

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAYAS
VOCENTE Y TOY-DAAN & GREGORIO SALBINO Y BUCAYNO,
DEFENDANTS-APPELLANTS.**

G.R. No. 80533. July 30, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

On July 22, 1987, the defendants-appellants were adjudged guilty beyond reasonable doubt for violation of Section 21, (b) in relation to Section 4, Article II of Republic Act No 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. The dispositive portion of the decision of the Regional Trial Court, First Judicial Region, Branch 5 of Baguio City reads:

“WHEREFORE, the Court finds and declares the accused AGAYAS VOCENTE y TOY-DAAN and GREGORIO SALBINO y BUCAYNO guilty beyond reasonable doubt of the crime charged, and hereby sentences EACH OF THEM to suffer LIFE IMPRISONMENT; to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency; and to pay their proportionate shares in the costs.

“In the service of their sentence, the accused shall be credited with their preventive imprisonment under the terms and conditions subscribed in Article 29 of the Revised Penal Code, as amended.

“The confiscated marijuana (Exhibit “B”, “C” and “C-1”), together with their containers (Exhibits “B-1”, “C-2” and “C-3”) are hereby declared forfeited in favor of the Government, and upon the finality of this Decision, the Clerk of Court shall turn over the same to the Dangerous Drugs Custodian (NBI), through the Chief, PC Crime Laboratory, Regional Unit No. 1, Camp Dangwa, La Trinidad, Benguet, for disposition in accordance with law.” (At p. 31, Rollo)

The information dated September 23, 1985 states:

“The undersigned accuses AGAYAS VOCENTE y TOY-DAAN and GREGORIO SALBINO y BUCAYNO for VIOLATION OF SECTION 21 (b), IN RELATION TO SECTION 4, ARTICLE II OF REPUBLIC ACT 6425, AS AMENDED (SALE, ADMINISTRATION, DELIVERY, DISTRIBUTION AND TRANSPORTATION OF DANGEROUS DRUGS), committed as follows:

“That on or about the 29th day of August, 1985, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, not authorized by law, did then and there willfully, unlawfully and feloniously attempt to sell, deliver and distribute one (1) kilo of dried marijuana leaves, knowing fully well that said leaves are marijuana leaves, a prohibited drug, in violation of the above-mentioned provision of law.” (At p. 11, Rollo)

Upon arraignment, on October 8, 1985, the defendants-appellants separately entered a plea of not guilty with the assistance of their counsel.

After trial, the lower court rendered the decision being assailed in this appeal which assigns the following errors:

- (1) The Lower Court erred in finding that the accused were guilty beyond reasonable doubt.
- (2) The Lower Court erred in convicting the accused of the crime charged in the information.
- (3) The Lower Court committed serious misapprehension of facts. (At p. 8, Brief for Accused-Appellants)

The defendants-appellants, in primarily averring that they were framed up, relate their version of the facts of the case as follows:

“That on August 1985, he (Agayas Vocente) was presently employed as a gardener in Natubleng, Buguias, Benguet, which is about 52 kilometers away from Baguio. That on August 29, 1985, he went to Baguio City with the intention of taking a bus going to Sagpat, Kibungan, Benguet, his residence because of an information that his wife has just delivered. He failed, however, to get a ride for home because the last bus already left as it was already 1:30 in the afternoon. Thus, he decided to visit Gregorio Salbino, his co-accused, who was then employed as assistant cook at the Provincial Restaurant, located at Baguio City. When he was there, two (2) visitors of Gregorio Salbino arrived and then they invited them to go for a drink at the Dangwa Canteen which is about 80 meters away from the Provincial Restaurant.

“That when they were going up to the Dangwa Terminal, one of the visitors who was later identified by Gregorio Salbino and corroborated by Domingo Lagawas as a certain Lito Ognasy, an alleged NARCOM informer, handed to the accused Agayas Vocente one red knapsack. Lito Ognasy told the accused to proceed to Dangwa Canteen informing them that he will join them later as he was going to see somebody on the other corner leading towards Acop jeepney station near the Dangwa Canteen.

“That when they were about 10 minutes drinking (sic) at the Dangwa Canteen, Lito Ognasy arrived and ordered beer then immediately Narcom agents frisked them, handcuffed them and took the red knapsack placed on top of the table. They were brought to Trancoville, Quisumbing Street, Baguio City, the sub-office of the NARCOM, and there they were mauled. Then he (Agayas Vocente) was asked by Lito Ognasy to go with them to KM 3, La Trinidad, Benguet, where Lito Ognasy retrieved 1 carton on the basement of the building, which when opened at the Narcom sub-station contained marijuana. (TSN, dated July 29, 1986)

“Taking the witness stand, the accused Gregorio Salbino corroborated the testimony of the accused Agayas Vocente on the color of the pack seized by the arresting officers, the manner they were arrested at Dangwa Canteen and the mauling incident. He denied having been in possession of two (2) stalks of marijuana, and in fact he claimed that his jacket was not returned by the Narcom and that his P10.00 was not returned by the arresting officers. (TSN, dated March 2, 1987)

“Tenson Baniwas, the cook of the Dangwa Canteen, affirmed the testimony of the accused that the knapsack seized by the Narcom placed on top of the table of the accused was a red knapsack and not a mere plastic bag as claimed by the prosecution. (TSN, dated August 5, 1986, pp. 1-7)

“Domingo Lagawad’s testimony corroborated the testimony of Agayas Vocente that the owner of the carton taken at KM 3, La Trinidad, Benguet belongs to a certain Lito Ognasy, who is known to them (sic) (TSN, dated, August 5, 1986, pp. 8-15).

“Julio Liw-an’s testimony confirms the fact that at the time of the arrest of Gregorio Salbino, he was employed at the Provincial Restaurant as assistant cook. That it was his off-duty when he was arrested.

“The testimonies of Busoy Vocente, brother of accused, Agayas Vocente, and Lucio Salbino, brother of the accused, Gregorio Salbino, claimed that after the arrest of their brothers, when they went to the Narcom sub-station at Trancoville, Baguio City, a Narcom agent told them that the case of their brothers can be fixed at a fee of P15,000.00. That since the case is already filed, the arresting officers’ remedy is not to testify during the trial. That they did not give the money but requested for three (3) extensions of time from September 1985 up to November 1985.

“Until finally the Narcom agents testified in court in December 1986 when the negotiation failed. (TSN, dated October 8, 1986, pp. 6-22)” (At pp. 4-7, Brief for Accused-Appellants)

On the other hand, the Solicitor-General, in his Brief, counterstates the facts, to wit:

“Acting upon the information received by the First Narcotics Command, AFP substation at Trancoville, Baguio City from a so-called coordinating individual (CI) in the early afternoon of August 29, 1985 that dried marijuana leaves were being offered to him for sale, commanding officer Capt. Manzano devised an entrapment plan against the reported pushers (pp. 2-3, tsn., December 9, 1985). He designated three NARCOM agents: PC Sgt. Samuel Fontanilla to pose as marijuana buyer and Sgts. Glenn Logan and Godofredo V. Fider to lend him support (p. 3, tsn., id.).

“Sgts. Fontanilla, Logan, Fider and their informer promptly proceeded to the Pitshop Pub House, Baguio City where the latter had arranged to meet with the pushers. Fontanilla and the informer first entered the said establishment and after a minute, Logan and Fider followed and seated themselves nearby. The pushers, later identified as Agayas Vocente and Gregorio Salbino, were already there and the informer introduced Fontanilla to them as the buyer (pp. 3, 4, 5, tsn., Dec. 9, 1985).

“Agayas Vocente priced the marijuana dried leaves at P600.00 per kilo, to which Fontanilla agreed and thereupon ordered a kilo of said stuff. It was also agreed that they would meet shortly afterwards at the Dangwa Bus Terminal Canteen where delivery and payment would be made (p. 6, tsn., Dec. 9, 1985).

“At about 3:00 o’clock that same afternoon, the NARCOM men and their informer entered the Dangwa Bus Terminal Canteen, with Sgt. Fontanilla taking one table with the informer and Sgts. Fider and Logan occupying another table nearby and they all waited for the pushers (p. 6, tsn., Dec. 9, 1985).

“When Vocente and Salbino entered the canteen, the latter handed to Fontanilla the aquamarine plastic bag he was carrying, saying it contained one kilo of dried marijuana leaves (p. 7, tsn., Jan. 6, 1986). Thereupon, Sgts. Fider and Logan sprang up to the pushers, identified themselves as NARCOM agents and placed Agayas Vocente and Gregorio Salbino under arrest. Both pushers were frisked and the back right pocket of Salbino’s pants yielded 2 stalks of marijuana dried leaves weighing about 5 grams (pp. 7, 8, tsn., id.). Asked if they had some more of the stuff, Agayas Vocente revealed he has two (2) kilos more stashed in a certain residence at km. 3, La Trinidad, Benguet (p. 9, tsn., Dec. 9, 1985). The lawmen and the appellants proceeded to the place indicated and Vocente retrieved from underneath a house, a carton box (Exhibit C-3) marked “Hotcake and Waffle Magic Mix” containing approximately 2 kilos of dried marijuana flowering tops (C-C-1, C-2). These were also seized by the agents (p. 10, tsn., id.) A Joint Affidavit narrating the circumstances of the arrest of appellants was executed by the NARCOM agents (p. 177, rec.).

“The dried leaves confiscated from appellants were turned over to the PC crime laboratory at Camp Dangwa, La Trinidad, Benguet for laboratory examination to determine the presence of marijuana (p. 5, tsn., Nov. 20, 1985). Carlos Figueroa, forensic chemist who conducted the laboratory tests, found the submitted specimen positive for marijuana, a prohibited drug. This finding is incorporated in his Chemistry Report Nr. D-128-85 (Exhibit D) (pp. 9, 10, 11, tsn., id.; p. 176, rec.).” (At pp. 57-61, Rollo)

After a careful examination of the evidence, both physical and oral, relied upon by the trial court in its judgment of conviction, we find no reversible error warranting us to disturb its findings. We apply the oft-repeated rule that unless the trial judge has plainly overlooked certain facts of substance and value that if considered, might affect the result of the case, his findings as to which version to accept are accorded due respect on appeal. (People v. Juan dela Cruz y Gonzales, et al. G.R. No. 83260, April 18, 1990; People v. Renato Mendoza Javier y Torres, G.R. No. 77756, March 26, 1990; People v. Quinlob, 119 SCRA 130 [1982]).

The defendants-appellants anchor their prayer for a verdict of acquittal on the following allegations: (a) that Lito Ognasy who was the coordinating individual who helped the NARCOM agents in framing up the

accused-appellants for personal gain was never presented in court; (b) that Lito Ognasy was the real owner of the red knapsack wherein the seized marijuana was kept and the cook of the Dangwa Bus Canteen testified that it was a red knapsack, not a plastic bag that he saw the NARCOM agents seize; and (c) that the undue delay in the trial of the case against the accused-appellants was intended to allow the NARCOM agents to extort money from the two brothers of the defendants-appellants in exchange for “fixing” the latter’s case.

The only plausible defense of the accused-appellants was that their arrest was a product of a frame-up, a defense which persons similarly charged, more often than not, regard as their last stronghold. Like alibi, it is a weak defense that is easy to concoct but difficult to prove (*People v. Edgardo Estevan y Eugenio*, G.R. No. 69676, June 4, 1990; *People v. Dante Marcos y Sibayan*, G.R. No. 83325, May 8, 1990; *People v. Sergio Nabunat y Asag*, G.R. No. 84392, February 7, 1990) In the instant case, the defendants-appellants failed to convincingly show any ill motive on the part of the prosecution witnesses to falsely testify against the defendants-appellants. PC Sgt. Samuel Fontanilla who posed as the marijuana buyer, Sgt. Glenn Logan, one of the two PC soldiers who lent support to the entrapment plan against the defendants-appellants and Carlos Figueroa, the forensic-chemist who reported as positive for marijuana the specimen confiscated from the defendants-appellants and given to him for examination, all of these witnesses enjoy the presumption of regularity in the performance of their duties so that the burden of overturning the said presumption lies on the defendants-appellants. The latter failed to prove their claim that they were framed-up by the arresting officers for personal gain. (see *People v. Arsenio Alfonso y Cawading*, G.R. No. 78954, June 18, 1990; *People v. Marcelino Yap, et al.* G.R. Nos. 87088-89, May 9, 1990; *People v. Fernando Hernandez y Tolentino*, G.R. No. 83286, November 16, 1989) We note the observation made by the trial court that:

“Significantly, too, the accused did not frontally deny the prosecution evidence that Fontanilla and the civilian informer first met with the accused at the Pitstop Pub House where Fontanilla was introduced by the informer to the accused as an interested marijuana buyer and thereafter, the accused quoted the price of P600.00 a kilo and Fontanilla, in turn, ordered one kilo of the stuff which the accused undertook to deliver, as they in fact delivered, at the Dangwa bus Canteen. The accused’s denial is merely inferential, if at all, considering that they adverted to a meeting at another establishment, namely, the Provincial Restaurant, and that this meeting was between the accused and a certain Lito Ognasy and the latter’s unidentified companion, before they went to the Dangwa Bus Canteen to drink beer. Such a tangential denial cannot overcome the force of the positive and unequivocal declaration of the State witnesses.” (At pp. 29-30, Rollo)

The fact that the informer, Lito Ognasy, was never presented in court by the prosecution is of no moment. His testimony, if it were given, would at best be corroborative or cumulative. Hence, his non-presentation is not fatal to the prosecution’s case as recently reiterated in the case of *People v. Tangliben y Bernardino* (G.R. No. 63630, April 6, 1990). Moreover, if the defense was really convinced that the alleged red knapsack which contained the seized marijuana belonged to Lito Ognasy, it could have taken steps to avail of Ognasy’s presence in court by compulsory process (*People v. Said Sariol y Muhamading*, G.R. No. 83809, June 22, 1989 citing *People v. Boholst*, 152 SCRA 263 [1987]).

We agree with the trial court’s finding that in the attempt to prove their innocence, the defendants-appellants tried to distort the real scenario of the crime by counter-alleging that it was a red knapsack and not an aquamarine or green plastic bag that contained the marijuana in question and that the real owner of the said knapsack was Ognasy and not either of them “in the hope that the murkier it becomes their guilt would be more difficult to discern.” Considering that the defendants-appellants were both caught red-handed while handing the prohibited drug aforementioned to Sgt. Fontanilla for purposes of sale and that the prosecution’s witnesses gave positive testimonies relating to the said incident, we are constrained to affirm the lower court’s judgment of conviction. It bears noting, however, that under the circumstances of the present case, there was already a perfected contract of

sale. At the Pitstop Pub House where Sgt. Fontanilla, acting as poseur-buyer was introduced by Ognasy to the defendants-appellants, there was already an agreement to sell one kilo of marijuana at the agreed price of P600.00. At the Dangwa Bus Canteen, what was left was the obligation of both parties to deliver their respective parts in the perfected contract of sale the poseur-buyer, the payment and the accused-appellants, the marijuana. Hence, there was more than just an attempt to sell which connotes that the other party to whom the said offer to sell was made did not agree to accept the offer. As we have held in the case of *People v. Ramon Macuto*, G.R. No. 80112, promulgated on August 25, 1989:

“The commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction whereby as in this case, the accused handed over the tea bag of marijuana upon the agreement with the poseur buyer to exchange it for money. x x x What is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices. The identity of the tea bag of marijuana which constitutes the corpus delicti was established before the court.” (Underlining Supplied)

Considering that the Dangerous Drugs Act provides the same penalty not only for selling and attempting to sell but also for distributing or delivering, the dispositive portion of the lower court’s decision is not affected.

As regards the contention that the delay in the trial proceedings of the instant case was for extortion purposes, we find the claim unsubstantiated by the evidence on the record.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby **AFFIRMED** in all its parts.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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