

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO LATI, ACCUSED-APPELLANT.

*G.R. NO. 70393. April 17, 1990*

Ponente: FELICIANO, J.

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### FELICIANO, J.:

Accused Rolando Lati y Sudla was charged with violation of the Dangerous Drugs Act in an Information, dated 12 May 1982, which read as follows:

#### "INFORMATION

The undersigned Assistant Fiscal accuses Rolando Lati y Sudla of the crime of violation of Section 4, Republic Act No. 6425, as amended, committed as follows:

That on or about the 7th day of May 1982, in the Municipality of Pasig, Metro Manila, Philip-pines, 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 sell and deliver to another person two (2) aluminum foils of dried marijuana flowering tops which are prohibited drugs.

Contrary to law."

Upon arraignment, on 21 June 1982, the accused assisted by counsel pleaded not guilty.

After trial, the trial court rendered a decision dated 12 September 1984 convicting him of the crime charged and sentencing him to life imprisonment and to pay a fine of P20,000.00, with subsidiary imprisonment in case of insolvency.

The present appeal assigns the following as errors, allegedly committed by the trial court:

"I

The decision is not based on the evidence presented in court, and that

II

The Prosecution failed to establish beyond reasonable doubt the guilt of the accused."[1]

The evidence for the prosecution consisted of the testimonies of Police Sgt. Renato Salvania, Patrolman Romeo Caviso, Forensic Chemist Dina Castillo, as well as real evidence comprised of (a) two [2] rolls of aluminum foil containing a total of three [3] grams of dried marijuana flowering tops allegedly sold by the accused before his arrest, and (b) a certified true xerox copy of a P20.00 bill allegedly representing the marked money used to purchase the prohibited drug.

The facts as presented by the prosecution were summarized by the trial judge in the following manner:

"The prosecution evidence shows that Sgt. Renato Salvania of the Anti-Narcotics Unit, Eastern Police District,

organized a task force to go after drug violators. The members of the group were Patrolmen Romeo Caviso, Norlando Cruz, Jesus Cladio and Carlito Reyes. At about 9:00 p.m. on May 7, 1982, Sgt. Salvania and his men went to Rosario, Pasig, Metro Manila. In front of the Rosario Church where they positioned themselves, Sgt. Salvania ordered Pat. Caviso to pose as a buyer of marijuana cigarettes. For this purpose, Sgt. Salvania marked a P20.00 bill (Exhibit A) and gave it to Pat. Caviso, which the latter would use in buying the prohibited drug. While mingling with the crowd, Pat. Caviso asked for the whereabouts of Boy Marcelo, a well-known pusher in the area. When told by Isidro Estadillo that Boy was already in hiding, Isidro said that he wanted to smoke marijuana but did not have any money. Upon hearing this, Pat. Caviso gave the marked P20.00 bill to Isidro who immediately went to the nearby talipapa. When Isidro, followed by Pat. Caviso, met the accused who was wearing short pants and was leaning on a wall, Isidro gave to the accused the marked P20.00 bill. After receiving the money, the accused handed to Isidro 2 rolls of aluminum foil (Exhibit G). Upon seeing this, Pat. Caviso immediately gave the pre-arranged signal to his companions and arrested Isidro and the accused. The policeman confiscated the marijuana from Isidro and got the marked money from the waistline of the accused.

At the police headquarters, an investigation was conducted by Pat. Carlito Reyes. Isidro pointed to the accused as the person who sold the marijuana to him, a charge which the accused denied. No statement was obtained from the accused because he refused to give any.

According to PC Forensic Chemist Dina Castillo, the 2 rolls of aluminum foil taken from the accused contained marijuana, a prohibited drug (Exhibit F)."[2]

The accused had a very different version of the events of the evening of 7 May 1982. His testimony was summarized by the trial judge as follows:

"On the other hand, accused Rolando Lati declared that at about 10:30 p.m. on May 7, 1982 he was taking a bath near a faucet beside his house located at Dr. Sixto Antonio Avenue, Rosario, Pasig, Metro Manila. At that time, he was half naked, wearing only a short swimming trunk. Suddenly, a taxi arrived and two policemen alighted and immediately arrested him. When he inquired why he was being apprehended, the policemen told him that they wanted to ask him something at the police precinct. When he showed some resistance, Pat. Caviso held his left arm and forced him to go with them. He wanted to put on a T-shirt as he had none [on] but the policemen denied his request. Inside the taxi, he saw other policemen and when he asked them the reason for his arrest, they simply laughed. Upon reaching the police station, he was maltreated and forced to sign a paper. Thereafter, he was brought to the municipal jail at Pasig and while on the way, the three policemen, Pat. Caviso, Reyes and Sgt. Salvania, said that they would release him if he could produce P1,500.00. He replied that if he [were] sent home, he could get the money but he was not allowed to go home. He was detained at the Pasig municipal jail where his mother visited him. His mother was shocked to see him half naked and full of bruises and contusions. He told his mother about the demand of the policemen for money. Subsequently, he was brought to the Rizal Provincial Jail where he met Isidro for the first time. Upon approaching him, Isidro said that he was sorry that he had to point to him. When he realized that Isidro was the one responsible for his arrest, he got angry and boxed him. It was only when he was brought before the Fiscal that he came to know that he was being accused of selling marijuana."[3]

The version of the accused, in respect of the time and circumstances of his arrest by the policemen, was corroborated by Flora del Rosario. Flora declared that at about 10:00 p.m. on 7 May 1982, she was in front of a commercial building along Dr. Sixto Antonio Ave., Pasig, Rizal, engaged in collecting a debt from one of her debtors. She noticed a taxicab stop in the street and two (2) policemen in civilian clothes alight therefrom. She recognized them because they had often eaten in a restaurant run by Flora in Barrio Rosario, Pasig. The two (2) policemen approached a man wearing only swimming trunks, one she referred to as "Tating", a nickname of the accused Rolando Lati. The accused was at that time taking a bath near a faucet which was being leased to people residing in the area. The accused was seized by the policemen and brought to the taxicab. He tried to resist, remonstrating "Ano ba ang atraso ko?" The taxicab then departed with the policemen and the accused on board.

Flora also stated that the place of the arrest was "a little bit further [away]" from the "talipapa" of Rosario, Pasig.[4]

There is here clearly a direct conflict between the positive testimony of the arresting officers Sgt. Salvania and Pat. Caviso, and the statements given in court by the accused and witness Flora del Rosario regarding the circumstances surrounding the arrest of the accused. The trial court correctly characterized the problem as one of credibility of witnesses. The trial court, having had the opportunity to observe the detailed demeanor of the prosecution and defense witnesses, and to listen to their respective testimonies, chose to give "full faith and credit" to the statements of the arresting officers. The trial judge conceded that the two (2) police officers may have known the accused prior to his arrest on 7 May 1982, but insisted that the accused had failed to point out "any quarrel or misunderstanding with them" that might have constituted a reason or motive for those officers to testify falsely against him.

Ordinarily, this Court would rely upon the well-settled rule that "findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by appellate courts." [5] There are, however, certain well-recognized exceptions to this rule. This Court may disregard the rulings of the trial court on credibility of witnesses if, e.g., there are facts and circumstances which were overlooked by the trial court and which would substantially alter the results of the case; [6] where the judgment is based on a misapprehension of facts; and where the inferences drawn by the trial court from the facts are manifestly absurd or impossible. [7]

We have carefully reviewed the record and it appears to us that there was some misapprehension of facts in this case and either the deriving of inferences from the facts which are manifestly mistaken or failure to draw reasonable inferences from the facts shown by the record.

1. We note firstly that the testimonies of the arresting officers Sgt. Salvania and Pat. Caviso were seriously flawed. The entrapment operation was apparently carried out without previous surveillance of the venue of the operation, that is, the vicinity of the church in Rosario, Pasig, in order to obtain specific information regarding the activities or whereabouts of particular suspected drug peddlers in the vicinity. In notable departure from the ordinary or standard operating procedure employed by law enforcement agents in this respect, no informer was utilized by the arresting officers. Pat. Caviso stated that while he was mingling with the evening crowd near the church and asking about the whereabouts of one Boy Marcelo (apparently a known drug pusher), he (Caviso) was approached by Isidro Estadillo, a virtual stranger to Caviso. Estadillo allegedly said to Caviso that he (Estadillo) wanted to smoke marijuana but had no money to buy the marijuana. Without further ado, Caviso, per his testimony, gave Estadillo the marked 20-peso bill with which to buy marijuana. Estadillo forthwith started to look for a marijuana seller. The supposed procedure employed by the arresting officers appears to us quite extraordinary. We find it very difficult to believe that Estadillo, or any one for that matter, would approach a total stranger to inform the latter about his desire to smoke marijuana and in effect solicit money from the stranger with which to buy the prohibited drug. Pat. Caviso then declared that he saw Estadillo approach the accused Lati to purchase the marijuana and managed to arrest the both of them while the other policemen converged upon the group. The testimony of Caviso appears to us contrived and improbable in its tenor and that accordingly, the trial court should not have relied solely upon the presumption of the regularity of the performance of official duties.

2. The prosecution failed, for some unexplained reason, to present the supposed chance or impromptu informer, that is, Isidro Estadillo, as a prosecution witness. It must be noted that Estadillo, according to the testimony given by Pat. Caviso was more than an informer; if the testimony of Caviso is to be believed, Estadillo acted as the poseur-buyer. Upon the other hand, according to his own testimony, Sgt. Salvania had instructed not Estadillo but rather Pat. Caviso himself to act out the role of poseur-buyer and that when Estadillo and Caviso started talking

with the accused, Caviso gave the money to the accused who then went into an alley and returned minutes later with "something which he gave to Caviso." But Pat. Caviso did not confirm that he had acted as poseur-buyer but instead pointed to Estadillo as having approached the accused Lati alone and handing him the money. There have been instances in the past where the prosecution refrained from presenting as a witness the informer the police had utilized, upon the plea that his identity should remain unknown for, among other things, his continued health and safety; and the Court has, several times, held that such failure was not fatal to the prosecution's case, especially where the testimony of the informer would have been merely corroborative in character.[8] In the case at bar, the identity of the alleged informer or poseur-buyer was revealed from the very beginning. The failure to present Estadillo as a prosecution witness remained unexplained and hence gives rise to the inference that if he had been presented, his testimony would probably not have supported the case of the prosecution.

3. The testimony of accused Lati was, as noted earlier, corroborated by the testimony given by Flora del Rosario. The trial court, however, did not give much weight to her testimony for the sole reason that she had admitted that "she was a family friend of the accused" and that "she was a comadre of the parents of the accused." The trial judge concluded that "therefore, the possibility that she was biased could not be discounted." [9] We believe, however, that the testimony of a family friend is not, for that reason alone, necessarily flawed or to be denied any weight.[10] Such testimony should be subjected to the ordinary processes of evaluation and accordingly assigned its proper, intrinsic weight.

The testimony of the accused himself, as corroborated by that of Flora del Rosario, was to the effect that he had nothing to do with the supposed purchase and sale of three (3) grams of dried marijuana flowering tops. He was in the process of taking a bath at a semi-public faucet when he was arrested. He was not then and there informed of the charge for which he was being arrested. More importantly, he was not previously known as a drug peddler or pusher. His involvement was thus solely due to his allegedly being identified as a marijuana vendor by Isidro Estadillo. Thus, the non-presentation of Isidro Estadillo as a prosecution witness in effect prevented confrontation in court between the accused Lati and Estadillo, the supposed informer or poseur-buyer (according to Pat. Caviso). The accused could, of course, have subpoenaed Estadillo as a hostile witness, but failed to do so. It is settled, however, that the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused to prove that he was in fact innocent.[11]

4. It thus appears that the trial court's finding that the accused Lati had delivered two (2) aluminum foils of dried marijuana to Estadillo rested solely upon the testimony of Pat. Caviso. Considering the important inconsistencies between the testimony of Salvania and that of Caviso, both arresting officers; considering also the implausible character of the story narrated by Pat. Caviso and the unexplained (and convenient) failure of the prosecution to present Isidro Estadillo as a witness against the accused; and taking into account the pivotal nature of the testimony which Estadillo might have given, we believe that the testimony of Caviso is too frail a reed to support by itself the conviction of Rolando Lati.

5. We turn to the 20-peso bill that was allegedly used in the case at bar as the consideration for the supposed purchase of two (2) aluminum foils of dried marijuana. The trial court found as a fact that Sgt. Salvania had marked a 20-peso bill belonging to him personally, while in front of the church in Rosario, Pasig, and handed the marked bill over to Pat. Caviso before the latter started mingling with the crowd apparently in the hope of colliding with a drug pusher.[12] After the accused was arrested, the same bill was allegedly recovered from him by Pat. Caviso. In its order denying the accused's motion for reconsideration, the trial court elaborated that Sgt. Salvania's mark consisted of an ink dot placed on the right side of the rear face of the bill, and that Sgt. Salvania had subsequently affixed his signature on the bill so that he would preserve the bill as evidence and not accidentally spend the same.

A review of the record shows that the evidence concerning the alleged marking of the bill is thoroughly unsatisfactory. Sgt. Salvania stated that he had noted down the serial number of the 20-peso bill which he gave to Pat. Caviso. In open court, Sgt. Salvania showed the bill, with the ink mark as he described it, while the Fiscal offered and marked, not the bill itself but a xerox copy thereof, as Exhibit E".[13]

Pat. Reyes testified that the xerox copy which became Exhibit "E" had been made by him after the arrest of the accused and after the issuance of the initial report of the laboratory test on the marijuana.[14] We must note that the police blotter, or a certified true copy of the relevant entry thereon, on which the serial number of the 20-peso bill was allegedly entered, was never presented before the trial court. The accused had demanded production of the police blotter by subpoena duces tecum. The subpoena was issued by the trial court.[15] But there is nothing in the record to indicate that the subpoena was ever complied with. Thus, Exhibit "E" (the xerox copy of the 20-peso bill does not show the signature of Sgt. Salvania nor the ink dot supposedly placed on the bill before the entrapment operation began. The alleged ink dot itself was not specifically marked as a sub-exhibit. Thus, whether the 20-peso bill owned by Sgt. Salvania and supposedly represented by Exhibit "E" was really used in the alleged entrapment operation is open to substantial doubt. We believe that this further eroded the credibility of the already weak and implausible testimony given by Pat. Caviso that the accused Lati had sold three (3) grams of dried marijuana to Isidro Estadillo for P20.00.

Mindful of the injunction that

"[e]very circumstance favoring the innocence of the accused must be taken into account and the proof against him must survive the test of reason. Only when the conscience is satisfied that the crime has been committed by the person on the trial should the sentence be one of conviction,"[16]

we have examined in some detail the prosecution's evidence and we find that that evidence has not induced moral certainty in our mind of appellant's guilt. We have also borne in mind the principle that the presumption of regularity of performance of official functions, taken alone, cannot prevail over the constitutional presumption of innocence of the accused.[17] We think these principles are particularly apropos the case at bar, considering that, as the Court in *People v. Fernando*[18] noted, "the common modus operandi of [anti]-narcotic agents of utilizing poseur-buyers does not always commend itself as the most reliable way to go after violators of the Dangerous Drugs Act as it is susceptible to mistake, harassment, extortion and abuse."

WHEREFORE, for failure of proof beyond reasonable doubt of his guilt, the accused Rolando Lati y Sudla is hereby ACQUITTED of the crime charged. The decision of the trial court dated 12 September 1984 is hereby REVERSED. Costs de oficio.

### **SO ORDERED.**

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.  
Gutierrez, J., on leave.

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[1] Appellant's Brief, p. 1.

[2] Decision of the trial court, Rollo, pp. 5-6.

[3] Id., Rollo, pp. 6-8.

[4] TSN, 6 July 1983, pp. 3-5; TSN, 2 November 1983, p. 3; TSN, 6 July 1983, pp. 6-7; Id. at 10.

[5] *People v. Tejada*, G.R. No. 81520, 21 February 1989, p. 4.

[6] Ibid.

[7] *People v. Ale*, 145 SCRA 50 at 58 (1986).

[8] *People v. Viola*, G.R. No. 64262, March 16, 1989; *People v. Asio*, G.R. No. 84960, September 1, 1989; *People v. Capulong*, 160 SCRA 533 (1988); *People v. Cerelegia*, 147 SCRA 538 (1987).

[9] Decision of the trial court, Rollo, pp. 8-9.

[10] E.g., *People v. Canada*, 144 SCRA 121 (1986); *People v. Salcedo*, 122 SCRA 54 (1983).

[11] *People v. Go Bio, Jr.*, 142 SCRA 238 (1986); *People v. Magallanes*, 147 SCRA 92 (1987); *People v. Pasco*, 120 SCRA 596 (1983).

[12] Decision of the trial court, Rollo, pp. 5-6.

[13] TSN, 23 July 1982, p. 9; *Id.* at 12.

[14] TSN, 22 October 1982, pp. 19-20.

[15] TSN, 23 July 1982, pp. 12-13.

[16] *People v. Flores*, 165 SCRA 71 at 85 (1988).

[17] *Id.* at 84.

[18] 145 SCRA 151 at 159 (1986).

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