

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DENNIS MENDOZA Y TANOPO AND RHODORA TANOPO Y CRUZ,
ACCUSED, DENNIS MENDOZA Y TANOPO, APPELLANT.**

G.R. No. 85176. October 21, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

The spouses Dennis Mendoza and Rhodora Tanopo were charged for violation of Section 4, Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972. In the Information filed by the Assistant City Fiscal of Dagupan City, it was alleged:

"That on or about the 12th day of November, 1987, in the City of Dagupan, Philippines, and within the territorial jurisdiction of this Honorable Court, the above-named accused DENNIS MENDOZA y TANOPO and RHODORA TANOPO y CRUZ, confederating together, acting jointly and helping each other, did then and there, wilfully, unlawfully and criminally, sell and deliver dried 'marijuana' leaves or Indian hemp contained in a plastic bag weighing more or less 100 grams to a customer, without authority to do so.

Contrary to Sec. 4, R.A. 6425, as amended.

Dagupan City, Philippines, November 13, 1987."^[1]

Both accused pleaded not guilty to the charge. In the ensuing trial, the prosecution presented the following witnesses: Cpl. Danilo Manalastas, Ms. Marita Bien and Pfc. Ismael Camacho. On the other hand, the defense relied on the testimonies of the two (2) accused and one Luzviminda Ferreria.

Summarizing the People's case, the court a quo stated as follows:

"x x x through the testimony of Cpl. Danilo Manalastas, a member of the Narcotics Command, that on November 12, 1987 at around 10:00 o'clock in the morning, while Cpl. Danilo Manalastas, Pat. Manaois and Peralta were inside the investigation room at the Dagupan City Police Station, a civilian informant went to their office and reported that one Dennis is engaged in selling marijuana. Upon receiving the information they immediately planned an entrapment operation against one Dennis. He (Manalastas) was designated as customer/buyer and his two companions as the back-up team. From the Dagupan City Police Station they went to Galvan Street. When they arrived at Galvan Street Pat. Manaois and Pat. Peralta strategically positioned themselves. The informant pinpointed to him a man walking along a dike together with a woman companion. They approached the two and the civilian introduced him to Dennis as buyer of marijuana. He (Manalastas) told Dennis that he wanted to buy marijuana. Dennis told him that one line of marijuana cost P100.00, and after that both agreed as to the price fixed by Dennis. At this juncture, Dennis asked that he should be paid the amount of P100.00, as he handed the P100.00 bill to alias Dennis. In turn, Dennis told him that the marijuana is in the possession of his woman companion. The latter gave him (Manalastas) the blue lady's skirt. Cpl. Manalastas opened it and after confirming that (sic) was contained inside the plastic bag was marijuana, he gave a prearranged signal to his companions by removing his sunglasses to the effect that the object was marijuana and the sale was consummated. At that moment, the back-up team rushed and closed in and

simultaneously identified themselves as Narcom agents and effected the arrest of alias Dennis. (2-13 tsn January 14, 1988) Dennis Mendoza resisted arrest and simultaneously boxed Pat. Manaois. However, he finally (Manalastas) arrested Dennis Mendoza and Pat. Manaois retrieved the P100.00 bill and got one stick of marijuana from the pocket of Dennis Mendoza. He (Manalastas) did not recover anything from the woman accused. (6-7 tsn January 15, 1988)

x x x

"Pfc. Ismael Camacho testified that the incident on November 12, 1987 was entered in the Police Blotter. Entry Number 0417 states:

'1410H Combined elements of First Narcotics Region I Command and this Station composed of P/Cpl Danilo Manalastas, Pat Maximiniano Peralta and Pat Artemio Manaois Jr have apprehended the husband and wife Dennis Mendoza y Tanopo, 26 yrs old, gasoline boy, and Rhodora Tanopo y Cruz, 22 yrs old, residents of #99-A Zamora St. this city following a buy/bust operation at around 12:30 this afternoon at the eastern side of Galvan St near dike. Confiscated from them were a plastic filled with dried marijuana leaves weighing one hundred (100) grams placed in a plastic bag wrapped with a blue ladies skirt and one (1) stick of marijuana found in the back pocket of Dennis Mendoza who reportedly resister (sic) after said peace officers identified themselves. The operation was conducted with Cpl. Manalastas with decoy/buyer for the one hundred grams of dried marijuana priced at one hundred pesos (P100.00). The marked one hundred peso bill with SH MT 105547 was received by Dennis Mendoza as the item was given by Rhodora Tanopo to Cpl. Manalastas.

Re: Appropriate charges to be filed.

(SGD) PFC CAMACHO'

"Marieta Bien, Forensic Chemist of the NBI Sub-office, Baguio City, testified that xxx xxx she conducted a laboratory examination on the specimen submitted to her for analysis, and in this connection, she prepared a report marked as Exhibit C. (2-9 tsn February 4, 1988)

"The Dangerous Drugs (Marihuana) Report No. DDM-87-50 (BAGSO) is quoted as follows:

x x x

SPECIMEN: 1. Dried flowering tops suspected to be marihuana contained in a trans-parent plastic bag; and

2. One (1) stick of handrolled cigarette with markings suspected to be marihuana, altogether wrapped in a light blue ladies skirt, further contained in a white plastic bag with markings.

x x x

Purpose of the laboratory examination:

To determine whether or not the specimens submitted are marihuana

FINDINGS:

Weight of specimen 1 = 41.7688 grams

2 = 0.5305 gram

Microscopic, chemical and chromatographic examinations made on the above-mentioned specimens gave POSITIVE RESULTS for MARIHUANA. xxx xxx xxx

x x x"[2]

Disputing the prosecution's allegations, the version of the defense as to the circumstances leading to the arrest of the appellant is synthesized by the trial court, thus:

"Rhodora Tanopo testified that xxx xxx (on) November 12, 1987 at about 12:00 o'clock noon, she was at home washing dishes because they had just finished eating their lunch together with her husband and other persons like Remedios Tanopo, her elder sister. After eating her lunch her husband Dennis Mendoza left for his work carrying with him rags which he would use in handling the hose of a gasoline pump. At about 12:00 o'clock noon somebody informed her that her husband had been arrested and mauled. She immediately went to the City Hall where she saw her husband Dennis Mendoza. His clothes were torn and his lips were injured. While at the City Hall, a policeman asked her what was her relationship with Dennis Mendoza to which she answered that Dennis Mendoza is her husband. After telling the policeman that she is the wife of Dennis Mendoza, she was brought inside the jail and detained together with her husband. She was detained there since November 12, 1987 up to the present. On March 26, 1988, she gave birth to a child named Angelica Mendoza inside the jail, the place where she takes care of her child up to the present. (2-7 tsn June 23, 1988)

"Dennis Mendoza testified that she (sic) is 28 years old, married, a gasoline boy and resident of Rivera Street, Dagupan City. He is married to Rhodora Tanopo. He works in a gasoline station located at Perez Boulevard which gasoline station is owned by Eddie Biagtan. xxx xxx On November 12, 1987 at 11:30 in the morning, he was already at home at Rivera Street. Upon his arrival thereat, he took his lunch together with his wife, sister-in-law Remy and Mercy, the wife of his brother-in-law. After eating his lunch, he went back to his place of work. xxx xxx While going back to work, he was bringing and carrying with him a bag containing some rags, a face towel which he would use in holding the gasoline hose. Aside from this bag containing rags, he was not carrying other things. While he was walking, coming from the opposite direction, two (2) men who were also walking suddenly threw an object to (sic) him which he instinctively caught. Immediately thereafter, somebody held him, saying that he is the owner of that object which was thrown to (sic) him and which he caught, and that they wanted to bring him along with them. He told them that he has no knowledge about their claim or their allegations. At this moment, somebody suddenly ripped his clothes and then someone boxed him, hitting him on his lips. Thereafter, he was brought to the Police Station, then to the investigation room where he was tortured by their insistent claim that he is the owner of that object which they claimed to be marijuana. He, however, told them that he has no knowledge. Despite this denial, still they insisted that he is the owner of that alleged object which they claimed to be marijuana. Besides, they wanted him to sign something which he refused. So, they opened the investigation room where he took a seat near the door. Few minutes thereafter, his wife arrived and asked him what had happened. But before he could answer his wife the Narcom agents arrived and told her to sign also. His wife refused to sign and there were some discussions. Before the discussions were over, his wife was no longer allowed to go out. xxx xxx

"Luzviminda Ferreria declared that she xxx xxx remembers the date November 12, 1987 because that was the time when her brother-in-law Dennis Mendoza was arrested. She came to know of the arrest when somebody went to their house and informed them of the arrest. The report was made to Ate Roda or Rhodora Tanopo. She, however, cannot tell definitely what time was it when the report was made, but definitely it was just after they finished eating their lunch together with Ate Remy, Ate Roda, Kuya Dennis and herself. When her husband returned home to take his lunch, she related to him the incident about the arrest of Dennis. After her husband was informed about the arrest of Dennis, he followed Dennis Mendoza and Rhodora Tanopo as (sic) the City Hall." (2-6 tsn July 14, 1988)[3]

On 4 August 1988, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, finding accused Dennis Mendoza guilty beyond reasonable doubt of Violation of Section 4 of Republic Act Number 6425, as amended, and pursuant to law hereby sentences him to suffer the penalty of Reclusion Perpetua (Life Imprisonment) and to pay a fine of Twenty Thousand (P20,000.00) Pesos, Philippine Currency, and to pay the costs.

"Accused Rhodora Tanopo is acquitted of the crime charged with costs de officio. The City Jail Warden is ordered to immediately release said accused unless she is detained for some lawful cause.

"Pursuant to Section 20, Article IV of Republic Act No. 6425, as amended, the dried flowering tops contained in a transparent plastic bag and one (1) stick of handrolled cigarette altogether wrapped in a blue ladies skirt are hereby confiscated and forfeited in favor of the Government. The Clerk of Court of this Court is ordered to turn over the same to the Dangerous Drugs Board for proper disposal without delay."[4]

Hence, this appeal by Dennis Mendoza which prays for a reversal of the judgment of conviction for alleged failure of the prosecution to prove the appellant's guilt beyond reasonable doubt.

Once more, this Court is faced with issues relating to traffic in prohibited drugs which, as current events clearly attest, continues to be a menace to society because of its pernicious effects upon the "users" and in many instances, upon the victims of such users. Courts should not relent in their task to ferret out those who transgress the law and thus assist in stamping out this ruthless network of "users" and "pushers" of prohibited drugs.

At the same time, courts have to be equally vigilant that in the zeal and haste to accomplish the purposes adverted to above, the accused be not deprived of all the rights granted him by the laws, most important of which is the constitutional presumption of innocence which can only be overturned should the evidence against him establish his culpability beyond reasonable doubt. The question posed before the Court in the present case is whether or not the evidence against the appellant fulfills the test of moral certainty sufficient to warrant an affirmance of the trial court's judgment of conviction.

The settled rule is that the trial court's findings of fact are entitled to substantial weight on appeal, as they were arrived at with opportunity of discerning whether or not the witnesses were telling the truth, by observing their deportment and manner of testifying on the witness stand. However, the rule does not apply where the trial court overlooked certain facts of substance and value which, when considered, affect the result of the case. Another recognized rule is that the testimonies of prosecution witnesses who are law enforcers are given credence for it is presumed that they regularly perform their duty, in the absence of convincing proof to the contrary.[5]

From a careful perusal of the proceedings a quo, this Court is constrained to set aside the lower court's findings, and we reverse its judgment of conviction of the appellant.

The prosecution, in the Information, alleged that the appellant and his spouse Rhodora Tanopo engaged in the "pushing" of marijuana. Further, it would seem that Rhodora Tanopo played an essential role in the entire incident in question. As attested by the testimony of the police witness, Cpl. Danilo Manalastas, Rhodora Tanopo (appellant's wife) was said to have personally given the prohibited drug, contained in a plastic bag and wrapped in a blue lady's skirt, to Cpl. Manalastas, who had posed as a buyer. Thus -

"FISCAL CASTILLO:

Q After you have handed the P100.00 bill to Dennis as payment of one line of marijuana, what happened next?

A He told me that the marijuana is in the possession of his woman companion, sir.

Q After that, what come (sic) next?

A A woman companion gave me the blue lady's skirt which contained the plastic bag of marijuana, sir.

x x x"[6]

Q You mentioned a while ago a certain woman companion of alias Dennis and that she was the one who handed to you the blue lady's skirt which contained marijuana, can you identify her if she is also inside the

courtroom?

A Yes, sir.

Q Please look around and point at that woman.

A She is beside Dennis, sir. (Witness pointing to a woman who, when asked her name, identified herself as Rhodora Tanopo).

x x x"[7]

"FISCAL RESULTAN:

Q The last time that you have testified you stated that you were able to confiscate dried marijuana contained in plastic bag and a hand-rolled cigarette from the accused, can you identify those articles if shown to you again?

A Yes, sir.

Q I am showing to you Exhibit 'E-3' which is a transparent plastic bag which contained marijuana, kindly examine the same and tell the Honorable Court if it has at all any relation to the marijuana which according to your testimony the last time you have bought from the accused for P100.00?

A This is the one, sir.

Q Who among the two accused gave you Exhibit 'E-3'?

A The woman companion of the suspect, sir.

Q Will you kindly stand up and identify the accused who handed to you this Exhibit 'E-3'?

A That woman, sir. (Witness pointing to a woman, who, when asked his (sic) name by the Court Interpreter, identified herself as Rhodora Tanopo).

x x x"[8]

Despite the positive evidence against Rhodora Tanopo, the trial court acquitted her, saying that:

"x x x, after an objective and careful scrutiny of the prosecution's evidence, believes the evidence against her would not suffice to sustain a conviction. The prosecution wanted this court to believe that Rhodora Tanopo managed to escape during the commotion. xxx xxx The prosecution's line xxx xxx is unbelievable. Further, there is no clear showing, for there is none, that the Narcom agents recovered the marijuana in question from Rhodora Tanopo. In fact, they did not recover any money from the woman accused. Furthermore, the testimony of Cpl. Danilo Manalastas that the woman accused was arrested inside the office of the Police Department (15 tsn January 15, 1988) does not, and cannot, inspire belief. Any human being who has committed a crime will not step in the Police Department except to surrender. Rhodora Tanopo was at their house washing dishes about 12:00 o'clock noon when she was informed that her husband was arrested. That was the reason why she immediately went to City Hall. xxx xxx She was arrested and detained right at that moment. The testimony of Rhodora Tanopo relative on this point was not rebutted. The prosecution failed to prove her guilt beyond reasonable doubt."[9] (Underscoring supplied)

Certainly favorable to the appellant's case is the express finding by the trial court that his spouse Rhodora, contrary to what is alleged in the Information and the prosecution's evidence, was never at the scene of the alleged crime. And yet, the implications of such finding seem to have escaped the trial court. In effect, such finding renders inconsistent the prosecution evidence. Since Rhodora was, all the while, at home, and could not possibly have handed over the marijuana to the police officer (Manalastas), then the prosecution's entire version of the

controverted circumstances is laid open to doubt. Appellant's guilt has likewise not been satisfactorily established.

The appellant, in the meanwhile, pleads that he was merely the victim of a frame-up. In cases involving persons accused of being drug-pushers or sellers, almost always, the defense is that the accused was framed by the apprehending police officers.[10] Such defense must always be viewed with extreme caution as it is one so easy to concoct. Yet, while the theory of the defense may not be totally convincing, the Court cannot tilt the scales of justice against the appellant in the face of the cardinal and well-entrenched rule that the prosecution must rely on the strength of its own evidence and not on the weakness of that of the defense.[11]

This Court, however, does not rely only upon Rhodora's acquittal as sole basis for finding reasonable doubt in the guilt of the appellant. There is also the matter of the one hundred peso (P100.00) bill that was allegedly used to obtain the marijuana from the appellant. As declared by the prosecution witness, Cpl. Manalastas,

"A. I handed the P100.00 bill to alias Dennis, sir."[12]

There being a categorical declaration of a transfer of money (paper bill), then that bill is a material item of evidence to prove, not that a sale or delivery had taken place, but that there was indeed a "transactional relationship" between the police witness and the appellant (who was immediately apprehended after the "transaction"). The absence of this vital piece of evidence again must be construed in favor of the appellant.

The Court is not unaware of the ruling in *People vs. Tejada*[13] where it was stated that "so long as the marijuana actually given by the appellant was presented before the lower court, the absence of the marked money does not create a hiatus in the prosecution evidence and does not destroy the prosecution's identification of the appellant as the offender."

However, there is one material factual difference between *Tejada* and the case at bar. In *Tejada*, the absence of evidence of the marked money arose from the fact that the other law officers arrived before the appellant could get the money.[14] Therefore, such money never came into play and presenting the marked bills would have served no evidentiary value. In the present case, the appellant was alleged to have received the money and was immediately apprehended thereafter. In fact, Pat. Manaois is supposed to have retrieved the P100 bill from appellant.

And where is that money (the P100 bill) now? According to a prosecution witness, he lost it while on an intelligence mission to Sta. Barbara, Pangasinan.[15] This Court cannot help but wonder why such an essential piece of evidence was not in the possession of the proper custodial officer but instead was so cursorily placed in one's wallet to be later conveniently lost!

The foregoing circumstances bring to the fore the possible abuses wrought by entrapment or "buy-bust" operations of law enforcement officers. As we observed in *People vs. Ale*,[16] "we cannot close our eyes to the many reports of evidence being planted on unwary persons, either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the usually severe penalties for drug offenses."

In this connection, this Court finds an item of evidence, "Exhibit 1" presented by the appellant in the proceedings a quo to be of disturbing concern, to say the least. Exhibit 1 is a copy of a decision of the Regional Trial Court of Baguio City (Branch 5) in *People of the Philippines vs. Nelson Humilde*, where the accused therein was charged also for violation of the anti-drug statute. In acquitting Humilde, the trial court took note of the questionable

actuations of one Pat. Maximiano Peralta, who as a witness for the prosecution, "demonstrated his temerity for concealing and twisting facts for his purposes." It is relevant to note that said Pat. Maximiano Peralta is the very same Pat. Peralta in the present case who was involved in the "buy-bust" operation together with the witness for the prosecution, Cpl. Manalastas. Considering the apparent implications, it would appear not unlikely that the circumstances of the arrest of appellant may have been embellished in favor of the prosecution, as earlier determined by the trial court when it acquitted Rhodora Tanopo (appellant's spouse).

This case may be taken by law enforcement officers as a setback in the government's drive against traffic in prohibited drugs, for after all, law enforcers are presumed to have performed their duties regularly. Yet, this presumption cannot, by itself, prevail over the constitutional presumption of innocence of the accused.[17]

WHEREFORE, the appealed judgment is REVERSED, and on reasonable doubt, the appellant is hereby ACQUITTED of the crime charged.

SO ORDERED.

Paras and Regalado, JJ., concur.
Melencio-Herrera, (Chairman), on leave.

[1] Rollo, p. 5

[2] Rollo, pp. 18-21

[3] Rollo, p. 21-23

[4] Rollo, pp. 25-26

[5] People v. Romarosa, G.R. No. 81768, 7 August 1991

[6] TSN, 14 January 1988, pp. 11-12

[7] TSN, 14 January 1988, pp. 13-14

[8] TSN, 4 February 1988, pp. 63-64

[9] Rollo, p. 25

[10] People vs. Macuto, G.R. No. 80112, 25 August 1989, 176 SCRA 762

[11] People vs. Olaes, G.R. No. 76547, 30 July 1990, 188 SCRA 91

[12] TSN, 14 January 1988, p. 11

[13] G.R. No. 81520, 21 February 1989, 170 SCRA 497

[14] Ibid, p. 504

[15] TSN, 15 January 1988, p. 25

[16] G.R. No. 70998, 14 October 1986, 145 SCRA 50

[17] People vs. Canido, G.R. No. L-32242, 18 November 1988, 167 SCRA 462

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