

## THIRD DIVISION

[ G.R. No. 178060, February 23, 2011 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROMEO DANSICO Y MONAY A.K.A. "LAMYAK" AND AUGUSTO CUADRA Y ENRIQUEZ, APPELLANTS.**

### D E C I S I O N

**BRION, J.:**

We review in this Rule 45 petition the decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> (CA) in CA-G.R. CR-H.C. No. 00645. The CA decision affirmed the decision<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 30, San Jose, Camarines Sur, in Criminal Case No. T-1910, finding appellants Romeo Dansico y Monay a.k.a. "Lamyak" and Augusto Cuadra y Enriquez guilty beyond reasonable doubt of illegal sale of *marijuana* under Section 4, Article II of Republic Act (R.A.) No. 6425, as amended.

#### The Information and Plea

The appellants were charged under the following Information dated September 8, 1998:

That sometime on September 7, 1998 at about 4:30 o'clock [sic] in the afternoon, at Brgy. May-Anao, Tigaon, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another to attain a common purpose did then and there willfully, unlawfully and feloniously without authority of law sell, deliver one (1) pc. Marijuana bricks wrapped in newspaper with approximate size of 1 ½ x 8 x 10 inches weighing approximately NINE HUNDRED (900) grams for and in consideration of FIVE THOUSAND PESOS (P5,000.00) to the prejudice of the Government.

ACTS CONTRARY TO LAW.<sup>[4]</sup>

With the assistance of their counsel, the appellants pleaded not guilty to the charge. In the pre-trial, the appellants admitted their identities and the existence of the booking sheet and the arrest report against them. Trial on the merits thereafter ensued.

#### The Prosecution's Case

The prosecution established its case by presenting the testimonies of three (3) witnesses<sup>[5]</sup> and the supporting documentary evidence.<sup>[6]</sup> The prosecution's account showed that the appellants were caught and arrested for selling *marijuana*

during a buy-bust operation.

The prosecution's evidence shows that on the basis of reports that the appellants were engaged in peddling *marijuana*, the members of the Camarines Narcotics Provincial (NARGROUP) Office, Naga City (headed by P/Insp. Dennis Vargas) organized a buy-bust operation against the appellants. The buy-bust team was assisted by an unidentified confidential informant and four (4) civilian volunteers. The confidential informant and Willie Paz, a civilian volunteer, were designated to act as poseur-buyers. P/Insp. Vargas gave Paz P5,000.00 as buy-bust money.<sup>[7]</sup>

On September 7, 1998, the buy-bust team went to May-Anao, Tigaon where they briefed the local Tigaon Police at their station of the impending buy-bust operation. The buy-bust team afterwards proceeded to the nipa hut owned by appellant Dansico. Paz and the confidential informant met with the appellants; the confidential informant informed the appellants that Paz wanted to buy P5,000.00 worth of *marijuana*. Paz handed the buy-bust money to the appellants who left in a motorcycle to get the *marijuana*.<sup>[8]</sup>

After three hours, more or less, the appellants returned with a brick, allegedly *marijuana*, wrapped in a newspaper. Appellant Dansico took the brick from appellant Cuadra and gave it to Paz. At this point, Paz gave the pre-arranged signal for P/Insp. Vargas and the buy-bust team to approach. The team immediately apprehended appellant Dansico, while appellant Cuadra resisted by throwing stones at and grappling with P/Insp. Vargas. Paz turned the seized *marijuana* to P/Insp. Vargas and the group proceeded to the Tigaon Police Station.<sup>[9]</sup>

The arrest of the appellants, the recovery of the suspected *marijuana* and the confiscation of the appellants' motorcycle were entered in the police blotter of the Tigaon Police Station. Afterwards, the buy-bust team (with the appellants in tow and with the confiscated items) proceeded to the NARGROUP Office where P/Insp. Vargas prepared a booking sheet and the arrest report. The confiscated brick of *marijuana* was placed inside a plastic bag and marked "07 September 1998 WPD" to indicate the date of the buy-bust. The plastic bag was initialed by P/Insp. Vargas and Paz.<sup>[10]</sup> P/Insp. Vargas also conducted an initial field test which confirmed the confiscated item to be *marijuana*. Afterwards, P/Insp. Vargas submitted the confiscated *marijuana* to the Crime Laboratory for further laboratory examination.<sup>[11]</sup> As borne by the mark stamped on the request of P/Insp. Vargas, the submitted *marijuana* was received by the receiving clerk of the Crime Laboratory and was given control no. 1774-98 D-10498.<sup>[12]</sup> The confiscated *marijuana* was turned over by the receiving clerk to P/Sr. Insp. Ma. Julieta Razonable<sup>[13]</sup> who then conducted the laboratory tests which subsequently confirmed that the submitted specimen was *marijuana*.<sup>[14]</sup> P/Sr. Insp. Razonable reduced her findings to writing under Chemistry Report No. D-104-98. After the examination, P/Sr. Insp. Razonable placed the *marijuana* inside a plastic bag and sealed it with tape.<sup>[15]</sup> In court, P/Sr. Insp. Razonable presented the *marijuana* by unsealing the plastic bag. She identified the *marijuana* by the markings she previously made.<sup>[16]</sup>

### The Case for the Defense

The defense denied the charges and countered that the appellants were victims of

frame-up and police extortion. The defense presented six (6) witnesses<sup>[17]</sup> (including the two appellants) and the documentary evidence. Appellant Dansico admitted that the *marijuana* presented in court was the same *marijuana* shown to him at the Tigaon Police Station.

According to the defense, appellant Dansico had a farm where appellant Cuadra worked. In the afternoon of September 7, 1998, appellant Cuadra was on his way back to the farm when he was accosted by P/Insp. Vargas who poked a gun at him. Appellant Cuadra attempted to flee and even shouted for help but P/Insp. Vargas struck him on the head with his gun.

SPO4 Paterno Boncodin, a local Tigaon policeman, was presented to corroborate the appellants' story. SPO4 Boncodin claimed that he saw P/Insp. Vargas and appellant Cuadra grappling with each other. He was then informed by the confidential informant that appellant Cuadra was being arrested for the illegal sale of *marijuana*. SPO4 Boncodin claimed that after appellant Cuadra was subdued and taken to the police station, P/Insp. Vargas returned to appellant Dansico's farm and arrested appellant Dansico. Thereafter, the appellants were charged with selling *marijuana*.

In its decision, the RTC found the appellants guilty of illegal sale of *marijuana* and sentenced them to suffer the penalty of *reclusion perpetua* with the corresponding accessory penalties. The RTC also ordered them (a) to pay a fine in the amount of Five Hundred Thousand Pesos (P500,000.00); (b) to return or reimburse Five Thousand Pesos (P5,000.00) representing the unrecovered buy-bust money; and (c) to pay the costs.<sup>[18]</sup>

The CA, on appeal, affirmed the RTC decision. The CA sustained the convictions of the appellants, finding the prosecution's version more credible in the absence of any improper motive established against the prosecution witnesses. The CA also relied on the presumption of regularity that attended the conduct of the buy-bust operation which led to the arrest of the appellants.

### The Issue

In their Brief,<sup>[19]</sup> the appellants seek their acquittal based on the following arguments. *First*, the two (2) elements of the crime - the sale and delivery of the *marijuana*, and the knowledge of the sale of *marijuana* - were not established in evidence. *Second*, the evidence failed to establish the existence of the buy-bust operation; for the first time on appeal, the appellants argue that they were instigated into selling *marijuana*. The other arguments relate to the disregard by the lower courts of the defenses of denial and frame-up, and the claim of police extortion raised by the appellants.

The Office of the Solicitor General<sup>[20]</sup> (OSG) contends that the evidence sufficiently established the sale and delivery of *marijuana* by the appellants during the buy-bust operation conducted by the team of P/Insp. Vargas. That an actual buy-bust operation took place was even testified to by defense witness SPO1 Roberto Caña and supported by the police blotter. The OSG also contends that the appellants' defenses of frame-up and extortion were not properly substantiated. On the instigation claim, the OSG stresses that this claim was only raised for the first on appeal. By this argument, the appellants in fact actually admitted having sold and

delivered *marijuana* to the team of P/Insp. Vargas.

The Court's Ruling.

**We find no reversible error committed by the RTC and the CA in appreciating the presented evidence and, therefore, deny the petition for lack of merit.**

First, to convict an accused of illegal sale of *marijuana*, the prosecution must establish these essential elements: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment.<sup>[21]</sup>

All these elements were duly proven during the trial. The fact that an actual buy-bust operation took place involving the appellants is supported not only by the testimonies of Paz (as the poseur-buyer) and P/Insp. Vargas, but also by the presented documentary evidence consisting of (a) the photocopy of the serial numbers of the marked money used in the buy-bust operation,<sup>[22]</sup> (b) the Tigaon Police Station police blotter showing the arrest of the appellants on September 7, 1998 and the cause of their arrest by the group of P/Insp. Vargas,<sup>[23]</sup> (c) the booking sheet and arrest report against the appellants prepared by P/Insp. Vargas,<sup>[24]</sup> and (d) the Joint Affidavit of Arrest executed by P/Insp. Vargas and Eduardo Buenavente, another civilian volunteer.<sup>[25]</sup>

Second, the testimonies of Paz and P/Insp. Vargas on the buy-bust operation and the identities of the appellants as the sellers of the *marijuana* were positive and straightforward; they were consistent with one another with respect to the events that transpired before, during, and after the buy-bust operation that led to the appellants' arrest. We consider, too, the testimonies of Paz and P/Insp. Vargas to be in accord with the physical evidence showing in detail the process undertaken by P/Insp. Vargas and the police officers immediately after the appellants' arrest and the confiscation of the *marijuana*. We also take into account that no improper motive was ever successfully established showing why the buy-bust team would falsely accuse the appellants.

Third, the defenses of denial, frame-up, and police extortion only become weighty when inconsistencies and improbabilities cast doubt on the credibility of the prosecution evidence. We do not see these inconsistencies and improbabilities in the presented evidence. Besides, the failure of the appellants to file appropriate criminal and administrative cases against the concerned police officers in light of their allegations highly indicates that the appellants' claims are mere concocted afterthoughts.

Fourth, the records show that the defenses of denial, frame-up, and police extortion were even contradicted by the appellants' own conduct during the appeal to the CA. By raising instigation as a defense, the appellants effectively admitted that they sold *marijuana*; they only now question the circumstances of the sale, with the claim that they were led into it by the police.

Fifth, the evidence on record belies that the appellants were instigated to sell *marijuana*. Instigation means luring the accused into a crime that he, otherwise,