

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO ATILANO Y CATAMPONGAN, ALIAS “GARDO,” ACCUSED-APPELLANT.

G.R. No. 94642. November 21, 1991

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-94642/>

REGALADO, J.:

Accused-appellant Edgardo Atilano y Catampongan, alias Gardo, was charged in Criminal Case No. 9125 of the Regional Trial Court of Zamboanga City, Branch 15, with a violation of Section 4, Article II of Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act of 1972," as amended by Presidential Decree No. 1675, in an information which alleges:

"That on or about January 25, 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wilfully, unlawfully and feloniously sell to AIC BONIFACIO C. MORADOS six (6) sticks of handrolled marijuana cigarettes, knowing same to be a prohibited drug.

CONTRARY TO LAW."[1]

Arraigned on February 15, 1989, appellant, assisted by his counsel, pleaded not guilty.[2] Trial on the merits commenced on March 13, 1989 and the case was submitted for decision on September 11, 1989.

The People's version of this case, which is substantiated by the transcripts of the stenographic notes taken at the trial and tallies with the findings of the court a quo, is presented as follows:

"In the morning of January 25, 1989, a team of NARCOM agents, led by Sgt. Amos Foncardas, received information from one of their civilian informers that a certain 'Gardo' of Don Toribio Street, Tetuan, Zamboanga City was engaged in selling marijuana. The information was relayed to Major Claudio Cabayacruz, Officer-in-Charge of the 9th Narcotics Regional Unit (NRU), who directed them to verify the report by conducting a surveillance. Thereupon, Sgt. Foncardas, with members of his team and the civilian informer, proceeded to Don Toribio Street, particularly at the corner of Dona Josefina Drive, in front of 'Amy's Store,' where the civilian informer pointed out 'Gardo' to the NARCOM operatives (March 13, 1989 tsn, pp. 15-16; May 10, 1989 tsn, pp. 3-8).

"Upon their return to their headquarters in the same morning, Major Cabayacruz ordered them to conduct a buy-bust operation. 'Gardo' was later identified as Edgardo Atilano y Catampongan, herein appellant (Ibid.).

"Sgt. Foncardas then briefed his team regarding their operation. AIC Bonifacio Morados was designated to act as the poseur buyer and, for this purpose, was given a ten-peso bill with Serial No. BH-673446 (Exhibit 'E') to be used in buying marijuana cigarettes from the suspected pusher. This money was taken from the NARCOM's buy-bust operation fund, whose serial numbers had been previously listed and recorded. A copy of said listing was furnished the Office of the City Prosecutor as early as four months earlier, or on September 12, 1988 (Exhibit 'G'). The serial number of Exhibit 'E' appears in said list and is marked Exhibit 'G-1.' AIC Morados

also marked the bill by placing his initials under the serial number thereof (March 13, 1989 tsn, pp. 16-18, 22; May 10, 1989 tsn pp. 8-14).

"Around 4:00 p.m. of the same day, Sgt. Foncardas and his team left headquarters for their mission. They found appellant at his usual place in the premises of 'Amy's Store' which is just in front of the Zamboanga A.E. Colleges High School. Morados then approached the appellant and told him that he (Morados) needed P10.00 worth of marijuana cigarettes. Appellant said that he had the stuff and told Morados to wait while he entered the Dona Josefina Drive. About five minutes later, appellant returned and handed Morados six (6) handrolled marijuana cigarettes. Morados then gave him the marked P10.00 bill and, as soon as the appellant received the money. Morados immediately took hold of his hand and announced that he (Morados) was a NARCOM agent. Sgt. Foncardas and the rest of the team, then observing from strategic place about 10 meters away, emerged and assisted Morados in placing the appellant under custody. The ten-peso bill was recovered from appellant's right hand, while the six sticks of marijuana cigarettes were turned over by Morados to Sgt. Foncardas. Later, appellant and the confiscated marijuana cigarettes were turned over to NARCOM Investigator Sgt. Mohammad Sali Mihasun at the Headquarters (March 13, 1989 tsn, pp. 18-20; May 10, 1989 tsn, pp. 14-18; pp. 28-30).

"Prosecution witness Ms. Athena Alisa P. Anderson, the Forensic Chemist, testified that, based on her laboratory examination, all the six handrolled cigarettes (Exhibits 'C' 'C-1' to 'C-5') were positive for marijuana. A written Chemistry Report, Exhibit 'D', contained her findings (March 13, 1989 tsn, pp. 2-14)."[3]

Appellant's version, on the other hand, is of the following tenor:

"Jesus Marcos III, a fowl breeder and resident of 206 Don Toribio St., Tetuan, Zamboanga City, testified that at around 3:00 p.m., January 25, 1989, he went to the residence of Edgardo Atilano. They were later joined by their friends, namely: Que Dagamanuel, Rogie Natividad and one Jaime and had a drinking session. At around 5:00 p.m. of the same date, while they were still drinking liquor, two persons in civilian attire arrived. They introduced themselves as NARCOM agents (who turned out to be Sgt. Foncardas and AIC Morados) and wanted to talk to Edgardo. The latter agreed and went with them. Later, he saw them handcuffed (sic) Edgardo and brought (sic) to the headquarters. He then informed the group of what happened (TSN, July 10, 1989, pp. 4-11).

"On cross-examination, he stated that they could not do anything when Edgardo was handcuffed by the NARCOM Agents as they were scared. They did not call his wife as the lat-ter saw what actually happened (Ibid, p. 20).

"Emmanuel Manalo, a working student and resident of Josefina Drive, Don Toribio St., Tetuan, Zamboanga City, testified that in the afternoon of January 25, 1989, while he was seated on a sofa near the terrace facing the residence of Edgardo Atilano, he noticed two persons enter the premises. He later saw one of the two persons put his arm at the back of Edgardo. Thereafter, Edgardo was handcuffed and led outside the house (TSN, September 4, 1989, pp. 5-8).

"Felisa Villaber, a housekeeper and resident of 195 Josefina Drive, Don Toribio St., Tetuan, Zamboanga City, testified that while she was at the house of her father, she saw two persons passed (sic) by to where Edgardo Atilano and his companions were drinking. Edgardo was brought outside. They stopped in front of their house and she saw them handcuff Edgardo (TSN, September 11, 1989 pp. 4-11).

"Accused Edgardo Atilano testified that at around 3:00 p.m., January 25, 1989, he was at the yard of his father's house in the company of Chicing, Que and Ronnie. The group decided to contribute something to drink. While they were drinking rum, two persons who turned out to be NARCOM Agents, entered the premises and came over to their table. One of the agents asked if he could talk to him. He agreed and went with them. However, he was handcuffed and apprehended by the NARCOM Agents. He was brought to their headquarters. His wallet was taken and then opened. He denied owning the P10.00 bill shown to him (Ibid, pp. 16-24)."[4]

In its decision dated November 10, 1989,[5] the trial court, after finding appellant guilty beyond reasonable doubt of the crime imputed to him, sentenced him to life imprisonment and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs. It also ordered that, subject to rules and regulations, the period of preventive imprisonment which started February 1, 1989 shall be credited to appellant. The marijuana cigarettes were confiscated in favor of the Government to be disposed of in accordance with law.

Not satisfied therewith, herein appellant took his case to this Court faulting the court below with the following errors, to wit:

1. That the trial court erred in not holding that the failure of the prosecution to present the alleged civilian informer as witness violated the right of the accused to cross-examine the witness against him;
2. That the trial court erred in giving full faith and credence to the testimonies of the prosecution witnesses and in totally disregarding the testimonies of the defense witnesses; and
3. That the trial court gravely erred in not acquitting accused-appellant Edgardo Atilano y Catampongan on the ground that his guilt was not proved beyond reasonable doubt.[6]

Appellant's arguments in support of his assigned errors have been correctly synthesized by the prosecution as follows:

1. Since he was pinpointed by a civilian informer as a supplier of marijuana, the non-presentation of said civilian informer as a witness is violative of his constitutionally guaranteed right to confront the witness against him;
2. Not a single document, i.e., sur-veillance report, was presented to show that he was under surveillance in the morning of January 25, 1989, thus rendering the prosecution version incredible, as this would be a deviation from the standard operating procedure.
3. It was highly improbable, assuming that appellant was indeed engaged in selling marijuana, that he would transact business with persons he does not know; and
4. The defense witnesses are more credible than the prosecution witnesses.

Appellant's submissions are without merit. We have perforce to reject the same.

This Court has repeatedly held that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity.[7] In the case at bar, it was unnecessary to present the informer because there was sufficient evidence to establish the case for the prosecution. Appellant was caught in flagrante delicto and his conviction does not depend on the civilian informer's testimony. Mention of the civilian informer was only instrumental in explaining how the "buy-bust" team came to know about appellant's activities in selling marijuana. Since the testimony of this police informer was 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 wrongdoing to the police authorities.[8]

The absence of a surveillance report is not detrimental to the prosecution's cause. Appellant failed to prove the existence of the supposed standard operating procedure requiring the same. Assuming *arguendo* that there was such a standard operating procedure, still the prosecution's case will prosper. Appellant was caught in flagrante delicto, as a result of the "buy-bust" operation, selling marijuana cigarettes, hence there was valid ground to justify his warrantless arrest.[9]

Appellant maintains that it is highly improbable that he would openly conduct the sale of marijuana to unknown

persons knowing fully well that what he was doing is illegal and eventually would run the risk of being caught red-handed.[10] We are not persuaded. 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.[11] What matters is not an existing familiarity between the buyer and seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves.[12]

We have held that "(d)rug-pushing when done on a small level, as in this case, belongs to that class of crimes that may be committed at any time 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."[13]

As to appellant's submission on the credibility of witnesses, suffice it to say that it is well settled in our jurisdiction that where the issue is one of credibility of witnesses, appellate courts give great weight to the findings of fact by the trial courts, as they are in a better position to examine real evidence, as well as observe the demeanor of the witnesses.[14] Such an opportunity is not available to the appellate judge, who must depend on the inanimate record that cannot reveal the tell-tale signs by which the truth may be discerned and the falsehood exposed.[15] In this case, we do not find any of the exceptive circumstances which would warrant a departure from the aforesaid decisional rule.

Credence is accorded to the prosecution's evidence more so as it consisted mainly of testimonies of the entrapping law enforcers. There is nothing in the record to suggest that the apprehending officers were compelled by any motive than to accomplish their mission to capture a drug pusher in the execution of the crime, the presumption being that law enforcers perform their duties regularly in the absence of any evidence to the contrary.[16]

Appellant's defense is alibi. The rule is too well-known that the defense of alibi can prosper only if it is so convincing as to preclude any doubt that the accused could not have been physically present at the scene of the crime or its vicinity at the time of its commission.[17] Unfortunately for appellant, he failed to show this physical impossibility. On the contrary, he, together with the defense witnesses all of whom were his neighbors, testified that the place where he allegedly was, is but a few minutes walk to the scene of the crime.

Thus, defense witness Jesus Marcos III testified:

"Q x x x And walking from Amy's store going to the residence of Edgardo Atilano in ordinary walking, how many minutes will it take you to reach Edgardo Atilano's residence?

A About two minutes x x x"[18]

On his part, Emmanuel Manalo declared as follows:

"Q From the place (where) you were residing at Dr. Junio, by walking, how many minutes will it take you to go to Amy's store?

A About 15 minutes.

Q By running, how many minutes perhaps from your house to Amy's store?

A About 10 minutes.

Q And your house is about 7 m. in front of Edgar Atilano?

A Yes, sir."[19]

Felisa Villaber, whose house is at the back of the house of her father confirmed that distance in her testimony:

"Q By walking, how many minutes will it take from the house of your father to Amy's store?

A From 8 to 10 minutes depending on how you walk." [20]

This fact was admitted by appellant himself:

"Q When you go to Amy's store from your house, how many minutes will it take you by walking?

A More or less 10 minutes depending on how you walk!" [21]

The positive identification of the appellant as the seller of the prohibited substances prevails over his mere denials. The well-entrenched principle is that greater weight is given to the positive testimony of the prosecution witness than to the accused's denial. [22] Appellant's denials constitute self-serving negative evidence.

It is futile for appellant to invoke the constitutional presumption of innocence because it has been overcome by overwhelming evidence establishing his guilt. His defense is not only intrinsically weak, being a compound of alibi and denial; what is disastrous for him is that the evidence for the prosecution is clearly strong and has proved his offense beyond peradventure of doubt.

Peddlers and dealers of drugs are actually mercenary agents of destruction insensitive to the effects of their nefarious trade upon the lives and futures of their hapless victims, the latter's innocent families and the unwary community, especially where the victims commit crimes under the influence of drugs. Satisfying, for monetary gain, the increasing need and craving of their customers by providing them with dangerous narcotics until the degree of addiction eventually results in death, these merchants of drugs are figuratively committing murder by installment. They are merchants of death and deserve no less than the maximum penalty.

WHEREFORE, the assailed judgment of the Regional Trial Court of Zamboanga City is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.

[1] Original Record, 1.

[2] Ibid., 9.

[3] Brief for the Appellee, 3-6; Rollo, 68-71.

[4] Brief for the Accused-Appellant, 3-5; Rollo, 34-37.

[5] Per Judge Jaime T. Hanoy; Rollo, 22-23.

[6] Brief for the Accused-Appellant, 5; Rollo, 37.

[7] People vs. Alerta Jr., G.R. No. 85250, July 1, 1991; People vs. Ruedas, 194 SCRA 553 (1991); People vs. Orita, 184 SCRA 105 (1990).

[8] People vs. Odicta, G.R. No. 93708, May 15, 1991.

[9] Section 5(a), Rule 113, 1985 Rules on Criminal Procedure.

[10] Brief for the Accused-Appellant, 6; Rollo, 38.

- [11] People vs. Odicta, supra.
- [12] People vs. Rodriguez, 172 SCRA 742 (1989); People vs. Tejada, 170 SCRA 497 (1989).
- [13] People vs. de la Torre, G.R. Nos. 90804-05, July 1, 1991.
- [14] People vs. Segwaben, 194 SCRA 241 (1991).
- [15] People vs. Kalubiran, G.R. No. 84079, May 6, 1991.
- [16] Section 3(m), Rule 131, Rules of Court.
- [17] People vs. Ruedas, supra; People vs. Yeban, et al., 190 SCRA 409 (1990).
- [18] TSN, July 10, 1989, 12-13.
- [19] TSN, September 4, 1989, 8-9.
- [20] TSN, September 11, 1989, 13.
- [21] Id., id., 30.
- [22] People vs. Kahn, 161 SCRA 406 (1988); People vs. De Jesus, 145 SCRA 521 (1986).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.