

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO WILLIAM Y BANECA, ROMULO M. CALOGCOG Y
QUIBAN, VIRGILIO APURA Y FERRAREN, BENJAMIN SAMIA Y
MARTINEZ, ACCUSED.**

G.R. No. 93712. June 15, 1992

Ponente: PARAS, J.

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PARAS, J.:

This appeal seeks reversal or modification of the decision* of the Regional Trial Court of Pasay City, Branch 109, dated December 22, 1989 issued in Criminal Case No. 86-9252-P entitled “People of the Philippines v. Alejandro William, et al.” the dispositive portion of which reads:

“In view of all the foregoing, the Court finds accused Romulo Calogcog y Quiban and Alejandro William y Banega guilty beyond reasonable doubt for Violation of Section 4, Republic Act 6425 as amended and hereby sentences them to Reclusion Perpetua and to pay a fine of TWENTY THOUSAND (P20,000.00) PESOS each without subsidiary imprisonment in case of insolvency.

“For insufficiency of evidence and on grounds of reasonable doubt, accused Benjamin Samia y Martinez and Virgilio Apura y Ferraren are hereby acquitted of the charges against them considering that the government witnesses testified that the two (2) accused Virgilio Apura and Benjamin Samia are mere onlookers (usyosos) at the place of the operation.

“The stuff of marijuana is hereby ordered forfeited in favor of the government and the Officer in charge of this Court is ordered to transmit the same to the Dangerous Drugs Board thru the National Bureau of Investigation for proper disposition.

“SO ORDERED.” (p. 66, Rollo)

The accused-appellants were charged with the violation of Section 4 of Republic Act 6425 as amended (The Dangerous Drugs Act of 1972) in an Information filed by the Pasay City Fiscal’s Office, thus:

“That on or about the 18th day of January, 1986, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, considering and confederating together and mutually helping one another without authority of law, did then and there willfully, unlawfully and feloniously sell, give away to another, deliver, distribute or act as a broker in the sale transaction of marijuana, a prohibited drug.

“Contrary to law.” (p. 57, Rollo)

All pleaded “not guilty”, when arraigned.

The antecedent facts of the case are as follows:

For the prosecution, four (4) witnesses were presented, namely: Pat. Cenon Parungao, Pfc. Manuel Olivas, Lt. Rolando Puruganan and P/Lt. Tita Advincula, who testified:

“That sometime in January 1986, the NARCOM conducted a surveillance at the Starlight Disco at Pasay City based on informations (sic) received that drug push-ers are roaming around the said place. That accordingly a team consisting of three (3) members with Lt. Puruganan as team leader was formed and surveillance was started two (2) weeks before the actual date of operation. That on January 18, 1986 one member of the team Pfc. Manuel Olivas posed as tourist guide with a U.S. Navy as tourist proceeded to the coffee shop at Starlight Disco. That one of the suspects Romeo Calogcog approached the group who in loud conversations made known the fact that they have a client, buyer of the dope, offering to contact person who has the stuff of marijuana which they offered to buy at P200.00. That Romulo Calogcog left and returned with one Alejandro William who owned the marijuana. That accordingly, the amount of P200.00 was paid to the two (2) suspects as payment for the marijuana stuff. That after the marijuana was delivered to Pfc. Olivas and the payment of P200.00 was received by Alejandro William, both were arrested by the team. That Samia and Apura arrived after Alejandro William has already delivered the marijuana and received payments thereof. That the two (2) were in the place making ‘usyoso’. That they also talked with Apura and Samia and also suspected them as pushers. That both accused Alejandro William and Romulo Calogcog were identified by members of the buy-bust team as the ones who sold the marijuana. That they also identified Apura and Samia. That all were arrested and investigated at the NARCOM Office. That the marijuana bought from Alejandro William and Romulo Calogcog were submitted to the PCCL for forensic examination. A receipt for the seized article was prepared and signed by the suspect. That the members of the team executed a Joint Affidavit of Arrest detailing the circumstances leading to the arrest. That the signatures thereon are that of the team members. That after the required forensic examination of the stuff sold by the accused Alejandro William and Romulo Calogcog were found to be positive for the presence of marijuana. That they noticed the presence of Apura and Samia after William has handed them the prohibited stuff. That because Apura and Samia were there making ‘usyoso’, they included them in the arrest least (sic) they may have knowledge of the transaction. That Apura and Samia were allowed to go home.” (pp. 58-59, Rollo).

The defense presented all the accused-appellants except Alejandro William who jumped bail.

Accused Romulo Calogcog, testified: That on January 18, 1986, at around 8:30 a.m., while on duty as a watch-your-car boy at the Starlight Disco located at corner San Luis Service Road, Roxas Boulevard, two (2) persons approached him and asked him if he knows something about marijuana to which he answered in the negative; that the two men left but after a little while he was arrested and brought together with the other three (3) accused inside a Hi-ace van then with William brought to the Beach View hotel inside a bathroom and was asked for money but answered in the negative; that for four (4) hours thereafter he was made as temporary helper; that thereafter he was brought to Camp Crame together with the other three (3) accused and with several others; locked inside - they were made to sign documents without letting them read the same and without a lawyer’s assistance; that they were then brought to the City Fiscal’s Office of Pasay, that he denied the charge versus him and upon cross examination denied all the testimonies of the defense; and that the officers who arrested him were not the ones who brought him to the hotel, that he knew the other three accused only by face.

Accused Virgilio Apura, when called to the witness stand, testified that at around 9:30 p.m. of January 18, 1986 he was alone eating “lugaw” near the service road corner San Luis St., Pasay City with other people; that he noticed three persons conversing with one another, but one left and returned after some ten minutes, that again the three talked to one another; that after he paid for the “lugaw”, two persons held the back of his pants and arrested him who introduced themselves as NARCOM agents, that he was brought inside a Hi-ace and to the Bayview Plaza; that he noticed there were less than nine persons inside the van, that two persons sitting beside him were brought to the second floor while he was left behind; “that he does not know the identities of the other two co-accused; that together with Samia or “tatang” he was sent home because they were only making “usyoso”; that they boarded a jeep and returned to the place where they were first arrested because they lived there, that again, the NARCOM agents invited them again for some explanation, they were again brought to the Bayview Plaza

Hotel and he was slapped twice when he denied any knowledge of marijuana, and he was boxed also on the chest upon repeated answers of denials to their similar questions; that they stayed there for four minutes, brought to Camp Crame and placed inside a small cell on the charge of confiscated marijuana but from whom it was confiscated, there was no mention; that they stayed in Camp Crame for five, (5) days; that he did not give any statement which he claimed as his right, that he only came to know William for the first time at Camp Crame; that he did not know the reason why he and Samia were left inside the van while Calogcog and William were brought inside the Bayview Plaza. On cross examination, Apura said that although Samia owns a small eatery near his place of residence it was only the wife who manages the store whom he sees there and never Samia; that he never knew Calogcog and William before the incident; that while eating “lugaw” he actually saw not only three (3) persons but five (5); that he did not hear them talking about marijuana.

Accused Benjamin Samia testified that on January 18, 1986, when he was at the store at around 8:00 and 8:30 p.m., there were three (3) persons eating and he sat down beside them waiting for them to finish eating; that after 10 minutes, somebody approached him and invited him to a nearby van where there were seven other persons; that he was brought to the beach with four (4) others; that upon reaching the hotel, nothing was asked of him but the two whom he later on knew to be Calogcog and William were brought upstairs; that after some time, he was told to go home as he was only an “usyosero”. On cross examination he said that he did not know any case calling for his invitation and arrest.

Accused-Appellants assigned two (2) errors, thus:

1. The trial court gravely erred in giving credence to the testimonies of the law enforcers who are accordingly presumed to be regularly performing their duties in the absence of proof to the contrary; and
2. The trial court seriously erred in considering that the evidences submitted are indeed the corpus delicti of the crime in the absence of convincing proof to that effect.

We will tackle the first assigned error.

We must pay attention to the fact that drug addiction is one of the most pernicious evils that have ever crept into our society. More often than not it is the young who constitute the greater majority of the citizenry who are the victims. It is of common knowledge that drug addicts become useless if not dangerous members of society and in some instances turn out to be among the living dead. This is the reason why courts and law enforcement agencies should continue in their relentless campaign not merely to minimize but to totally eradicate the evil before it is too late. And everyone must be involved in this drive if we are to succeed. The peddlers of drugs are actually agents of destruction. (Peo v. Policarpio, 158 SCRA 85)

At the same time, we should not close our eyes to 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 unusually severe penalties for drug offenses (Pee v. Ale 145 SCRA 50).

What transpired was a buy-bust operation of the NARCOM people inevitably preceded by careful planning which consists of weeks of surveillance and tense sleuthings. There is nothing in the records of the case suggesting that the testimonies of the NARCOM agents were motivated by any reason other than the mission to curb drug abuse. (People v. Labriaga, 199 SCRA 530).

As a general rule, a buy-bust operation is the method employed by peace officers to trap and catch malefactors in flagrante delicto. It is essentially a form of entrapment since the peace officer neither instigates nor induces the accused to commit a crime. Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker from whose mind the criminal intent originated. Oftentimes it is the only effective way of apprehending a criminal in the act of the commission of the offense. The NARCOM agents in this case used entrapment to be able to catch the accused-appellants in that act. The fact that they had a ready supply belies their claim of instigation. (*Peo v. dela Cruz*, 18 April, 1990).

While the appellants' attempt to discredit the testimony of said police officers, they have not shown any improper motive why they should testify in the manner that they did. Thus their testimonies are entitled to full faith and credence. They are presumed to be in the regular performance of official duties. (*Perez v. Rumeral*, 200 SCRA 194).

Further, even without relying on the presumption of regularity in the performance of the NARCOM officers' official duties, appellants' conviction can be sustained on the un rebutted evidence that they were caught in flagrante delicto.

It is worth reiterating that conspicuous is the fact that accused-appellants did not impute, much less prove, any ill-motive on the part of the NARCOM agents. This destroys their defense that they were framed. In this regard, it was held in *Peo v. Agapito*, 154 SCRA 694 that:

“(i)n 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. We realize the disastrous consequence on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policeman's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists (p. 700).” (pp. 14-15, Appellee's Brief; p. 74, Rollo)

And for someone caught red-handed peddling illicit drugs, just like the accused-appellants, an imputation of wrongdoing allegedly committed by Enforcement Officers, so easily fabricated, can be expected. (*Peo v. Madarang*, 147 SCRA 123)

Besides, again, in *Peo v. Rumeral*, 200 SCRA 194. We held that the commission of the offense of illegal sale of marijuana requires merely the consummation of the selling transaction. What is important is that the poseur buyer received the marijuana from the accused.

As to the 2nd assigned error questioning the Court's consideration of the corpus delicti of the crime, this the Solicitor General has brilliantly refuted, thus:

“The contents of the plastic cannister and the aluminum foil seized from appellants tested positive for Marijuana. - On the basis of her laboratory examination of objects taken from appellants, PC forensic chemist Lt. Tita B. Advincula issued Chemistry Report No. D-51-86 dated January 20, 1986 (Exhibit 'D') stating that the 3.09 grams of suspected dried marijuana flowering tops placed in a round plastic container with cover (Exhibit 'I-1') and the 0.58 gram of suspected marijuana flowering tops wrapped in aluminum foil (Exhibit 'I-2') tested positive for marijuana.

“When Lt. Advincula testified, she identified the specimens on which she conducted her laboratory examination and the report she prepared (TSN, December 22, 1986). The fact that she did not give details of the procedure she followed in examining the specimens does not diminish her credibility. She was not able to give details of the procedure she followed not because of any inability or refusal on her part to do so but because of the simple reason that she was not asked, whether in direct examination or cross-examination, to do

so. She was merely called upon to identify the report she prepared and the specimens she used.

“Appellants point out that this Honorable Court, ‘in various occasions,’ ruled that an expert witness, such as a forensic chemist, should show the thorough procedures he followed to determine that the specimen is a prohibited drug (Appellants’ Brief, p. 8). It must be stressed that appellants failed to cite a single case supporting this proposition.

“Moreover, witness Advincula testified (TSN, December 22, 1986, p. 3) that she used three methods of examination in arriving at the finding contained in her preliminary report (Exhibit ‘D’) that the specimens proved positive for marijuana. She also prepared a Chemistry Report 2-51-86 (Exhibit ‘K’), the final report of her examination of the specimens.

“Appellants attack the credibility of Pfc. Olivas for mistakenly identifying the chemistry report which certified that the specimens tested positive for marijuana as Chemistry Report No. ‘D-85-186’ instead of ‘D-51-86’. This is nitpicking. Since Pfc. Manuel Olivas did not conduct the laboratory examination and did not prepare the chemistry report, he was not expected to be familiar with the same and, most certainly, to memorize its number.”

“The probative value of an object evidence is not affected by the fact that it is beyond the commerce of man. – Appellants raise the strange argument that Exhibit ‘C’ has no probative value because the subject thereof –marijuana– is beyond the commerce of man. This is simply absurd. The transfer of marijuana was incidental to the arrest of appellants and the confiscation of the subject matter of the crime. Exhibit ‘C’ is in the same category as a death certificate and autopsy report which are admissible evidence of the subject of the crime –the human cadaver which is also beyond the commerce of man. Transfer of goods as a consequence or by virtue of police or state action such as forfeiture, seizure, condemnation, confiscation did not fall within the phrase ‘commerce of man’ even in its broadest meaning.

“Assuming that the signing of the receipt of seized goods by appellants constituted extrajudicial confession and therefore required the assistance of counsel, any defect or infirmity was cured or waived when appellants’ counsel. Atty. Oscar Nudo, categorically stated that appellants were not objecting to the admission of Exhibit ‘C’.

“Under Sec. 36, Rule 132, of the Revised Rules of Court, objections to evidence shall be made as soon as the grounds therefor shall become reasonably apparent. The alleged infirmity of Exhibit ‘C’ is the absence of counsel when appellants signed Exhibit ‘C’. This alleged defect was reasonably apparent at the time Exhibit ‘C’ was introduced and at the time it was formally offered in evidence. It must be stressed that appellants did not merely fail to object to said exhibit’s admission. They even categorically manifested that they were not objecting to the admission of Exhibit ‘C’. Appellants cannot now object to the admission of Exhibit ‘C’. Objections to admissibility of evidence cannot be made for the first time on appeal.” (People v. Verges, 105 SCRA 744).

“The presentation of the marijuana specimens taken from appellants and their identification by the forensic chemist constitute proof of corpus delicti. – Corpus delicti simply means the fact that a crime was committed (People v. Pascual, No. 1055-R, October 10, 1947, 44 OG 2787). In People v. Macuto, 176 SCRA 76, it was held that:

‘(w)hat is important is the fact that the poseur-buyer received the marijuana from the appellant and that the contents were presented as evidence in court. Proof of the transaction suffices. The identity of the tea bag of marijuana which constitutes the corpus delicti was established before the court.’

“In the case at bar, appellants were positively identified as the sellers of goods to the NARCOM agents. The goods were delivered by and seized from appellants. (Exhibit C) The goods seized were tested positive for marijuana (Exhibits D, K), one of the drugs prohibited under Sec. 4 of the Dangerous Drugs Act. Said

marijuana and its containers were presented in evidence (Exhibits I, I-1, I-2).

“Appellants try to raise doubt as to the identity of the marijuana by pointing to the possibility that the objects seized from appellants may have ‘commingled’ with other NARCOM evidence considering their massive operations on January 18, 1986.

“This is highly improbable. The Receipt for Property Seized (Exhibit C), executed by appellants themselves immediately following their arrest on January 18, 1986, acknowledged the seizure of goods from them on the date indicated thereon and described said goods as:

‘A’ one (1) round plastic cannister leveled (labeled ?) ‘Bulleye’ Magnum, containing marijuana arrox (sic) 3 grams.

‘B’ one (1) big (?) foil containing marijuana.’

“The Affidavit of Arrest (Exhibit A) executed by arresting officers Pat. Parungao and Pfc. Olivas described the containers of the marijuana seized from appellants as ‘a plastic container with a ‘Bullseye’ mark and an aluminum foil.

“The request for laboratory examination executed by Major Ruperto M. Remetre on January 19, 1986 (Exhibit J) in connection with the case involving Virgilio Apura, appellant Alejandro William, Benjamin Samia, and appellant Romulo Calogcog described the specimens submitted for examination as ‘one (1) round shape plastic container marked ‘Bullseye’ containing suspected marijuana’ and ‘one (1) cigarette foil of suspected marijuana.

“The Certificate of Laboratory Result (Exhibit D) executed by examining forensic chemist Lt. Tita Advincula described the specimens submitted in connection with said case as follows:

‘(A)’ 3.09 grams of suspected dried marijuana flowering tops placed in a round plastic container with cover.

‘(B)’ 0.58 gram of suspected marijuana flowering tops wrapped with aluminum foil.

“The foregoing information matches the description contained in Chemistry Report No. D-51-86 issued by Lt. Advincula (Exhibit K).

“The specimens described in the fore-going documents were presented in court (Exhibits I, I-1, I-2) and identified by Lt. Advincula as the specimens submitted to her for examination in connection with appellants’ case.

“In view of the foregoing circumstan-ces, it is highly unlikely that the speci-mens examined by the forensic chemist and which tested positive for marijuana are different from those seized from appellants.” (pp. 25-35, Appellee’s Brief; p. 74, Rollo)

WHEREFORE, the assailed decision is hereby AFFIRMED.

SO ORDERED.

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

Nocon, J., on leave.

* Penned by Lilia C. Lopez.

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