

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. YABES GATONG-O, EMILIO TAYAN AND BERT BACBAC, DEFENDANTS-APPELLANTS.**

*G.R. No. 78698. December 29, 1988*

Ponente: GANCAYCO, J.

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**GANCAYCO, J.:**

Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Oftentimes it is the only effective way of apprehending a criminal in the act of the commission of the offense. In entrapment the idea to commit the crime originated from the accused. Nobody induces or prods him into committing the offense. A criminal is caught committing the act by ways and means devised by peace officers.

It must be distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. In entrapment ways and means are resorted to for the purpose of capturing the lawbreaker in flagrante delicto. In entrapment, the crime had already been committed while in instigation, it was not and could not have been committed were it not for the instigation by the peace officer.

Entrapment has proven to be an effective means of apprehending drug peddlers as in this case.

At about 9:00 o'clock in the morning of May 30, 1984, Pat. Celestino de la Cruz of the Narcotics Unit of the Angeles City Police received word from a civilian informer that three Igorots were arriving in Angeles City later that evening to sell twelve (12) kilograms of marijuana to interested buyers. At 11:00 o'clock in the evening of the same day, the civilian informer went to the police station to talk to the policemen on duty. The information was relayed to the station commander, Captain Paras, who later directed Pat. de la Cruz, Sgt. Edgardo Raquidan and Pat. Pedro Hernandez to prepare an entrapment operation for the suspects with Sgt. Raquidan acting as poseur-buyer.

At midnight, the civilian informer called up the police station informing said policemen assigned to the case that he already got in touch with the three suspects and that they are ready to deal with him. The informer asked the policemen to proceed to Deang's Marketing & Commercial establishment along MacArthur Highway, Angeles City.

Said policemen arrived at the designated place at around 12:30 in the early morning the following day, May 31, 1984. Only Sgt. Raquidan alighted from their car.

Several minutes thereafter, the civilian informer arrived on board a tricycle. He told Raquidan that the suspects were waiting in a nearby hotel and that the sum of P1,600.00 was needed for the entrapment. Pat. de la Cruz then instructed the civilian informer to tell the suspects that an interested buyer was waiting for them at the Deang's Marketing store. After the civilian informer left the policemen drove their car to a distance of about fifteen (15)

meters. Raquidan was the only one left in front of the Deang's Marketing Store. The civilian informer then returned accompanied by the suspects. He introduced Raquidan to one of the suspects, Bert Bacbac. After some preliminary negotiations, Raquidan agreed to purchase marijuana from Bacbac. Thereafter, the two other suspects handed over to Raquidan a plastic bag containing one kilogram of marijuana.

Upon ascertaining the contents of the plastic bag, Raquidan gave the signal to the other policemen by putting his hand on his head. The policemen approaches the suspects, introduced themselves as police officers and arrested them. They were brought to the police station for investigation and thereafter they were detained at the Angeles City Jail. The policemen conducted a search at the hotel room where the suspects were billeted. They failed to find any evidence incriminating the suspects.

Thus on June 14, 1984 an information was filed by the Second City Assistant Fiscal of Angeles City in the Regional Trial Court (RTC) of the same city charging Yabes Gatong-o, Emilio Tayan and Bert Bacbac for violation of Section 4, Article II of the Dangerous Drugs Act of 1972[1] alleging, among others, that the said accused on May 31, 1983 sold/delivered dried marijuana flowering tops. After arraignment and trial on the merits, judgment was rendered by the trial court on April 3, 1987 finding the accused guilty of the offense charged and imposed on them the penalty reclusion perpetua and ordering each of the accused to pay fine of P30,000.00 plus costs.

Hence, this appeal wherein the accused assailed the trial court in giving credence to the evidence for the prosecution instead of that of the defense.

Appellants pointed out that it is not credible that the police operatives would not know the name of their civilian informer. While it is true that the name of the said informer had not been revealed by any of the apprehending policemen, it is equally true that it was this informer who gave the lead to the police officers that culminated in the apprehension of the appellants. The failure of the policemen to identify said civilian informer by name does not thereby establish that there was no such informer at all. The police operatives may be familiar with the informer without bothering to inquire about his name or identity or it is probable that they knew the identity of said informer but refused to reveal his identity for his personal safety.

Appellants also argue that it is beyond human understanding that any of them would have parted with precious merchandise and handed the same to a person they have met for the first time without receiving the corresponding payment therefor. It is true that the police officers did not have the amount of P1,600.00 with them to buy marijuana from the appellants during the incident. Be that as it may, it was not indispensable for their operation. Sgt. Raquidan went through the motion as a buyer and his offer was accepted by the appellants who produced and delivered the marijuana. There was no need to hand the the marked money to the appellants in payment thereof. The crime was consummated of the delivery of the goods.

Appellants observed that the operation was not conducted in characteristic secrecy and care which renders it incredible; that the transaction was conducted at the Deang's Marketing store in front of the Remedian Barbecue Plaza where there were people around; and that the loud voices of the appellants during the negotiation could be heard by the operatives who were then hidden ten (10) meters away.

Suffice it to say that although it is in a public place that the transaction occurred, it was past midnight and there were few people around. That must be the reason why the conversation between the appellants and Raquidan was loud. There were no witnesses around. The police operatives who heard the conversation were hiding in their vehicle.

Appellants then contend that it was not possible to the two other operatives to have seen the signal of Raquidan

when they were ten to fifteen meters away and the place was dimly lit. The distance and the light must be sufficient enough for the two police operatives to see the signal of Raquidan. Thus, they simultaneously arrested the appellants.

The testimony of Raquidan is faulted in that he could not recall who among the appellants handed the marijuana to him. This is without basis. Raquidan only stated he could not remember whether the one who handed the bag containing the marijuana to him is appellant Tayan or Gatong-o.[2]

The testimony of Pat. de la Cruz to the effect that he could not recall the name of the hotel where the appellants were billeted which they searched is assailed by the appellants as improbable considering that the hotel is located in Angeles City where de la Cruz resides. De la Cruz may not have given too much importance to the name of the hotel they searched inasmuch as the search proved to be futile.

However, the appellants correctly pointed out that the following observations of the trial court has no basis in the record:

"Angeles City has been known to be a "drop area" which may be explained by the presence of Clark Air Base, the personnel of which are potential customers. Marijuana grown in the uplands i.e., Benguet, Mt. Province is taken to Baguio and thence brought down by land transport to drop areas such as Olongapo, Angeles City and Metro Manila where customers abound."[3]

The above statement finds no support in the records and is improper. Nevertheless it does not in the least minimize the guilt of the appellants for the crime they have committed.

The defense of the appellants is to the effect that on that evening of May 30, 1984 they were on their way to San Fernando, Pampanga to work in a certain Jun-Jun Bakery in Barangay San Isidro where Bacbac was once employed. They got out of the bus upon reaching Dau, Pampanga and took supper at a restaurant in Angeles City. Immediately after they left the restaurant, they were arrested by the police officers and forced to board their vehicle. They were brought to a grassy place where they were asked if they had any marijuana with them. Appellants denied having marijuana in their possession so they were brought to the police station where they were mauled and thereafter detained in the Angeles City Jail.

The version of the appellants is far from credible. They have not shown any cogent motive for the police officers to falsely charge them for peddling marijuana. The examination of the contents of the plastic bag that was taken from them proved to contain marijuana. They were caught in the act of selling marijuana to Raquidan. The case of the prosecution is positive and clear. The conviction of the appellants is in order.

WHEREFORE, the judgment appealed from is AFFIRMED in toto with costs against appellants.

### **SO ORDERED.**

Cruz, (Acting Chairman), Griño-Aquino, and Medialdea, JJ., concur.  
Narvasa, J., on leave.

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[1] R.A. 6425, as amended.

[2] TSN, March 10, 1986, pp. 6-7.

[3] Page 2 of Decision; p. 54, Rollo.

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