

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO BAGANG Y ARBULANTE, ACCUSED-APPELLANT.*G.R. Nos. 92793-94. March 30, 1993*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-92793-94/>**BELLOSILLO, J.:**

ROBERTO BAGANG Y ARBULANTE was charged in two (2) separate Informations, one for violation of Sec. 4, and the other, for violation of Sec. 8, both of Art. II, R.A. 6425, otherwise known as "The Dangerous Drugs Act of 1972," allegedly committed in Angeles City on 28 August 1984. These cases were docketed in the court below as Crim. Cases Nos. 6716 and 6717, respectively.

On 9 July 1986, after trial on the merits, the trial court convicted the accused in Crim. Case No. 6716 but dismissed Crim. Case No. 6717 on the ground that illegal possession is absorbed in drug pushing. Consequently, what is on appeal before Us is only Crim. Case No. 6716, now G.R. No. 92793. G.R. No. 92794 which refers to Crim. Case No. 6717 of the trial court should be disregarded.

It appears that a few hours after high noon on 28 August 1984, the Narcotics Command stationed in Angeles City was informed by three (3) policemen of Bacolor, Pampanga, that the principal supplier of marijuana in the province was in operation in Angeles City. Acting on the report, the Commanding Officer of the Narcom immediately formed a "buy-bust" operation team composed of Sgt. Edgardo Raquidan who was to act as poseur-buyer, Pat. Celestino dela Cruz, and an arrested pusher who was to be utilized as intermediary. The agents then marked paper bills - two (2) P5.00 bills and one (1) P10.00 bill for the entrapment. After a short briefing, the team proceeded to the target area at corner Reyes and Jesus Streets, Barangay Lourdes Northwest, Angeles City. The team was joined by Bacolor policemen.

At the designated place, a man, later identified as suspect Roberto Bagang, approached the intermediary who informed Bagang that his companion, pointing to Sgt. Raquidan who was disguised in civilian clothes, was interested in buying marijuana. The "customers" were told by Bagang to wait. After a few minutes, Bagang was back with two (2) small plastic tea bags of marijuana. He handed the stuff to Sgt. Raquidan who expressed his displeasure over the price. Then Bagang passed on two (2) more tea bags. Upon paying P20.00 in marked bills to Bagang, Sgt. Raquidan scratched his head, which was the pre-arranged signal for the other members of the team to close in and arrest the suspect. Bagang attempted to run away but Sgt. Raquidan grabbed him by the arm. When searched, Bagang was found to be in possession of fifteen (15) more tea bags of marijuana.[1]

The policemen then brought Bagang to their headquarters and placed him and the evidence in the custody of Sgt. Romeo Consengco, the evidence custodian. The pieces of evidence were then accordingly marked for proper identification and later sent to the PC Crime Laboratory in San Fernando, Pampanga, for examination. The Forensic Chemist then submitted her report finding the stuff positive for marijuana.[2]

Appellant has a different version of the incident. He maintains that on 28 August 1984, between 3:00 to 4:00 o'clock in the afternoon, while he was on his way to buy cigarettes, a person running on the curve of the road

suddenly bumped him. He fell but immediately stood up and gave chase. While pursuing the unidentified man, someone from behind unexpectedly held him by the hair and then twisted his arm. The man was holding a brown paper bag. According to appellant, he was brought to Jesus Street where, moments later, he saw two (2) other persons whom he later came to know as Sgt. Raquidan and Pat. dela Cruz, alight from a tricycle. On their way to Camp Pepito, he was asked by the Narcom agents as to who owned the paper bag. Later at the headquarters, he was forced to write his name on the two (2) P5.00 bills and the one (1) P10.00 bill, including the brown paper bag and the plastic bag containing the suspected marijuana. Bagang further claims that he was not even investigated but was simply locked up in jail.[3]

Pablito V. Garcia, a witness for the defense, testified that in the afternoon of 28 August 1984, he noted a commotion near his house and saw Narcom agents asking Roberto Bagang where the person they were chasing went to and Bagang replied he did not know. The Narcom agents then arrested Bagang who was not carrying anything when seen in front of his house.[4]

On the basis of the evidence thus presented, the trial court found the accused Roberto Bagang y Arbulante guilty of violating Sec. 4, Art. II, of R.A. 6425, as amended, and sentenced him to reclusion perpetua and to pay a fine of P20,000.00, plus costs.

The accused now comes to Us imputing error to the trial court (a) in believing that there was a buy-bust operation on 28 August 1984; (b) in giving weight to the inconsistent and conflicting testimonies of witnesses and in disregarding the evidence for the defense; and, (c) in convicting him despite failure of the prosecution to prove his guilt beyond reasonable doubt. In sum, the assigned errors may be subsumed in the issue of whether the court a quo erred in giving weight and credence to the evidence of the prosecution, instead of the defense.

As correctly observed by the Solicitor General -

"It is hard to believe that the Narcom agents, Pat. dela Cruz and Sgt. Raquidan, would fabricate and concoct a story that appellant was caught selling marijuana in a 'buy-bust' operation. As police officers, they are presumed to have performed their duties regularly. Moreover, aside from Cruz and Raquidan, there was the civilian informer who had earlier been arrested in Bacolor, Pampanga and who acted as poseur-buyer, and the 3 policemen of Bacolor, Pampanga, namely: Sgt. Pampilo Santos, Cpl. Arturo David, and Pfc. Manuel David, who served as back-up and additional security of the team (tsn, June 25, 1985, pp. 5-9). It is not therefore easy to fabricate the prosecution's version that appellant was caught selling marijuana in a 'buy-bust' operation.

"Further, appellant cannot fault the trial court in giving weight to the prosecution's witnesses' narration of the incident as it had the singular advantage of observing at first hand their demeanor in giving their testimonies, especially, since it has not been shown that they had any improper motive in testifying falsely against the appellant, but did so merely in compliance with their duty as enforcers of the law (People v. Eslabon, 145 SCRA 396).[5]

Indeed, in the absence of proof of motive to falsely impute such a serious crime against appellant, the presumption of regularity in the performance of official duty as well as the findings of the trial court on the credibility of witnesses should prevail over the self-serving and uncorroborated claim of having been "framed." [6] Moreover, We find no compelling reason to disregard the findings of the trial court which after all had the distinct advantage of observing at first hand the demeanor of witnesses when they gave their testimonies on the witness stand.

Accused-appellant strongly suggests that the non-presentation of the alleged civilian informer renders the testimonies of the prosecution witnesses hearsay, hence, worthless.

We do not agree. The determination of who should be presented as witnesses for the prosecution is addressed to the sound discretion of the prosecuting officer.[7] As held in People v. Bolasa[8] -

"While the civilian informer, as the 'poseur-buyer' would have been the most logical witness to testify on what transpired at the 'buy-bust' operation, his testimony would nonetheless have been merely corroborative. This being so, the identity of the civilian informer may remain confidential; there are strong reasons for permitting the continued anonymity of the informer such as the maintenance of his health and safety and the encouragement of others to report wrongdoing to police authorities x x x x"

In the case before Us, the civilian informer was not utilized as the "poseur-buyer;" instead, one of the agents, Sgt. Raquidan, was the "poseur-buyer." What is significant is that Pat. dela Cruz testified that he actually observed the sale of the prohibited drugs and that he saw the accused hand to Sgt. Raquidan, who was in civilian clothes, the four (4) plastic tea bags of marijuana flowering tops, and that the accused received from Sgt. Raquidan the marked paper bills used in the operation. Sgt. Raquidan himself affirmed the testimony of Pat. dela Cruz. Verily then, We sustain the trial court in giving due weight and credence to the evidence for the prosecution, thus discarding the version of the defense. Under the circumstances, We find no reason to deviate from the conclusion reached by the court a quo that the accused is guilty of drug pushing in violation of Sec. 4, Art. II, of R.A. 6425.

However, the trial court erred in imposing the penalty of reclusion perpetua. The proper penalty prescribed for the offense charged is "life imprisonment to death" and not reclusion perpetua, which carries with it the accessory penalties enumerated in Art. 41, of the Revised Penal Code.

WHEREFORE, the decision appealed from finding accused-appellant ROBERTO BAGANG Y ARBULANTE guilty of violation of Sec. 4, Art. II, R.A. 6425, as amended, otherwise known as "The Dangerous Drugs Act of 1972," is AFFIRMED, with the modification that the proper penalty should be life imprisonment, instead of reclusion perpetua.

Costs against accused-appellant.
SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Tsn, 16 October 1984, pp. 2-5; 12 February 1985, p. 10; 13 August 1985, pp. 2-8.

[2] Tsn, 7 May 1985, pp. 2-7.

[3] Tsn, 25 September 1985, pp. 3-14.

[4] Tsn, 20 November 1985, pp. 3-8.

[5] Brief for the Appellee, pp. 11-12; Rollo, pp. 62-63.

[6] People v. Labra, G.R. No. 98427, 20 November 1992, citing People v. Dekingco, G.R. No. 87685, 13 September 1990, 189 SCRA 512.

[7] People v. Babac, G.R. No. 97932, 23 December 1991; 204 SCRA 968.

[8] G.R. No. 80436, 2 June 1992; 209 SCRA 476.

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