# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO PEÑERO Y TAGAWA, ACCUSED-APPELLANT.

*G.R. No. 91284. September 03, 1992*

Ponente: CRUZ, J.

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**CRUZ, J.:**

It appears that the accused-appellant, who was a pedicab driver, was also offering a different kind of trip. The lower court, after trial, found him guilty of selling marijuana in violation of the Dangerous Drugs Act. He now says it was he who was taken for a ride.

The evidence for the prosecution showed that he was caught in flagrante in a buy-bust operation conducted in the morning of May 12, 1989, at Sta. Rosario Street in Mandaluyong, Metro Manila.

Cpl. Ernesto David of the Mandaluyong police had earlier that morning received a tip that there was a man selling marijuana on that street. The man's description was given. On the basis of this information, Cpl. David ordered Pat. Ronald de Castro and Cpl. Reynaldo Cruz to conduct the operation. They were given a ten-peso bill for the sham purchase, with the former to act as the buyer.

Arriving at the said street at about ten o'clock that morning, De Castro waited on one side of the road for their quarry while Cruz posted himself on the other side inside a parked car with tinted windows. Soon enough they spotted Pepito Peñero, who fitted the description given them. De Castro approached Peñero and asked, "Pare, meron ba tayo diyan, pahinging isa lang." Peñero readily answered, "Meron, sir," and drew out of his pants pocket a packet wrapped in aluminum foil which he gave De Castro. De Castro then handed him the ten-peso bill.

Cruz, who was watching the transaction, saw De Castro give the pre-arranged signal. He forthwith approached the two and identified himself to Peñero as a police officer. Peñero was placed under arrest. De Castro and Cruz then body-searched him and confiscated four more aluminum-wrapped packages that they also found in the front right pocket of his short pants.

Peñero was taken to the police headquarters, where a sworn statement was taken from him after investigation by David. The five aluminum-wrapped packets were marked and sent to the National Bureau of Investigation for examination and were later found to contain marijuana. The cxorresponding complaint was thereafter filed with the fiscal's office, resulting in the prosecution of Peñero for violation of Section 4, Article II of R.A. 6425.

The foregoing account was testified to by the three police officers[1] and Raquel Angeles.[2] Among the exhibits submitted by the prosecution were the confiscated marijuana,[3] the laboratory report thereon,[4] the ten-peso bill,[5] and the sworn statement of Peñero.[6]

In his defense, Peñero claimed he was set up. He denied the charge against him, claiming that the marijuana and the ten-peso bill were both "planted." He had never seen the marijuana before his arrest, when it was shown to him for the first time at the police headquarters. The money, he said, was given to him by a boy who was paying his fare and it was while he was counting the change that the two policemen arrested him. Peñero also assailed his

extrajudicial, confession. He said it had been taken from him without the assistance of counsel and neither had he been informed of his constitutional rights.

Judge Martin S. Villarama, Jr. of the Regional Trial Court of Pasig found for the prosecution. Disbelieving the defense, he held that on the basis of the testimonial and documentary evidence of the People, including the extrajudicial confession, the guilt of the accused had been established beyond reasonable doubt.

In the decision dated November 21, 1989, Peñero was sentenced to "suffer the penalty of reclusion perpetua with all its accessory penalties, to pay a fine of P20,000.00 and to pay the costs."

The trial court is faulted in this appeal for giving credence to the prosecution witnesses and for admitting the marijuana and the ten-peso bill as exhibits despite their inadequate identification. It is also contended that the extrajudicial confession should have been rejected outright because of its obvious flaws.

Peñero stresses that the police officers who testified against him had merely framed him. Their story of the sale and his arrest was concocted and implausible. He questions the identification allegedly made by the informer and insists that the policemen merely singled him out and arbitrarily arrested him. He underscores their inconsistency about the source of the ten-peso bill and suggests that the passenger he says had paid him the money was the person they were really after. There was no proof either that the ten-peso bill was the money used for the alleged sale as there was no marking made thereon by the policemen. The defense also argues that the marijuana foils supposedly taken from Peñero were not sufficiently identified, as shown by the uncertain testimony of De Castro.

Peñero's most important challenge is against the extrajudicial confession, which he avers was clearly violative of the Bill of Rights.

This last challenge is formidable and must be sustained. The prosecution has not shown that the accused was duly informed of his constitutional rights when he was placed under custodial investigation and later made to sign the said confession. The statement itself shows that he was merely warned that it might be used against him. He was also not apprised of his right to be silent and to the assistance of counsel which could be furnished to him for free if he could not afford to retain the services of a paid lawyer. It is not denied that the statement was taken from him without such assistance. There is also no refutation of his testimony that he was merely made to sign the statement without giving him a chance to study it or to consult a lawyer about it.

These circumstances rendered the sworn statement completely inadmissible. It should not have been considered at all by the trial judge. It is amazing that he did so, in light of the long line of decisions that should have guided him, beginning with the landmark case of Morales vs. Enrile.[7] Moreover, there was the express mandate of Article III, Section 12, subsections (1) and (3) of the Constitution, which are clear enough:

> Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> x x x
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
>
> x x x

All judges should be keenly aware of these provisions and ever alert against their violation. The trial judge in the case at bar actually abetted such violation instead of striking it down with the ire it should have provoked for


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affronting the Constitution. It should be observed, in fairness, that he did say the accused-appellant would have been convicted just the same even if the extrajudicial confession were not taken into account. The point, though, is that he did not disregard it at the very outset, as he should have, and instead considered it with the rest of the evidence in convicting Peñero.

The other points of the defense are, however, not well taken. We agree with the trial judge that even with the rejection of the extrajudicial confession, the other evidence of the prosecution would still be sufficient to warrant the conviction.

We have said often enough that the findings of fact of the trial court deserve credence on appeal save where they come under the established exceptions. The reason is the superior opportunity of the trial judge to observe the witnesses as they testify and thereby assess their credibility by their demeanor on the stand. The tell-tale signs of prevarication are plain enough for the trial judge to see but are not available to the appellate judge. The higher court can go only by the silent record.

Even if it be conceded that David did not testify to having given the ten-peso bill to De Castro and Cruz, that omission is not material, much less fatal. The other two policemen did say under oath, and categorically enough, that they got it from David.[8] The fact that it was not marked may have lessened its probative value but did not render it inadmissible as part of their testimony.

The same observations may be made of the marijuana foils, which in fact had been previously marked before they were sent to the NBI. David definitely pointed to them as the articles turned over to him by De Castro and Cruz and in turn sent by him to the NBI.[9] Notably, the marijuana was wrapped in aluminum foil with the brand name "Tortillo Chips" printed on it,[10] and this served as further identification. More importantly, Raquel Angeles, the forensic chemist of the NBI, positively identified the marijuana foils as the articles she received from David which she subsequently examined.

Peñero's protest that he was arrested and searched without warrant is a futile afterthought. He was validly arrested under Rule 113, Section 5(a), of the Rules of Court while actually committing a crime. And he was validly searched incidental to that arrest in accordance with Rule 126, Section 12.

The defense, finally, makes the usual argument that Peñero could not have committed the crime so openly, in a busy street with all the people milling around. If he really intended to sell the prohibited article, he would have been more cautious and done it more covertly. True, he should have been more careful. But he was not. He probably felt that he did not have to be, in pure disdain of the law-enforcement authorities. Peñero's conduct only proves the growing lack of respect of drug-pushers for the campaign against drug addiction and should lessen rather than increase the doubt about his guilt. At any rate, we have already held that -

> Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall (People v. Rubio, G.R. No. 66875, June 19, 1986, 142 SCRA 329; People v. Sarmiento, G.R. No. 72141, January 12, 1987, 147 SCRA 252), in front of a store (People v. Khan, G.R. No. 71863, May 23, 1988, 161 SCRA 406) along a street at 1:45 p.m. (People v. Toledo, G.R. No. 67609, November 22, 1985, 140 SCRA 259), and in front of a house (People v. Policarpio, G.R. No. 69844, February 23, 1988).

We are convinced, as was the trial judge, that the accused-appellant committed the crime imputed to him. The testimonial and documentary evidence of the prosecution has established his guilt beyond reasonable doubt as

against his feeble defense that he was merely the victim of persecution from the police. The police had no motive for persecuting him. On the other hand, it is clear that he was actuated by greed when he plied his clandestine trade that morning in callous disregard of the misery he was sowing.

The decision sentenced the accused-appellant to reclusion perpetua and all its accessory penalties, but that was a mistake. The penalty prescribed by Section 4, Article II of the Dangerous Drugs Act as amended is life imprisonment to death and a fine ranging from P20,000.00 to P50,000.00. The penalty of reclusion perpetua, which carries accessory penalties under the Revised Penal Code, is completely different from life imprisonment.[11] Consequently, we shall have to correct the penalty of reclusion perpetua to life imprisonment, to which shall be added the fine of P20,000.00 and the costs of the suit.

The accused-appellant was only a small-time operator, but he still contributed his share to the proliferation of illegal narcotics and the spread of drug addiction among our people. It is dismaying that, according to the latest reports, the Philippines has become the second biggest producer of marijuana in the whole of Asia. This dubious distinction should all the more justify the imprisonment for life of persons like the accused-appellant whose depravity continues to weaken our society. They all deserve the full justice and rigor of the law for their execrable offense against the life and future of this nation.

WHEREFORE, the appealed judgment is AFFIRMED as above modified. It is so ordered.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

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[1] TSN, September 29, 1989; October 2, 1989.

[2] Ibid., September 6, 1989.

[3] Exhibit "B."

[4] Exhibit "D."

[5] Exhibit "E."

[6] Exhibit "G."

[7] 121 SCRA 538; see also People vs. Galit, 135 SCRA 465; People vs. Pecardal, 145 SCRA 647, People vs. Capilin, 165 SCRA 47.

[8] TSN, September 29, 1989, p. 7; October 2, 1989, p. 2.

[9] TSN, September 29, 1989, pp. 14, 16.

[10] Exhibit "B;" TSN, September 6, 1989, p. 3.

[11] People vs. Ruedas, G.R. No. 83372, February 27, 1991.


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