

## EN BANC

[ G.R. No. 125310, April 21, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR LAGMAY Y ALARCON, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

"In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. This determinant, with the constitution presumption of innocence which can be overthrown only by the strength of the prosecution's own evidence proving guilt beyond reasonable doubt, irresistibly dictate an exoneration in this case."<sup>[1]</sup>

"The constitutional presumption of innocence is not an empty platitude meant only to embellish the Bill of Rights. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People of the Philippines and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt. That mandate shall be enforced."<sup>[2]</sup>

The presumption of innocence is not a mere procedural tool of the law. It is not overcome by the presumption of regularity; indeed, it can be rebutted only by proof beyond reasonable doubt.

"x x x the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. The proof against him must survive the test of reason, the strongest suspicion must not be permitted to sway judgment."<sup>[3]</sup>

In order to convict an accused the circumstances of the case must exclude all and each and every hypothesis consistent with his innocence."<sup>[4]</sup>

In offenses involving the capital punishment, the presumption of innocence takes an even more paramount significance. "It is safely entrenched in our jurisprudence that unless the prosecution discharges its burden to prove the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence in his behalf."<sup>[5]</sup>

"The prosecution must rely on the strength of its own evidence and must not simply depend on the weakness of the defense. The slightest possibility of an innocent man being convicted for an offense he has never committed, let alone when no less than

a capital punishment is imposed, would be far more dreadful than letting a guilty person go unpunished for a crime he may have perpetrated."<sup>[6]</sup> The presumption of innocence provides the fulcrum from where the scales of justice can be balanced and allowed to take its course.

The case before us is an automatic review, of the decision of the Regional Trial Court, Davao City, Branch 17, in Criminal Case No. 34, 149-94, for violation of Section 8, Republic Act 6425, as amended by Batas Pambansa Blg. 179, finding accused Edgar Lagmay y Alarcon guilty as charged. The dispositive portion of the decision reads:

"WHEREFORE, finding the evidence of the prosecution more than sufficient, to prove the guilt of accused of the offense charged, pursuant to Sec. 20 of Republic Act 76 paragraph 5 thereof, accused EDGAR LAGMAY y ALARCON, is sentenced to suffer a maximum penalty of death by electrocution, in accordance with Sec. 24 of Republic Act 7659.

"Notwithstanding the imposition of the above-death penalty against accused, Edgar Lagmay y Alarcon, this court finding the above-penalty, harsh and clearly excessive, considering the personal circumstances of accused, as first offender, without prior derogatory record against him, pursuant to Art. 5, par. 3 of the Revised Penal Code, it is recommended to His Excellency President Fidel V. Ramos, President of the Republic of the Philippines, through the Secretary of Justice, Manila, to extend Executive Clemency to accused, on account of the strict enforcement of the provision of Republic Act 7659 can be considered harsh or clearly excessive penalty deserving exercise of Presidential Pardon and/or commutation of sentence, along with appropriate legislative remedial measures, as may be recommended with Congress of the Philippines, to correct the disparity in the Imposition of penalty as above-pointed out."

<sup>[7]</sup>

The antecedent facts of the case are as follows:

In an Information dated June 13, 1994, City Prosecutor of Davao City Jose Emmanuel M. Castillo charged the accused, Edgar Lagmay y Alarcon with violation of Section 8, Republic Act No. 6425, as amended, as follows:

"That on or about June 7, 1994, in the city of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, did then and there willfully, unlawfully and feloniously had in his possession 3.2 kilograms of dried marijuana leaves and one stick marijuana cigarette roch, a prohibited drug."<sup>[8]</sup>

On June 21, 1994, the court issued a warrant for the arrest of the accused.<sup>[9]</sup> On July 14, 1994, the court arraigned the accused and he entered a plea of not guilty.<sup>[10]</sup> The court issued an order<sup>[11]</sup> setting the case for continuous trial beginning with the presentation of the prosecution's evidence on August 4 and 5, 1994, at 8:30 in the morning, and for the accused on August 30 and 31, 1994, at 8:30 in the morning.

The lower court in its decision narrated a succinct account of the events that

transpired on that fateful day of June 7, 1994.

In the afternoon of June 7, 1994. accused-appellant, a Marine Engineering graduate, was at MATS College in Agdao, Davao City to get his SOLAS Certificate for his application as a seaman. He was at the school premises at about 2:30 in the afternoon and left at about 6:30 in the evening. He took a pedicab bound for the Agdao public market to check if his father was still at the market selling pork. After talking with his father, he left for home at Toril, Davao City. At around 7:30 in the evening, he boarded a jeep at the corner of Anda and San Pedro streets. Including him, the jeep he was riding in had five other passengers. They passed through Uyanguren or Ramon Magsaysay Avenue, Reyes, Bolton, San Pedro Streets and finally stopped in front of the Datu Complex at Bankerohan, Davao City.

Along the way, the jeep picked up passengers and some alighted at several stops. At Bankerohan, three or four more passengers boarded the jeep and they proceeded towards their destination at Toril. The accused fell asleep during this segment of the trip. When the jeep stopped at a police checkpoint in Ulas, a tap on the shoulder awakened him. Someone asked him if he owned the bag beside his seat. The accused answered that the bag was not his. SP03 Laput, one of the policemen in the checkpoint, kept asking him if the bag belonged to him. Again, he said no. The policeman then asked the accused to alight from the jeep and carry the bag. He alighted from the jeep but did not carry the bag. The policeman immediately frisked him at the waist and asked if he was a military man, to which he answered that he was not.

At that time, there were many passengers inside the jeep, both men and women, but the police officer did not bother to question them. Instead, he insisted that the accused carry the bag. Accused reiterated that the bag did not belong to him and refused to carry it. At this instance, the policeman cocked his armalite rifle and pointed it at the accused, and told him that he would shoot the accused, which caused the latter to scamper and hide.

From his hiding place, the accused overheard the policeman say that he would not be shot but arrested instead. Only then did he come out of his hiding place. Whereupon, he was immediately accosted by the policeman and ordered to lie face flat on the ground while they tied his hands. They again asked him if he owned the bag. Again, he denied owning the bag.

Accused was brought to the Ulas Police Sub-Station, and again questioned about the bag which was found to contain 3,051.3 grams of dried marijuana leaves.<sup>[12]</sup> He again denied ownership of the bag. A certain Captain Yu arrived at the sub-station and asked if the accused already admitted ownership of the bag. He was told that the accused refused to admit ownership of the bag. Capt. Yu then threatened the accused that he would be delivered to the NARCOM. When accused asked where he would be taken, he was hit with the butt of the rifle at the right side of his stomach and was told that he would be brought to the "smokey mountain" a known salvage area in Davao.

While on their way to "smokey mountain", they stopped at a dimly lit place somewhere in Ma-a, Davao City, a well known salvage area where Capt. Yu ordered the accused to run. He refused and was asked again whether he owned the bag. Again, he denied ownership of the bag.

At around 10:00 in the evening of June 7, 1994, Capt. Yu fired his gun in the air and declared that the next shot would be for the accused, after which Capt. Yu pointed his gun at the back of the accused's neck. Accused pleaded for his life and told the Captain that the bag was not his. Capt. Yu, however, did not heed his pleas and informed him that he would count up to ten. After which, if he still would not admit ownership of the bag, he would be killed.

When Capt. Yu was at the count of seven, by some stroke of luck, two cars passed by and their lights caused Capt. Yu to stop. The accused was brought back inside the jeep and they proceeded to the Catitipan station. Upon arrival, somebody pointed a gun at him and he was again asked if he owned the bag.

During the entire interrogation accused was never asked whether he needed a lawyer. In Catitipan, a certain Major Laza, promised to help him if he would admit ownership of the bag. According to accused, he was hit repeatedly by the policemen until he could no longer move and until the policemen got tired of hitting him. He was detained for four (4) days and was made to lie down on a table, with handcuffs on and then transferred to a place they called a stockade at Catitipan, Diversion Highway, Davao City.

Accused strongly denied the accusation against him. The trial court, however, after hearing the evidence presented by both the prosecution and the defense ruled in favor of the prosecution and sentenced the accused to death.

The accused through counsel filed a motion for new trial, to introduce newly discovered evidence.

At the hearing of the motion for new trial, the testimony of six (6) witnesses were presented, namely: the conductor of the jeep, Hesorenan<sup>[13]</sup> de la Cerna; passengers of the jeep, Victor Degamo, Teresita Pecson, sisters of the accused, Crispina Lagmay and Marichu Lagmay-Garcia; and the wife of the accused.

Victor Degamo, and Teresita Pecson, both passengers of the jeep, declared that the reason they came out in the open and testified for the accused was that they could not, in conscience, allow an innocent man to die, when they knew that it was not the accused who owned the bag. They testified that they were hesitant to talk at the checkpoint when asked by, the police because they were afraid of the true owner of the bag, who was still inside the jeep at that time.

The conductor of the jeep, Hesorenan de la Cerna, testified in the following manner:

Q. What was your work before becoming a fisherman?

A. I was a conductor.

Q. What is the work of a conductor?

A. The work of a conductor is to attend to the passengers to see to it that they are properly seated and to collect their fare.

Q. You mean to say that you are a conductor of a passenger vehicle?

A. Yes.

Q. What kind of passenger vehicle?

A. A PUJ.

Q. What kind of a PUJ, if you know?

A. Lawin

Q. Who is the owner of that PUJ Lawin where you were a conductor?

A. Fernando Calvo.

Q. Where is he staying?

A. At Toril in front of the Color Plaza.

Q. Who is the driver of that jeep where you are a conductor?

A. Efren Sustiger.

Q. Since when did you become the conductor of said Jeep?

A. January 1994.

Q. Where is the route of that Lawin jeep where you are a conductor?

A. Toril Agdao and vice versa.<sup>[14]</sup>

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Q. Will, you please tell the court if you remember on June 7, 1994 if you were a conductor in that jeep?

A. Yes.

Q. At about 7:00 in the evening of the said date June 7, 1994 do you remember where were you?

A. Yes.

Q. Where were you

A. I was at that time at the Assumption School.

Q. Where is this Assumption School located?

A. Cabaguio Avenue, Agdao Davao City.

Q. Why were you at Assumption School?