

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELVIN ODICTA Y BETITA ALIAS “BOYET,” NILO CELUBRICO Y CAPANAS, RESPONDENTS.

*G.R. No. 93708. May 15, 1991*

Ponente: GRIÑO-AQUINO, J.

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### GRIÑO-AQUINO, J.:

In Criminal Case No. 32836 of the Regional Trial Court of Iloilo City, 6th Judicial Region, Branch 26, Melvin Odicta y Betita alias “Boyot” and Nilo Celubrico y Capanas, were charged with violation of Section 4, Article II of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, committed as follows:

“That on or about the 6th day of March 1989, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, conspiring and confederating between themselves, working together and helping one another, with deliberate intent and without any justifiable motive did then and there willfully, unlawfully and criminally sell and/or distribute one (1) plastic pouch of suspected dried marijuana leaves and seeds weighing approximately 50 grams, a source of prohibited drugs, without having the authority to sell and/or distribute the same; that P100.00 marked bill, bearing SN CW113844, used as “buy money” was recovered.

“Contrary to law.” (p. 6. Rollo)

Upon arraignment, both accused pleaded “Not Guilty” (p. 25, Rollo).

The facts, as recited in the decision of the trial court, are as follows:

In the afternoon of March 6, 1989 at around 3:30 o’clock, a team of agents from the 6th Narcotics Regional Command (NARCOM), Iloilo City, composed of Sgt. Benito Bonite, Sgt. Dande Deocampo and CIC Freddie Cartel, went to Barangay Esperanza, Tanza, Iloilo City, to conduct a buy-bust operation. The team was dispatched by Captain Rustico Francisco, commanding officer of the 6th Narcotics Command, upon a tip that there was rampant selling of marijuana in that place by a group headed by a certain “Boyot.” (pp. 3-4, tsn, June 25, 1989.)

Upon arriving at Tanza, Sgt. Benito Bonite and Sgt. Dande Deocampo positioned themselves about ten meters away from CIC Freddie Cartel who proceeded to a store in the said barangay. Nilo Celubrico approached Freddie Cartel who told Celubrico in the language known to the latter: “I want to score,” meaning that he wanted to smoke marijuana. Celubrico asked Cartel how much marijuana he wanted to buy and Cartel answered: “two hundred pesos.” (pp. 6-8, tsn, September 4, 1989.)

At that time, Cartel had with him two marked one hundred peso bills which their commanding officer had earlier given to him to be used in the buy-bust operation. Cartel gave the money to Celubrico. At the same time he took his handkerchief from his pocket as a signal for his companions to close in. (pp. 8-9, *ibid.*)

Celubrico received the money and told Cartel to wait. Celubrico went to the store and gave the money to Melvin Odicta who gave Celubrico a plastic pouch containing dried marijuana leaves (Exhibit A). Celubrico handed the pouch to Cartel. Whereupon Sgts. Bonite and Deocampo rushed to the store and, identifying

themselves as NARCOM agents, arrested Celubrico and Odicta. (pp. 9-11, *ibid.*)

Sgt. Bonite seized Odicta and searched him, finding only one marked One Hundred Pesos (P100.00) with the signature of Sgt. Bonite thereon. The NARCOM agents brought Odicta and Celubrico to their headquarters and investigated them. The accused refused to give written statements. Nevertheless, they were booked for violation of the Dangerous Drugs Act by selling marijuana. (pp. 11-13, *ibid.*)

Upon examination by the Philippine Constabulary Crime Laboratory (PCCL), Camp Delgado, Iloilo City, the article in the plastic pouch that was taken from the accused proved to be positive for marijuana. (pp. 7-10, *tsn*, May 10, 1989.)

The appellants denied having sold marijuana leaves to Cartel. Their version was:

At 3:30 in the afternoon of March 6, 1989, Melvin Odicta was inside the house of Erlinda Jaurigue playing a game on the family computer when suddenly four armed men arrived and pointed their guns at him saying, “don’t run.” (p. 27, *Rollo.*)

Melvin Odicta asked what was his fault but the armed men simply answered: “You are the one.” They asked for his name and he replied: “Boyet.” The armed men, who turned out to be NARCOM agents, frisked and handcuffed him and brought him outside the store. (p. 27, *Rollo.*)

Nilo Celubrico alleged that he was in the store buying sugar when he noticed people scampering. The woman at the store, on seeing the armed men enter the house followed them. When they came out of the house together with Melvin Odicta, the NARCOM agents also arrested Celubrico and brought him to the headquarters together with Odicta. Celubrico at first hesitated to go with the NARCOM agents. He asked them what his fault was and they answered: “Just go with us.” (p. 27, *Rollo.*)

On the way, the accused met Barangay Captain Jesus de la Cruz of Barangay Esperanza and asked him to go with them. The barangay captain went along to the NARCOM headquarters on Gen. Luna Street, where the accused were investigated. Because they refused to admit ownership of the dried marijuana leaves in the plastic bag (Exhibit A) shown to them by the NARCOM agents, they were allegedly maltreated.

In its decision dated December 4, 1989, the trial court found both accused guilty of selling prohibited drugs. The dispositive part of the decision reads as follows:

“WHEREFORE, the court hereby finds the accused, MELVIN ODICTA y BETITA alias “Boyet” and NILO CELUBRICO y CAPANAS, guilty beyond reasonable doubt of the offense of violation of Section 4, Article II of Republic Act 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972 and sentences each to suffer the penalty of life imprisonment and to pay a fine of P20, 000.00 and the costs.

“The subject dried marijuana leaves (Exhibit A) are hereby ordered confiscated and ordered delivered to the National Bureau of Investigation, Regional Office No. 6, Iloilo City, for proper disposition.” (pp 19-20, *Rollo.*)

Both defendants appealed assigning the following errors against the trial court’s decision:

1. in not holding that the prosecution failed to prove the guilt of the accused beyond reasonable doubt.
2. in not declaring illegal the arrest of accused Melvin Odicta and Nilo Celubrico, which was effected without warrant, and in admitting in evidence the exhibits obtained thereby.
3. in not absolving the accused-appellants from criminal liability for had been investigated by the prosecution witnesses to commit the crime charged.

The appeal is devoid of merit.

The appellants harp on the failure of the prosecution to present as a witness the police informer whose report

triggered the entrapment operation, and on the alleged improbability that a drug pusher or seller of prohibited drugs would make such a sale to a stranger.

Both arguments were disposed of by this Court in *People vs. Sanchez*, 173 SCRA 305, 313, in this wise:

“The presentation in evidence of the ‘buy-bust’ money is not indispensable for conviction of the accused since the sale of marijuana had been adequately proven by the independent testimony of the two (2) police officers. Since testimony of the police informer was similarly not essential for conviction of the accused, his identity may remain confidential: there are strong practical reasons for such continued secrecy, including the continued health and safety of the informer and the encouragement of others to report wrong doing to the police authorities. The accused’s theory that it is ‘contrary to human experience’ that a drug ‘pusher’ would sell drugs to a total stranger is not persuasive. In real life, ‘pushers,’ especially small-quantity or retail ‘pushers,’ sell their prohibited wares to customers, be they strangers or not, who have the price of the drug and this the Court has recognized.” (citing *People vs. Tejada*, 170 SCRA 497; *People vs. Paco*, 170 SCRA 681; underscoring supplied.).

Generally, the evidence given by law enforcement officers enjoys a high credibility rating, for as this Court pointed out in *People vs. Sanchez*, 173 SCRA 305, 311:

“As is so common in criminal cases of this kind, there is here a direct conflict between the positive testimony of the arresting officers Sgts. Palmero and Serrano, and the testimony of the accused. The trial court which had the opportunity to observe the detailed demeanor of the prosecution witnesses and of the accused on the witness stand, and to listen to their respective testimonies, gave more credence to the statements of the arresting officers, Sgts. Palmero and Serrano. The trial court pointed out that these government agents had no known motive or reason falsely to impute a serious and unfounded charge against the accused. The accused had been a complete stranger to the police officers until they encountered him in the course of performance of their duties as members of the Narcotics Command. The testimony of the two (2) police agents carries with it the presumption of the regularity of the performance of official functions. The resulting applicable principle has been stated in *People vs. Patog*, 144 SCRA 429, in the following terms: ‘Where there is no evidence and nothing to indicate the principal witness for the prosecution was [moved] by improper motives the presumption is that he was not so [moved] and his testimony is entitled to full faith and credit.’”

The appellants’ defense of inducement or instigation deserves no consideration. Neither the testimony of CIC Freddie Cartel on the buy-bust operation, nor the appellants’ testimony so much as hints that they were “induced” by the police officers to engage in the business of selling marijuana. CIC Cartel testified thus:

“Q:

Can you tell the Court what task assigned to the team? (sic)

“A:

As purseur-buyer [sic].

“Q:

What is the work of the purseur-buyer [sic]?

“A:

The one who buys marijuana.

“Q:

Upon reaching the place where you were assigned to go, could you narrate to the court what did your team do when you arrived at Esperanza, Tanza, Iloilo?

“A:

When I arrived at the said place, Esperanza, Tanza, Iloilo City, I immediately went to the store.

".....

“Q:

When you reached there what did you do?

“A:

I talked to one person and later known to be Nilo Celubrico.

“Q:

What happened next?

“A:

I asked him if I can purchase marijuana.

“Q:

Is there any local dialect or word which is used when you want to purchase marijuana?

“A:

‘Score’

".....

“CITY PROSECUTOR:

“Q:

When you were asked by Nilo Celubrico if you will score, what was your answer?

“A:

Yes.

“Q:

When you answered ‘yes,’ what did you do as you confer with Nilo Celubrico because you have a score? (sic)

“A:

Nilo Celubrico asked how much I am going to buy.

“Q:

What was your answer?

“A:

P200.00

“Q:

When you said P200.00, did you have money at that time?

“A:

Yes, ma’am.

”.....

“Q:

In what denominations?

“A:

Two 100 peso bills.

“Q:

Two 100 peso bills. What did you do with that?

“A:

I gave the money to Nilo Celubrico and the same time I made a sign with my left hand with a white handkerchief to my companion.

“Q:

Was Nilo Celubrico about to receive the P200.00 that you gave the sign?

“A:

Yes, ma’am.

“Q:

After Nilo Celubrico had received the P200.00, what did he do, if he did any?

“A:

He went to the store.

“Q:

Where was that store located. How far was it away from you?

“A:

About five (5) meters.

".....

“Q:

. . . what happened there?

“A:

I saw Nilo Celubrico gave the money to one person.

“Q:

After giving the money to that person, did Nilo Celubrico go back to you?

“A:

Yes, ma’am.

“Q:

When he went back to you, did he bring anything?

“A:

Yes, ma’am.

“Q:

What did he bring?

“A:

One (1) plastic pouch of marijuana.

".....

“Q:

Was that one (1) plastic pouch of marijuana given to you by Nilo Celubrico received by you?

“A:

Yes, ma’am.

“Q:

After you have received that one plastic pouch of marijuana from Nilo Celubrico what did you do next?

“A:

When he gave to me 1 plastic of marijuana, my back-up, Sgt. Bonite and Deocampo were already there at my back.

“Q:

So, what did you, Sgt. Bonite and Sgt. Deocampo do with Nilo Celubrico?

“A:

. . . They identified themselves as NARCOM agents and effected arrest.

“Q:

After Nilo Celubrico was arrested. How about you, what did you do? (sic)

“A:

I went to one person in the store who later was identified as Melvin Odicta and introduced myself as a NARCOM agent and I arrested him. (pp. 4 -11, TSN, September 4, 1989.)” (pp. 12-18, Appellee’s Brief.)

The records show that prior to the buy-bust operation, the appellants already possessed a supply of marijuana for sale to anyone willing to pay the price. The NARCOM agents did not provide them with marijuana to sell to the public. When the NARCOM agents asked to buy some of the stuff of the appellants, their purpose was simply to make the appellants reveal their possession of the prohibited drug and to catch them in the act of violating the Dangerous Drugs Law. Entrapment is a procedure or operation sanctioned by the Revised Penal Code (People vs. Valmores, 122 SCRA 922 [1983]).

“Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Oftentimes, it is the only effective way of apprehending a criminal in the act of the commission of the offense. In entrapment, the idea to commit the crime originated from the accused. Nobody induces or prods him into committing the offense. A criminal is caught committing the act by ways and means devised by peace officers.

“It must be distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured in to the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. In entrapment, ways and means are resorted to for the purpose of capturing the lawbreaker in flagrante delicto. In entrapment, the crime had already been committed while in instigation, it was not and could not have been committed were it not for the instigation by the peace officer.” (People vs. Gatong-o, et al., 168 SCRA 716.)

There is no merit in the appellants’ other contention that their warrantless arrest was illegal, hence, the evidence

obtained thereby was inadmissible in evidence.

Section 5(a), Rule 113 of the 1988 Rules of Criminal Procedure reads:

“Section 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

“(a)

When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense:

“.....

Moreover, Section 12, Rule 126, provides:

“Section 12. Search incident to lawful arrest. – A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense without a search warrant. (12a)”

Having caught the accused-appellant in flagrante selling prohibited drugs, the NARCOM agents did not need a warrant of arrest to seize them. The warrantless search, as an incident to a lawful arrest, was lawful (*Nolasco vs. Paño*, 147 SCRA 509). “The fruits obtained from such search are admissible in evidence” (*People vs. Aminnudin*, 163 SCRA 402). The constitutional guarantee against a warrantless arrest, as well as unreasonable searches and seizures, was not violated.

WHEREFORE, finding no reversible error in the judgment of the trial court, the same is **AFFIRMED** in toto with costs against the appellants.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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