

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO HERNANDEZ Y TOLENTINO, DEFENDANT-APPELLANT.*G.R. No. 83286. November 16, 1989*

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-83286/>**GANCAYCO, J.:**

On July 16, 1987, Police Corporal Renato del Poso of the Eastern Police District, Pasig, Metro Manila, received information that a certain drug pusher alias "Boy Cubao" was engaged in the sale of marijuana dried leaves along Calderon Street, in Calumpang, Marikina. Del Poso formed a team composed of Patrolman Romeo Caviso, as team leader, Patrolman Dominador Cruz, who with Caviso were assigned the role of poseurs-buyer, as well as Patrolmen Roberto Pongyan, Henry Molina and Rafael Ranot. They were ordered to conduct a surveillance in the place to verify the report. A week of such surveillance produced positive results so they decided to conduct a buy-bust operation to apprehend the drug pusher.

On July 21, 1987 at around 10:30 A.M., the group proceeded to the vicinity of Calderon Street. Each of the police operatives took strategic positions around the area. At about 11:00 A.M., Patrolmen Cruz and Caviso saw the suspect standing near the American Golden Shoe Factory situated in the same place. They approached the suspect and asked him if they could buy marijuana leaves with fruiting tops. The suspect replied that they could buy marijuana for ten pesos (P10.00). Pat. Cruz then handed a ten-peso bill to the suspect who in turn delivered to Pat. Cruz one piece of plastic tea bag containing marijuana with fruiting tops.[1] Upon a pre-arranged signal of Pat. Caviso, the other members of the team arrested the suspect who was identified as Fernando Hernandez y Tolentino. They confiscated three (3) plastic tea bags of marijuana with fruiting tops in the right pocket of his maong short pants.[2] Hernandez was then brought to the police headquarters together with the evidence confiscated from him for investigation. Hernandez admitted his guilt and pointed the source of marijuana to be a certain Edgar, a member of the military.

An examination of the dried marijuana leaves with fruiting tops confiscated from Hernandez was made by Police Captain Nelly Cariaga, a forensic chemist, who found the same to be positive for marijuana.[3]

Hence, in due course, an information was filed against Hernandez in the Regional Trial Court for violation of Section 4, Article II of Republic Act No. 6425, as amended by Batas Pambansa Blg. 179, which reads as follows:

"That on or about the 21st day of July, 1987, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, without having been authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and give away to another person four (4) pieces of plastic tea bags containing dried marijuana, a prohibited drug, in violation of the above-cited law.

Contrary to law."

After arraignment wherein the accused pleaded not guilty and the trial on the merits, a decision was rendered on May 6, 1988 convicting the accused of the offense charged and imposing upon him the penalty of reclusion perpetua with all its accessory penalties, to pay a fine of P20,000.00 and to pay the costs. The accused was

ordered to be credited in full with the period of his preventive imprisonment. The four (4) pieces of plastic tea bags containing dried marijuana fruiting tops were ordered turned over to the Dangerous Drugs Board Custodian, NBI, to be disposed of according to law.

The accused interposed this appeal alleging that the trial court committed the following of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE CONTRADICTING TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT AT THE TIME OF HIS CUSTODIAL INVESTIGATION HE WAS NOT APPRISED OF HIS CONSTITUTIONAL RIGHTS."

The appeal is devoid of merit. The appellant claims that he was the victim of a frame-up and that not one of the team members of the police knew his identity prior to his arrest.

The testimony of the police officers who arrested him is to the effect that he was duly identified by an informer before they actually conducted a buy-bust operation. They conducted a surveillance of the area whereby they positively verified the appellant as a drug pusher. The prosecution established that at the buy-bust operation the appellant sold a tea bag of dried marijuana with fruiting tops to Patrolmen Cruz and Caviso for and in consideration of P10.00.

In another vein, the appellant claims that Patrolman Caviso knew him earlier as he was a police informer. If this is so, it must be the reason why the police officers were able to easily identify him during the operation. The tea bags that were taken from the possession of the appellant were found to be marijuana.

The appellant failed to show any motive on the part of prosecution witnesses, particularly the police officers, in testifying in the manner that they did against him. The presumption of regularity in the performance of their official functions has not been overturned.

The mere denial of the appellant that he was just picked-up for no reason at all and framed-up deserves no credence. He claims that during the custodial investigation he was not informed of his constitutional rights and that he was not able to avail of the services of counsel. It appears no extrajudicial statement was taken from him during such investigation that could have been presented as evidence against him. Nevertheless, the evidence adduced by the prosecution adequately established his guilt beyond peradventure of doubt.

During the custodial investigation the appellant identified the source of the marijuana that was confiscated from him to be a certain Edgar who is a member of the military. This is a lead that the law enforcement agencies should pursue if no steps had been taken as yet.

WHEREFORE, the judgment appealed from is hereby affirmed in toto with costs against appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit B.

[2] Exhibits F to F-1.

[3] Exhibit C.

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