to them that he was the owner thereof. In his brief, the Solicitor General admitted that "without the information given by his co-accused Vicente Polo, who unfortunately was not presented in court to be cross-examined, Casquejo would not have been implicated. Granting without admitting that Casquejo really gave an "oral admission," before Sgt. Quijon, still the same is not sufficient to convict him. . . . [S]aid oral admission was vehemently denied by appellant Casquejo, which denial was not refuted by the prosecution . . . [I]t is our submission that the evidence on record does not warrant a finding that the appellant Casquejo's guilt was proven beyond reasonable doubt. . . . With respect however to appellant Cristobal Casquejo, we respectfully recommend his acquittal." (Appellee's brief pp. 9-16)

On the other hand, appellants Romeo Valmores and Celerino Torremocha contended that the crime charged was a consequence of an inducement by the People's witnesses, particularly, Cpl. Cabatingan.

In an entrapment, ways and means are resorted to for the purpose of trapping and capturing the law breakers in the execution of their criminal plan; whereas, in instigation, the instigator practically induces the would-be defendant into the commission of the offense, and himself becomes a co-principal. Entrapment is no bar to the prosecution and conviction; in instigation, the defendant would have to be acquitted. In the case of *People vs. Lua Chu, et al.*, 56 Phil. 52-54, the accused wrote to his correspondent in Hongkong to send him a shipment of opium. This opium had been in Hongkong for sometime, awaiting a ship that would go direct to Cebu. The Collector of Customs of Cebu received information that the accused was intending to land opium in the port. The Collector promised the accused that he would remove all the difficulties in the way, and for this purpose agreed to receive P2,000.00. Juan Samson, a secret serviceman, pretended to smooth the way for the introduction of the prohibited drug. The accused started landing the opium. At this time the agents of the law seized the opium and had the accused

prosecuted. This Court held that: "It is true that Juan Samson smoothed the way for the introduction of the prohibited drug, but that was after the accused had already planned its importation and ordered for said drug. Juan Samson neither induced nor instigated the accused to import the opium in question, but pretended to have an understanding with the Collector of Customs, who had promised them that he would remove all the difficulties in the way of their enterprise so far as the customs house was concerned. This is not a case where an innocent person is induced to commit a crime merely to prosecute him, but it is simply a trap set to catch a criminal."

In the case at bar, Cpl. Cabatingan did not perform any act which in any way induced or influenced the herein appellants to sell marijuana. When Cpl. Cabatingan and appellant Valmores met for the first time, the latter told the former that he could not bring with him samples of marijuana because they were in one of the islands in Talibon. He then made arrangement for the transfer of the marijuana to Talibon and told Cpl. Cabatingan that the moment the same arrives he would get in touch with him through an informer. True enough, upon arrival of the marijuana, Cpl. Cabatingan, Valmores and Torremocha went to the place where the marijuana was kept. Torremocha showed Cpl. Cabatingan the sack of marijuana leaves, seeds and stalks in the presence of Vicente and Rogelio Polo. Having agreed on the price at P1,800.00 per kilo and after weighing the marijuana, Cpl. Cabatingan and Valmores went to the public market of Talibon to get the money from the financier. When Valmores was holding the bag containing the marked money, he was arrested by a member of the team and turned over to the authorities, following which the team proceeded to the nipa hut where the marijuana was kept and arrested Vicente Polo, Rogelio Polo and Celerino Torremocha.

It is clear that there was no inducement made by Cpl. Cabatingan. Valmores was really looking for buyers of marijuana. What the peace officers did was to employ ways and means of trapping and catching in flagrante a malefactor and this is not contrary to public policy.

On the alleged error that the lower court should have considered appellants to have violated Republic Act 6425, as amended by Presidential Decree No. 44, and not under Presidential Decree No. 1675 pursuant to which they are being penalized and the penalty of which is life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos, suffice it to say that the crime was committed in November 1980 and Presidential Decree No. 1675 took effect in February 1980. Thus, the penalty imposed by the lower court is in accordance with the law.

WHEREFORE, appellants Romeo Valmores and Celerino Torremocha are hereby sentenced each to suffer the penalty of life imprisonment and each to pay a fine of P20,000.00, with costs.

For insufficiency of evidence, Cristobal Casquejo is acquitted.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez and Gutierrez, Jr., JJ., concur.
Melencio-Herrera, J., took no part.

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