

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HEGEL SAMSON Y LAPINIG, ACCUSED-APPELLANT.

G.R. Nos. 139377-78. May 29, 2002

Ponente: VITUG, J.

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VITUG, J.:

Hegel Samson appealed to this Court his conviction in Criminal Cases No. 97-71952 and No. 97-71953. Appellant was charged with violation of Republic Act ("R.A.") No. 6425, as amended by R.A. No. 7659, and Presidential Decree ("P.D.") No. 1866 in two separate Informations that read:

"The undersigned accuses HEGEL SAMSON Y LAPINIG, of a Viol. of Sec. 8, Art. II, in rel. to Sec. 2(e-1) (i) Art. 1 of R.A. 6425 as amended by R.A. 7659, committed as follows:

"That on or about the 14th day of July, 1997, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any prohibited drug did then and there wilfully, unlawfully and knowingly have in her/his possession and under her/his custody and control 84.55 grams of marijuana (Hashish) a prohibited drug.

"x x x x x x x x

"The undersigned accuses HEGEL SAMSON Y LAPINIG, of Violation of Presidential Decree No. 1866, committed as follows:

"That on or about the 14th day of July, 1997, in Quezon City, Philippines, the said accused without any authority of law, did then and there wilfully, unlawfully and knowingly have in his/her possession and under his/her custody and control one (1) Colt cal. 45 pistol with one magazine loaded with six (6) live ammunitions, without serial number without first having secured the necessary license/permit issued by the proper authorities."[1]

Hegel Samson pled "not guilty" to the charges at his arraignment; thereupon, the two cases were consolidated and heard jointly.

The evidence for the prosecution considered by the court below to be sufficient in convicting the accused was mainly sourced from the testimony of witnesses Kathlyn Joyce Budy, Rachel Suayan and Gay Perez, as well as of the arresting police officers from the Special Operations Division of the Philippine National Police ("PNP") Narcotics Group, Camp Crame, namely, P/Insp. Raymond Santiago, SPO4 Bienvenido Salvania, Jr., SPO3 Amado Antonio and SPO2 Armando Bungay, and that of Forensic Chemist P/Insp. Macario Taduran, Jr., of the PNP Crime Laboratory. The facts, depicted by the prosecution and culled by the trial court in its decision, would disclose that -

"x x x On July 13, 1997, Sunday, at around 11:30 in the morning, Kathlyn and her friends/schoolmates at Fatima College of Physical Therapy, Rachel and Gay, were on board a Nissan Sentra car cruising along Taft Avenue, Manila. They were on their way to a friend's house to have a tattoo done.

"Inside the car, Kathlyn was the one driving, Rachel was seated beside her while Gay was seated behind Kathlyn. When the car was caught in a traffic jam, the girls saw a man (whom they identified in court to be the herein accused Hegel Samson) alight from a nearby passenger jeepney and approach their car. The man tapped Kathlyn's window, lifted his shirt to show his gun tucked in his waist and told her to pull over. Kathlyn heeded and when the door was opened, the man instructed Rachel to transfer to the back seat beside Gay while he sat beside Kathlyn. The girls who were then all scared asked the man, 'Why, what happened?' The man, after introducing himself as a narcotics police officer, bent forward and got something underneath. He then asked the girls, 'What's this?' as he showed them a small bag which apparently contains marijuana/hashish. Kathlyn was then ordered to drive the car towards the direction of a police station but along the way the man told them that they [would] need to pay him a fine of P500,000.00 so he [would] not bring them to the station and no case [would] be filed against them. The girls were shocked of the man's demand. Out of fear and confusion, they tried to haggle the amount demanded as they drove along the streets of Malate. The man agreed to reduce the amount to P30,000.00 but insisted to get the whole amount that day. The girls pleaded as they could give him only P4,000. Although he consented, the man ordered them to meet him the following day to bring the 'balance.' After receiving the P4,000.00 which Kathlyn still had to withdraw then from an ATM, the man asked Kathlyn to write his cell phone number and pager number (141) 936530 on a piece of paper and to also write a note stating that: 'I, Mr. Jel Samson, promise that no one can be arrested after receiving the remaining balance of P26,000.00.' The note was then signed by the man above the printed name SPO1 Gel Samson.

"Before telling Kathlyn to drop him off in front of a police station somewhere in Taft Avenue, the man took with him her student registration card and Rachel's New Jersey driver's license. The girls then proceeded home and told Gay's father of what [had] happened. They decided to report the incident to the Office of the PNP Narcotics Group at Camp Crame where they later learned that there [was] no one in the police force by the name of SPO1 Gel Samson.

"Upon being informed by the girls that they [were] supposed to meet the impostor the following day to give the balance of the demanded amount, the PNP Narcotics Group instructed the girls to proceed with the meeting as they [planned] to set up an entrapment. The girls obliged and agreed to come back to Camp Crame the following morning, July 14, 1997, for final instructions.

"The following day, Monday, the girls were given an ultra-violet powder dusted white envelope containing bogus money by the entrapment team composed of P/Insp. Santiago, SPO4 Salvania, Jr., SPO3 Antonio and SPO2 Bungay. They also sent a message to the man through his pager confirming their meeting in the afternoon at Wendy's Restaurant, SM City Annex, EDSA, Quezon City.

"At around 12:00 noon, the girls arrived at Wendy's and occupied one table. A few minutes later, the Narcotics agents, in civilian attire, positioned themselves inside and out of the said restaurant which [was] enclosed with clear glass panels. Some of the agents were seated just in front of the table of the three girls.

"At around 2:00 p.m., the man arrived. He came in and out of the restaurant a couple of times before he finally approached the girls. He showed them again his gun tucked in his waist by lifting his shirt. Then, he instructed them to transfer to another table. During the conversation, the man demanded that one of the girls [should] go with him to the car outside where he [would] receive the agreed balance. The girls insisted that they [would] give him the money right there. Kathlyn then showed the envelope with the money inside. As soon as the man took hold of the envelope, the undercover agents pounced on him while the girls ran for their safety as the man was then swinging his right arm towards his waist in an attempt to draw his gun. Customers panicked and commotion ensued. But as the man was subdued by the agents, tension waned.

"The NarcGroup agents recovered from the man's possession the following: 3 IDs issued by WPD, Manila Mayor's Office and NarCom; 2 PNP IDs; one Colt cal. .45 pistol without serial number with one magazine loaded with six live ammo.; a headgear badge; a cellphone; pager; Rachel's New Jersey driver's license; Kathlyn's student registration card; and a transparent plastic pack containing sixteen (16) pieces of dark brown

cylindrical shape candy-sized suspected hashish.

"At the NarcGroup Headquarters in Camp Crame, the person arrested was identified as Hegel Samson y Lapinig, 25 years old, registered nurse and a resident of 2351 Alabastro Street, San Andres Bukid, Malate, Manila. Laboratory examination of the suspected hashish recovered from him gave [positive] results for Marijuana Resin, a prohibited drug, with a total weight of 84.55 grams (Exhibit 'F,' 'G'). Likewise, the PNP Firearms and Explosives Division certified that Hegel Samson [was] not a licensed/registered firearm holder of any kind and caliber per certification from available records with said office (Exhibit 'A')."[2]

The version of the defense testified to by appellant and his wife, also summed up by the trial court in its decision, was to the following effect:

"[Appellant Hegel Samson] x x x is a registered nurse but his main job is that of a collector supervisor at Palm Plaza Hotel, Adriatico, Malate. He is also a volunteer/member of the Anti-Narcotics Unit of the Western Police District (WPD), for a year prior to his arrest and as such he was issued a NarCom ID during the incumbency of Manila Mayor Mel Lopez, although he said later that it was Mayor Alfredo Lim.

"Hegel said that he was with his still girl friend then, Mary Grace, on board a passenger jeepney when during a traffic jam he 'observed' the three girls inside their car smoking and passing the butt to one another. He then told Mary Grace to go home ahead of him. He alighted from the jeepney and knocked on the window of the driver of the car and told them that they were using marijuana. He showed his ID and asked them to pull the car over. One of the girls hid the butt under the dashboard. The girls told him that there was nothing wrong with it. When Hegel told them to go with him at the WPD Headquarters, the girls offered him money but he told them that they (had) better use it for their bail bond when they (would be) detained. Upon reaching the front of the WPD Station, the girls were already crying and told Hegel that it would be embarrassing if they would be detained because they were all women. Hegel then thought of charging them also with 'bribery' and so he went with them looking for a bank. They went to three different banks in Malate. (Hegel said that 'sunud sunuran lang po ako sa kanila' since he was not the one driving.) The girls told him that they only had P4,000.00. When he agreed to that amount, the girls said that the balance of P26,000.00 would be given at SM West.

"After Hegel received the P4,000.00, the girls brought out a paper which he signed and they gave him their IDs. Before dropping him off at Police Station 5 along UN Avenue, they asked him if he might bring along some police officers with cameras. Hegel assured them that no such thing would happen.

"Hegel informed his agent companion, a certain Antonio Sison, that he was planning to charge the girls with 'bribery' the next day. But as his companions had a project on street children, they told him to go ahead and they would just follow and bring a camera.

"The following day, July 14, in the afternoon, Hegel arrived alone at SM Wendy's and saw the girls seated at a slightly hidden portion. When he approached them, one girl told him 'Here is the money.' Hegel first asked them to move to another table where everybody could see them. Although they seemed to be afraid to transfer to another table, the girls agreed. After moving, the girls were insisting that they give him the money. Hegel told them 'mamaya na.' One of the girls asked him for their IDs but he told them that he would first call somebody and he had with him their IDs and the P4,000.00. He went out, made a phone call, and waited for his companion who never arrived. When he came back, Hegel saw P/Insp. Santiago. Thinking that Santiago was a relative of the girls, Hegel told him 'kasama ka ha.' Santiago and his men then poked their guns at him, hit him with a gun on his nape, and forced him to lie face down. They took his pager, cellphone, and wallet. The girls, on the other hand, ran away."[3]

The trial court, presided over by Honorable Judge Jaime Salazar, rendered on 15 June 1999 its judgment; the decretal portions read:

"ACCORDINGLY, judgment is hereby rendered as follows:

"1. In Criminal Case No. 97-71952, accused Hegel Samson y Lapinig is hereby found GUILTY beyond reasonable doubt of Violation of Section 8 Article II in relation to Sec. 2(e-1) (i) Art. 1 of R.A. 6425 as amended by R.A. 7659, for illegal possession of 84.55 grams of Marijuana Resin (Hashish), as charged herein, and he is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay a fine of P1,000,000.00.

"The 84.55 grams of Marijuana Resin (Hashish) subject of this case shall be transmitted to the Dangerous Drugs Board for proper disposal in accordance with law.

"2. In Criminal Case No. 97-71953, accused Hegel Samson y Lapinig is hereby found GUILTY beyond reasonable doubt of Violation of P.D. 1866 for illegal possession of one (1) Colt cal. 45 pistol with one magazine loaded with six (6) live ammunitions, without serial number, as charged herein and he is hereby sentenced, in accordance with R.A. 8294 amending P.D. 1866, to suffer an indeterminate jail term of Six (6) Years of Prision Correccional as minimum to Eight (8) Years of Prision Mayor as maximum, and to pay a fine of Thirty Thousand Pesos (P30,000.00).

"The firearm and ammunition subject of this case shall be transmitted to the PNP Firearms and Explosives Division, Camp Crame for proper disposal/safekeeping in accordance with law.

"Costs against the accused."[4]

Assailing the judgment of conviction, appellant interposed the present appeal contending that the lower court erred in convicting him beyond reasonable doubt for both offenses of "illegal possession of marijuana resin in violation of Section 8, Article II, in relation to Section 2(e-1) (i) Article I of RA No. 6425, as amended by RA No. 7659, and illegal possession of firearm in violation of PD No. 1866." [5] Disputing the facts found by the trial court, appellant would insist that he was merely having a conversation with the three women when apprehended at Wendy's Restaurant in SM City. He disclaimed possession of any illegal drug or contraband or having acted in any manner that engendered a reasonable ground for the Narcom Agents to suspect and conclude that he was committing a crime. Appellant quoted a portion of the testimony of prosecution witness SPO4 Bienvenido Salvania, Jr., during cross-examination -

"ATTY. SAVELLANO:

Could you tell us if there is any law as a police officer that you can arrest a person with white envelop?

"FIS. MACEREN:

Objection your honor.

"ATTY. SAVELLANO:

He was not creating any trouble at that time?

"WITNESS:

None sir.

"ATTY. SAVELLANO:

He was not holding a gun at that time?

"WITNESS:

No sir.

"ATTY. SAVELLANO:

He was not holding any contraband?

"WITNESS:

What I saw is the envelop given to him by the three girls sir."[6]

The above statements, however, were clearly taken out of context and left much of the real story. Pertinently, SPO4 Bienvenido Salvania, Jr., testified:

"WITNESS:

At 1:00 I saw a man holding a radio who approached the three girls, sir.

"FIS. MACEREN:

What happened next?

"WITNESS:

I saw the man talking to the three girls, sir.

"FIS. MACEREN:

"When he was talking to the three girls what happened next?

"WITNESS:

He went out of the restaurant and later on came back.

"FIS. MACEREN:

When he returned, what did you do next?

WITNESS:

We sat on the table beside the three girls and I saw them talking when I saw that while they were talking one of the ladies handed over the envelop we had prepared which contained the ultra violet powder. I stood up and all the members of the team went near the table and introduced ourselves as police [officers], sir.

"FIS. MACEREN:

When you introduced yourself as police officers what did this man do?

"WITNESS:

He was surprised, it seems that he moved- back ward.

"FIS. MACEREN:

What did you do?

"WITNESS:

It appeared to us that he was able to get something in his waistline and so we drew out our gun sir.

"FIS. MACEREN:

Why did you assume that he was about to draw his gun?

"WITNESS:

Because according to the three girls, he had a gun with him sir.

"FIS. MACEREN:

What happened next?

"WITNESS:

The man was wearing a `polo' and it is loose. When he stood up and frisked him we found that he had a gun with him inside the holster."[7]

The antecedent events that led to the entrapment operation, as well as the manner in which it proceeded, were amply testified to by Kathlyn Joyce Budy, Rachel Suayan, and Gay Perez.

Testimony of Kathlyn Joyce Budy -

"Q

Madam Witness you said on July 13, 1997 you were in Taft Avenue. What were you doing in said place?

"WITNESS:

"A.

We were on our way to get a tattoo from my friend. We were going to my friend's place to have it done.

"FISCAL MACEREN:

"Q.

Do you remember any unusual incident that happened on said date, Madam Witness?

"WITNESS:

"A.

(We were held up by the) traffic then and this guy [got] out of the jeepney, approached us and he lifted his shirt and I saw he had a gun and he told us to pull over.

"FISCAL MACEREN:

“Q.

You said that this man or guy [got] out from the jeepney and approached you.

“WITNESS:

“A.

He lifted up his shirt and I saw he had a gun and he told us to pull over.

“FISCAL MACEREN:

“Q.

After he told you to pull over, what happened next?

“WITNESS:

“A.

He told my friend Rachel to sit at the back and he sat in front, sir.

“FISCAL MACEREN:

“Q.

You said you were on your way to have it done, the tattoo?

“WITNESS:

“A.

Yes, sir.

“FISCAL MACEREN:

“Q.

Who were your companions at the time?

“WITNESS:

“A.

Gay Perez and Rachel Suayan, sir.

“FISCAL MACEREN:

“Q.

After you were told to pull over, what happened? What did you do?

“WITNESS:

“A.

Well, he told us to open the door of the car and told Rachel to go to the back and he sat in front. Then after that he told us to pull over (interrupted)

“ATTY. SAVELLANO:

May we move that the answer of the witness be stricken off the record, the same is not responsive, Your Honor. The question is, ‘what did you do.’

“FISCAL MACEREN:

That is what she said. She is narrating.

“COURT:

What did you do when you were told to pull over?

“WITNESS:

He went inside the car and then after that I asked him, ‘Why, what happened?’ because we did not know what was going on.

We were scared and he bended down and I don’t know what he got and he said, ‘What is this?’

“FISCAL MACEREN:

“Q.

When he bent down and asked ‘What is this,’ what was that he was showing to you, Ms. Witness?

“WITNESS:

“A.

He was showing something in a little bag, it’s hashish sir.

“FISCAL MACEREN:

“Q.

What did you do when you or when he told you ‘What is this,’ what did you do after that?

“WITNESS:

“A.

He told us to pull over and we went around, went to the side streets in Manila. I think we were in Ermita. We were scared. I asked him, ‘Who are you,’ and what he was doing.

“FISCAL MACEREN:

“Q.

Madam Witness this person who approached you and showed his gun under his t-shirt, if you see him again, will you be able to identify him, Madam Witness?

“WITNESS:

“A.

Yes, sir.

“FISCAL MACEREN:

“Q.

Will you please look around the courtroom and tell us if this person you saw is inside the courtroom.

“WITNESS:

“A.

He is, sir.

“FISCAL MACEREN:

“Q.

Please point to him.

“WITNESS:

“A.

That one, sir.

“ATTY. SAVELLANO:

Me?

“WITNESS:

“A.

No, that guy with a yellow t-shirt.

“INTERPRETER:

Witness pointed to a person inside the courtroom who when asked by the court identified himself as one HEGEL SAMSON.

“FISCAL MACEREN:

“Q.

You said that you were asked to go to one of the side streets in Manila.

“WITNESS:

“A.

Yes, sir.

“FISCAL MACEREN:

“Q.

What happened after that, Madam Witness?

“WITNESS:

“A.

He was telling us that he was going to take us to the precinct sir.

“COURT:

He told you he would take you to the precinct?

“WITNESS:

Yes, sir, and then he was suggesting that we should pay him P500,000.00 sir so that he would not take us to the precinct any more and no case would be filed against us, sir.

“FISCAL MACEREN:

“Q.

So what happened after he told you that he would go if you would pay him P500,000.00, Madam Witness?

“WITNESS:

“A.

I was shocked and I was scared, because I don't have P500,000.00 sir.

“FISCAL MACEREN:

“Q.

What happened after he asked that amount from you, Madam Witness?

“WITNESS:

“A.

We started talking, negotiating, trying to make it to the price that we could get, I guess.

“FISCAL MACEREN:

“Q.

And then what happened after that, Madam Witness?

“WITNESS:

“A.

Then we [came] to an agreement of P30,000.00, sir.

“FISCAL MACEREN:

“Q.

What exactly was the agreement that you had with him?

“WITNESS:

“A.

He was trying to get the money that day, all of the money that day but we did not have that much money.

“FISCAL MACEREN:

“Q.

So what happened next?

“WITNESS:

“A.

We only came out with P4,000.00 sir. Then he said, I will give him the money, the balance the following day.

So, I gave him the P4,000.00 that day and we talked and he told us that on the following day we should meet and give him the balance of the money.

“FISCAL MACEREN:

“Q.

Now, Madam Witness, where did he say you will meet the following day?

“WITNESS:

“A.

After I gave him the P4,000.00, we wrote an agreement letter and then he signed it.

“COURT:

Who wrote that letter?

“WITNESS:

I wrote the letter and then he signed it.

“COURT:

How come you wrote the letter?

“WITNESS:

I don't know but he told me to write a letter so I wrote a letter, a letter of agreement and I signed it. It appears to be like an 'I owe you.'

“FISCAL MACEREN:

“Q.

Where is the letter now?

“WITNESS:

“A.

I don’t know who has it. They have it in evidence, I guess the police has it, sir.

“FISCAL MACEREN:

“Q.

Now, Madam Witness, you said that you were going to meet?

“WITNESS:

“A.

The following day, sir.

“FISCAL MACEREN:

“Q.

Where?

“WITNESS:

“A.

At Wendy’s, S.M. City Annex.

“COURT:

Where did this happen, Madam Witness?

“WITNESS:

It is somewhere in Taft Avenue. Somewhere in the vicinity.

“COURT:

In Manila?

“WITNESS:

Yes, sir. This all happened in Taft.

“FISCAL MACEREN:

“Q.

When you were told to meet him in Wendy’s, North S.M. Annex, what city is this?

“WITNESS:

“A.

Quezon City, sir.

“FISCAL MACEREN:

“Q.

After you were told to meet him there, what happened next?

“WITNESS:

“A.

That day?

“FISCAL MACEREN:

“Q.

On the 13[th] of July, 1997 what happened after he told you that you will meet him at the SM City Annex?

“WITNESS:

“A.

After we had left him?

“FISCAL MACEREN:

“Q.

Yes.

“WITNESS:

“A.

After that we went to PNP NARCOM, EDSA, to verify if he was really a cop.

“FISCAL MACEREN:

“Q.

And what did you find out?

“WITNESS:

“A.

They told me there is no one by that name.

“FISCAL MACEREN:

“Q.

What happened after they told you that the accused is not a police officer?

“WITNESS:

“A.

We just talked to them and told them what happened and that they would have to see us the following day.

“FISCAL MACEREN:

“Q.

Now, Madam Witness, you mentioned that you were supposed to meet him, the accused on the 14[th] of July, 1997 at SM Wendy’s, SM City Annex, were you able to meet with the accused?

“WITNESS:

“A.

Yes, sir, he came back also.

“FISCAL MACEREN:

“Q.

What time was that when you met with the accused?

“WITNESS:

“A.

I think it was 1:00 o'clock, sir.

“FISCAL MACEREN:

“Q.

Who were with you when you went to Wendy's SM City Annex?

“WITNESS:

“A.

Rachel, Gay and NARCOM People. They were in civilian clothes.

“FISCAL MACEREN:

“Q.

Are you telling us Madam Witness that you went to SM Annex, at Wendy's, all of you – you, Rachel and Gay together with the NARCOM agent sat on one table.

“WITNESS:

“A.

No, Rachel and me and Gay sat on one table.

“FISCAL MACEREN:

“Q.

Where did these police officers place themselves?

“WITNESS:

“A.

They were outside.

“FISCAL MACEREN:

“Q.

Now, did you see the accused on the 14[th] of July, 1997?

“WITNESS:

“A.

Yes, sir.

“FISCAL MACEREN:

“Q.

What did he do when you saw him?

“WITNESS:

“A.

He approached us when he had seen us. Then I gave him the money, sir.

“FISCAL MACEREN:

“Q.

What money is that that you gave to him?

“WITNESS:

“A.

Marked money. NARCOM had given me that money and that was what I gave him.

“FISCAL MACEREN:

“Q.

What happened next after that, Ms. Witness?

“WITNESS:

“A.

Then NARCOM people came in and took him, sir. They got him.”[8]

Testimony of Rachel Suayan -

“Q.

Do you remember any unusual incident that happened on 14 July 1997 at said restaurant Madam Witness?

“WITNESS:

“A.

We agreed that we would meet him.

“INTERPRETER:

Witness pointing to a person who earlier identified himself as HEGEL SAMSON.

“FISCAL MACEREN:

“Q.

What was the purpose of the meeting?

“WITNESS:

“A.

To exchange the money, sir.

“COURT:

What was the purpose, why you have to meet him there?

“WITNESS:

He told us to meet him there because he had with him my friend’s permit and license and he was going to get the P26,000.00, sir.

“FISCAL MACEREN:

“Q.

When you went to Wendy’s, SM City, who were with you?

“WITNESS:

“A.

Kathlyn Joyce Budy and Gay, sir.

“FISCAL MACEREN:

“Q.

Besides these two friends of yours, did you go there with any other persons?

“WITNESS:

“A.

No, sir, just the three of us, sir.

“FISCAL MACEREN:

“Q.

Madam Witness on the said date did you go to Camp Crame in the morning?

“ATTY. SAVELLANO:

Leading, Your Honor.

“COURT:

Well, the witness is a young woman, American citizen and maybe is not familiar with our procedures. Anyway, they said they went to Camp Crame.

“ATTY. SAVELLANO:

She testified she is 23 years old, Your Honor.

“COURT:

We are trying to be liberal.

“WITNESS:

We were with the cops to get him, sir.

“FISCAL MACEREN:

“Q.

You mentioned earlier that you went to Camp Crame. What time did you go to Camp Crame on July 14?

“WITNESS:

“A.

Early morning.

“FISCAL MACEREN:

“Q.

And what did you do at Camp Crame on July 14, 1997?

“WITNESS:

“A.

They told us to meet him at SM City, and we went there, sir.

“FISCAL MACEREN:

“Q.

What happened when you were at SM City Annex?

“WITNESS:

“A.

We just waited for Hegel.

“FISCAL MACEREN:

“Q.

Did he arrive?

“WITNESS:

“A.

Yes, he did.

“FISCAL MACEREN:

“Q.

What happened when Mr. Hegel Samson arrived?

“WITNESS:

“A.

He was asking for the money, sir.

“FISCAL MACEREN:

“Q.

And then what happened next, Madam Witness?

“WITNESS:

“A.

Then, he is telling us, ‘let’s go to your car’ and we told him ‘We don’t want to go to our car. We want to do it here.’

“FISCAL MACEREN:

“Q.

What happened after you told him you don’t like to go to the car?

“WITNESS:

“A.

Then, he said `wait, wait' and then he just walked around and came back. He was just trying to get us away from S.M. City, away from the crowd. He was trying to get us away from the area and we were insisting, `No, no, no.'

“FISCAL MACEREN:

“Q.

And then what happened after you insisted that exchange take place at Wendy's?

“COURT:

After you insisted you want to do it there, what happened next?

“WITNESS:

We gave him the money there.

“FISCAL MACEREN:

“Q.

When you said `we,' who in particular was holding the money?

“WITNESS:

“A.

Kathlyn, sir.

“FISCAL MACEREN:

“Q.

When Kathlyn Budy was about to give [the] money, what happened next?

“WITNESS:

“A.

That’s when the cops came.

“FISCAL MACEREN:

“Q.

You mentioned that the cops came. What happened when the police officers arrived?

“WITNESS:

“A.

Of course they got him.

“FISCAL MACEREN:

“Q.

Would you tell us where did you [go] or what exactly happened when the police arrived, can you describe to us what exactly happened.

“WITNESS:

“A.

They grabbed him first of all, and they took him away from the crowd.

“COURT:

The court hereby noticed that this young lady speaks really like an American citizen same with Kathlyn Joyce Budy. May I know if you are an American citizen.

“WITNESS:

Yes, sir.

“FISCAL MACEREN:

“Q.

Madam Witness will you please describe to us how was the apprehension of the accused done, was it in an orderly manner or was there a commotion that took place?

“WITNESS:

“A.

There was a commotion because it was in a public place. Of course there’s gonna be a commotion.

“FISCAL MACEREN:

“Q.

And will you please describe to us what happened when you said there was this kind of commotion.

“WITNESS:

“A. They arrested him and people were screaming.”[9]

Testimony of Gay Perez –

"FISCAL MACEREN:

"Q.

What happened when the name of the accused was discovered as not a member of the NARCOM?

"WITNESS:

"A.

That Sunday, we agreed that we would meet the next day, which was [a] Monday at Wendy's. That was Sunday and we [would] meet at Wendy's on Monday.

"FISCAL MACEREN:

"Q.

You mentioned that you talked with someone on the morning of July 14. Who were these people you were conferring with?

"WITNESS:

"A.

We were talking with the police officers and they told us to come back the following morning, sir.

"FISCAL MACEREN:

"Q.

And did you return to Camp Crame on the 14th of July?

"WITNESS:

"A.

Yes, we did as instructed.

"FISCAL MACEREN:

"Q.

What happened there?

"WITNESS:

"A.

They told us that the NARCOM people will set up a meeting at Wendy's, an entrapment for him at Wendy's sir." [10]

Appellant admitted having received the cash of P4,000.00 and signing a note that assured the girls that they would be free from arrest if they could come up with the agreed balance of P26,000.00. The excuse, he proffered, that he did so only in order to be able to also charge them with bribery would hardly appear persuasive. He testified:

"Q

And what did these persons in the car do?

"A

When we were already in front of the Western Police District, it was the lady who was driving and they were already crying and they said it would be embarrassing if they would be detained because they were all women, sir.

"Q

And so, what happened?

"A

Since the lady behind me was already crying and I was planning to charge them also with bribery, sir.

"Q

How much did they offer to you Mr. witness?

"A

They were the ones who looked for a bank, sir.

"Q

And were they able to look for a bank?

“A

We went to three (3) different banks, sir.

“Q

Did you accompany them in going to the bank?

“A

Yes, sir, because `sunud sunuran lang po ako sa kanila’ since I was riding inside the car and they were the ones driving, sir.

“Q

In what particular bank did you go?

“A

Metrobank I think, sir.

“Q

Where?

“A

Somewhere in San Andres, Malate, sir.

“Q

What other bank?

“A

Somewhere in UN, sir.

“Q

After visiting these banks, what happened?

“A

They said that they only had P4,000.00, sir.

“Q

Did they withdraw any money from the bank?

“A

When I agreed to that P4,000.00, they said the balance of P26,000.00 will be given at SM West, sir.

“Q

Why did you actually accept this P4,000.00?

“A

Not yet, sir, it was still in their hands.

“Q

But did you actually receive that P4,000.00 on that day?

“A

Yes, sir.

“Q

What particular time did you receive that amount?

“A

About 3:00 o'clock in the afternoon or 2:00 o'clock, sir.

“Q

Why did you receive [the] amount?

“A

I was planning of charging them with bribery, sir.

“Q

After receiving that P4,000.00, what happened?

“A

They told me that they would meet me at SM West the following day where they would deliver the balance of P26,000.00, sir.

“Q

After receiving that amount and after they stated that you were going to meet [them] at SM West, what happened next?

“A

They brought out a paper and before we parted ways, they gave their IDs and they even asked me [whether] I might bring along some police officers with cameras and I assured them that there would be no such thing that would take place or happen, sir.

“Q

After that transaction, what happened?

“A

I signed the paper that they showed to me, sir.

“Q

And then you parted ways?

“A

They dropped me off at Precinct 5 in UN, sir.

“Q

Did you report that matter to police officers specifically at NARCOM where you were allegedly connected?

“A

Not yet, sir, but I already told it to one of my agent companion that I was planning to charge them with bribery

the next day, sir.”[11]

Indeed, the trial court had well-founded grounds for convicting appellant.

The entrapment operation was set up and conducted by the police following the complaint made by Kathlyn, Rachel and Gay. Appellant would make capital of the fact that the “bogus” money used during entrapment was not presented in court and that it took the prosecution quite sometime to produce the firearm taken from him. The non-presentation of the “bogus” money did not adversely affect the case against appellant for the crime of illegal possession of prohibited drugs. The fact of the matter was that a good quantity of marijuana resin/hashish (84.55 grams) was recovered from him when arrested by the police officers during the entrapment operation. As regards the firearm, the prosecution did finally present the firearm in evidence. The delay in having it presented was explained by SPO3 Amado Antonio.

"Q.

Now, as investigator assigned thereat, on July 14, 1997, do you remember having investigated a case involving one Hegel Samson y Lapinig?

"WITNESS:

A.

Yes sir.

"FIS. CEDILLO:

"Q.

And after investigation, you have submitted of course a report relative to that?

"COURT:

Who brought this matter to your knowledge for investigation?

"WITNESS:

"A.

It was the Director sir, because of the complaint of the three women, sir.

"FIS. CEDILLO:

"Q.

Now, in the course of investigation what were the evidences, if any, that have been entrusted to you for investigation?

"WITNESS:

"A.

Caliber Pistol .45, ID and other material.

"FIS. CEDILLO:

"Q.

Who entrusted to you the evidence?

"WITNESS:

"A.

SPO4 Salvania, SPO2 Bungay and P/Insp. Santiago.

"x x x x x x x x

"FIS. CEDILLO:

May we request that the pistol Colt Cal. 45 be marked for the prosecution as Exhibit I, the magazine with six (6) live ammos. be likewise marked as Exhibit I-1.

"COURT:

Okay, mark it.

"FIS. CEDILLO:

"Q.

Now, this case has been dragging for so long, in fact the prosecution rested without the firearm. Why is it so long to produce this one?

(Fiscal referring to the firearm.)

"WITNESS:

"A.

We have been subpoenaed but we have not received (the subpoena). We have been subpoenaed but it did not reach us." [12]

"FIS. RODULFO:

We are now offering, your Honor this Colt 45 firearm, your Honor this Colt .45 which was found in possession of the accused Hegel Samson but without serial number, your Honor.

"COURT:

What exhibit?

"FIS. RODULFO:

As Exhibit I, your Honor, which was marked as Exhibit I for the prosecution to prove that indeed this firearm was found in the possession of the accused when he was apprehended by the Police Officer and together with this, your Honor, the magazine with six (6) live ammo. which was marked already as I-1 series your Honor, to

prove also that this was also found inside the barrels of chamber of this Colt .45, your Honor which was identified by the proper custodian Antonio which was not testified in this court." [13]

Scrutinizing the records, the Court has discerned no cogent reasons for ignoring the factual findings of the trial court. On the issue of credibility of witnesses, well-settled is the rule that the trial court, which has the distinct advantage of observing closely their demeanor and deportment at the stand, is in a much better position, than an appellate tribunal, to determine the veracity of and to weigh the conflicting testimony. It is only when the trial court would appear to have patently discarded or missed certain facts of substance and significance that could alter the judgment and the result of the case that its assessment of credibility might not deserve approbation by the appellate court. [14]

Section 8, Article II, in relation to Section 2(e-1)(i), Article I, of R.A. No. 6425, as amended by R.A. No. 7659, provides:

"SEC. 8. Possession or Use of Prohibited Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof. (As amended by R.A. 7659, Dec. 13, 1993)

"SEC. 2. Definitions. – As used in this Act, the term:

"x x x x x x x x

"(i) 'Indian hemp' – otherwise known as 'Marijuana,' embraces every kind, class, genus or specie of the plant cannabis sativa L., including cannabis Americana, hashish, bhang, guaza, churrus and ganjab, and embraces every kind, class and character thereof, whether dried or fresh and flowering or fruiting tops or any parts or portions of the plant, seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever."

"SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

"x x x x x x x x

"6. 50 grams or more of marijuana resin or marijuana resin oil."

There being neither mitigating nor aggravating circumstance that attended the commission of the crime, [15] the penalty of reclusion perpetua, as well as the fine of one million pesos, imposed by the trial court for the possession of 84.55 grams of marijuana resin accords with the law.

Illegal possession of firearm, in turn, is punished by R.A. No. 8294 which, in part, states:

"SEC. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. – The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess, any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

"The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but

considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

"If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

"If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat.

"The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

"The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor."

The indeterminate sentence given by the trial court, a jail term of six (6) years of *prision correccional* as minimum to eight (8) years of *prision mayor* as maximum deserves review. For purposes of fixing the indeterminate sentence, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed, and the minimum of which shall be within the range of the penalty next lower in degree to that prescribed by law for the same offense.^[16] Although the offense of illegal possession of firearm is punished by a special law, the penalty provided, nevertheless, has been taken from the range of penalties found in the Revised Penal Code, thereby effectively adopting the rules set forth therein inclusive of the Indeterminate Sentence Law. The penalty for illegal possession of a high-powered firearm (Colt cal. 45 pistol) is prescribed to be *prision mayor* in its minimum period with a duration of 6 years and 1 day to 8 years. The penalty next lower in degree is thus *prision correccional* in its maximum period with a duration of 4 years, 2 months and 1 day to 6 years. There being neither aggravating nor mitigating circumstance that has been established, the penalty that can be imposed is, by way of minimum, anywhere within the range of *prision correccional* maximum, or from four (4) years, two (2) months and one (1) day to six (6) years and, by way of maximum, anywhere within the medium period of *prision mayor* minimum, or from six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months of *prision mayor*.

WHEREFORE, the judgment of the trial court convicting appellant Hegel Samson y Lapinig in Criminal Cases No. 97-71952 and No. 97-71953 is AFFIRMED subject to the MODIFICATION of the penalty of imprisonment imposed in Criminal Case No. 97-71953 by instead imposing on appellant an indeterminate sentence of four (4) years, eight (8) months and twenty-one (21) days of *prision correccional* maximum, by way of minimum, to seven (7) years and one (1) day of *prision mayor* minimum, by way of the maximum penalty. In all other respects, the sentence appealed from shall remain unchanged. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Rollo, pp. 6-7.

- [2] Rollo, pp. 18-19.
- [3] Rollo, pp. 19-21.
- [4] Rollo, p. 23.
- [5] Rollo, p. 47.
- [6] TSN, 13 February 1998, p. 10.
- [7] TSN, 13 February 1998, pp. 4-6.
- [8] TSN, 22 January 1998, pp. 7-28.
- [9] TSN, 22 January 1998, pp. 86-97.
- [10] TSN, 22 January 1998, pp. 62-63.
- [11] TSN, 14 January 1999, pp. 8-10.
- [12] TSN, 21 January 1999, pp. 4-7.
- [13] TSN, 12 March 1999, pp. 2-3.
- [14] *People vs. Doria*, 301 SCRA 668.
- [15] Art. 63, Revised Penal Code.
- [16] *People vs. Simon*, 234 SCRA 555.

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