

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMEO OLIVARES AND WILFREDO REOLO Y REGONDOLA,
DEFENDANTS. ROMEO OLIVARES, APPELLANT.**

G.R. No. 86219, June 14, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Legazpi City, Branch VII in Criminal Case No. 3666 filed against Romeo Olivares and Wilfredo Reolo, finding appellant Romeo Olivares guilty beyond reasonable doubt of violating Section 4, Article II of the Dangerous Drugs Act. The co-accused Wilfredo Reolo is still at large. Only Olivares was tried.

The information filed against the appellant alleged:

“That on or about the 28th day of July, 1986, in the Municipality of Guinobatan, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, and without the authority of law, did then and there wilfully, unlawfully and feloniously have in their custody and possession dried marijuana leaves and seeds, and in a ‘buy and bust’ operation sell to a NARCOM asset/informer part thereof for P20.00, Philippine Currency, to the damage and prejudice of public welfare.” (Original Records, p. 1)

The facts of the case as presented by the prosecution and relied upon by the trial court in convicting the appellant are as follows:

“The evidence for the prosecution shows, among others, that on July 28, 1986 Riza Galvan was on duty at the NARCOM office with the task of receiving incoming messages, information and other directives, and on that day, he received an information from an informant that a certain Romeo Olivares, Wilfredo Reolo, Armando Padoy and a certain Zaldy have in their possession dried marijuana leaves which is estimated to be 1,000 grams in weight and that said marijuana leaves are being sold by them at the residence of Romeo Olivares located at the corner of A & D Paulate Street, Guinobatan, Albay; that NARCOM, on the basis of said information, applied for and were able to secure a search warrant, which was issued by Branch 3 of the RTC in Legazpi City; that the NARCOM headed by PC Major Crisostomo Zaidem conceived a “buy-bust operation”, and briefings were conducted by the NARCOM chief relative to said operation; that the NARCOM operatives left for Guinobatan, Albay at about 5:30 in the afternoon of the same day; that after a briefing at the churchyard of Guinobatan, Albay conducted by Major Zaidem, the informant proceeded to the billiard-hall of the accused Romeo Olivares to pose as a marijuana buyer, and had with him a P20.00 bill marked with the signature of Maj. Zaidem; that meanwhile, Riza Galvan and Lucino Flores positioned themselves 10 meters more or less from the entrance of the lighted billiard-hall; that the informant was met by a man at the entrance of the billiard-hall who turned out to be Wilfredo Reolo; that while the informant and Reolo were having a conversation, the former delivered the marked money to the latter, and then, a man who turned out to be accused Romeo Olivares, approached the two, and Reolo gave the marked money to Romeo Olivares; that Romeo Olivares went inside his residence which was adjacent to the billiard-hall, and after about 5 minutes,

returned to the two (Reolo and informant), and Romeo Olivares gave something to the informant, after which, the informant gave a pre-arranged signal which meant that the informant was able to buy marijuana; that immediately after the pre-arranged signal, Galvan and Flores approached Reolo and Olivares, introducing themselves as NARCOM operatives and arrested both of them; that the article given by Olivares to the informant was retrieved from the latter by Galvan, which turned out to be pack or tea bag of marijuana, and the same was later given to Maj. Zaidem; that after the arrest of Olivares and Reolo, the NARCOM operatives conducted a search for the 1,000 grams of marijuana in the residence of Olivares by virtue of the search warrant, and in the presence of barangay officials Fernando Rivera and Pedro Morales, who were fetched by the NARCOM operatives after the arrest but before the search was conducted; that the operatives found in the bedroom of Olivares two canisters labeled 'bonna' which both contained few dried marijuana seeds and leaves; that they also found a black attache case which yielded three Philippine peso bills having denominations of P20.00, P1.00 and P5.00, and they took the P20 bill found inside the black attache case which was the marked money given by Major Zaidem to the informant; that a receipt for property seized (Exhibit L) was prepared by the operatives and was signed by Olivares, and a booking sheet and arrest report (Exhibit A) was likewise prepared by the operatives and was signed by Olivares; that Romeo Olivares and Wilfredo Reolo were later on brought to Camp Bagong Ibalon and had them submit for the taking of finger prints, as indicated in Exhibits A, N, and O; that Romeo Olivares was subjected to a physical examination at Camp Bagong Ibalon, whereby the medical examination report (Exhibit Q) indicated that no external physical injuries were noted at the time of examination; that the 1.5 grams of suspected dried marijuana fruiting tops placed inside a transparent plastic bag (Exhibit E) as well as the two tin cans labeled 'bonna' (Exhibit F and G) each containing suspected dried marijuana fruiting tops having a total weight of 2.1 grams were turned over to the Forensic Chemist, Police Lt. Lorie Arroyo, who conducted a laboratory examination of the same, with the finding that after a qualitative examination conducted on the above mentioned specimens, said specimens gave positive result to the tests for marijuana, a prohibited drug, as indicated in Chemistry Report No. D-94-86 (Exhibit C)." (Rollo, pp. 22-25)

For its part, the defense alleged that:

"xxx [A]t about 8:00 o'clock in the evening of July 28, 1986 (sic) when accused Romeo Olivares, his wife, and two children were in their house, five armed men barged into their billiard-hall at corner A and D Paulate Street, Guinobatan, Albay; that one of the armed men drew out from the left pocket of his shirt a cellophane packet which has the size of a tea bag and told Romeo Olivares that the cellophane packet contains marijuana and compelled him to admit that it is his; that two armed men went upstairs and poked a gun at accused's wife, Elizabeth, who was ordered to go downstairs and to join her husband Romeo; that one of the armed men, who is a tall person, boxed Olivares which caused the latter to fall down on his chest; that then Olivares was pulled to the kitchen of his house with a gun pointed against his temple by one of the armed men, who also boxed the accused; that the accused saw another armed man coming from the outside of his house, carrying two cans labeled 'bonna'; that the accused was again compelled by the armed men to admit that those two cans also belong to him, although the accused vehemently denied ownership of the same nor being in possession of marijuana, but First Lt. Lomeda at this moment was pointing a .45 caliber pistol at the accused; that the accused was dragged and kicked out of the billiard-hall to a jeep parked in front of the billiard-hall; that then, the armed men entered their room and ransacked accused's personal belongings; that after the lapse of about 20 to 25 minutes, the accused was ordered to alight from the jeep and dragged to the billiard-hall, and it was at this point, when accused saw his attache case, which was kept in his matrimonial bedroom, on top of a billiard-hall already opened; that accused was forced and intimidated to sign papers; although at first the accused refused because he insisted to be assisted by a lawyer before he signs those papers but his plea was ignored and in fact prevented from doing so by the armed men whom he identified as AIC Galvan and his armed companions; that nonetheless, the accused signed those papers at a point of a gun as he was threatened in this manner 'pirmahan mo na yan kung hindi patay kang bata ka'; that he was also threatened to act normally as soon as barangay captain Fernando Rivera arrived after they ransacked the accused's personal belongings; that when barangay captain arrived, the accused, already intimidated, obeyed to act normally in the

presence of said barangay official; that thereafter, the accused was told to board a jeep because he would be brought to Camp Bagong Ibalon, and on the way, the accused was appeased by Galvan to raise P10,000.00 so that the case would be dropped or settled; that they arrived at Camp Bagong Ibalon at about 9:00 in the evening of the same day, where the accused was hit several times with a hand and he was placed in jail until the next morning; that when the parents of the accused arrived the next morning, they were told by Major Zaidem to raise P10,000.00 for his release; that accused denied having solicited the legal services of Atty. Mario Encinareal for his release from the custody of said NARCOM agents; that before his release from the custody of the NARCOM personnel, the accused was forced to sign documents, and he signed them because he was being hurt, and he was never assisted by any counsel before the NARCOM.” (Rollo, pp. 25-27)

Appellant Olivares in assailing the judgment of conviction assigned the following errors:

I

“THE LOWER COURT ERRED IN NOT HOLDING THAT THE PROSECUTION (PLAINTIFF-APPELLEE) MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT BECAUSE:

“A) CONTRARY TO THE TESTIMONIES OF ALL DEFENSE WITNESSES, THE TESTIMONY OF AIC RIZA GALVAN SOLELY RELIED UPON BY THE PROSECUTION IS NOT CLEAR, POSITIVE, CONVINCING AND STRAIGHTFORWARD; IF AT ALL, THE SAME IS FRAUGHT WITH CONTRADICTIONS AND INCONSISTENCIES WHICH ONLY TEND TO OBSCURE THE WITNESS’ OATH AND THUS CANNOT AND COULD NEVER PASS THE LITMUS TEST OF ‘PROOF OF GUILT BEYOND REASONABLE DOUBT’;

B) THE ALLEGED CONFIDENTIAL AGENT WHO ACCORDINGLY ACTED AS POSEUR-BUYER FOR THE PURCHASE OF MARIJUANA ITEMS FROM APPELLANT WAS NEVER IDENTIFIED NOR PRESENTED TO THE WITNESS’ STAND INSPITE OF THE INSISTENCE OF ACCUSED-APPELLANT THAT HE BE SO IDENTIFIED AND PRESENTED: HIS NON-IDENTIFICATION AND NON-PRESENTATION ARE THEREFORE SUBJECT TO THE PRESUMPTION THAT IF EVER SO IDENTIFIED AND PRESENTED HIS TESTIMONY WOULD ONLY BE ADVERSE TO THE PROSECUTION’S CAUSE;

C) CONSIDERING THAT SAID CONFIDENTIAL AGENT, INFORMANT, HAS NEVER BEEN IDENTIFIED AND PRESENTED TO THE WITNESS’ STAND, ALREADY FULLY EXPLAINED ABOVE, ABSOLUTELY NO PROOF OR EVIDENCE WHATSOEVER HAS EVER BEEN ADDUCED THAT THE ALLEGED PACK OR TEA BAG OF MARIJUANA (EXH. ‘E’) IS THE VERY SAME THING THUS RECOVERED BY AIC RIZA GALVAN FROM SAID CONFIDENTIAL AGENT/INFORMANT.”

II

THAT THE LOWER COURT ERRED IN NOT HOLDING THAT EXHIBITS “E”, “F” AND “G” (ALLEGED MARIJUANA ITEMS) AND EXHIBITS A, B, H, L & N ALLEGED DOCUMENTS SHOWING PARTICIPATION OF APPELLANT IN THE ACTS COMPLAINED OF) ARE INADMISSIBLE IN EVIDENCE CONSIDERING THAT THE SAME WERE OBTAINED BY THE ARRESTING OFFICERS IN VIOLATION OF APPELLANT’S CONSTITUTIONAL RIGHT ON CUSTODIAL INVESTIGATION AS LAID DOWN BY JURISPRUDENCE.” (Appellant’s Brief, pp. 1-2)

A thorough examination of the records of the case shows that the trial court relied heavily on the testimony of Galvan in concluding that the appellant sold marijuana to the poseur-buyer in a buy bust operation. The other prosecution witness, Forensic Chemist, Lt. Lorlie Arroyo testified merely with respect to the identification of the

pack and canisters of marijuana fruiting tops seized from the appellant. The Court notes, however, that Arroyo could validly testify only as to those quantities handed over to him by the NARCOM agents for examination. Arroyo was not presented as a witness to the alleged act of selling marijuana since he was not present during the buy-bust operation on July 28, 1986.

The prosecution also presented Barangay Captain Fernando Rivera as a rebuttal witness. Rivera testified regarding the regularity in the conduct of the search inside the house of the appellant by virtue of a search warrant procured immediately after receiving information about suspected drug pushers. Rivera disproved the appellant's allegation that force and intimidation were inflicted by the police officers when the accused-appellant was asked to sign papers.

The Court finds that Rivera, like Arroyo, cannot corroborate nor confirm the testimony of Galvan on the act of delivery and sale of marijuana to the poseur buyer designated by the NARCOM team. No other prosecution witness was presented to positively identify the appellant as a seller.

The records show that Galvan, who was the only one who testified regarding the sale, stood about ten (10) meters away from where the alleged sale took place. Galvan did not personally know the appellant and the co-accused. He could identify the latter only through the description given by the informant. He could not hear the conversation taking place among the informant (who was also the poseur buyer), the co-accused Reolo and the accused-appellant Olivares.

Insofar as the crime of selling or distributing marijuana is concerned, the appellant therefore, zeroes in on the competence of eyewitness Galvan to give positive testimony on the fact of sale.

The records are clear that Romeo Olivares is guilty beyond reasonable doubt of possessing dried marijuana leaves. The two tin cans of marijuana (Exhibits "F" and "G") were seized from his possession by virtue of a valid search warrant. The appellant failed to prove that the warrant was illegally issued. The allegations of having been boxed and threatened to admit that the tin cans belonged to him are without basis. The NARCOM operations asked two barangay officials to witness the search of the house to insure that it would be conducted properly and any report would attest to its regularity.

They were apparently aware that drug pushers usually charge NARCOM agents and policemen with the planting of evidence and inflicting of physical injuries. The operations also brought the accused to Camp Bagong Ibalon for a medical examination to belie any future allegation of force and violence having been used.

The appellant contends that the seized items including the bag of marijuana (Exhibit "E") retrieved by Galvan from the poseur-buyer and believed to be sold and delivered by the accused-appellant, the two cans of marijuana (Exhibits "F" and "G"), the marked money (Exhibit "H"); the Booking Sheet and Arrest Report (Exhibit "A" and "L"); and the Receipt for Property Seized (Exhibit "B") all of which were offered by the prosecution are inadmissible in evidence as these were allegedly obtained in violation of the constitutional rights accorded to an accused during a custodial investigation. He explains that "all confrontations made with the accused and all papers upon which the accused was made to sign were processes of a custodial investigation," so that there is a need to first inform the accused-appellant of his constitutional rights to silence and to be assisted by a counsel. He alleges that the documents (Exhibit "A", "B" and "L") were signed by him and that the marijuana and the marked P20.00 bill were seized under conditions violative of the said constitutional rights laid down in paragraph 1, Section 12, Article III of the Constitution.

As earlier stated, the two tin cans are the results of a valid search.

Exhibit "A" and "L" which identically show the specimen signatures, are also admissible. These documents are

part and parcel of a mandatory and normal procedure followed by the apprehending and seizing police officers. In these three Exhibits, the accused-appellant did not give any statement against his own interest. The mere signing of the documents did not amount to Olivares' subjection to a custodial investigation wherein an accused is required to give statements about his involvement in the offense and wherein the right to be informed of his rights to silence and to counsel would otherwise be invoked. (*People v. Rualo*, 152 SCRA 635 [1987]). Guilt is proved by other evidence.

The accused-appellant possessed marijuana. The question before us is - Did he sell the marijuana? There is no issue of smoking or use of marijuana in this case. In fact, the NARCOM agents procured a search warrant, went to the billiard-hall, and searched the residence because of information that Olivares was selling marijuana at his place. Is Olivares guilty beyond reasonable doubt of selling the marijuana found in his possession?

It is a common defense of persons charged with the sale of marijuana to question the non-presentation of the informants in court. However, NARCOM operatives rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers. The usefulness of informers would be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as possible, their identities are kept secret. The usual defense - that the non-presentation of informers and poseur-buyers amounts to suppression of key evidence - is non-availing when it comes to buy-bust operations in the anti-drug campaign.

We have carefully looked into the credibility and competence of Riza Galvan because the guilt or innocence of the appellant insofar as the more serious crime of selling marijuana is concerned, hinges on his testimony.

We discount the defense theory that the NARCOM agents planted the marijuana to carry out an extortion activity. The story is farfetched and is not sustained by the records. We are satisfied from the evidence that the government agents were simply discharging their duty when they engaged in the operation which led to the arrest of Olivares.

The alleged discrepancies in the testimony of Galvan are not of a nature to warrant the rejection of what he stated. Whether or not there were two or four of them when they left the churchyard, with the informant going ahead or not, is a minor discrepancy unrelated to the possession and sale of the marijuana. The exact time when the P20.00 bill was given to the informer is also a minor discrepancy.

More important is whether or not Galvan actually witnessed the sale. The records show that Galvan was only ten meters away from Olivares, Reolo, and the informer when the transaction took place. The place was well-lighted. Galvan saw the incident when the marked money was being turned over the Reolo, then to Olivares. He was looking when Olivares left the billiard-hall and entered his adjacent residence. He saw Olivares come out and turn over something that had been gotten from inside. When the operatives moved in to arrest appellant, that something was taken by Galvan from the poseur-buyer. It was the packet of marijuana. To still require Galvan to actually hear the conversation which transpired between buyer and seller is unnecessary. It was enough that he witnessed the turning over of the money, the bringing out of marijuana and its being handed to the buyer. The evidence of the sale of marijuana is sufficient to establish guilt beyond reasonable doubt.

The marijuana in the two tin cans is likewise evidence that the appellant had a ready supply of marijuana inside his house. When a buyer places an order and turns over the payment, Olivares would leave the billiard-hall, enter his residential quarters, and come out with the purchased quantity which he turned over to his buyer. The marked money was also recovered from his brief case where he placed it when he went inside the house.

Galvan's testimony on the exchange of money for the marijuana is positive and categorical. There is absolutely no evidence in the record of any evil motives why he would implicate Olivares for a crime punished by reclusion

perpetua if such were not true. Nor is there proof of any malicious motive why the NARCOM operatives should go to all that trouble to plant marijuana on his person and later inside his house. The concatenation of circumstances from the report of a cache of marijuana, the securing of a search warrant, the sales transaction itself, the bringing in of barangay officials, and the discovery of the tins of marijuana in addition to the packet sold for P20.00 all point to the guilt of the appellant as a seller of marijuana.

WHEREFORE, the judgment of the lower court is hereby AFFIRMED. The appeal is DISMISSED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.

Cortes, J., on leave.

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