

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO CRISOSTOMO Y PAREDES, ALIAS "BONICOL";
ACCUSED-APPELLANT.**

G.R. No. 97427. May 24, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Appellant Reynaldo Crisostomo y Paredes alias "Bonicol" was charged with violation of Section 4, Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972. The information dated 7 March 1989 alleged:

"x x x That on or about the 4th day of March 1987, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and criminally sell and distribute one (1) pack of dried marijuana leaves with seeds approximately weighing one hundred thirty five (135) grams, a source of prohibited drugs, without having the authority to sell and distribute the same.

CONTRARY TO LAW."[1]

The accused pleaded not guilty to the charge. During trial the prosecution presented the following witnesses: Lt. Zenaida Sinfuego, Forensic Chemist, PC Crime Laboratory, Sgt. Benito Bonete, Narcotics Command, Iloilo City, C1C Freddie Cartel, Narcotics Command, Iloilo City.

The case for the prosecution as summarized by the trial court was as follows:

"x x x An earlier message was received at the Narcom Headquarters from a concerned person or unknown caller which lead (sic) to the arrest of a certain Lennie Placida. The latter, at the Narcom Headquarters after she was apprehended and brought thereto, revealed that the source of her stuff was a certain "Bonicol" at Bgy. MacArthur, La Paz, Iloilo City. With the information on hand, a team was organized for a buy-bust operation and dispatched to the place together with Lennie Placida. C1C Freddie Cartel as the poseur-buyer, was given six (6) pieces of P100.00 bill denomination (Exh. "D" with submarkings) and each was initialled accordingly at the right forehead of the late Pres. Roxas (Exh. E, with submarkings) constituting the so called marked money bills.

Reaching the place, C1C Cartel proceeded immediately to the place, pointed to by Lennie Placida, where "Bonicol" could be located. A person seated was seen and was asked concerning "Bonicol". Without giving a responsive answer, C1C Cartel was asked instead if he (Cartel) wants to "score". It was answered in the affirmative but only for an amount of P600.00 (6 pieces P100.00 - bill denomination) which was simultaneously handed over to the said person. The latter after receiving the amount, immediately went inside the seemingly small coffee shop and a few minutes later came back bringing the stuff wrapped with a newspaper. When it was opened for verification of the contents, it was found positive. Immediately the pre-arranged signal was made (touching right side of the head) for the rest of the team members who were stationed at their respective strategic position(s) to immediately respond and react.

"Bonicol" was thereby accordingly informed/told that they were Narcom Agents and he ("Bonicol") was under arrest and brought to the Narcom Headquarters. At the Narcom Headquarters, "Bonicol" signed the Receipt of Seized Articles (Exh. "G", with submarkings) and a black wallet was recovered (Exh. "F") and among others, it contained the two (2) pieces P100.00 - bill denomination bearing the initial of Sgt. Bonite, marked money bills. This wallet was well identified and the contents itemized, as testified and placed on records. After the laboratory test was conducted on the specimen submitted (Exh. "B", consisting of 135 gms.), it was found positive (Exh. "A") for marijuana."[2]

After trial, the court rendered a decision[3] dated 3 August 1990 the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused REYNALDO CRISOSTOMO, alias "Bonicol" guilty beyond reasonable doubt of the offense charged and hereby imposes the penalty of life imprisonment and to pay a fine of P20,000.00, and further ordering the confiscation of the subject marijuana in favor of the government;

Let the preventive detention be credited in favor of the accused; and

With cost de oficio.

SO ORDERED."[4]

On appeal to this Court, accused-appellant assigns the following errors to the trial court:

"X X X IN CONVICTING ACCUSED-APPELLANT BEYOND REASONABLE DOUBT AND SENTENCING HIM TO A PENALTY OF LIFE IMPRISONMENT.

X X X IN NOT GIVING CREDENCE TO THE FACT THAT THE ACCUSED-APPELLANT WAS ARRESTED AND MADE TO CONFESSED (SIC) AS WELL AS MADE TO SIGN EXHIBIT "G" RECEIPT OF PROPERTY SEIZED WITHOUT BENEFIT OF COUNSEL;

X X X IN NOT GIVING CREDENCE TO THE TESTIMONY OF ACCUSED-APPELLANT AND HIS WITNESSES WHO TESTIFIED THAT ACCUSED-APPELLANT WAS A "FALL GUY" OF NARCOM BUY-BUST OPERATIONS."[5]

The well settled rule in this jurisdiction is that the commission of the crime of illegal sale of prohibited drugs is considered consummated once the sale transaction is established.[6]

On the other hand, the gravity of the penalty imposed and the relative ease with which unscrupulous and corrupt law enforcers can plant evidence on the innocent for purposes of extortion and/or vengeance should make the courts extra-vigilant in trying drug cases.[7] This Court, and all other courts of justice for that matter, should not allow themselves to be used as instruments of extortion, vengeance or injustice, otherwise, the Constitutional presumption of innocence until proven guilty beyond reasonable doubt becomes meaningless.

In the case at bar, a close and careful scrutiny of the records shows that certain material inconsistencies in the testimonies of the prosecution witnesses which both the trial court and the defense counsel apparently failed to notice, put a reasonable doubt on the guilt of accused-appellant, Reynaldo Crisostomo.

Sgt. Bonete testified that only C1C Cartel was with him when they went to the place specified by the unknown caller to look for Lennie Placida.[8] C1C Cartel on the other hand testified that aside from Sgt. Bonete, a certain Sgt. Allaga was with them.[9]

Sgt. Bonete also repeatedly stated, both on direct and cross examinations that the buy-bust team was composed of himself, C1C Cartel and Sgt. Gabasa.[10] However, C1C Cartel stated several times that aside from the three (3) of them, Sgt. Allaga was also a part of the buy-bust team.[11]

The opportunity to question the aforestated twin inconsistencies regarding the participation of Sgt. Allaga was unfortunately missed by the defense. The inconsistencies, while ordinarily immaterial, become important when an additional conflict in the testimonies of the two (2) buy-bust team members is considered.

Sgt. Bonete testified that C1C Cartel, acting as the poseur-buyer, was approached by the alleged pusher.[12] C1C Cartel however stated that he saw a person sitting on a bench whom he asked regarding the whereabouts of Bonicol and who allegedly turned out to be Bonicol himself.[13] The question of how the initial contact between the poseur-buyer and the alleged pusher was made is material since whatever sale of prohibited drugs subsequently occurred would result from that initial contact. The manner by which initial contact is made likewise becomes material in cases where there is a question of whether there is a valid entrapment. All the elements of the sale transaction must be clearly and adequately shown, starting from the initial contact between the buyer and the alleged pusher until the sale is completed by the delivery of the illegal drug subject of the sale. The constitutional presumption of innocence demands no less than the moral certainty that there was indeed a sale of an illegal drug by the alleged pusher.

The materiality of discrepancies in the testimonies of prosecution witnesses should be determined based on the particular circumstances of a given case. In the case at bar, the initial contact between C1C Cartel and the alleged pusher becomes material when we consider the statement of Cartel that he asked the person sitting down where to find Bonicol and the accused allegedly answered "I am Bonicol. Why, do you want to 'score'?"[14] On the other hand, as already pointed out, Sgt. Bonete testified that C1C Cartel was approached by the alleged pusher. The conflict of the two (2) versions is irreconcilable. In this case, the commencement of the sales transaction is dependent on the initial contact between Cartel and the alleged pusher. It is improbable for Sgt. Bonete to have failed to notice that it was Cartel who approached the person who was sitting down rather than Bonicol approaching Cartel. This inevitably leads to the conclusion that either only one of the two (2) witnesses related the correct sequence of events or neither of them stated the true events. The records fail to show which of the two (2) conflicting versions is correct. And yet, the conviction of the accused cannot be based on speculations that the version consistent with guilt is correct. If the inculpatory facts and circumstances are capable of two (2) or more explanations one or more of which is consistent with the innocence of the accused, then the test of moral certainty required to support a conviction is not met.[15]

While it may be true that the accused did indeed sell marijuana to C1C Cartel, the prosecution must show this by clear, credible and convincing evidence which establishes beyond reasonable doubt the guilt of the accused. The defense in this case failed to take advantage of the weakness of the prosecution but it should be stressed that it is not for the defense to show that the prosecution is weak but rather it is the prosecution which must first overcome the constitutional presumption of innocence. The prosecution evidence in this case leaves much to be desired.

The violation of the accused's right to counsel need not be discussed in detail except that law enforcers should be reminded that any evidence obtained in violation of the said right will in most cases weaken if not entirely destroy the case for the government.

WHEREFORE, the decision appealed from is hereby REVERSED and a new decision is entered ACQUITTING the accused Reynaldo Crisostomo on the ground of reasonable doubt. The accused is ORDERED to be RELEASED unless he is detained for some other charges.

SO ORDERED.

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

- [1] Rollo, p. 7
- [2] Rollo, pp. 16-17
- [3] Penned by Judge Julian Y. Ereno
- [4] Rollo, p. 20
- [5] Rollo, p. 37
- [6] *People v. Santiago*, G.R. No. 94472, 3 March 1992, 206 SCRA 733
- [7] *People v. Ale*, G.R. No. 70998, 14 October 1986, 145 SCRA 50
- [8] TSN, 3 October 1989, p. 26
- [9] TSN, 19 March 1990, p. 3
- [10] TSN, 3 October 1989, pp. 3, 29 and 30
- [11] TSN, 19 March 1990, pp. 4, 6 and 16
- [12] TSN, 3 October 1989, pp. 4 and 5
- [13] TSN, 19 March 1990, pp. 4, 17, and 18
- [14] TSN, 19 March 1990, p. 4
- [15] *People v. Taruc*, G.R. No. 74655, 20 January 1988, 157 SCRA 178

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