

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERGIO NABUNAT Y ASAG, DEFENDANT-APPELLANT.***G.R. No. 84392. February 07, 1990*

Ponente: GANCAYCO, J.

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On February 3, 1982, between 9:00 and 10:00 o'clock in the morning, NBI Agents Onofre Manalad, Dorotheo Rocha, Reynaldo Laigo and undercover operatives Esther Alforque and Louie de Guzman were at the NBI office in Baguio City when they received word from an informant that Sergio Nabunat of Km. 5, Sto. Tomas St., Green Valley, Baguio City was engaged in marijuana trafficking. Manalad organized a raiding team and took it to the Venus Hotel and Restaurant where they planned the operation. Those who were at the hotel with Manalad were Rocha, Laigo, Villacorta, de Guzman and Alforque, an informer and Francisco Bose, the driver.

Manalad asked Alforque and the informant to contact Nabunat that noon and to order at least two kilograms of marijuana and to have it delivered to the hotel. Alforque returned to the hotel about 1:00 o'clock in the afternoon and informed Manalad that she failed to convince Nabunat to bring the marijuana to the hotel. Instead Nabunat asked that she bring the buyer to him.

Manalad then instructed De Guzman to pose as buyer and to bring with him P2,000.00 consisting of 50-peso bills. On top of three (3) bundles of paper cut into the size of peso bills were placed the fifty-peso bills which could easily be viewed by, but not to be delivered to, Nabunat.

The team left the hotel about 2:45 in the afternoon in three vehicles. They arrived at the place where the sale was to take place about 3:15 or 3:20 in the afternoon and positioned themselves in such a way that they could view the transaction without arousing suspicion. Alforque alighted from the car and proceeded to Nabunat's house while De Guzman and the driver stayed behind. Alforque came back with Nabunat and introduced De Guzman to Nabunat as a friend who had come to the city to buy marijuana. Nabunat asked De Guzman if he had the money and upon being shown the same he went back to the house and returned with a blue paper bag. De Guzman got out of the car and asked Nabunat to show him the contents of the bag. Nabunat produced a brown paper bag marked "Baguio Fancy Grocery." When De Guzman saw its contents, Alforque, as agreed upon, pressed the button of the walkie-talkie and the two cars with the other members of the team closed in, causing Nabunat to get rattled and to drop the bag. He tried to run away but Rocha and De Guzman held him by his belt and pushed him inside the land cruiser. Marlon Nabunat, son of Sergio Nabunat, ran towards him to help his father but when the agents introduced themselves and informed him of the arrest, he ran up the house. They conducted a follow-up search in the residence but they did not find either the son or any marijuana.

Manalad brought Nabunat to the NBI office in Baguio City. The marijuana was confiscated and deposited in the evidence room. Rocha investigated Nabunat who affixed his signature on the specimen and executed a sworn statement which was subscribed before Agent Villacorta. Rocha conducted a field test of each of the samples taken from 12 packages which yielded positive results.[1]

Nabunat was temporarily released upon a promise that he would set up the entrapment of his supplier of marijuana. When he failed to appear after a week, Manalad with some NBI agents filed a complaint against him in Baguio City. Nieva G. Gamosa and Elvira Aveña, a forensic chemist, reexamined the evidence using the same tests. Their findings were positive for marijuana.[2]

In due course, on June 1, 1982, Sergio Nabunat y Asag was charged with violation of Section 4, Article II of Republic Act No. 6425 for the said delivery and trafficking of prohibited drugs in an information that was filed in the Regional Trial Court of Baguio City.

Upon arraignment, the accused pleaded not guilty so the trial on the merits proceeded. Thereafter, the trial court rendered judgment convicting the accused of the offense charged and imposing on him the penalty of life imprisonment and a fine of Twenty Thousand Pesos (P20,000.00). It was ordered that the accused was to be credited with the preventive imprisonment undergone by him, subject to the conditions prescribed by Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127. The 675 grams of dried marijuana leaves/flowering tops were also ordered confiscated in favor of the government.

Not satisfied therewith, the accused now interposed this appeal alleging the sole assignment of error that the prosecution had not presented the quantum of proof necessary to overthrow the constitutional presumption of his innocence.

The main thrust of the defense is that the appellant is a victim of a frame-up. The version of the appellant is that in the morning of February 3, 1982, while he was at home removing the grasses around his residence three persons came, one female and two males. The woman introduced herself as Esther Alforque informing him that they were looking for ladies to work in the disco in Olongapo City. Appellant replied that he did not know of any. He noticed one of the men was holding a grocery bag. Alforque asked him if they could leave the bag and he said that they could do so. He took the bag and placed it near the door inside the kitchen. He was told that they would take the bag at around 2:00 o'clock to 3:00 o'clock in the afternoon of the same day. Alforque went back in the afternoon and took the bag. When she reached the road she called the appellant who went down the road. Nearby was a parked Volkswagen beetle car with four persons riding therein. Alforque placed the bag near the door of the vehicle. When one of the men told the appellant to open the bag, he refused to do so. Nevertheless, the driver, Louie de Guzman, pointed a gun at him and forced him to open it. The bag contained wrapped leaves. When De Guzman asked the appellant where he took the same he answered he did not know about it. He was then allegedly maltreated by De Guzman and brought to the NBI office.

Further, the appellant contends that because of the failure of the prosecution to present Esther Alforque who was the mystery woman who brought the goods, his theory of a frame-up is thereby strengthened. He argues that the non-presentation of Alforque leads to no other conclusion than that if presented her testimony will be adverse to the cause of the prosecution.

Appellant further alleges that Lino Domilos who participated in framing him up likewise did not testify. He contends that it is because of a conflict over a piece of land with one Major Dumpit and Domilos that he was set up.

The court finds the appeal to be devoid of merit. The matter of who are the witnesses to be presented by the prosecution is addressed to the sound discretion of the fiscal or prosecutor handling the case. The failure of the prosecution to present any witness does not necessarily suggest that said witnesses if presented would testify adversely to the cause of the prosecution. The said witnesses are just as available to the defense who may present them if appellant so desires.

More so in this case where the evidence adduced by the prosecution is sufficient to sustain a conviction. The testimony of Alforque and Domilos, if at all, would only be corroborative if not cumulative. The physical act of delivering the marijuana was established through the testimonies of NBI agents De Guzman and Manalad. It is pointless, therefore, to present any other witness to prove the same facts.

Appellant admits that the 12 packages found in his possession were genuine marijuana dried leaves. He, however, claims that Alforque together with Domilos and Major Dumpit planted the same. There is no evidence whatsoever that would link Esther Alforque to Major Dumpit or Domilos. There is also no proof that will tend to establish the alleged frame-up theory of the appellant. What appears indeed is that in a buy-bust operation appellant was apprehended while selling a big quantity of marijuana leaves to the NBI agents.

For the defense of having been set up or framed-up to prosper, the evidence adduced must be clear and convincing. Like alibi, it is a weak defense that is easy to concoct and is difficult to prove. No doubt this defense put forward by the appellant proved to be a dud.

The agents arrested the appellant on February 3, 1982 but temporarily released him on his promise that he would identify his supplier. It was only when he failed to show up after a week that the NBI agents proceeded in filing the case against him. The representation of the appellant that the NBI agents asked money for his release is not borne by the evidence. On the contrary, the agents demonstrated extreme zeal in the performance of their duties. Appellant has not shown any cogent reason why the NBI agents and prosecution witnesses would implicate him in such a serious offense unless is the truth.

Finally, the alleged inconsistencies in the testimonies of the prosecution witnesses are on minor matters which rather than affect their credibility are clear indications of truthfulness and candor.

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

SO ORDERED.

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

[1] Exhibit H, TSN, November 11, 1988; pages 18-23, 28-29.

[2] Exhibits G and E, TSN, March 30, 1986; pages 6, 10-12.

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