

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESTANISLAO YUTUC Y TELLIS, ACCUSED-APPELLANT.

G.R. No. 82590. July 26, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal interposed by accused-appellant Estanislao Yutuc y Tellis from the decision of the Regional Trial Court, Branch XLVII, San Fernando, Pampanga* in Criminal Case No. 3707 entitled "People of the Philippines vs. Estanislao Yutuc y Tellis", the decretal portion of which reads:

"WHEREFORE, premises considered, finding the accused guilty beyond reasonable doubt of the offense charged, for violation of Section 4, Article II, Republic Act No. 6425, (As Amended by P.D. No. 1675 which took effect on Feb. 17, 1980) the Court hereby sentences him to serve the penalty of life imprisonment and to pay a fine of Twenty Thousand (P20,000.00) plus costs.

"The penalty imposed by the law is very stiff, but it must be followed and obeyed as it is so written. The law does not make any distinction whether the sale, administration, delivery, distribution and transportation of the prohibited drug is in large scale or in a small quantity. Whether the amount of the prohibited stuff sold, administered, delivered, distributed or transported is big or small, the penalty is the same because the ultimate pernicious effects thereof on the victims are the same.

"This decision must now serve as a deterrence to those who are still engaged or are attempting to indulge themselves in such nefarious activities in violation of the Dangerous Drug Law, for if they persist and caught in the act, or sufficient evidence exists to that effect, the full force of the law will take its course against them as it did in the case at bar.

"SO ORDERED."

The accused was arrested by Narcotics Command (NARCOM) soldiers on December 2, 1986 at 4:00 p.m. at Barangay Tina-jero, Bacolor, Pampanga, allegedly for selling dried mari-juana leaves in the amount of FIFTY PESOS (P50.00) to one of them Sgt. Juanito de la Cruz.

At the time of his arrest, the accused was 17 years old. He was detained at Camp Olivas, San Fernando, Pampanga until January 9, 1987 when he was transferred to the National Penitentiary at Muntinlupa, Metro Manila where he is presently detained.

Although arrested on December 2, 1986 and detained from that date, it was not until January 9, 1987 or more than one month after his arrest and detention that the following information was filed:

"The undersigned Provincial Fiscal and Special Counsel accuses ESTANISLAO YUTUC y TELLIS of the crime of Violation of Section 4, Article II of RA 6425, otherwise known as the Dangerous Drugs Acts of 1972, as amended, committed as follows:

"That on or about the 2nd day of December, 1986, at about 4:00 o'clock in the afternoon, in barangay Tinajero,

municipality of Bacolor, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ESTANISLAO YUTUC y TELLIS, not having been lawfully authorized, permitted and/or licensed, did then and there willfully, unlawfully and feloniously sell, administer and give away one (1) transparent cellophane bag of dried marijuana leaves, which when subjected to test, disclosed a positive indication of the presence of tetrahydrocannabinol (THC) found in marijuana, a prohibited drug.

"All contrary to law."

Upon arraignment, the accused, with the assistance of counsel de oficio, pleaded NOT GUILTY.

At the trial, the prosecution presented three witnesses, namely: Sgt. Juanito de la Cruz, Sgt. Eufonio N. Sapad, Jr., both of the Narcotics Command at Camp Olivas, Pampanga and Marlene Salangad, Forensic Chemist.

Sgt. Juanito de la Cruz, a soldier of the Armed Forces of the Philippines assigned to the Narcotics Command at San Fernando, Pampanga, as intelligence operative, testified that at about 1:00 o'clock in the afternoon of December 2, 1986, a Buy Bust Operation team was organized by Operation Officer Capt. Honorio Tomas in view of an informant's (identity undisclosed) report of an on-going drug trafficking in Barrio Tinajero, Bacolor, Pampanga. Sgt. Juanito de la Cruz, member of the Philippine Army, Narcotics Command, was to act as poseur-buyer and was given marked money in the total sum of P50.00 consisting of two (2) P20.00 and one (1) P10.00 bills (Exhibits "I" to "I-2", "J" to "J-2" and "K" to "K-2"). Upon arrival at the scene of the incident at 3:00 o'clock p.m., the civilian informer introduced De la Cruz to the accused as a friend of said informer. De la Cruz offered to buy P50.00 worth of marijuana from the accused. Accused went to a corner at the back of a house and came back bringing with him the marijuana dried leaves contained in one (1) plastic bag measuring one-half foot in length and four (4) inches in width and which approximately weighed eighteen (18) grams (Exhibit "G"). The accused gave De la Cruz the marijuana and the latter in turn proffered the P50.00 marked bills. De la Cruz wiped his face with a handkerchief as a pre-arranged signal to his companions to arrest the accused, which they did. Accused's companion who was with him all the time was able to scamper and ran away but accused himself was brought to the Police Station at Bacolor, Pampanga where the arresting team had him blottered and searched. They found the marked money in accused's possession (TSN, pp. 32-59, May 19, 1987; pp. 104-107, September 16, 1987). The apprehending officers brought the accused to Camp Olivas, San Fernando, Pampanga where they took accused's fingerprints and prepared a Booking Sheet and Arrest Report (Exhibits "D" to "D-4", TSN, pp. 59-65, May 19, 1987).

Sgt. Eufonio Sapad, Jr. who apprehended the accused corroborated Sgt. de la Cruz' statements to the effect that he saw the accused deliver the marijuana and De la Cruz gave the P50.00 marked bills. At Camp Olivas, the accused underwent custodial investigation without having been informed of his constitutional rights to remain silent, to counsel and to be informed of such rights and was made to sign a Receipt of Property Confiscated/Seized (Exhibits "A" to "A-3") consisting of the 18 grams marijuana dried leaves and the P50.00 marked bills, a Waiver of Detention under Art. 125, RPC (Exhibits "B" to "B-1"). The arresting officers executed a joint affidavit in connection with the apprehension of the accused (Exhibits "C" to "C-2", TSN, pp. 2-21, March 10, 1987; pp. 92-96, June 10, 1987; pp. 165-168, 171-177, December 9, 1987). Capt. Marlene Salangad, Forensic Chemist of the Philippine Constabulary confirmed that the specimen indicated in Exhibit "A" weighs approximately thirteen (13) grams of marijuana dried leaves contained in a cellophane pack (Exhibit "G") and which was wrapped with a piece of bond paper (Exhibit "F"). Upon physical, chemical and confirmatory tests taken, the specimen proved to be positive for marijuana, a prohibited drug (Technical Report No. UB-510A-86, Exhibits "H" to "H-1", TSN, pp. 72-86, June 10, 1987).

On the other hand, the defense presented the accused Estanislao Yutuc as its lone witness, who testified that he is 18 years of age having been born on May 7, 1969, single, is a helper of his mother and a resident of Tinajero,

Bacolor, Pampanga since birth. On that fateful day of December 2, 1986 at about 4:00 o'clock in the afternoon, he was at the road near their house at Tinajero, Bacolor, Pampanga about to pay P230.00 for the rice which his mother purchased at the store located near their house. The money given to him by his mother to pay the rice consisted of two (2) P50.00 bills; five (5) P20.00 bills; and three P10.00 bills. Prior to the intended payment, a person approached him and inquired about a person whose name he forgot. He denied any knowledge of said person. Another person arrived and they exchanged signals to each other. Then PC soldiers came. The first person who inquired ran away and the soldiers handcuffed him. C2C Oscar Imperial manacled him. He asked Imperial the reason for shackling him but the officer refused to say anything. His aunt came, held him in the arms and asked the PC soldiers why they put handcuffs on the accused and brought him with them. The PC soldiers did not answer her questions but simply drew their guns. He felt frightened and his aunt released him from her hold. He was made to board a car and sat in the middle of two (2) persons. The PC soldiers were in civilian clothes and inside the car, he was beaten and boxed several times all over his body by said soldiers. He was brought to the Municipal Building of Bacolor, Pampanga and was subjected to interrogation concerning the sale of marijuana and his personal circumstances. He denied having anything to do with a marijuana. Later, he was brought to Camp Olivas but while they were on the way, apprehending officers Villaruz, Sapad, Imperial, De la Cruz and Baking hit him and boxed him several times. While being maltreated, they asked him the name of the person who ran away and again he denied knowledge of said person. They boxed him for giving such response. At the NARCOM Office, Camp Olivas, Imperial, De la Cruz and Sapad kicked him and he was thrown by the impact of the assault. He was made to sign Exhibits "A", "B" and "D" under threats to kill him if he would not sign them. Because he could not read the documents presented to him, he asked the soldiers to read the documents to him, and they replied that he was just a "nobody" to make such a request. Fearful of his life, he gave in and involuntarily signed said papers without having been informed of the contents thereof and without the assistance of counsel in violation of his constitutional rights. He was detained at Camp Olivas for one (1) month and seven (7) days. Fifteen (15) days after his detention, his mother filed a petition for habeas corpus (Exhibit "1") but the same was dismissed upon filing of the Information against him on January 9, 1987 (Exhibit "2").

He denied having been engaged in selling marijuana, neither did he smoke marijuana before. He recognizes the money marked as Exhibits "I", "J" and "K" as part of the P230.00 his mother gave him. At the time the money were taken from him, no markings appeared thereon. He saw the PC officers placed dots on the money thereafter. Prior to the incident, he did not know these PC soldiers and that he had no quarrel with them earlier, nor with their relatives (TSN, pp. 196-247, December 10, 1987).

As heretofore mentioned, accused Estanislao Yutuc was convicted of the crime charged.

Hence, the instant appeal.

Accused-appellant poses the following assigned errors:

FIRST ASSIGNMENT OF ERROR

1. THE TRIAL COURT ERRED IN ADMITTING THE FOLLOWING EXHIBITS, AS EVIDENCE OF INCRIMINATING ADMISSIONS, OF THE ACCUSED;
2. EXHIBITS A, A-1, A-2, AND A-3 -- RECEIPTS OF PROPERTY CONFISCATED/SEIZED DATED DECEMBER 2, 1986, PARTICULARLY EXHIBIT A-2 WHICH READS "WITH MY CONFORMITY, ESTANISLAO YUTUC Y TELLIS (OWNER OF CONFISCATED ITEMS)";
3. EXHIBITS B, AND B-1 -- "WAIVER OF DETENTION UNDER ART. 125, RPC" DATED DECEMBER 3, 1986, PARTICULARLY EXHIBIT B-1 WHICH PURPORTS TO BE THE SIGNATURE OF THE ACCUSED;

4. EXHIBIT D -- "BOOKING SHEET AND ARREST REPORT", PARTICULARLY EXHIBIT D-1 SHOWING PUR-PORTEDLY THE SIGNATURE OF THE ACCUSED AND EXHIBIT D-4 THE ALLEGED FINGERPRINT MARKS OF THE ACCUSED;

5. EXHIBIT F -- THE ALLEGED BOND PAPER USED IN WRAPPING PLASTIC BAG ALLEGEDLY CONTAIN-ING MARIJUANA LEAVES, MORE PARTICULARLY, THE SIGNATURE OF THE ACCUSED; AND

6. EXHIBITS I, I-I, J, J-1, J-2, K, and K-1 -- THE ALLEGED MARKED MONEY, MORE PARTI-CULARLY, EXHIBITS I-2, J-2, AND K-2 WHICH PUR-PORTEDLY ARE SIGNATURES OF THE ACCUSED.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED SOLD DRIED MARIJUANA LEAVES FOR P50.00 (FIF-TY PESOS) TO SGT. JUANITO DE LA CRUZ OF THE NARCOTICS COMMAND.

THIRD ASSIGNMENT OF ERROR

ASSUMING THAT THE ACCUSED SOLD DRIED MARI-JUANA LEAVES TO SGT. JUANITO DE LA CRUZ, THE TRIAL COURT ERRED IN NOT FINDING THAT HE DID SO ONLY UPON INDUCEMENT (NOT ENTRAPMENT) OF NARCOM SOLDIERS.

FOURTH ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING THE AC-CUSED GUILTY BEYOND REASONABLE DOUBT FOR VIO-LATION OF SECTION 4, ARTICLE II, REPUBLIC ACT NO. 6425 (AS AMENDED BY P.D. NO. 1675) AND IN SENTENCING HIM TO SERVE THE PENALTY OF LIFE IMPRISONMENT AND TO PAY A FINE OF TWENTY THOUSAND PESOS (P20,000.00).

Well-entrenched is the rule that trial courts' findings of facts carry great weight for these courts have the privi-lege of examining the demeanor of the witnesses while on the witness stand, and therefore, can discern if these witnesses are telling the truth or not. The exception lies when (1) the conclusion is a finding based entirely on specu-lations; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; and (5) the court, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both the appellant and appellee (People v. Taruc, 157 SCRA 182 [1988]).

In its findings of guilt against the accused, the trial court gave more weight and credence to the evidence of the prosecution, both testimonial and documentary.

It laid stress on the credibility of the testimonies of the members of the "Buy Bust Operation Team" organized with the duty to enforce the law. As such, they were supposed to be parts and parcels of the law enforcement agencies of the government which enjoy the presumption of regularity in the performance of their duties, and added that there being no evil or improper motive in the minds of all the members of the apprehending team or any of them to make a false imputation against the accused, the credibility of their declarations is further strengthened (Rollo, pp. 44-45).

However, a meticulous scrutiny of the records discloses that the testimonies of the prosecution witnesses are not only fraught with inconsistencies and contradictions but the actions of the police officers in question indisputably show a callous disregard of the Constitution and of the law which would amount to a mockery of justice to impress on their actions the presumption of regularity and on their testimonies with honesty and good faith.

In an un rebutted testimony, the accused established that he was boxed and maltreated particularly when asked the name of the person who ran away. At the NARCOM Office, Camp Olivas, Imperial, De la Cruz and Sapad kicked him until he was thrown by the force and impact of the punishment. He was threatened and intimidated into signing incriminatory admissions. He was illegally detained from December 2, 1986 to January 9, 1987. On December 17, 1986, the accused's mother filed a petition for Habeas Corpus thereby practically forcing the filing of the information in the instant case on January 9, 1987 before the Regional Trial Court of Pampanga. In view of the filing of said information, the Petition for Habeas Corpus became moot and academic and was dismissed by the Regional Trial Court on that ground but not before it has noted that the detention of the accused by the NARCOM agents was "without any legal basis." (Rollo, pp. 75-76).

Undeniably, the prosecution witnesses Sgts. De la Cruz and Sapad, committed a criminal act, a plain violation of Article 125 of the Revised Penal Code, if not plain arbitrary detention (Article 124 of the same Code). In fact, Sgt. Sapad admitted in open court that he was aware that the detention of the accused was in violation of the Revised Penal Code (Hearing, December 9, 1987; TSN, pp. 7, 8, 9).

Under the circumstances, there is merit in defense counsel's contention that these prosecution witnesses who are sworn to protect the citizenry, yet have knowingly violated the Constitution and the law, hardly deserve to be given any credence at all. Otherwise stated, there can be no conviction on the basis of their testimonies (Rollo, p. 88).

Verily, the presumption that official duty has been regularly performed cannot, by itself, prevail against the constitutional presumption of innocence accorded an accused person (People v. Ale, 145 SCRA 51 [Oct. 14, 1986]; People v. Fernando, 145 SCRA 151 [Oct. 24, 1986]; People v. Flores, G.R. No. 65647 [Aug. 30, 1988]; People v. Carido, G.R. No. 32242 [Nov. 18, 1988]).

Even more categorically, the Court stated that the common modus operandi of 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 as well as to harassment, ex-tortion and abuse (People v. Fernando, supra).

Still further, full faith and credence cannot be accorded to the testimonies of the prosecution witnesses particularly those of the two arresting officers, as they are replete with contradictions and tainted with inaccuracies.

Sgt. Eufonio Sapad, Jr., himself the arresting officer, was so confused that even on direct examination, he could not even distinguish the accused from the informer. He testified thus:

"FISCAL LISING: Can you possibly identify this informer who reported to your office that there was a person in Tinajero, Bacolor, Pampanga?

A: Yes, sir.

Q: Who is he?

CLERK OF COURT: Witness pointing to a person inside the courtroom when asked, answered by the name of Estanislao Yutuc.

FISCAL LISING: What I mean, you stated a person or informant went to your office to report that there is a person ... I am clarifying Your Honor.

ATTY. BENOZA: There was already an answer. The alleged informer was already pinpointed, Your Honor.

FISCAL LISING: I am asking ... He misunderstands me.

ATTY. BENOZA: I just want to make it of record that the informer pinpointed to by the witness is the very accused Estanislao Yutuc." (TSN, pp. 4-6, March 10, 1987).

Sgt. De la Cruz who acted as poseur-buyer simply declared that the report came from a civilian informant (TSN, pp. 36-37, May 19, 1987). The identity of the informer was not revealed. For no apparent reason, he was not pre-sented as a witness, although there appears to be no point in concealing his identity for as Sgt. de la Cruz testified, the informer was with him when he arrested the accused and introduced him to the latter (Hearing, May 19, 1987; TSN, pp. 17, 18, 19); giving rise to another disputable presumption that evidence wilfully suppressed would be adverse if produced (Rule 131, Sec. 5(e); *People v. Ale*, 145 SCRA 50 [1986]).

As to the number of suspected drug pushers per verbal report from the alleged informant, Sgt. de la Cruz was not even certain. At first, he said there was one and then he said there were two. He declared as follows:

"Question: What was the purpose of that civilian informant who went to your office on Decem-ber 2, 1986?

Answer: He told us that there was one person who was selling marijuana, sir." (TSN, pp. 36-37, May 19, 1987).

"Question: Did you hear what was reported by the alleged civilian informant to Col. Roberto Kalinisan?

Answer: Yes, sir.

"Question: What did you hear about?

Answer: The civilian informant went to our office and reported to Col. Roberto Kali-nisan that there are two persons in the name of Estanislao Yutuc and Arnel Garcia who are involved in selling marijuana in Barrio Tinajero, Bacolor, Pampanga, sir.

"Question: Did I get you right that you stated that there was only one alleged person informed by the civilian informant who was involved in selling marijuana?

Answer: I cannot recall, sir, but I know there are two." (TSN, pp. 113-115, September 16, 1987, underlining supplied).

Even as to the time he acquired knowledge of the name of the accused, Sgt. de la Cruz contradicted himself as follows:

"Q: How bout the accused Yutuc? From whom did you hear his name for the first time?

A: When we already investigated him sir." (TSN, p. 159, September 30, 1987) (emphasis supplied)

"ATTY. BENOZA: Did I get you right that it was only in the investigation when you came to know the name of the accused?

A: When the informant reported to us. I already knew his name, sir.

"Q: So you want to change your re-direct testi-mony that you came to know the name of the accused during the investigation?

A: Yes, sir, I had to answer." (TSN, p. 160, Ibid.; emphasis supplied).

As to whom the verbal report of the informant was directed, both NARCOM agents' statements are at war with each other despite their presence at the time the report was received, since Sgt. Sapad swears that the informant reported the matter of drug trafficking to his officemates (TSN, p. 7, March 10, 1987) while Sgt. de la Cruz stated that it was to Operations Officer Captain Honorio Tomas to whom the information was relayed (TSN, p. 38, May 19, 1987) then amended it to Commanding Officer Col. Roberto Kalinisan (TSN, pp. 111-112, September 16,

1987, emphasis supplied).

Even the physical evidence is suspect since Sgt. Sapad who was supposed to be the seizing officer affirmed that the marked money were returned to him and he had them xeroxed but when asked who returned the same, he replied that the money was on file (TSN, p. 18, March 10, 1987).

And again as to who placed the dots on the marked money, the answers of the two soldiers did not jibe. Sgt. Sapad said that all of them placed the dots on the marked bills (TSN, p. 94, June 10, 1987) while Sgt. de la Cruz stated that Operations Officer Capt. Tomas placed them (TSN, pp. 118-119, September 16, 1987).

Sgt. Sapad testified that the plastic bag delivered to Sgt. de la Cruz contained five fingers, dried marijuana leaves weighing approximately 18 grams (TSN, pp. 10-12, March 10, 1987; Exhibits "A" to "A-3", "E" to "E-2"). In contrast, the Laboratory Examination Report, confirmed by the testimony of Marlene Salangad, Forensic Chemist of the PC Crime Laboratory, who examined the contents, shows that they consisted exclusively of marijuana fruiting tops weighing thirteen (13) grams. This discrepancy finds no explanation in the record.

In contrast, the testimony of the accused is direct, consistent and devoid of any prevarication. Contrary to the claim of the prosecution that the defense limited itself to bare denial, the accused clearly explained that he was arrested when about to pay for the rice his mother has bought. The marked money allegedly used to pay him was part of the two hundred thirty pesos (P230.00) his mother gave him to pay for the rice. His testimony remained unshaken despite rigid cross-examination.

The accused maintained that he does not sell nor smoke marijuana (Decision, Trial Court, p. 16). His statement is confirmed by the fact that he has no criminal record unlike in the case of *People v. Boholst* (152 SCRA 271 [1987]) whose doctrine is sought by the Solicitor General to be applied to this case, where the accused was previously convicted of frustrated murder, robbery, hold-up and violation of R.A. 6425 as drug pusher.

As to documentary evidence, there is merit in the claim that the trial court erred in admitting the exhibits in question which were taken from the accused in patent disregard of the latter's constitutional rights.

As earlier narrated, after he was arrested and on the way to Camp Olivas, he was beaten, boxed, pushed and kicked. At the NARCOM Office, without being informed of his right to silence and of his right not to incriminate himself, he was threatened and/or intimidated to sign several documents now marked Exhibits "A", "B", "D", "F", "I", "J" and "K" (Hearing, December 10, 1987; TSN, pp. 24, 25, 26, 29, 30). Because he could not read and understand the documents presented to him, he requested that the said documents be read to him but his request was rudely denied. He was a "nobody" the soldiers said (*Ibid.*; TSN, p. 27).

Afraid and thoroughly intimidated, the accused signed the documents identified as follows:

- (1) Exhibit "A" - purporting to be a "Receipt of Property Confiscated/Seized" from him by the soldiers;
- (2) Exhibit "B" - "Waiver of Detention under Article 125, R.P.C.";
- (3) Exhibit "D" - "Booking Sheet and Arrest Report" to which the accused implicitly admits that he was arrested for selling marijuana leaves;
- (4) Exhibit "F" - through which the accused acknowledges that the plastic bag contain-ing marijuana leaves taken from him;
- (5) Exhibits "I", "I-1", "J", "J-1", "J-2", "K", "K-1" and "K-2" - which the accused apparently admits that the two twenty-peso bills and one ten-peso bill allegedly with markings, were paid to him by the Narcom. (Rollo, pp. 74-75).

The narration of the above circumstances by the accused was not only unrebutted by the prosecution but was admitted by Sgt. Sapad on cross examination as follows:

x x x x x x x x

"Question:

While he was detained, that was the time you asked him to sign Exhibit "A", is that correct?

Answer:

Before he was detained, we have him signed the Exhibit "A", sir.

Question:

Is it not you said that you immediately proceeded to Camp Olivas to bring the accused in that place; are you now saying that before you went to Olivas, you went to another place and asked the accused to sign somewhere else?

Answer:

No, sir.

Question:

That means that immediately upon being apprehended, that was the time that you asked him to sign that document Exhibit "A"?

Answer:

We have him signed the document in the office, sir.

Question:

At Camp Olivas where he as detained?

Answer:

No, sir.

Question:

In the office?

Answer:

Yes, sir.

Question:

When you asked him to sign this, again, you just asked him to sign this without informing him of anything, is that correct?

Answer:

Except for the things I said a while ago, we told him that before signing, he can have the services of a counsel.

Question:

That is all you told the accused, Mr. Sapad?

Answer:

Yes, sir.

Question:

Are you sure of that?

Answer:

Yes, sir.

Question:

You did not tell him before signing that this document may be used against him in a criminal prosecution like this very serious crime as charged in the very in-formation?

Answer:

No, sir.

Question:

Likewise, you did not inform him that he has the right to refuse signing this document?

Answer:

Yes, sir.

x x x x x x x x

Question:

I am showing you again Exhibit "D", which you asked the accused to sign, a booking sheet and arrest report. Before you asked the accused to sign, again, I am asking you a very important question, Mr. Sapad- - it was only the right to counsel that you informed Mr. Yutuc and nothing else before you asked him to sign?

Answer:

Yes, sir.

Question:

And again, this was signed in the presence of several officers who are armed with guns, is that correct?

Answer:

Some were armed, sir.

Question:

But this was signed in Camp Olivas when he was detained?

Answer:

Before we have him signed, he was not yet detained, sir.

Question:

Now, let us clarify this. Do you mean to say that when you brought him to the office you don't consider it detention yet?

Answer:

Not yet, sir.

Question:

And the act of investigation, that is not detention yet, according to you?

Answer:

Not yet, sir.

Question:

You are referring to detention as the placing behind bars?

Answer:

Yes, sir.

COURT:

Question:

But he was under your custody?

Answer:

Yes, sir.

Question:

And it was a custodial investigation that you had?

Answer:

Yes, sir."

(Hearing, December 9, 1987; TSN, pp. 10-12, Record, pp. 171-173; TSN, pp. 13-16; Record, pp. 174-176).

These documents were signed by the accused during custodial investigation without the assistance of counsel. He was not informed of his constitutional right to silence and obviously under threats of violence and intimidation upon his person. He might have been informed of his right to counsel but not that he may be provided with one if he cannot afford the services of counsel. More than that, if it can be assumed that he waived said right, the waiver was not in writing and not in the presence of counsel. In any event, this Court ruled that the written instruments are declaration against interest and tacit admission of the crime charged, since mere unexplained possession of prohibited drugs is punishable by law. These documentary evidence is in the same category as extra-judicial confessions outlawed by the Constitution (*People v. Turla*, G.R. No. 70270, November 11, 1988).

There is, therefore, no question that the admissions of the accused were taken without strict observance of Section 20, Article IV of the Constitution which provides in no uncertain terms that "Any confession obtained in violation of this section shall be inadmissible in evidence."

Thus, this Court has ruled that the rights guaranteed during a custodial investigation are not supposed to be merely communicated to the suspect especially if he is un-lettered, but must be painstakingly explained to him so he can understand their nature and significance. Moreover, manhandling of any sort will vitiate any extrajudicial confession that may be extracted from him and renders it inadmissible in evidence against him (*People v. Opida*,

142 SCRA 296 [1986]).

The evidence as to whether or not Yutuc participated in the sale of marijuana is not enough to convict him beyond reasonable doubt. But assuming he did sell, there remains the issue of whether he was induced to sell or was merely entrapped into looking for marijuana to sell.

Sgt. Juanito dela Cruz narrated that he approached the accused who was with one Arnel Garcia and told him "iiscore ako ng marijuana," meaning, he will buy marijuana. The accused then allegedly went inside a street at the back of a house and came back bringing along with him the marijuana for which he (Sgt. de la Cruz) paid the marked P50.00 (Hearing, Sep-tember 16, 1987, TSN, pp. 32 to 41).

On the other hand, Sgt. Sapad on cross examination admitted that because of the verbal report of the informant, he already had a pre-conceived notion, a pre-judgment that there really was illegal sale of drugs in Tinajero and that accused was selling marijuana. He admitted further that he and his companion practically induced the suspect into the commission of the offense. He testified as follows:

"Question: Without you having been a buyer or your companion having been a buyer, you would agree with me that there would not have been a charge against the accused, is that correct?

Answer: Yes, sir.

Question: In other words, you induced practically the suspect into commission of an offense, is that correct?

Answer: Yes, sir.

Question: Mr. Witness, you have been in investigation for so long. I am asking you a very important question, which may redound to the future of this poor boy: - you do not know the difference between the instigation and entrapment, as an investigator, is that correct?

Answer: No, sir.

Question: As a matter of fact, that was not even a subject of your seminar or any other training before you undergo raiding like this?

Answer: I do not know that, sir.

Question: In short, you instigated the commission of the crime?

Answer:

Yes, sir."

(Hearing, December 9, 1987, TSN, pp. 18 to 20), Underscoring supplied)

On all fours with the case at bar is the case of *People v. Lapatha, et al.* (G.R. Nos. 63074-75, November 9, 1988), where the Court ruled that instigation and not entrapment prevailed. Under similar circumstances, the accused in said case was not looking for buyers at the time when the poseur-buyer asked for the drug and practically induced the former to commit the crime.

In the same case, the Court distinguished instigation from entrapment as follows:

"In entrapment, ways and means are resorted to for the purpose of trapping and capturing the law breakers in the execution of their criminal plan. On the other hand, 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 prosecution and conviction, while in instigation, the defendant would have to be acquitted."

In another case, this Court ruled further that entrapment 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. 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 of the peace officer (People v. Gatong-o, G.R. No. 78698, December 29, 1988).

In the case at bar, the accused denied having sold marijuana to the Narcotics Command agents nor had he been engaged at any time in the sale of marijuana. His statement is confirmed by the fact that he has no police or criminal record. Nevertheless, assuming that he did sell the drug as alleged by the prosecution, it would appear that when Sgt. Juanito de la Cruz approached the accused, the latter was not looking for buyers of marijuana nor was he in possession of any marijuana. It was Sgt. de la Cruz who proposed to buy marijuana from the accused after having been introduced to the latter as a user. Thereafter, the accused is alleged to have entered an alley at the back of a house and later returned with the marijuana for which Sgt. de la Cruz paid the accused P50. Without the proposal and instigation of Sgt. de la Cruz, the alleged sale of marijuana would not have transpired.

It is quite clear that Sgt. de la Cruz suggested the commission of the crime by offering the accused P50 for the purchase of the prohibited drug which was not even in the possession of the accused. Otherwise stated, Sgt. de la Cruz instigated the accused to look for marijuana which he (Sgt. de la Cruz) would buy or pay for P50. When an employee of the government, as in this case, encourages or induces persons to commit a crime in order to prosecute them, such conduct is most reprehensible (U.S. vs. Phelps, 16 Phil. 440, as cited in People v. Lapatha [supra]). Clearly, there was instigation in the case at bar and the defendant is entitled to acquittal.

In any event therefore, the issue as to whether or not the testimonies of the prosecution witnesses could be believed, is immaterial as against the fact that instigation transpired in the case at bar and not entrapment, in which case the accused would have to be acquitted.

Finally, if the inculpatory facts and circumstances are capable of two or more explanations one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support conviction (People vs. Taruc, pp. 186-187, supra).

The scales of justice must hang equal and in fact, should even be tipped in favor of the accused because of the constitutional presumption of innocence (People vs. Opida, 142 SCRA 303 [1986]).

WHEREFORE, the judgment of conviction is REVERSED and SET ASIDE and accused Estanislao Yutuc y Tellis is ACQUITTED on grounds of reasonable doubt.

SO ORDERED.

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

* Penned by Judge Edilberto S. Aquino

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