# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SILFERIO SILLO Y FERRER, ACCUSED-APPELLANT.

*G.R. No. 91001. September 18, 1992*

Ponente: NOCON, J.

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**NOCON, J.:**

In what would have been an otherwise perfect frame-up, the People's case falls flat on its face and the accused-appellant has to be acquitted as the poseur-buyer in the alleged buy-bust operation was never presented in court by the prosecution.

According to the People:

> "On or about 8:30 o'clock in the evening of March 18, 1987, Patrolmen Ricardo Oñes and Elmer Mabolo and Corporal Valentin Ilagan of the Vice Division of the Pasay City Police, while on duty at the Office of the Anti?Narcotics Unit, received information from an anonymous phone caller that there were pushers in the vicinity of Lakandula St., Pasay City. Immediately, they formed themselves into a group for the purpose of conducting a buy-bust operation. They entered in the police blotter their mission and the one ten peso and two five peso bills they will use as marked money. (TSN, p. 4-5, June 15, 1987).
>
> "About 9:00 o'clock in the evening of the same day, the policemen, along with a 'civilian informant', proceeded to Dolores Street, a block away from Lakandula Street. The informer led Patrolman Oñes to appellant's house at 164 Int., Dolores Street, while the other officers positioned themselves a few meters away from the house. Thereafter, the informer called someone by the name of Penpen. Later, a man, who turned out to be appellant Silferio Sillo y Ferrer, went down and talked to the informer. The latter told appellant in the presence of Patrolman Ones, who posed as buyer/companion, that they wanted to buy marijuana. Appellant went upstairs, leaving the undercover cop and the informer. When he returned, appellant received from the informer the marked money and thereafter handed to the latter the two foils of marijuana. Immediately, Patrolman Ones identified himself as a police officer and, with the help of other police officers, arrested appellant. Appellant was brought to the police station and turned over to Police Investigator Eduardo Manfoste for further investigation. (TSN, p. 6 to 8, May 11, 1988). The two foils of marijuana were turned over to the National Bureau of Investigation for examination (Exh. 'B'). After examination, Forensic Chemist Alicia Juan certified that the evidence thus examined gave positive result for marijuana (Exh. 'C')."[1]

Accused-appellant was, therefore, charged with violation of Section 4, R.A. 6425 in Criminal Case No. 87-11539-P filed with the Pasay City Regional Trial Court.

At the arraignment, accused-appellant pleaded "Not Guilty!" because according to him:

> "[O]n March 18, 1987, between 8:00 PM and 8:20 PM, Silferio Sillo went out of the house to fetch the children of his live-in wife. At about 8:30 PM, he and the children were already at home. His wife prepared their supper and at about 9:00 PM, Pat. Oñes and P/Cpl. Ilagan with the civilian named Kulot suddenly entered their house. He knows the two policemen because he was a barangay tanod from 1983-1986. Pat. Oñes was holding something like foils of cigarettes when he was about to search the body of Silferio but the latter was

> able to move back. The policemen then pointed their guns at Silferio and he was told not to make a scandal. Silferio then showed off his pant's pocket and wallet to the policemen who found nothing. The policemen conducted a search inside the house and they likewise found nothing. Silferio's mother and wife who were then present were afraid. Silferio was then brought to the police headquarters but he did not see anymore kulot, a well known snatcher and with whom he (accused) had encountered several times in their barangay selling stolen items. (TSN, pp. 2-8, July 13, 1988 and pp. 2-6, August 10, 1988 Sillo).[2]

The trial court gave more credence to the People's version and on September 30, 1988 rendered a decision which stated in its dispositive portion:

> "In view of all the foregoing, the Court finds the accused Silferio Sillo y Ferrer guilty beyond reasonable doubt as charged in the information and hereby sentences him to Life Imprisonment and to pay a fine of P20,000.00 with all the accessory penalties provided for by law and to pay the cost.
>
> "Likewise, the two (2) sticks of marijuana and the dangerous drugs subject of this case is hereby confiscated in favor of the government and ordered turned over to the Dangerous Drugs Board thru the National Bureau of Investigation for proper disposition.
>
> "SO ORDERED."[3]

Hence, this appeal.

The accused-appellant claims that the trial court erred in:

1. Convicting him despite material inconsistencies in the testimonies of prosecution witness; and

2. Finding that his guilt was proven beyond reasonable doubt.

## I

It is to be noted, that in this particular buy-bust operation, it was the civilian informer who allegedly handed the money to the accused-appellant and who subsequently received the marijuana from the latter. This is clear from the joint affidavit submitted by Pats. Oñes and Mabolo, Pfc. Manlongat and P/Cpl. Ilagan[4] right after the buy-bust operation which in its fractured syntax states:

> "THAT, minutes later upon arrival at the subject place, WE, P/CPL. Valentino Ilagan, PFC. Samuel Manlongat and Pat. Elmer Mabolo, positioned ourselves to obscure/dim portion in front of house nr. – 164 Int., Dolores, St., Pasay, while Pat. Ricardo Oñes together with a civilian informer proceeded directly at the footstair of said house and after several called by his alias PENPEN, the suspected drug pusher came down and approached the informant and Pat. R. Oñes;
>
> "THAT, the suspected pusher went upstair after short conversation with the Informant and Pat. Oñes and minutes after, went back to the informer and Pat. Oñes and handed two foils of suspected Marijuana leaves to the informer and kept the Twenty pesos as payment to his pants front right pocket;
>
> "THAT, immediately after the payment, Pat. R. Oñes held the suspected Marijuana pusher by the right hand, subsequently identified himself as police member of Pasay, at this juncture, Cpl. V. Ilagan, PFC. S. Manlongat and Pat. E. Mabolo showed themselves and assisted Pat. Oñes in apprehending the suspect;"

The civilian informer was not presented as a prosecution witness[5] in spite of the fact that, as testified to by Pat. Oñes, it was the civilian informer who, while acting as the poseur-buyer, gave the accused P20.00 and received from the latter the two marijuana sticks. Thus, Pat. Oñes testified:

> "Fiscal Barrera:


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who handed the money, ten peso bill and five peso bill to the suspect?

A: My civilian informant.

Q: After handing him the money what happened?

A: He go (sic) upstairs and then he went down and handed to my civilian informant the two foils of marijuana.

xxx xxx xxx

Court: Who received the marijuana from the accused?

A: My civilian informer."[6]

One of the rights of an accused is to confront and cross-examine the witnesses against him at the trial.[7] Only two (2) persons allegedly were eyewitnesses to the alleged sale of marijuana by the acused-appellant -- the civilian informer who was also the poseur-buyer and Patrolman Oñes.

Reviewing Patrolman Oñes' testimony, We find the same riddled with inconsistencies and improbabilities, thus:

1. Regarding who allegedly gave the marked money to the suspected drug pusher, on direct examination, Patrolman Oñes already contradicted himself, as follows:

"Fiscal Barrera: While there at the house of the accused a certain Penpen, what happened there?

A: After handing the marked money and after giving us the two foils of marijuana I informed him I am a member of the Pasay Police Force. After I gave him the marked money, he put it in his right front pocket and I informed him I am a police officer and effect the arrest.

xxx xxx xxx

Fiscal Barrera: Who handed the money, ten peso bill and five peso bill to the suspect?

A: My civilian informant."[8]

(Italics supplied)

While on cross-examination, he again contradicted himself, as follows:

"Q: Your civilian informer received the marijuana foil and after receiving it you turned over to the accused the alleged marked money?

A: Yes, sir.

xxx xxx xxx."[9]

"Q: By the way, who gave this money to the accused?

A: The poseur buyer."[10]

(Italics supplied)

2. Regarding which came first, the exchange of the marijuana or the exchange of the marked money, on direct he contradicted himself as follows:

"Court: Did the accused handed you already the marijuana?

A: He handed the marijuana already.

Court: Upon receiving the money?

A: Yes, Your Honor.

xxx xxx xxx.

Q: After handing him the money what happened?

A: He go upstairs and then he went down and handed to my civilian informant the two foils of marijuana."[11]

(Italics supplied)

3. Regarding as to whether he checked if the foils did contain marijuana before arresting the accused-appellant, Patrolman Oñes testified on direct, as follows:

"Q: You got the cigarette aluminum foil from the hand of the accused and your informant did not open it?

A: He opened it.

Q: While he was looking at the marijuana you effect the arrest?

A: Yes, sir, after handing the money.

xxx xxx xxx

Q: All the time that marijuana cigarette foil was in the possession of your informant?

A: Yes, sir.

Q: And you did not even touch that?

A: Yes, sir.

Q: Then you immediately effect the arrest?

A: Yes, sir."[12]

(Italics supplied)

but on cross, when asked why he arrested the accused-appellant without knowing the contents of the foil, he said:

"Q: Why did you arrest him when you are not sure that contained in the foil is marijuana?

A: I looked at the contents of the foil."[13]

(Italics supplied)

4. Regarding as to when the civilian informer surrendered the marijuana foils to the police, he said on direct:

"Fiscal Barrera: Upon receiving these two foils of marijuana, what did your informer do?

Court: In time the civilian informer handed the marijuana to your team leader?

A: In the office already."[14]

(Italics supplied)

while on cross, he said:

"Q: Where was the informant, he followed you?

A: He was together with us proceed to the headquarters. (sic)

Q: At all time he has possession of that cigarette foil confiscated from the accused?

A: No. At the said vicinity after getting the marijuana from the accused he handed the said foils of marijuana to our team leader Corporal Ilagan."[15]

(Italics supplied)

5. As to whether there was actual drug trafficking in Lakandula St., Pat. Oñes under cross stated:

"Atty. Barcelona: You stated on March 18, 1987 you were in your office and that while present there at 8:30 you received a telephone call there is a drug trafficking in the vicinity of Lakandula St., Cecilia St. and Tramo?

A: Yes, sir."[16]

xxx xxx xxx.

"Atty. Barcelona: How did you know there were marijuana sold in that area?

A: The civilian informant.

Q: But before that you did not conduct surveillance?

A: After the telephone call, two weeks before we are already receiving information regarding drug pushing in the said vicinity.

Q: Who received that call?

A: Member of our team.

Q: You mean to say that was the second call you received on March 18?

A: We have received call about drug trafficking in that place. Before that call we have been conducting surveillance. At that night we conducted buy bust operation in the said vicinity after receiving the telephone call from a certain resident there informing us a certain alias Penpen is conducting sale of marijuana.

xxx xxx xxx."[17]

While on further cross, he stated that:

"Court: In short, the information you received by phone is there is an actual drug trafficking in Lakandula St.?

A: Yes, sir.

xxx xxx xxx.

Q: When you arrived at Lakandula St., you did not see any drug trafficking around?

A: No.

Q: What prompted you in going to the house of the accused?

A: To check if said accused is selling marijuana."[18]

(Italics supplied.)

Apparently, the alleged buy-bust group members cannot even get their act together. For example:

1. As above-quoted, Patrolman Oñes stated that the civilian informer surrendered the foils of marijuana to P/Cpl Ilagan either at the scene of the crime or at the police headquarters. However, P/Cpl. Ilagan stated it differently, as follows:


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"Q: Together with the marijuana foils then what happened after that?

A: We brought the suspect to the Police Headquarters.

Q: And Pat. Oñes never parted with that 2 foils of marijuana?

A: It was given to me.

Q: When did Pat. Oñes give it to you?

A: After the apprehension.

Q: In the Headquarters?

A: No, in the house of the accused."[19]

(Italics supplied)

2. A very glaring discrepancy exists in the distance between the group of Pat. Oñes and the civilian informer and the group of the alleged buy-bust operatives who hid themselves as uncovered by the testimony. Pat. Oñes testified on direct that:

Q: At that time when the civilian informant handed the marked money to the person of the accused and when the accused went down again and handed the two foils of marijuana to your civilian informer, where were your other companions then, Cpl. Ilagan, Pat. Mabolo and Manlongat.

A: They hid themselves near to me (sic).

Fiscal Barrera: How far were these police officers?

A: A meter away.[20]

(Italics supplied)

while Pat. Mabolo testified on direct that:

Q: What happened there at Dolores Street?

A: Pat. Oñes together with the informant proceeded to the footstairs of the house #164 Int. Dolores Street.

Q: And what about the rest of the team?

A: We positioned ourselves at the dim portion fronting the house #164.

Q: How far were you from Pat. Ones and your informant?

A: Around 10 meters away.[21]

(Italics supplied)

3. Patrolmen Oñes in answer to a question by the Honorable Court had testified, as above-quoted, that the civilian informer received the marijuana from the accused. However, P/Cpl. Ilagan, then alleged team leader, testified differently as follows:

Q: So when he went down and gave these alleged 2 foils of marijuana he was immediately apprehended to whom did the accused handled these marijuana?

A: To Pat. Ricardo Oñes.

Q: Are you sure of that?

A: Yes, sir.[22]

(Italics supplied.)

The inconsistencies and contradictory statements of Patrolman Oñes himself and the inconsistencies of the statements of Patrolman Oñes with respect to the statements of P/Cpl. Ilagan and Pat. Mabolo engender serious doubts as to their reliability and veracity.[23] The presentation of the poseur-buyer is therefore very material and relevant in this case. The alleged buy?bust team members' statements can now be regarded as pure hearsay without the presentation of the civilian--informer-poseur-buyer.[24] He alone could definitely testify whether accused-appellant sold to him two foils of marijuana for Twenty (P20.00) Pesos. Accused?appellant's constitutional right to cross-examine the alleged poseur-buyer was thus violated.[25]

True it is that the Court has ruled in several cases that the civilian-informer-poseur-buyer's testimony would have been merely corroborative, the most recent of which is People vs. Dag-uman,[26] but in accused-appellant's case, considering the material discrepancies in the prosecution witnesses' testimony, the prosecution's case must necessarily rise or fall on the civilian-informer-poseur-buyer's testimony.[27]

The alleged civilian-informer-poseur-buyer was the only person who could definitely and categorically attest to the circumstances surrounding the arrest of the accused-appellant. He was the one who allegedly transacted with the latter and he was the one who allegedly exchanged the P20.00 bills for the two foils of marijuana. A similar situation confronted the Court in People vs. Yabut,[28] and the Court stated therein that:

> "[I]n short, he could have provided the most accurate account of the case. Yet, he was not presented as a witness by the prosecution, and his failure to testify remains unexplained. In such a situation, People vs. De Guzman, 194 SCRA 601 is enlightening where this Court was less than tactical. Querubin was the best witness to narrate the transaction; Bazar could at best only corroborate. xxx xxx."[29]

The identity of the civilian-informer-poseur-buyer is vital when the accused, as in the case at bar, denies having sold marijuana to anyone.[30] The failure to present the civilian-informer-poseur-buyer engenders a well-grounded belief that either he does not exist, or that, if he does, his evidence is being willfully suppressed because it will be adverse if produced.[31]

The Court notes that a witness for the accused-appellant, Amelia Abalos, testified as follows:

> "That she is residing at 164 Dolores St., Pasay City about fifteen (15) meters away from the house of the accused. That at about 8:00 to 9:00 p.m. of March 18, 1987, she was at home with her husband and child when a certain Kulot came. That Kulot handed two (2) P10.00 bill to her husband. That in return, her husband gave Kulot 2 foils of marijuana. That after fifteen (15) to twenty (20) minutes when Kulot left their house, a commotion was heard. That she came to know from the people living in that place that Pen-pen was apprehended. That she saw Kulot with the Police Officers."[32]

If Amelia Abalos' husband had been one of the accused in this case, Amelia Abalos' statement would have been considered as a declaration against her husband's penal interest.[33] Definitely, her husband is not the accused, but the trial court should have examined with more care the following portion of her testimony:

> "Q: Was that the first time that you saw your husband handed marijuana to a person to another person?
>
> A: Yes, sir.
>
> Q: And what did you do upon learning that your husband handed marijuana to another person or to alias Kulot?
>
> A: I got angry, sir.


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Q: And what did you do?

A: I quarrelled with him when I came to know that he is selling marijuana."[34]

(Italics supplied)

which could provide a plausible reason for her testifying in favor of accused-appellant even to the extent of incriminating her husband.

And who is this shadowy character Kulot? The accused-appellant's common-law wife's testimony sheds some light, to wit:

"Q - Are all this police officers who went to your house were police officers?

A - There is a civilian who went in our house.

Q - Who is that civilian?

A - I came to know to certain Kulot.

Q - Before that incident you do not know this fellow?

A - I know him for his alias.

Q - You have known him that particular date or before the incident?

A - Before.

Q - How did you come to know this "Kulot"?

A - This Kulot have a misunderstanding between my husband.

Q - What was that misunderstanding?

A - Because a Kumpadre of my husband complained to him that Kulot snatched the necklace the Kumpadre of my husband.

Q - What did your husband do?

A - What my husband did is to talk to Kulot.

Q - What was that misunderstanding that erupted between them?

A - My husband is asking for Kulot, where is necklace which he snatched, Kulot is being pinpointed.

Q - Did you notice this incident?

A - Yes sir.

Q - Where is this confrontation happened?

A - Inside the interior of Dolores St., Pasay City.

Q - When was that confrontation happen?

A - Before the incident happened.

Q - How many months before the incident happened?

A - About two months.


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Q - And that was the misunderstanding between Kulot and your husband?

A - Yes sir."[35]

(Note: SIC not used to avoid cluttering up the testimony; Italics supplied)

While it is the rule that the accused's common-law wife's testimony should be taken with a grain of salt because of their common-law marital relationship,[36] considering, however, the proven material discrepancies in the alleged buy-bust team operatives' testimonies, it becomes now credible that the civilian-informer's (Kulot) testimony was suppressed as there is the distinct possibility, that Kulot might have revealed something adverse to the policemen's interest under skillful cross-examination.

The evidence of the prosecution is sorely wanting to justify conviction. Settled is the rule that the prosecution must rely on the strength of its own evidence and not in the weakness of the defense.[37]

The Court notes the trial judge did not maintain the appearance of the cold neutrality of an impartial judge in rendering the questioned decision[38] for her Honor's statement, before the trial started, during the hearing of the motion to grant bail to the accused was that:

"Court: So this is a hearing of the motion to bail.

Atty. Barcelona: The accused is charged under Section 4, this is not a capital offense.

Court: That is why we are hearing this case. It is not among those subject to presidential order. As long as it is in the law, it's the law. The law could be hard but we should respect the law. Unless they decide to amend it or make it henceforth not punishable with that penalty. In fact if I can have my way I will be frank to you, I was sent as scholar to UNAFE, we have extended studies about drug addiction. The pusher should be shot to the Luneta. I am referring to the pushers. In our rule the dividing line is not very clear. Only the voluntary submission of addicts are there."[39]

(Italics supplied.)

WHEREFORE, in view of all the foregoing, the appealed decision is hereby REVERSED and SET ASIDE. The accused-appellant Silferio Sillo y Ferrer is ACQUITTED of the crime charged with costs de officio.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

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[1] Rollo, pp. 64-66.

[2] Ibid, p. 43.

[3] Decision, penned by Her Honor, Judge Lilia C. Lopez; Original Records, p. 291.

[4] Exh. "E", Folder of Exhibits; TSN, June 15, 1987, p. 7, TSN, February 1, 1988.

[5] Shown by a recital of the witnesses presented by the prosecution:

"To prove their case, the Prosecution presented the following witnesses: The Forensic Chemist, Pat. Ricardo Oñes, Pat. Eduardo Manfoste, P/Cpl Valentin Ilagan and Pat. Elmer Mabolo, all of the Pasay City Police Station." (Decision, p. 1; Original Records, p. 284)

[6] TSN, June 15, 1987, pp. 5-6.

[7] Section 1(f), Rule 115, Rules of Court.

[8] TSN, June 15, 1987, p. 5.

[9] Ibid, p. 12.

[10] TSN, July 6, 1987, p. 5.

[11] TSN, June 15, 1987, p. 5.

[12] Id.

[13] Id.

[14] Ibid, p. 6.

[15] Ibid, p. 13.

[16] Ibid, p. 8.

[17] Ibid, p. 9.

[18] Ibid. p. 11.

[19] TSN, February 1, 1988, p. 16.

[20] TSN, June 15, 1987, pp. 5-6.

[21] TSN, May 11, 1988, p. 6.

[22] TSN, February 1, 1988, p. 14.

[23] People vs. Fulgarillas, G.R. No. 91160, August 4, 1992.

[24] People vs. de Luna, 179 SCRA 245.

[25] People vs. Bagano, 181 SCRA 747.

[26] G.R. No. 96548, May 28, 1992. In this case, the civilian-informer-poseur-buyer was not presented mainly because his life was in danger, the other civilian informer having just been mercilessly gunned down by the relatives of an accused in another drug case and also because the therein accused's defense was incredible: he knew possession of marijuana was wrong but still he accommodated the request of a stranger to buy marijuana on the ground that the stranger said he was a good friend of the accused's friend.

[27] People vs. De Luna, supra, at p. 251.

[28] G.R. No. 82263, June 26, 1992.

[29] Ibid, p. 6.

[30] People vs. Ale, 145 SCRA 50.

[31] Sec. 5(e), Rule 131, Rules of Court; People vs. Alilin, G.R. No. 84363, March 4, 1992.

[32] Decision, p. 6; Original Records, p. 289.

[33] “With reference to the admissibility of the admissions and declarations of a defendant charged with a crime, the rule seems to be that the declarations made by a defendant or by a third party, by his authority, if relevant, are admissible against him. x x x" (United States vs. Ching Po, 23 Phil. 578, 583)

[34] TSN, August 17, 1988, p. 5.

[35] TSN, August 25, 1988, pp. 3-4.

[36] People vs. Carpio, G.R. No. 88942, March 25, 1992.

[37] People vs. Fulgarillas, supra.

[38] People vs. Serrano, 203 SCRA 171.

[39] TSN, June 15, 1987, p. 3.


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