

## SECOND DIVISION

[ G.R. No. 144399, March 20, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DANILO RODRIGUEZ AND EDWIN RODRIGUEZ, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision,<sup>[1]</sup> dated January 25, 2000, of the Regional Trial Court, Branch 35, Iloilo City, finding accused-appellants Danilo D. Rodriguez and Edwin D. Rodriguez guilty of violation of Art. II, §4, in relation to Art. IV, §21(b), of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, and sentencing them to suffer the penalty of *reclusion perpetua* and to pay a fine of P3,000,000.00 each.

Charges against accused-appellants for violation of R.A. No. 6425 were filed on January 26, 1998. The information against them alleged —

That on or about the 22nd day of January, 1998, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, conspiring and confederating with one another, working together, and helping one another, did then and there willfully, unlawfully and criminally sell and/or distribute one (1) block dried marijuana fruiting tops weighing 932.3 grams, without having the necessary permit or authority to sell and/or distribute the same.

CONTRARY TO LAW.<sup>[2]</sup>

When arraigned on April 15, 1998, accused-appellants pleaded not guilty,<sup>[3]</sup> whereupon they were tried.

The prosecution presented three witnesses, namely, P/SINSP Angela Baldevieso, PNP Crime Laboratory Forensic Chemist, PO1 Richard Lambino, and PO1 Wendel Alfonso.<sup>[4]</sup> Their testimonies are to the following effect:

On January 13, 1998, the 6<sup>th</sup> Regional Narcotics Operatives at Camp Delgado in Iloilo City received information from a confidential agent that accused-appellants Danilo Rodriguez and Edwin Rodriguez were selling marijuana. Accordingly, the Chief of Police of Camp Delgado, P/INSP Alex Relado, assigned Assistant Investigator and Intelligence Operative PO1 Richard Lambino to the boarding house of the confidential agent on Gen. Hughes and Sagrado Sts. every afternoon. On January 21, 1998, at about 9 o'clock in the evening, PO1 Lambino was introduced by the narcotics agent to accused-appellants as a *bakasyonista* who was into drugs.

PO1 Lambino was afterwards taken to the house located along Gen. Hughes St., owned by a person referred to as "captain," where PO1 Lambino ordered 1 kilogram of marijuana for the price of P6,000.00. PO1 Lambino offered to give an initial payment of P1,500.00 in three P500 bills, all marked with the initials "AR" (for Alex Relado), which accused-appellant Danilo Rodriguez accepted. Accused-appellant Edwin was also present inside the house of the captain when the transaction took place. Both accused-appellants promised to return at 4 o'clock in the morning of the next day, January 22, 1998, to deliver the marijuana for which they would be paid the balance of the agreed price.<sup>[5]</sup>

A team was, therefore, organized by P/INSP Relado to conduct a buy-bust operation. The team was composed of PO1 Lambino, who would act as a poseur-buyer, and PO1 Wendel Alfonso, as close back-up, with Sgts. Glicerio Gafate and Honrado and PO2 Diosdado Adonis as part of the arresting team.<sup>[6]</sup>

At 2 o'clock in the morning of January 22, 1998, the members of the team deployed themselves in the vicinity of the boarding house of PO1 Lambino.<sup>[7]</sup> In a sketch<sup>[8]</sup> which he drew in open court, PO1 Lambino indicated that he and PO1 Alfonso stayed inside the boarding house, while PO2 Adonis posted himself near the Bayani Royal Hotel across the street on Gen. Hughes St., and the rest of the team stayed near the gate of the Sagrado Corazon de Jesus College, which was separated from the boarding house only by a footwalk.

Accused-appellants failed to show up at the agreed time. At about 5:30 o'clock in the morning, PO1 Alfonso went out of the boarding house to buy cigarettes from a store in front of the Sagrado Corazon de Jesus College. PO1 Lambino followed and went to a waiting shed near the boarding house.<sup>[9]</sup>

At about 6 o'clock in the morning, just as the members of the team were about to leave, accused-appellants arrived on a jeep. Edwin handed a black bag to Danilo who then delivered it to PO1 Lambino.<sup>[10]</sup> PO1 Lambino opened the bag and saw a brick of dried marijuana leaves wrapped in a newspaper. When Lambino identified himself as a NARCOM agent and told both accused-appellants that they were under arrest,<sup>[11]</sup> Edwin tried to run away, but he was intercepted and handcuffed by members of the team. Danilo resisted arrest. He kicked some members of the team and bit the hand of P/INSP Relado. As Danilo could not be subdued and placed in the police car, the police had to stop a passenger jeep and load him into it.

Accused-appellants were then taken to Camp Delgado.<sup>[12]</sup> Accused-appellants were booked and a Receipt of Property Seized,<sup>[13]</sup> signed by PO1 Alfonso, PO1 Lambino, and SPO2 Honrado, was issued, although accused-appellants refused to acknowledge it.<sup>[14]</sup>

The block of dried marijuana leaves<sup>[15]</sup> seized from accused-appellants was tested at the PNP Crime Laboratory of Camp Delgado and found by the Forensic Chemist, P/SINSP Angela Baldevieso, to be marijuana fruiting tops, weighing 932.3 grams.<sup>[16]</sup> Baldevieso testified that she took small samples from the four sides as well as the top of the specimen. The samples, weighing about 0.01 gram, were subjected to physical, chemical, and thin layer chromatography tests and were found to be

positive for marijuana, according to her.<sup>[17]</sup>

For the defense, accused-appellants Danilo and Edwin Rodriguez testified in their behalf. Danilo testified that in the morning of January 22, 1998, he and his younger brother Edwin visited their sick cousin Lito Seillon. While they were walking along Gen. Hughes St., a white car stopped by and two men, whom he identified as Gafate and Pastor, alighted. Gafate spoke to him saying, "Dan, you come with me. You committed a wrong against us." Without waiting for accused-appellants to reply, Gafate and Pastor handcuffed them, forced them inside their car, and took them to Camp Delgado. Danilo was then taken to a room, where Gafate took a brown bag from a cabinet and threw it on the table saying, "This is our evidence against you, if you have escaped from us before, this time you won't." Danilo claimed he was forced to admit ownership of the marijuana and to sign the receipt. When he refused, P/INSP Relado took a red plastic bag from his pocket and pulled it over Danilo's head, tightening and squeezing it around the neck, thus leaving Danilo gasping for breath. Danilo said he bit a portion of the plastic in order to rend it so that he could breathe, but P/INSP Relado covered the tear in the plastic with his hand, forcing Danilo to bite the palm of Relado, and not the latter's wrist, as claimed by the prosecution. After taking the plastic bag off Danilo's head, Gafate struck Danilo on the head with a piece of plastic furniture. The police officers then took his personal data.<sup>[18]</sup> Accused-appellant Danilo denied ownership of the black bag and the 932.3 grams of marijuana, the receipt of the three P500 bills, and the possession of one P500 bill allegedly recovered from him. He claimed that the charges were trumped up.<sup>[19]</sup>

Danilo was corroborated by the testimony of his younger brother and his co-accused, Edwin.<sup>[20]</sup>

On January 25, 2000, the trial court rendered a decision,<sup>[21]</sup> the dispositive portion of which reads:

WHEREFORE, finding the two (2) accused DANILO RODRIGUEZ and EDWIN RODRIGUEZ guilty beyond reasonable doubt of the offense of Violation of Sec. 4, Art. II, in relation to Sec. 21(b) Art. IV, RA 6425, the Court hereby imposes upon them the penalty of RECLUSION PERPETUA and a fine of Three Million Pesos (P3,000,000.00) each.

The 932.3 grams of one block (brick) of dried marijuana fruiting tops (Exh. "D") is ordered forfeited in favor of the government, which shall be turned over to the Dangerous Drugs Board for proper disposition.

SO ORDERED.<sup>[22]</sup>

Hence, this appeal. Accused-appellants contend in their lone assignment of error that —

THE TRIAL COURT ERRED IN RENDERING A CONDEMNATORY JUDGMENT WHICH LIES AT THE FACE OF REASON AND BASED UPON NOTORIOUSLY FALSE TESTIMONY.<sup>[23]</sup>

**First.** Accused-appellants contend that there was no consummation of the sale of marijuana because the balance of P4,500.00 of the purchase price was not paid.

This contention is untenable. Art. II, §4 of R.A. No. 6425 punishes the sale, administration, delivery, distribution and transportation of prohibited drugs. It is immaterial that no payment was made to accused-appellants. As long as the entrapping officer went through the operation as a buyer and the appellants as sellers accepted his offer and the marijuana was delivered to the former, the crime is consummated by the delivery of the drugs.<sup>[24]</sup> We have already held that if (1) the identity of the buyer and the seller, the object, and the consideration and (2) the delivery of the thing sold and the payment therefor are shown, the accused can be convicted. In this case, the evidence for the prosecution establishes these conditions beyond reasonable doubt. The poseur buyer, PO1 Richard Lambino, and his back-up, PO1 Wendel Alfonso, positively identified accused-appellants as those who sold to them one block of marijuana dried leaves during the buy-bust operation.<sup>[25]</sup> There is a presumption of regularity in the performance of official functions.<sup>[26]</sup>

Furthermore, the charge against the accused-appellants is not limited to the sale of prohibited drugs, but includes the distribution of the same. In the distribution of prohibited drugs, the payment of any consideration is immaterial. The mere act of distributing the prohibited drugs to others is in itself a punishable offense.

In addition, the *corpus delicti* of the crime charged, i.e., 932.3 grams of marijuana, was duly established before the trial court.<sup>[27]</sup> That accused-appellants were arrested *in flagrante delicto* is clear. Their arrest without a warrant is authorized under Rule 113 of the Revised Rules of Criminal Procedure which provides in pertinent part as follows:

SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; . . .

**Second.** Accused-appellants contend that the failure to recover the marked money allegedly used in the buy-bust operation and to present it in court create a doubt as to their culpability for the crime charged.

While the presentation of the marked money in evidence could indeed have reinforced the prosecution's claim that there had been a buy-bust operation, on the other hand, its absence is not proof that the sale did not take place. The non presentation of the marked money used in buying marijuana from the accused-appellants is of no consequence. R.A. No. 6425 punishes the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer has been accepted by the prohibited drug seller.<sup>[28]</sup> What is important is that the prohibited drug given or delivered by the accused was presented before the court and that the accused was identified as the offender by the prosecution eyewitnesses.<sup>[29]</sup>

In *People v. Villaviray*,<sup>[30]</sup> the non-presentation of marked money was considered because the testimonies of the prosecution witnesses were inconsistent. But in this case, the testimonies of the prosecution witnesses were consistent, especially on material points. PO1 Lambino and PO1 Alfonso identified accused-appellants in open court as the drug pushers and the 932.3 grams of marijuana (Exh. D) as the

drug sold.<sup>[31]</sup> Although accused-appellants claim there are inconsistencies in the testimony of P/INSP Relado on March 5, 1999, the record does not show that he ever testified in the trial court or that a hearing was ever conducted on March 5, 1999.

**Third.** Accused-appellants argue that the laboratory tests were done on only 0.01 gram and not on the entire amount of drugs allegedly purchased from them. They thus contend that the entire 932.3 grams of marijuana must be tested because under R.A. No. 6425, in relation to R.A. No. 7659, the penalty is based on the amount or quantity of drugs seized or taken.

We are not persuaded. This Court has ruled that a sample taken from one of the packages is logically presumed to be representative of the entire contents of the package unless proven otherwise by the accused.<sup>[32]</sup> Thus, if the prosecution, as in this case, proves that the sample is positive for marijuana, it can be presumed that the entire substance seized is marijuana. The burden of evidence shifts to accused-appellants to prove otherwise.<sup>[33]</sup> Accused-appellants in this case have not presented any evidence to overcome this presumption.

**Fourth.** Accused-appellants claim that they were framed up. They insist that they were on their way to visit a sick relative when they were apprehended by police officers and falsely charged.

The charge has no basis. Frame-up, like alibi, is generally considered with disfavor. It is a common and standard line of defense in cases arising from violations of the Dangerous Drugs Act.<sup>[34]</sup> It cannot prevail over the positive identification of the prosecution witnesses who have no reason to testify falsely against accused-appellants. In this case, the testimonies of PO1 Lambino and PO1 Alfonso were consistent, detailed, and unequivocal. They likewise enjoy the presumption of veracity considering that the witnesses are presumed to have performed their official duties regularly and in accordance with law. For this reason, this defense fails.

Accused-appellants also insinuate bad motives on the part of the police officers who conducted the buy-bust operation. According to them, the police officers were determined to place them behind bars at all cost after they were acquitted in 2 previous drug cases. But this is a mere allegation which must not be equated with proof. It is based merely on accused-appellants' suspicion and is unsubstantiated by any evidence.

The contention of accused-appellants that the marijuana was initially stored in the office of the police officers at Camp Delgado and subsequently planted, as proven by the 86-day-old issue of the *Philippine Daily Inquirer* newspaper (dated January 1, 1997), with which the marijuana was wrapped, must also be dismissed as bordering on the ridiculous. The material used in wrapping the marijuana bears no relation to the case. It is just as absurd as the claim that the bag in which the marijuana was placed was a luxury bag.

Indeed, the allegation that accused-appellants were framed and that one of them, Danilo, was maltreated by the police officers<sup>[35]</sup> is belied by the fact that their testimonies were inconsistent. Thus, contrary to Danilo's claim that he was