

SECOND DIVISION

[G.R. No. 95352, January 28, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO
PAGAURA Y TICLING, ACCUSED-APPELLANT.
D E C I S I O N**

TORRES, JR, J.:

Accused-appellant Pedro Pagaura assails the decision of the Regional Trial Court, Branch XV, Ozamiz City, dated July 19, 1990, convicting him of violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Anti Dangerous Drugs Act of 1972, the dispositive portion of which reads:

"WHEREFORE, finding the accused Pedro Pagaura y Ticing guilty beyond reasonable doubt of the violation of the provisions of Section 4, Article II of RA 6425, otherwise known as the Anti-Dangerous Drugs Act of 1972, as amended, he is hereby sentenced to the penalty of imprisonment of reclusion perpetua, and to pay a fine of Twenty Thousand Pesos (P20,000.00), to suffer the other accessory penalties of the law and to pay the costs.

It appearing that the accused Pedro Pagaura has been under detention since his arrest on September 17, 1989, he is hereby credited four-fifths (4/5) of his detention as he did not agree in writing to abide by the rules for convicted prisoners in accordance with RA 6127. The remaining 12.0730 grams of marijuana leaves confiscated from the possession of the accused is forfeited in favor of the government and should be burned by the Clerk of Court in the presence of the public.

SO ORDERED." [1]

On April 3, 1990, an information for violation of Section 4, Article II of RA 6425 was filed against herein accused-appellant Pedro Pagaura' and which reads as follows:

"That on the 17th day of September, 1989, at about 7:00 o'clock in the morning, more or less, at Wharf Area, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, feloniously and unlawfully have in his possession and control one (1) kilo dried marijuana leaves.

Contrary to Section 4, Article 11 of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended." [2]

The accused-appellant pleaded not guilty during the arraignment. Trial on the merits ensued thereafter.

Prosecution witnesses P/Sgt. Rolando Atacador P/Lt. Gualberto Bacarro Jr., P/Sgt. George Amerkhan testified that on September 17, 1989, they were on duty at the wharf area of Ozamiz City and they were assisting in the joint PC-INP Philippine Ports Authority and Philippine Coast Guard team conducting baggage inspection on passengers disembarking from the boat coming from Cebu City. These policemen were in civilian wear and while Sgt. Atacador and Sgt. Amerkhan were standing at the waiting shed of the PPA, which was about 50 meters away from the boat, accused-appellant Pedro Pagaura approached them and requested them to help him secure a ticket to Tubod, Lanao del Norte. The two directed Pagaura to the counter of the Tamula Shipping Lines, Inc., but the latter insisted on their help alleging that he was afraid of the inspection because his black bag contained a kilo of marijuana. To convince the two policemen, accused-appellant opened his bag and showed them the marijuana leaves wrapped in paper. Sgt. Amerkhan then called Lt. Bacarro, Jr. and informed him about the matter. Then they identified themselves to the accused-appellant and placed him under arrest. They later brought him to the office the Philippine Coast Guard for further investigation. From the Coast Guard office, accused-appellant was brought to the Police station where he was turned over to the Investigation Division. The marijuana leaves were confiscated and accused-appellant was also made to sign the confiscation receipt in the presence of one Atty. Peterson Durias, Jr.

NBI Forensic Chemist Bernabe Arenga conducted microscopic, chemical, and chromatographic tests on the confiscated leaves which later revealed that they were actually marijuana leaves. Arenga prepared Report No. DDM-89-76 (NEMRO) dated September 27, 1989 and sent a copy thereof to the Station Commander of Ozamiz City upon the request of Lt. Bacarro, Jr.

The marijuana leaves were sent to the City Prosecutor's Office for safekeeping. On March 12, 1990, at about 4:30 o'clock in the afternoon, the Hall of Justice, wherein the Prosecutor's office was located, was completely destroyed by fire. None of the records, books, and supplies were saved from the conflagration. Even the marijuana leaves, which were kept inside a vault, were also burned.

The defense had only one witness, accused-appellant Pedro Pagaura who was 20 years old, single, jobless, and a resident of Tubod, Lanao del Norte. Pagaura was in Ozamiz City to visit his cousin Sosiso Maceda who was studying in Misamis University. He was usually asked by his aunt to bring provisions and money for his cousin. Once, when he was in Ozamis City in the first week of June, 1989, he was searched by Sgt. Amerkhan and Sgt. Atacador. The two policemen again approached him in the first week of August, this time not to search him but to ask him information about people selling marijuana. Pagaura, himself, was one of the suspected pushers but the policemen wanted him to be their "asset" (informer). When he failed to provide them the needed information, the policemen became mad at him and told him that he was hard-headed. Lt. Bacarro, Jr. warned him to better watch out. Thus, in the morning of September 17, 1989, while he was in the wooden wharf waiting for the launch for Tubod, Sgt. Atacador and Sgt. Amerkhan apprehended him and searched his bag. Having found nothing the two asked him where the marijuana was. He had nothing to show but still he was nevertheless arrested and brought to the Coast Guard Office. Later, he was brought to the police station for further interrogation. From the police station, they proceeded to the house of one Fiscal Uy where he was made to sign a waiver. He was also made to