

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CORNELIO MARILAO Y SAMSON, DEFENDANT-APPELLANT.

*G.R. No. 71681. September 05, 1989*

Ponente: FERNAN, C.J.

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### FERNAN, C.J.:

Cornelio Marilao y Samson appeals from the decision of the Regional Trial Court, Branch LXXI in Antipolo, Rizal, convicting him in Criminal Case No. 1140-A for violation of Section 4, Article II of Republic Act No. 6425 (Dangerous Drugs Act of 1972 as amended by Presidential Decree No. 1675) sentencing him to suffer the penalty of reclusion perpetua, to pay a fine of P20,000.00 with costs against accused Cornelio Marilao.[1]

The information filed against him reads:

"The undersigned Assistant Fiscal accuses Cornelio Marilao y Samson of the crime of Violation of Section 4, Art. 11 of R.A. 6425 As Amended by P.D. 1675, committed as follows:

"That on or about the 18th day of May, 1984, in the Municipality of Antipolo, Province of Rival, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another 202 grams of marijuana fruiting tops, which are prohibited drug (sic), in violation of the above-cited law.

"Contrary to Law."[2]

The evidence for the prosecution consists of the testimonies of three (3) lady police officers (Pfc. Armenia S. Pilueta, Pfc. Virginia Eslomot and Capt. Lilita B. Chambers) summarized by the lower court as follows:

"The first witness for the People, Pfc. Pilueta is 29 years old, single, a policewoman since 1979 and on detached service units since 1982 with narcotics command, Philippine Constabulary, Camp Crame, Quezon City, declared that in the afternoon of May 18, 1984 at about 5:30 o'clock, one of their confidential informers conveyed to Lt. Col. Edwin Cuenco of the NARCOM about the drug trafficking of a certain Nelio (He was identified in open court on October 10, 1984 by Pfc. Pilueta and Pfc. Eslomot as accused Cornelio Marilao. Upon receipt of the 'hot tip', Lt. Col. Cuenco immediately instructed the surveillance and intelligence team headed by Lt. Manuel Barcena, Pfc. Armenia Pilueta, Pfc. Virginia Eslomot and 3 others as members to proceed to Antipolo, with the end in view of busting the drugs operation of accused and/or arrest him.

"Not long after, the team proceeded to Antipolo. After the team had studied the location and terrain of M.H. del Pilar and de la Paz streets, the team decided to disperse within the perimeter of the area, i.e., Pfc. Pilueta was designated to buy the prohibited drug from accused while the other members of the team including its team leader positioned themselves at a vantage position in relation to where Pfc. Pilueta was positioned.

"At about 7:30 o'clock that evening, Pfc. Pilueta accompanied by their confidential informer chanced upon accused who was then in front of his parents' 2--storey house, the first floor of which was utilized as a restaurant. Immediately Pilueta informed accused of her desire to buy dried marijuana leaves and at the same

time she asked the price of one line or 100 grams of the prohibited leaves. Accused answered that he sells at P180.00 per line.

"Thereafter, Pilueta handed to accused four (4) P100 bills (Exhibit 'B'). Upon receipt of the money, accused left Pilueta and the informer and proceeded towards his residence with the purpose of getting the prohibited leaves. A few minutes later, accused returned and handed to Pilueta the prohibited drugs - about 200 grams. Thereupon, Pilueta 'stretched her head by way of signal to her team members that she has consummated her transaction with accused. In a few seconds, Pilueta and her companions swarmed over the person of accused identifying themselves as NARCOM agents.

"Thereafter, a quick body search was made upon the person of the accused which led to the discovery of two (2) P100 bills which was earlier paid to him by Pfc. Pilueta.

"Desirous of recovering more prohibited drugs from accused, the NARCOM agents rushed inside the residence of accused where they found another 100 grams of the prohibited stuff beneath the floor inside their 'restaurant-residence'.

"After the apprehension of accused, he was brought to the NARCOM headquarters at Camp Crame where he was interrogated. Finally, Pilueta testified that the effects of the crime - the 300 grams of dried marijuana leaves plus the two (2) P100 bills recovered from accused were deposited with the P.C. Crime Laboratory or with the Property Custodian of the NARCOTICS Investigation Unit.

"The second witness for the People was Pfc. Virginia Eslomot, a 30-year old policewoman since 1978, unmarried and on detached service with NARCOM, Camp Crame since 1981. She testified as follows: She was one of the members of the Barcena Team that proceeded to Antipolo, Rizal in the evening of May 18, 1984 to bust the drug trafficking activities of accused along M. H. del Pilar and de la Paz Streets in Antipolo Rizal. She emphatically declared that from the time Pfc. Pilueta started to buy marijuana from accused up to the time the deal was consummated, she and the other NARCOM agents were in front of the residence of the accused, approximately 10 to 15 feet away from them thus enabling them to have a clear view of the transaction. In other words, the declaration of witness is to the effect that she saw accused deliver or hand down to Pfc. Pilueta the dried marijuana leaves which the latter bought from the former, including the recovery of the two (2) P100 bills from accused and an additional 100 grams of prohibited drugs which were taken inside the residence of accused.

"The last witness for the People was Captain Lilita B. Chambers, 46 years old, married, police captain, and Chief Chemist, PC Crime Laboratory, Camp Crame, Quezon City, who declared that in the morning of May 19, 1984, she received a letter from a certain Lt. Col. Teodorico Viduya requesting that an examination be made on the specimens attached thereto. Immediately upon receipt of said letter, she assigned Lt. Therese Ann Bugayong, a chemist to conduct a careful analysis and examination of the specimens. Despite the assignment of the case to Lt. Bugayong, Captain Chambers saw to it that she was personally present during the examination of the specimens as in fact she was shown the results of said examination of Lt. Bugayong. The chemistry report (Exhibit 'D') clearly shows that the specimens which were subjected to an analysis and examination by Lt. Bugayong gave positive results to the tests for marijuana."<sup>[3]</sup>

On the other hand, the evidence for the defense consists of the uncorroborated oral testimony of accused, 27 years old, single, a vendor and a resident of M. H. del Pilar, Antipolo, Rizal. His testimony as stated in the decision of the trial court is as follows:

"He vehemently denies having committed the crime imputed to him. He admits though that in the evening of May 18, 1984, at about 7:00 o'clock he met Myra Matangga, his acquaintance for the past 8 months and a certain Tomboy at his parents' residence in Antipolo, Rizal. At said meeting, Myra Matangga told him that they wanted to buy marijuana leaves. He replied that he does not have the stuff nor sells the same. Myra Matangga's companion the tomboy (she was referred to as one of the two tomboys who testified against him)

butted in and reiterated their desire to buy the stuff as they badly needed the same. Accused answered again in the negative.

"As he was going some where, he begged off to be excused to change his clothes and his two (2) visitors, Myra and this tomboy left.

"A few minutes later, he was in the street on his way to his appointment when he was called by two (2) tomboys and Myra. When he approached the group, the tomboy who was earlier insisting to buy marijuana from him drew her gun and poked the same at him. At the same time, the group told accused that they were bringing him with them to the headquarters because he was caught selling dried marijuana leaves. The group then boarded him in a car. Once inside the car, he was shown a bag full of dried marijuana leaves. Myra Matangga told the group that the stuff was confiscated from him. He denied Myra's accusation but Myra stood her ground thus he was asked to sign a document without the assistance of counsel which document allegedly was a go-signal for his detention at the NARCOM detention center.

"On cross-examination, he admitted that Myra Matangga and the tomboy went to his residence that evening because they were going to buy marijuana (p. 3, TSN, February 21, 1985). He also admitted on cross-examination that he was certain that the marijuana leaves shown to him by the tomboys were indeed marijuana leaves. He explained that he could not have been mistaken about that because he was once a frequent smoker of marijuana leaves."[4]

After careful examination of the evidence the Court a quo rendered a decision on July 10, 1985, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, the Court hereby finds accused Cornelio Marilao guilty beyond reasonable doubt of the crime charged and sentence him to suffer the penalty of reclusion perpetua, to pay a fine of P20,000.00 with costs against accused Cornelio Marilao."[5]

In this appeal, Cornelio Marilao submits that the court a quo erred in convicting him because of the insufficiency of the prosecution's evidence to prove his guilt beyond reasonable doubt due to: (a) the failure to present the male confidential informant as one of the prosecution's witnesses which according to the accused is imperative to corroborate the testimony of the arresting officer; (b) the non-presentation by the prosecution of the alleged marked four P100.00 bills two of which were recovered from the person of the accused when he was searched, and the police logbook where the serial numbers of these bills were allegedly noted down; (c) the improbability or incredibility of the manner by which the alleged "buy-bust" transaction was held, which occurred in a public place, in front of the residence-restaurant of the parents of the accused and without the usual "look-out" of the seller; and (d) on the matter of the confiscated marijuana leaves, appellant claims that there was no proof that the specimen so examined and found to be marijuana fruiting tops are the same specimen actually taken from the accused.

We find the appeal devoid of merit.

In *People v. Capulong*,<sup>[6]</sup> we held that the non-presentation as a witness of the informant, used by the members of the Constabulary Anti-Narcotics Unit in entrapping the accused in flagrante is not fatal to the prosecution's case if his testimony would be merely corroborative and cumulative. In this case, the accused admitted in his brief,<sup>[7]</sup> the informant's testimony was merely to corroborate the arresting officer's testimony positively identifying the appellant in open court as the seller of the dried marijuana leaves and the recipient of the four marked P100.00 bills.

Corroboration is not necessary if the details of the crime have already been testified to with sufficient clarity. The failure to present all the eyewitnesses to an act does not necessarily give rise to an unfavorable presumption,

especially when the testimony of the witness sought to be presented is merely corroborative.[8] In fact, there is no law requiring that a testimony be corroborated in order to be believed. The testimony of a single witness if credible and positive, is sufficient to produce conviction.[9]

It must be remembered that the matter of presenting witnesses for the People is a prerogative of the prosecuting fiscal.[10] The non-presentation by the prosecution of certain witnesses is not a sufficient defense, neither does it detract from the prosecution's evidence, the number of witnesses called to testify being left largely to the sound discretion of the prosecuting officers.[11] Thus, in instances where the accused believes that the testimonies of said witnesses are important to his cause, he should avail of them even by compulsory judicial process if necessary.[12]

In the same way that the non-presentation of the informant by the prosecution is not a sufficient defense, likewise, the non-presentation or the marked four P100.00 bills during trial does not militate against the prosecution's case.[13] Based on the testimonies of the prosecution's witnesses, Pfc. Pilueta and Pfc. Esломot, it was clearly established that the marked bills were given by Pfc. Pilueta to the appellant who in turn handed the marijuana leaves to the former. It has not been shown that the NARCOM officers who caught the accused selling marijuana leaves have any motive to falsely accuse Cornelio Marilao of such a serious crime[14] nor to maliciously implant evidence of corpus delict against the latter. Thus, it is safe to assume that the marijuana leaves submitted to the PC Crime Laboratory at Camp Crame are the same marijuana leaves handed by appellant to Pfc. Pilueta based on the presumption under the law that official duty has been regularly performed.[15]

On the issue of the improbability of the sale to have transpired in a public place coupled with the absence of a "look-out" for the accused, the Court finds this a flimsy and shallow defense upon which to assert the innocence of the accused. It has not been established by the latter that the street was indeed a busy street so as to make the sale of marijuana improbable or incredible. The court neither finds the necessity for the prosecution to establish the presence of a "look-out" for the accused without necessarily discounting the possibility of the presence of one, the same not being an element of the crime punished under Section 4 of Republic Act No. 6425. Besides, unless the "look-out" himself is arrested and prosecuted, the prosecution has no means of determining his presence in the area.

The more important consideration in the instant appeal is the fact of positive identification of the appellant by two prosecution witnesses as the seller of the marijuana leaves. This should prevail over his denials and inadmissions of having committed the crime for which he was charged below since greater weight is generally given to the positive testimony of the prosecution witnesses than to the accused's denial.[16] As between the positive declaration of the prosecution witness and the negative statement of the accused, the former deserves more credence.[17]

WHEREFORE, the appealed judgment is hereby AFFIRMED, with costs against appellant.

**SO ORDERED.**

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.  
Feliciano, J., on leave.

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[1] RTC Decision, Rollo, p. 16.

[2] Information, Rollo, p. 4.

[3] RTC Decision, Rollo, pp. 11-14.

- [4] Ibid, Rollo, pp. 14-15.
- [5] Ibid, Rollo, p. 16.
- [6] G.R. No. 56574, April 15, 1988; 160 SCRA 533, Gutierrez, J.
- [7] Brief for the Accused, p. 5.
- [8] People v. Salufrania, G.R. No. 50884, March 30, 1988; 159 SCRA 401, Padilla, J.
- [9] People v. Cortez, G.R. No. L-32246, June 30, 1988, Cortes, J.
- [10] People v. Obenque, 147 SCRA 488 (1987).
- [11] People v. Laureta, G.R. No. L-31245, March 25, 1988; 159 SCRA 256, Yap, J.
- [12] Ibid.
- [13] People v. Polo, 147 SCRA 551, 556 (1987).
- [14] People v. Cerelegia, 147 SCRA 538 (1987).
- [15] Section 5 (m), Rule 131, Revised Rules of Court.
- [16] People v. Khan, G.R. No. 71863, May 23, 1988, 161 SCRA 406, Gutierrez, J.: People v. de Jesus, 145 SCRA 521 (1986).
- [17] People v. Melgar, G.R. No. 75268, January 29, 1988; 157 SCRA 718, Gutierrez, J.

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