THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. QUEROBEN POLIZON Y ACLA, ACCUSED-APPELLANT.

G.R. No. 84917. September 18, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

The accused-appellant Queroben Polizon y Acla was charged before the Regional Trial Court (RTC) of Misamis, Oriental, Branch 18, with violation of Section 4, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, committed as follows:

> "That on or about August 20, 1986 at 9:30 o'clock in the evening, at Ramonal Village, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously have in his possession and control a prohibited drug consisting of one (1) tea bag of dried marijuana leaves for P10.00, for the purpose of selling, delivering and giving and actually selling, delivering and giving it to several unidentified persons, for money or any other material consideration. Contrary to and in violation of Section 4 Article II, of R.A. 6425 as amended."[1]

After trial on the merits, the trial court rendered judgment,[2] the dispositive part of which reads as follows:

> "WHEREFORE, the court finds the accused Quiroben Acla Polizon, Jr., guilty beyond reasonable doubt of selling and delivering to another marijuana (Exhibit E), a prohibited drug, in violation of Sec. 4, Article II, Rep. Act. 6425, as amended, and sentences him to suffer the penalty of life imprisonment (Reclusion perpetua) and to pay a fine of Twenty Thousand (P20,000.00) pesos, and the costs. The accused shall be credited with the full period of his preventive detention.
>
> The marijuana (Exh. E) is confiscated and forfeited in favor of the Government and shall forthwith be turned over to the Dangerous Drug board for proper disposal without delay.
>
> SO ORDERED.
>
> City of Cagayan de Oro, April 23, 1987."[3]

The evidence for the prosecution shows that at about 9:30 o'clock in the evening of 20 August 1986, M/Sgt. Dominador Pascua, a PC soldier assigned to the 10th Narcotics Regional Unit (NARCOM), together with S/Sgt. Edgardo Dagoc, a PA soldier, a civilian poseur-buyer, and a driver of the police sakbayan, went to the Justo Ramonal Village in Cagayan de Oro City on a "buy-bust" operation. The poseur-buyer, a certain Boy Lim, a former boxer, under the close watch of the team, met and conversed with the accused on the street. Covertly watching them "from the shadows" were M/Sgt. Pascua who was only four (4) meters away, and S/Sgt. Dagoc who concealed himself behind a parked truck about five (5) meters away.

Moments later, the accused walked away from Boy Lim and approached a parked motorized tricycle (locally known as motorela) where Manuel (Mawe) Laudiana was seated. After a short while, the accused rejoined Boy Lim and handed the latter something in a plastic wrapper. The NARCOM agents immediately "closed in" on the

accused, identified themselves as NARCOM agents and arrested the accused. They brought the accused to the 10th NARCOM office at the City Hall, Cagayan de Oro, for interrogation.

The stuff given by the accused to Boy Lim turned out to be dried marijuana flowering tops inside a plastic wrapper, known in police parlance as "tea bag". The marijuana inside the "tea bag" was wrapped by Pascua in a piece of onion skin paper on which he wrote the following:

> "QUIROBEN POLEZON y ACLA"
>
> "CONDUCTED BUY–BUST OPN AT RAMONAL VILLAGE CAG DE ORO CITY ON OR ABT' 202140H AUG 86 TO A CERTAIN QUIROBEN POLEZON Y ACLA ONE (1) TEA BAG OF MJ W/ ROLLING PAPER AT P10.00 PER TEA BAG."

The suspected marijuana was submitted by the NARCOM commanding officer to the National Bureau of Investigation, Cagayan de Oro Regional Office, for laboratory examination. The finding of the forensic chemist Bernabe P. Arenga (who testified for the prosecution) was that the specimen contained in the tea bag weighing 0.8602 gram was positively marijuana.

The defense presented the accused as its lone witness who testified that at about 9:00 o'clock in the evening of 20 August 1986, while he was watching a dart game at Tata Ador's place Pennol Amareli called him from across the street at a store some fifteen (15) meters away. As he was walking towards Pennol, Boy Lim came near him and inquired about the house of anyone selling marijuana. The accused pointed to the house of Virgilio Adoran, the upper floor of which was occupied by Manuel "Mawe" Laudiana. After looking at the house some fifteen (15) meters away, Boy Lim requested the accused to buy marijuana for him (Lim) intimating that Lim was afraid, and cautious about the presence of several persons near the house - some of whom were playing darts and others drinking liquor.

The accused refused the request but was prodded by Boy Lim to do it. Knowing Boy Lim to be a boxer, accused agreed. He called Manuel Laudiana who was seated in a parked motorized vehicle but the latter signalled the former to come. At first the accused hesitated to go near Laudiana, but on the second call, he relented and approached Laudiana who was fifteen (15) meters away. There, he handed two (2) five-peso bills (given to him earlier by Boy Lim) to Laudiana who, in turn, handed to him a tiny plastic bag or packet containing the marijuana. Then accused gave the stuff to Boy Lim who put it inside the hip pocket of his short pants. In a moment, Boy Lim embraced the accused and when the latter asked the former why he did so, Lim told him "You are a pusher," and bodily lifted the accused and brought him to where Sgt. Pascua stood watching near a coconut tree some distance away. Pascua pointed a .38 cal. revolver to his face, had his hands handcuffed behind him by Benito Lim and then brought to the NARCOM office where he was interrogated and made to admit being a drug pusher but he did not sign any written statement.

In this appeal accused-appellant assigns three (3) errors to the court a quo, to wit:

"I

> THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS ENTRAPMENT, NOT INSTIGATION, THAT HAPPENED IN THE CASE AT BAR.

II

> THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF PROSECUTION WITNESS M/SGT. DOMINADOR PASCUA.

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III

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

These alleged errors may be reduced to the lone issue of whether or not there was entrapment or instigation employed by the NARCOM agents on the accused-appellant.

Appellant alleges that there was instigation, not entrapment. We agree.

The dividing line between entrapment and instigation has, at times, been blurred; but it has been clearly delineated by the Court in several cases. This again is the crucial issue in this case.

> "In entrapment, the entrapper resorts to ways and means to trap and capture a lawbreaker while executing his criminal plan. On the other hand, in instigation the instigator practically induces the would-be defendant into committing the offense, and himself becomes a co-principal (People vs. Natipravat, infra). Entrapment is no bar to prosecution and conviction while in instigation, the defendant would have to be acquitted (People vs. Lapatha, 167 SCRA 159)."[4]

As pointed out in the brief for accused-appellant, the appellant was not looking for a marijuana buyer at the time Boy Lim asked him to buy the stuff; neither was he in possession of marijuana.

Appellant avers that when Boy Lim approached him, he was not in possession of marijuana, but on his way to see Pennol Amarile who had called him from across the street; and that he was instigated by Boy Lim to commit the crime charged. Therefore, according to the appellant, the criminal intent originated in the mind of the instigator (Boy Lim) and that the accused was lured into the commission of the offense charged so that he could be prosecuted.

We agree with the appellant's contention that the non-presentation of Boy Lim, the alleged poseur-buyer, weakens the prosecution's evidence. Sgt. Pascua was not privy to the conversation between Lim and the accused. He was merely watching from a distance and he only saw the actions of the two. As pointed out by the appellant, Sgt. Pascua had no personal knowledge of the transaction that transpired between Lim and the appellant. Since appellant insisted that he was forced by Lim to buy the marijuana, it was essential that Lim should have been presented to rebut accused's testimony.

Moreover, we note that no evidence was presented by the prosecution to support its proposition that the accused was searched or frisked and that the money allegedly given to him or the marijuana was found in his possession. In fact, the prosecution admits that the money given the accused by Boy Lim could not be found in his pockets. Besides, if it were true that Sgt. Pascua and Sgt. Dagoc were closely watching the whole event, they could have observed that the accused went over to Manuel Laudiana who handed the marijuana to the accused. When the actual arrest was effected, not one of the two (2) police officers bothered to go after Laudiana. The prosecution admitted that the accused got the marijuana from Laudiana, yet, they simply allowed Laudiana to get away - and with the money allegedly given by Boy Lim thru the accused.

Thus, two (2) conflicting versions of what really transpired between Boy Lim and the appellant are presented in this case.

In a recent decision of the Court, we held that the person who could provide the most accurate account of the transaction is the poseur-buyer.

> "Well-established is the rule that when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocense 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 a conviction. In the present case, accused-appellant's version of the circumstances leading to his apprehension constitutes a total denial of the prosecution's allegations. In this regard, this Court has ruled that when there is such a divergence of accounts -

'it becomes incumbent upon the prosecu-tion to rebut appellant's allegations by presenting xxx xxx the alleged poseur-buyer. This it failed to do, giving rise to the presumption that evidence willfully suppressed would be adverse if produced. (Rule 131, Sec. 5[e]). This failure constitutes a total flaw in the prosecution's evidence since the so?called informant who was never presented as a witness and never identified, is the best witness for the prosecution. xxx' (emphasis supplied)[5]

From the circumstances of the case, we hold that the guilt of the accused-appellant was not proven beyond reason-able doubt. The well-settled rule that the conviction of an accused person must not rest on the weakness of the defense but on the strength of the evidence presented by the prosecution, has not been satisfied and met in the present case.

WHEREFORE, the appealed decision of the Regional Trial Court of Misamis Oriental, Branch 18, is hereby REVERSED and the accused-appellant is ACQUITTED on reasonable doubt.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.
Cruz, (Chairman), J., on leave.

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[1] Rollo, p. 11

[2] Penned by Judge Senen P. Penaranda

[3] Rollo, p. 27

[4] People vs. Marcos, G.R. No. 83325, May 8, 1990, 185 SCRA 154; People v. Payumo, G.R. No. 81261, July 2, 1990, 187 SCRA 64

[5] People vs. Ernesto Yabut y Torres, G.R. No. 82263, June 26, 1992.

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