

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL ACURAM, DEFENDANT-APPELLANT.*G.R. Nos. 98423-24. May 22, 1992*

Ponente: ROMERO, J.

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Appellant Rafael Acuram impugns and would have this Court reverse the decision[1] of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21 finding him guilty beyond reasonable doubt of selling marijuana in violation of Sec. 4 of the Dangerous Drugs Act of 1972 and imposing on him the penalty of "life imprisonment and a fine of P20,000 without subsidiary imprisonment in case of insolvency."

Two separate informations were filed against appellant on August 9, 1989. Although both informations referred to the same incident on June 20, 1989 in the municipality of Bansalan, Davao del Sur, the first information charged appellant with violation of Sec. 8 of the Dangerous Drugs Act of 1972 as amended by Batas Pambansa Blg. 179 for alleged unlawful and felonious possession of one hundred thirty-five point eight (135.8) grams of marijuana leaves (Crim. Case No. XXI-137 [89]). The second information charged appellant with violation of Sec. 4 of the same law for willful, unlawful and felonious sale and distribution of one gram of marijuana leaves (Crim. Case No. XXI-137-A [89]).

Upon arraignment, appellant pleaded not guilty to the charges against him.[2] At the joint trial of the two cases, the prosecution presented only three witnesses: Philippine Constabulary (PC) members Sgt. Candelario Lahaylahay, Lt. Salome Jose and CIC Manuel Peleño.

Sgt. Lahaylahay came to know the "asset" named Tonton through CIC Noel Masongsong. Tonton used to buy marijuana from Acuram. In the morning of June 20, 1989, Tonton informed him that Acuram, also known as Bebot, was selling marijuana obtained in Pikit. Thus, Sgt. Lahaylahay organized a team to conduct a buy-bust operation. Before proceeding with the operation, he asked permission from Col. Jesus Magno at the PC headquarters in Digos. Col. Magno instructed him and his team to conduct a surveillance on Acuram. They forthwith proceeded to Bansalan but they did not drop by the police station there anymore.[3]

Together with CIC Masongsong, CIC Manuel Peleño and Tonton, Sgt. Lahaylahay arrived in the Bansalan poblacion at around 2:30 in the afternoon. All of them were in civilian clothes and they carried sidearms.[4] Upon reaching Lily St., they gave Tonton one hundred fifty pesos (P150.00) with which to buy marijuana from Acuram. While standing by a store around twenty (20) meters from the house of Acuram, they watched as Acuram handed over marijuana to Tonton in exchange for P150. When Tonton returned to them with the marijuana, they "went directly" to the house of Acuram. There, they met Acuram whose wife informed them that there was marijuana in the basket of dried fish. Indeed, they found marijuana leaves in two baskets ("bangkat") of dried fish covered by an old newspaper beside the stove in the kitchen.[5]

The constabulary men then took pictures of the marijuana which, including the one gram bought by Tonton, was later found to weigh 135.8 grams.[6] The camera they used had been lent to them by Col. Magno. They asked for

the P150 purchase money from Acuram but he returned to them only P135 on the pretext that he had bought something out of the missing P15.[7] Aside from Acuram and his wife, the other persons in Acuram's house were a man "extracting corn grits" and Acuram's two small children.[8]

CIC Peleño fetched barangay captain Doroteo Parawan who recorded the apprehension of Acuram and witnessed the inventory and photographing of the seized marijuana.[9] Acuram executed a "receipt" stating that intelligence operatives of the 435th PC company had been able to "confiscate" in his possession "more or less 2 grams of dried marijuana leaves" in his residence and that said operatives did not take anything else from him (Exh. D). Later, Acuram was brought to the PC barracks for proper investigation. The PC team deposited the marijuana seized from Acuram with Cpl. Impang, the investigator. The latter in turn, brought it to the PC Crime Laboratory in Davao City for examination.[10]

Sgt. Salome Jose, forensic analyst of the said PC Crime Laboratory, received a request for laboratory examination on June 22, 1989 (Exh. A). With said request was a specimen consisting of 135.8 grams of "suspected dried marijuana fruiting tops wrapped with old newspapers and placed in a white plastic bag marked 'DATU COMPLEX DIGOS'" (Exh. C). After subjecting the specimen to the Duquenois-Levine test, Sgt. Jose found that it was "positive for marijuana" (Exh. B).

CIC Manuel Peleño corroborated Sgt. Lahaylahay's testimony. According to him, they were standing at a distance of around thirty (30) meters from the nipa hut of Acuram. After seeing Tonton buy marijuana from Acuram at the stairs of the latter's house, they proceeded to investigate Acuram who confessed that there was more marijuana in the basket of dried fish. They told Acuram to get the marijuana and then they took pictures of it.[11] They also retrieved the purchase money from Acuram and later turned it over to Cpl. Impang.[12] CIC Peleño added that the buy-bust team did not secure a search warrant because they caught Acuram "in the act." [13]

In his defense, Acuram interposed alibi and denial that he had possessed or sold marijuana. According to Acuram,[14] before noon of June 20, 1989, he was in barangay Mabunga looking for bamboos which he intended to use for the bodega of his newly-harvested corn. At around 2:00 o'clock in the afternoon, he and his companion, Jimmy Labajo, were able to buy five bamboo poles from Mrs. Garciano. After cutting the bamboos, Acuram and Labajo had them hauled by a carabao.[15]

Upon reaching his house, Acuram saw PC soldier Pelenio (Peleño) at the door of the kitchen. He also saw Lahaylahay, Masongsong, the "asset" and Doroteo Parawan. Pelenio invited him to go upstairs. Lahaylahay then "forced him to admit (ownership of) the marijuana which was placed on top of the table." [16] Lahaylahay also asked him if he sold marijuana to Tonton but he denied that he did so.[17] Lahaylahay then asked him to go with the PC team to the barracks. He acceded on condition that the incident be blotted at the office of the barangay captain. On their way to Digos, they passed by the house of barangay captain Parawan who recorded the incident in a logbook. They did not, however, pass by the police station to have the arrest duly recorded.

Acuram asserted in court that the PC team and the barangay captain arrived in his house ahead of him. He was allegedly surprised to see the marijuana leaves on the table and when the barangay captain confronted him about it, he retorted that they did not belong to him.

When showed the "receipt" stating that marijuana had been confiscated from him, Acuram claimed that he was in a state of shock when he signed it.[18] Later, however, he admitted having signed it in the house of barangay captain Parawan and that the latter signed the same document as a witness.[19]

For his part, barangay captain Doroteo Parawan testified that at around 4:00 o'clock in the afternoon of June 20, 1989, some members of the 435th PC Company went to his house to report that they had "raided" the house of

Acuram and seized five (5) grams of marijuana. Parawan himself recorded the report (Exh. 1).

When he arrived at Acuram's house, he found only the "raiding team" there and, although at first he did not know the names of the team members, he recorded the fact of the confiscation of about two grams of marijuana from Acuram's residence. In the kitchen, the team opened a paper bag and he saw marijuana inside it.[20] Besides the PC team, the only other person he saw in Acuram's house was Mrs. Acuram. He did not see Acuram arrive but he saw Acuram "went down the house." He asked him if he really owned the marijuana but Acuram replied that he had "just arrived." [21]

Victoria Vda. de Garciano corroborated Acuram's story that he went to her place to buy bamboos and that Acuram and Labajo left her house at past 3:00 o'clock in the afternoon of June 20, 1989.[22] In defense of her husband, Lucrecia Acuram, testified that Acuram and Labajo left after lunch of June 20, 1989 to get bamboos from Mrs. Garciano. While her husband was away, four persons arrived. As one of them called her, she met them downstairs. The men were looking for Acuram because they had "something to take up with" him.[23] Three of the men went upstairs and later, the fourth person followed them. These men had with them a plastic bag marked "Datu Complex." [24] They went to the kitchen and opened three baskets but they did not find anything. They searched the clothes around and looked into her children's food boxes. Not finding what they were looking for, all four of them sat down in the balcony.

When barangay captain Parawan arrived, her husband was not yet home. Her brother Dingkong fetched Acuram who arrived with Labajo and the carabao hauling five pieces of bamboo. The constabulary men left with her husband and the barangay captain at past 4:00 o'clock in the afternoon.

With these pieces of evidence, on January 15, 1991 the lower court rendered the aforementioned decision. On the strength of the ruling in *People v. De Jesus* [25] that possession of prohibited drugs is inherent in the crime of selling them, the lower court held Acuram liable only for violation of Sec. 4 of the Dangerous Drugs Act as amended by Batas Pambansa Blg. 179 penalizing sale and distribution of prohibited drugs, and dismissed the charge of illegal possession of prohibited drugs under Sec. 8 of the said law.

Acuram appealed to this Court. He alleges that the lower court erred in: (a) giving credence to the "hearsay testimonies" of Sgt. Lahaylahay and CIC Peleño; (b) admitting in evidence the marijuana leaves and stems presented as evidence; (c) holding that Parawan's testimony refuted appellant's claim that he had just arrived from Mabunga and therefore he (Acuram) could not have sold the marijuana to the constabulary "asset," and (d) discrediting the testimonies of the defense witnesses. The bot-tomline of this assignment of errors is the credibility of the witnesses presented by both the prosecution and the defense.

The credibility of witnesses has always been the area of responsibility of the trial court and its findings and conclusions on the matter are respected and given great weight by the appellate courts. The trial court's findings on the matter may only be disregarded by this Court if there are facts and circumstances which were overlooked by the trial court and which would substantially alter the results of the case; where the judgment is based on a misapprehension of facts; and where the inferences of the trial court from the facts are manifestly absurd or impos-sible.[26] The Court finds that none of these instances exists in this case to warrant deviation from the rule of vesting great weight and reliance on the trial court's findings regarding the credibility of the witnesses herein. Be that as it may, the Court shall confront the first three matters raised in the as-signment of errors to insure a thorough appreciation of the merits of the appeal. Needless to say, discussion on the fourth assigned error shall be dispensed with.

Appellant's allegation that the testimonies of Lahaylahay and Peleño are "hearsay" is baseless. Both constabulary men were eyewitnesses to the "buy-bust" operation and appellant had not refuted their respective testimonies, let

alone established that they were somewhere else when the buy-bust operation transpired such that they could not have witnessed it. Thus, Peleño categorically stated that he saw Tonton as he bought marijuana from Acuram at the stairs of the latter's house.[27] Although Peleño failed to estimate the quantity of the marijuana bought by Tonton from appellant, he affirmed in court that the piece of paper delivered by appellant to Tonton contained marijuana.[28]

Lahaylahay himself narrated how, from a distance of twenty meters, he saw appellant and Tonton exchange marijuana with the money the constabulary men themselves had provided Tonton. Repe-titious questions by both the prosecutor and the defense counsel failed to move Lahaylahay to depart from his testimony that he actually saw appellant deliver marijuana to Tonton and the latter receive P150 from the former.[29] Hence, while the distance between these two PC operatives and the house of appellant where the sale transpired could have prevented Peleño and Lahaylahay from hear-ing the conversation between Tonton and the appellant, proof of aural access has become unnecessary in this case in view of the positive testimonies of Peleño and Lahaylahay that they witnessed the marijuana and the purchase money change hands. Said testimonies on the sale are sufficient evidence to establish guilt beyond reasonable doubt.[30]

While the appellant does not expressly deny the actual occurrence of the sale of marijuana between him and Tonton, he proposes the probability that Tonton could have hidden marijuana in his person and then presented it as the one he bought from appellant. Completely baseless as it does not stand on solid evidence, the proposition could have merited scrutiny had the defense presented proof that Tonton was impelled by an improper motive in imputing criminal liability on the appellant. The defense of a frame-up which appears to be the object of the appellant's disquisition on probabilities, was never raised below much less propped up by evidence. Like alibi, a frame-up should be established by clear and convincing evidence for it is easy to concoct but hard to prove.[31] Similarly, appellant's allegation that he was forced to admit ownership of the marijuana leaves is not supported by evidence except for his own self-serving testimony. Even his wife and the barangay captain did not corroborate this allegation when they testified.

Neither was there proof that the arresting officers were guided by considerations other than the fulfillment of their task to enforce the law.[32] That the PC operatives had no evil motives to harass and implicate the appellant is supported by their testimonies that the incident was the first meeting between them and the appellant.[33] Said testimonies were affirmed in court by the appellant who even added that he bore no grudges against or had a misunderstanding with the PC men, Tonton and Parawan.[34] Moreover, the presumption of regularity of performance of offi-cial functions has not been rebutted by the defense's evidence. Thus, in this case, since it is not the sole basis for convic-tion, the presumption of regularity of performance of official functions prevails over the constitutional presumption of inno-cence of the accused.[35]

Appellant bewails the fact that Tonton was not presented by the prosecution as a witness. It should be remembered, however, that the option to present a witness is discretionary on the part of the prosecution. If the fiscal or prosecutor deems it improper to present an informer as a witness, he does so in the exercise of sound discretion guided in all probability by the fact that an informer has to preserve his cover so that he could continue with his invaluable service.[36] There is also the over-riding consideration that an informer risks his life in playing his role in the apprehension of violators of the Dangerous Drugs Law. The prosecution's failure to present Tonton as a witness did not, therefore, weaken its case. Tonton's testimony would merely be corroborative or cumulative to those of the constabulary men who were themselves eyewitnesses to the sale of marijua-na.[37] Moreover, nonpresentation of a civilian informer as a witness is not a sufficiently plausible defense. At the trial, the accused can always avail of an informer's testimony even through compulsory judicial process, if necessary.[38]

With regard to appellant's contention that his arrest and the seizure of the marijuana were illegal as the constabulary men were not armed with a warrant, it should be observed that said processes were effected immediately after the sale of marijuana. As the law allows warrantless arrests when a crime has just been committed, it was not imperative for the arresting officers to obtain a search warrant or a warrant of arrest. It is of judicial notice that in the arrest of a violator of the Dangerous Drugs Act as a result of a buy-bust operation, the offender is invariably caught red-handed.[39] Hence, the admissibility of the seized marijuana is beyond question. Furthermore, the seized marijuana was duly authenticated – the PC operatives testified that they gave it to the investigator who then transmitted it to the forensic analyst who likewise testified that she received it with a letter-request for examination.[40]

The appellant stresses emphatically that barangay captain Parawan's testimony proved that the sale could not have transpired because appellant was not yet at home at the time the "buy-bust" operation occurred. However, as proven by the prosecution and even by the defense, Parawan arrived at the residence of appellant after the "buy-bust" operation. Appellant himself admits that Parawan "would not be in a position to know if accused just arrived from barangay Mabunga. The only thing he could know was he saw the accused." [41]

Appellant's alibi and denial of having sold or possessed marijuana crumbles in the face of his positive identification as the seller of marijuana by prosecution witnesses Lahaylahay and Parawan.[42] Besides, the five-kilometer distance between appellant's residence and barangay Mabunga where he was allegedly buying bamboos at the time of the sale,[43] was not too far as to prevent him from being home before 3:00 o'clock in the afternoon when the "buy-bust" operation was in progress. Neither could the testimony of Mrs. Garciano help – she did not have a watch and her testimony on the time when appellant was supposed to be in Barangay Mabunga was, as she herself admitted, based on estimates.[44]

A "buy-bust" operation is the method most frequently used by law enforcers in catching violators of the Dangerous Drugs Act. While this method is not exactly fool-proof for in its application law enforcers are liable to commit abuses, still it has been proven to be an effective means of entrapment of persons who, for obvious reasons, clandestinely peddle or possess prohibited drugs. The courts cannot be too cautious in the determination of whether or not the operation has been properly conducted. Unfortunately for the defense in this case, there is nothing on record to overturn the decision of the lower court.

WHEREFORE, the decision subject of the instant appeal is hereby AFFIRMED in toto. Costs against the appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Penned by Judge Rodolfo A. Escovilla.

[2] Original Record, p. 42.

[3] TSN, October 25, 1989, pp. 23-26; 54.

[4] Ibid, p. 32; TSN, March 12, 1990, p. 19.

[5] TSN, October 25, 1989, pp. 12 & 35-40.

[6] Ibid, pp. 13 & 29.

[7] Ibid, pp. 41-42.

[8] Ibid, pp. 33-34 & 49-50.

[9] Ibid, pp. 47-49.

[10] Ibid, pp. 15-16.

[11] TSN, March 12, 1990, p. 11.

[12] Ibid, pp. 15-16.

[13] Ibid, p. 19.

[14] Questioned by the court why he was sporting long hair and a beard, Acuram said that like Samson, he would feel weak every time his hair is cut (TSN, July 11, 1990, pp. 18-19).

[15] Ibid, pp. 5-8.

[16] Ibid, p. 9.

[17] Ibid, pp. 9-10.

[18] Ibid, p. 20.

[19] Ibid, p. 29.

[20] Ibid, pp. 6-7.

[21] Ibid, p. 7.

[22] TSN, October 1, 1990, p. 6.

[23] Ibid, p. 25.

[24] Ibid, p. 30.

[25] G.R. No. 71942-43, November 13, 1986, 145 SCRA 521.

[26] People v. Lati, G.R. No. 70393, April 17, 1990, 184 SCRA 336, 342; People v. Payumo, G.R. No. 81761, July 2, 1990, 187 SCRA 64.

[27] TSN, March 12, 1990, p. 10.

[28] Ibid, p. 14.

[29] TSN, October 25, 1990, pp. 16, 30-31, 35-36.

[30] People v. Olivares, G.R. No. 86219, June 14, 1990, 186 SCRA 536, 545.

[31] People v. Nabunat, G.R. No. 84392, February 7, 1990, 182 SCRA 52; People v. Marcos, G.R. No. 83325, May 8, 1990, 185 SCRA 154.

[32] People v. Guiagui, G.R. No. 78527, April 25, 1990, 184 SCRA 538; People v. Yap, G.R. Nos. 87088-89, May 9, 1990, 185 SCRA 222; People v. Payumo, supra.

[33] TSN, October 25, 1989, p. 21 and March 12, 1990, p. 14; People v. Borja, G.R. No. 71838, February 26, 1990, 182 SCRA 581.

[34] TSN, July 11, 1989, pp. 24 & 26.

[35] See: *People v. Lati*, supra, at p. 347.

[36] *People v. Consuelo*, G.R. No. 77755, April 18, 1990, 184 SCRA 402.

[37] *People v. Tangliben*, G.R. No. 63630, April 6, 1990, 184 SCRA 220.

[38] *People v. De la Cruz*, G.R. No. 83260, April 18, 1990, 184 SCRA 416.

[39] Ibid, p. 422.

[40] *People v. Tangliben*, supra at p. 226.

[41] Appellant's Brief, p. 8.

[42] *People v. Marcos*, supra at p. 165; *People v. De Jesus*, supra, at p. 527.

[43] Decision, p. 3.

[44] According to Mrs. Garciano, together with appellant and Labajo, she estimated the time when appellant was supposed to be in her house several months after appellant's arrest. The prosecution, however, manifested in court that since his arrest, appellant had been in detention (TSN, October 1, 1990, p. 11).

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