

## FIRST DIVISION

**[ G.R. No. 128277, November 16, 1998 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERDINAND GUENO Y MATA, ACCUSED-APPELLANT**

### DECISION

**VITUG, J.:**

Ferdinand Cueno y Mata pleaded "not guilty" to two separate indictments charging him with the violation of Section 4 and of Section 8 of Republic Act 6425, otherwise known as the Dangerous Drugs Act, as amended: in the first charge (Criminal Case No. 37-95), appellant was accused, along with Florida Senarosa Fajardo, of having transgressed Section 4 of the Act, and in the other (Criminal Case No. 38-95), he was indicted for violating Section 8 of the law. The accusatory portions of the informations read:

**In Criminal Case No. 37-95 -**

"That on or about January 30, 1995, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, conspiring, confederating together and mutually helping one another, did, then and there, vatfully, unlawfully, feloniously and knowingly sell to a poseur buyer a small brick of dried Marijuana leaves with flowering tops with a total net weight of 30.4315 grams, a prohibited drug.

"CONTRARY TO LAW."<sup>[1]</sup>

**In Criminal Case No. 38-95 -**

'That on or about January 30, 1995, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did, then and there, wilfully, unlawfully, feloniously and knowingly have in his possession and control one (1) brick and twenty one (21) plastic tea bag of dried Marijuana leaves with flowering tops with a total net weight of 861.5842'grams, 'a prohibited drug.

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

Accused Ferdinand Cueno and Florida Fajardo pleaded "not guilty" in Criminal Case No. 37-95; Cueno likewise entered a plea of "not guilty" in Criminal Case No. 38-95. Following the arraignment, a joint trial was conducted since the two offenses were spawned during the same occasion.

When the reception of the evidence had concluded, the trial court, in its decision of 10 January 1997, convicted both accused (Cueno and Fajardo) in Criminal Case No. 37-95 and found accused-appellant (Cueno) in Criminal Case No. 38-95 guilty as charged. The dispositive portions of the judgment in the two criminal cases read:

"WHEREFORE, this Court finding both accused GUILTY beyond reasonable doubt as charged in the two (2) criminal Informations, accordingly hereby sentences them as follows:

**"In Crim. Case No. 37-95**

"Accused FERDINAND CUENO and FLORIDA FAJARDO are hereby sentenced to an indeterminate prison term of four (4) months and twenty (20) days of arresto mayor maximum as minimum, to four (4) years and two (2) months of prision correccional medium as maximum, with the accessory penalties provided for by law, and to pay the costs.

**"In Crim. Case No. 38-95**

"Accused FERDINAND CUENO is hereby sentenced to a penalty of reclusion perpetua and is ordered to pay a fine of P500,000.00, with the accessory penalties provided for by law, and to pay the costs.

"SO ORDERED."<sup>[3]</sup>

The versions given by the prosecution and the defense, respectively, were narrated in good detail by the trial court, presided over by the Honorable Christopher O. Lock, in its appealed decision, viz-.

'The prosecution evidence showed that on January 25, 1995, an asset accompanied P01 AVELINO CAMANTIGUE to Inocencio St., San Roque, Cavite City and pointed to the house of the accused FERDINAND CUENO. Upon instructions of their commanding officer, Police Superintendent MELCHOR RAMOS of the 1st Mobile Force Company based in Camp Pantaleon Garcia, Imus, Cavite, PO1 CAMANTIGUE together with SPO1 AQUILINO SARMIENTO and P02 EDWIN MOJICA conducted surveillance operations on the alleged drug pushing activities of herein accused at around 9:30 in the morning of January 26, 1995. P01 CAMANTIGUE who posed as a newspaper vendor observed from a distance of 15 meters from the store of FERDIE CUENO that a person was handing money to said accused and FERDIE in turn gave something to the person who immediately inserted the same in his pocket. CAMANTIGUE allegedly overheard FERDIE saying: 'hindi ka lugi sa halagang P20.00 at iyan ay malakas.' At that time SARMIENTO and MOJICA passed by CAMANTIGUE who removed his cap as a signal that the sale was already consummated. After this, the group returned to their station, and reported the result of their surveillance to their commanding officer who instructed them to apply for a search warrant.

"On January 30, 1995 at about 9:30 in the morning, SPO1 AQUILINO SARMIENTO together with P02 EDWIN MOJICA and P01 AVELINO CAMANTIGUE proceeded to the Hall of Justice at Imus, Cavite and

applied for and were issued Search Warrant No. 023 by Judge DOLORES L. ESPAÑOL, of the Regional Trial Court Branch 90, Dasmariñas, Cavite. Said search warrant ordered the search of the premises of one PETER DOE alias FERDIE and the seizure of dried marijuana leaves allegedly in the possession of aforesaid person.

"After the search warrant was issued by Judge ESPAÑOL, CAMANTIGUE and his companions returned to their station and informed their Commanding Officer Police Superintendent MELCHOR RAMOS that a search warrant has already been issued, who hatched a plan that a buy-bust operation be conducted on the accused first before the implementation of the search warrant. It was agreed that P01 CAMANTIGUE will be accompanied by their informant who will introduce the former to FERDIE as a user who is interested in buying marijuana.

"At about 3:30 that same afternoon, a team of policemen led by P/Supt. RAMOS, and composed of SPO1 SARMIENTO, P02 MOJICA, P01 CAMANTIGUE, P03 FRANCISCO RAMOS together with their informant, a certain ADO, proceeded to Cavite City, more particularly, Inocencio St., San Roque, Cavite City, where accused resides. Upon arrival thereat, as planned, ADO introduced CAMANTIGUE to FERDIE as a user who wants to buy marijuana. FERDIE at that time was standing by the door of his store which is just an extension of the house where he was staying. After said introduction, FERDIE asked CAMANTIGUE how much worth of marijuana was he buying, to which CAMANTIGUE retorted that he wanted to buy marijuana worth P150.00. FERDIE got the P150.00 from CAMANTIGUE and then called his commonlaw wife, the herein accused FLORIDA FAJARDO alias FLORY, and instructed her to give CAMANTIGUE marijuana worth P150.00. FLORY went inside their house and when she returned, she handed CAMANTIGUE the marijuana (Exhibit 'D'). CAMANTIGUE then removed his cap as a signal to his companions that the sale has been consummated. SPO1 SARMIENTO, P02 MOJICA and his companions approached them and they identified themselves as policemen. They then arrested FERDIE, and recovered from his possession were the buy money in the amount of P150.00, consisting of a P100 bill with SN VQ927976 and a P50.00 bill with SN NRO87791. FLORY was asked to go out of the store, and the policemen announced to the couple that they had with them a search warrant for the search and seizure of marijuana in the premises of both accused. Before the raiders proceeded to search the house of the accused, they called for barangay officials in the area to witness the conduct of the search. Barangay Kagawads ERNESTO ROSAL and ALFREDO SALINAS, SK Chairman EDGAR ORDOÑEZ, Asst. Chief Barangay Tanod JOSE DESIDERIO arrived, and together with P/Supt. RAMOS, SPO1 SARMIENTO, P02 MOJICA and P01 CAMANTIGUE proceeded to search the residence of the accused. Barangay Chairman DOROTEO ICAYAN, JR. arrived when the search was in progress. Inside the bedroom of the accused, SPO1 SARMIENTO found a balikbayan box which contained dirty clothes, a brick of dried flowering tops of marijuana wrapped in a newspaper with a gross weight of 803 grams (Exhibit 'E') and twenty one (21) plastic tea bags containing dried flowering tops of marijuana with a gross weight of 48.5842 grams (Exhibits 'F-I' to 'F-21') together with rolling papers. After the search, the policemen prepared a

Receipt of Property seized (Exhibit '1') which was signed by both accused FERDINAND CUENO and FLORIDA FAJARDO, ANGELINA MATA, mother of FERDIE, the raiding police officers, and the barangay officials who were present when the search was made and the ensuing discovery of marijuana inside the bedroom of the accused. Both accused together with the seized articles were then brought by the policemen to their headquarters in Camp Pantaleon Garcia, Imus, Cavite. The following day, January 31, 1995, the seized articles were brought to the NBI for laboratory examination, which examination gave positive results for marijuana. On the same day, the corresponding criminal complaints were filed against accused FERDINAND CUENO and FLORIDA FAJARDO.

"The story of the defense is different.

"The defense evidence showed that at around 4:30 in the afternoon of January 30, 1995, while accused FLORIDA FAJARDO was tending their store located at Inocencio St., San Roque, Cavite City and taking care of her 1 1/2 year old daughter, JESSICA, about eight (8) armed policemen in civilian clothes forcibly entered their house. As she was so frightened by the sudden appearance of these persons, she called her live-in partner and co-accused FERDINAND CUENO, who at the time was at the back of their house, near the residence of their neighbor JERRY LIBONGCOGON watching children playing with spiders. When FERDIE, hearing the shouts of FLORY, rushed to the scene and introduced himself and asked why these persons were inside his house, he received a strong slap on his face. FLORY, looking pale and visibly frightened by the events she saw, held her child and just sat on their bed. FERDIE and FLORY were brought outside where FERDIE was handcuffed. After about 5 minutes, barangay officials came, namely, EDGIE ORDONEZ, JOJO ROSAL and ALFREDO SALINAS. He noticed the presence of Barangay Tanod JOSE DESIDERIO when Barangay Captain DOROTEO ICAYAN came. FERDIE was not able to talk to the barangay officials because they talked with the policemen inside the house. The policemen showed the barangay officials the search warrant which was not shown to the accused. Thereafter, the first floor of their house was searched and policemen found marijuana inside a box. The box and the marijuana inside does not belong to him and he does not know where it came from. FERDIE's sister, LORENA CUENO, who actually owns the store he and his wife FLORY are tending, and her live-in partner EFREN CONCEPCION are the ones occupying the first floor of their house. FERDIE and his wife occupies one of the three (3) rooms in the second floor of the house owned by FERDIE's mother. FERDIE's mother and stepfather, together with his younger sister occupies the two (2) other rooms. At the time the raid was conducted by the police on January 30, 1995, LORENA was working in Japan as an entertainer, and it was only EFREN who was occupying the first floor of the house, although both accused still has access to the first floor because one has to pass the ground floor before he can enter the store. EFREN who is jobless and a known drug user has already been salvaged (summarily executed by law enforcement agents) sometime last year."<sup>[4]</sup>

Only Ferdinand Cueno appealed to this Court from the judgment of the court *a quo*. While, normally, only that which meted him the sentence of *reclusion perpetua* could

be appealed directly to the Supreme Court, his other conviction, however, in the other case over which the trial court imposed a lower penalty, could likewise here be considered consistently with the ruling in *People vs. Saley*,<sup>[5]</sup> where this Court had observed:

"x x x This Court has appellate jurisdiction over ordinary appeals in criminal cases directly from the Regional Trial Courts when the penalty imposed is reclusion perpetua or higher. The Rules of Court, allows, however, the appeal of criminal cases involving penalties lower than reclusion perpetua or life imprisonment under the circumstances stated in Section 3, Rule 122, of the Revised Rules of Criminal Procedure. Thus -

""(c) The appeal to the Supreme Court in cases where the penalty imposed is life imprisonment, or where a lesser penalty is imposed but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death or life imprisonment is imposed shall be by filing a notice of appeal in accordance with paragraph (a) of this Section.""

In his brief filed in compliance with the resolution of 27 August 1997 of the Court, appellant, through counsel, argues that -

"1. The trial court (has) erred in giving credence to the testimonies of the prosecution witnesses; (and)

"2. The trial court (has) erred in finding accused-appellant Ferdinand Cueno guilty beyond reasonable doubt in Criminal Case No. 37-95 for selling marijuana leaves and Criminal Case No. 38-95 for possessing marijuana leaves."<sup>[6]</sup>

Regrettably, the appeal must fail.

Accused-appellant assails the credibility of the police officers who have given testimony in the two criminal cases. Unless compelling reasons are shown otherwise, this Court, not being a trier of facts itself, rely in good part on the assessment and evaluation by the trial court of the evidence, particularly the attestations of witnesses, presented to it. The Court will not generally interfere with the findings of the trial court in passing upon the credibility of the witnesses; it is the latter court, not the appellate tribunal, which has the opportunity to see and hear first hand the bringing up to it during trial of testimonial evidence. Here, once again, the Court sees no reason to doubt and disturb the findings thereon of the trial court. The inconsistencies pointed out by accused-appellant, at best to his cause, pertain only to collateral matters and really not that relevant to the case against him.

The totality of the evidence would indicate that the sale of prohibited drugs did take place. The two basic elements for this charge to prosper, i.e., (a) the identity of the buyer and the seller, the object and the consideration, and (b) the delivery of the thing sold and the payment therefor,<sup>[7]</sup> as the Solicitor General so pointed out, had been successfully established by the prosecution witnesses, particularly the police officers, in their testimony during trial.