

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO ESTILLERO Y ABESA, DEFENDANT-APPELLANT.*G.R. No. 84148. June 05, 1989*

Ponente: GRIÑO-AQUINO, J.

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To a charge of drug-pushing, in violation of Republic Act 6425, otherwise known as the Dangerous Drugs Act, the appellant pleaded not guilty upon arraignment on February 4, 1987 in Criminal Case No. RTC '87-1530, entitled "People of the Philippines vs. Pedro Estillero, Jr." in the Regional Trial Court of Naga City.

Based on information given to the Naga City police by a police informant, Amelita Catolico, that marijuana was being sold at the public market, police lieutenant Tomas Rentoy, Officer-in-Charge of the Anti-Narcotics Unit, together with patrolmen Rodolfo Imperial, Benjamin Navarro, Jr. and policewoman Lorna Fernandez, decided to conduct a "buy-bust operation" (p. 18, Rollo) on January 21, 1987. The informant, Amelita Catolico was to pose as a buyer, using marked money in the amount of Twenty Pesos (P20.00), consisting of two (2) five-peso bills bearing Serial Nos. KL973450 and BM563678 and a ten-peso bill bearing Serial Number AB238388. The policemen had the paper bills xeroxed before they proceeded to the Naga City public market at 7:30 in the evening of January 21, 1987. Acting according to plan, the policeman stayed beside the Regina Dry Goods Store while Amelita Catolico proceeded to the open patio, which was five to seven meters away, where the accused was loitering at the time. Upon approaching the accused, Catolico handed the marked money over to him.

When Lt. Rentoy and his group saw that the accused "already gave something" (p. 19, Rollo) in a silver-colored cigarette foil to Amelita, they approached the accused and announced that they were arresting him. The accused took to his heels but the policemen gave chase until they caught him. He was immediately brought to the police headquarters, where he was subjected to search and investigation. The marked money was seized from him by Rentoy. Amelita Catolico turned over to Lt. Rentoy the marijuana cigarette she bought from the accused. It was subjected to the Duquanois Levine Regent System test. At Camp Bagong Ibalon Crime Laboratory in Legaspi City, the dried leaves were also subjected to a phine layer promotographic examination. Both tests proved that the confiscated stuff was marijuana which weighed approximately three (3) grams.

The accused denied having sold a marijuana cigarette to Catolico (whom he did not know personally) or received P20 from the latter. He alleged that he was the victim of a frame-up by the police. He testified that at around 7:30 o'clock in the evening of January 21, 1987, he was in the open patio of the Naga City public market, waiting for his employer Ramon Agubang to pay him his daily wage as a carinderia helper, when Patrolman Navarro, in the company of some other policemen, arrived and upon seeing him, called him to ask about the whereabouts of a certain "Kilas." When he answered that he did not know "Kilas" he was brought to the police headquarters and placed inside the jail. They threatened to charge him with possession of marijuana if he refused to tell them the whereabouts of "Kilas," but they promised to set him free if he gave them the information they wanted. He insisted that he did not know "Kilas." His employer Ramon Agubang testified that when he returned to his carinderia at around 8:00 p.m., he learned that the accused, whom he had not yet paid his wages had been

apprehended by the police and incarcerated.

On April 18, 1988, the trial court rendered judgment finding the accused guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the penalty of reclusion perpetua, to pay a fine of P20,000, and the costs.

The accused appealed to this Court, alleging that the lower court failed to consider the following material facts:

1. The failure of the prosecution to rebut his testimony that he was the victim of a frame-up by the arresting officers.
- 2 The failure of the prosecution to present in court the alleged poseur-buyer Amelita Catolico who was the principal participant in the entrapment of the accused.
3. That the sale of marijuana allegedly took place in the patio of the public market in full view of many persons and the apprehending officers.

We find merit in the appeal. The appellant's guilt has not been proven beyond a reasonable doubt.

Firstly, his denial of the charge of drug-pushing and his allegation that he was framed by the policemen because he could not give them information regarding a certain "Kilas" was not rebutted by the prosecution. The presumption that official duty had been regularly performed cannot prevail over the Constitutional presumption of innocence enjoyed by an accused person particularly when the prosecution's evidence is weak.

It is unbelievable that the appellant would have sold marijuana leaves openly in the patio of the public market, to a complete stranger like Catolico. Even if he was engaged in that business, it is improbable that he would have risked getting caught and spending the rest of his life behind bars for the pittance of P20 supposedly proffered to him by Catolico.

The failure of the prosecution to present the supposed poseur-buyer, Amelita Catolico, was fatal to its case. Without her testimony identifying the accused as the supposed drug-pusher, there was no proof that she bought and he sold the marijuana to her. The prosecution failed to explain why it could not present her. The presumption is that her evidence would have been adverse if produced (Rule 131, Sec. 5[e], Rules of Court).

In *People vs. Laureano Fernando*, 145 SCRA 151, this Court harked back to "the fundamental precept that the prosecution carries the burden of proof to establish the guilt of the accused beyond reasonable doubt for it is not incumbent upon the accused to disprove his guilt." Hence, without the testimony of the poseur-buyer, the Court found no convincing evidence pointing to the accused as having feloniously sold and delivered the marijuana cigarettes.

The Solicitor General, in his brief for the People, recommended the acquittal of appellant Estillero on the ground that his guilt had not been demonstrated beyond a reasonable doubt. We agree.

WHEREFORE, as recommended, the judgment of the trial court is reversed and set aside, and the accused Pedro Estillero, Jr. y Abesa is acquitted of the crime charged. Costs de oficio.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.
Medialdea, J., on leave.

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