

## THIRD DIVISION

[ G.R. No. 98060, January 27, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SATURNINA SALAZAR Y PALANAS, ACCUSED-APPELLANT.  
D E C I S I O N**

**PANGANIBAN, J.:**

As her defense in this appeal, appellant alleges violation of her constitutional rights against warrantless search and seizure, and to counsel during custodial investigations. However, the search, being merely an incident of a legitimate buy-bust operation against illegal drugs, needed no warrant. And while her right to counsel during the custodial investigation was indeed violated, there were other evidence sufficient to warrant her conviction beyond reasonable doubt.

This appeal seeks the reversal of the Decision<sup>[1]</sup> in Criminal Case No. 925 of the Regional Trial Court of Oroquieta City, Branch 13, finding appellant Saturnina Salazar y Palanas guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425 (Dangerous Drugs Act of 1972), as amended by Presidential Decree No. 1675, and imposing upon her the penalty of life imprisonment and payment of P20,000.00 as fine, with costs.

**The Facts**

According to the Prosecution

Appellant was tried under an Information <sup>[2]</sup> the accusatory portion of which reads:  
<sup>[3]</sup>

"That on or about the 23rd day of August 1988, at 1:35 o'clock in the afternoon, more or less, in Barangay Poblacion II, Oroquieta City, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there and without authority of law, wilfully, unlawfully and feloniously sell, deliver and give away five (5) marijuana sticks to a NARCOM Agent posing as a buyer in consideration of the amount of Five Peso (P5.00) marked bill with Serial No. FJ526501; and, as a result of the said Buy-Bust operation, confiscated from the control and possession of the accused were six (6) marijuana sticks and five (5) grams, more or less, of dried marijuana leaves in addition to the five (5) marijuana sticks aforestated.'

Contrary to law."

On arraignment, appellant, assisted by counsel pleaded not guilty to the crime charged. <sup>[4]</sup> The prosecution presented Sgt. Jim Cubillan, Cpl. Emilio de Guzman,

and Forensic Chemist Bernabe Arenga and various evidence proving the following facts:

After being informed of the activities of drug pushers in Oroquieta City, Sgt. Cubillan and Cpl. de Guzman of the Narcotics Command (NARCOM) of the Philippine Constabulary (PC), left Ozamis City on August 23, 1988, for the former city. Upon their arrival at noon, they were met by the police informer who accompanied them to the place where a pusher operated. Near the City Hall, the informer pointed to them the residence-cum-store of appellant and thereafter left the two constabulary operatives.

Right then and there, Sgt. Cubillan took a five-peso bill with Serial No. FJ526501 from his billfold, marked it with his initials and handed it to Cpl. de Guzman. The latter then went to the store and told the woman seated on the windowsill that he wanted "to score" [5] ("mag-score nga ako"). [6] The woman nodded. After indicating that he wanted five (5) sticks of marijuana, Cpl. de Guzman asked her if what she was about to give him was "genuine" and gave her the five-peso bill. After the woman gave him five sticks of marijuana, Cpl. de Guzman unwrapped one stick. He smelled its contents and at the same time noticed the seeds therein. He then placed the contraband in his pocket, showed his identification card to the woman and told her that he was a NARCOM agent. [7]

At that moment, Sgt. Cubillan approached the two. He had positioned himself at the back of the store, around four or five meters away from Cpl. de Guzman and the woman. [8] He and Cpl. de Guzman arrested the woman, whom they later learned to be Saturnina "Nena" Salazar. They recovered from appellant the P5.00-bill. Upon being informed by Cpl. de Guzman that appellant had taken the five marijuana sticks from a plastic container on the table inside the store, Sgt. Cubillan took the container which had six (6) more marijuana sticks and around five (5) grams of dried marijuana leaves. [9]

The NARCOM agents took appellant to the local PC headquarters. On board a motorcar, Sgt. Cubillan asked her if she knew of other pushers in the vicinity. She pointed to the place of Josephine Bayotas. When they passed by Bayotas' residence, the two PC operatives also arrested her. [10]

At the PC headquarters in Camp Naranjo, Sgt. Cubillan interrogated appellant while Cpl. de Guzman took her bio-data. [11] Her fingerprints were also taken. [12] Thereafter, Cpl. de Guzman made her sign her bio-data and the paper containing her fingerprints. It was Sgt. Cubillan who instructed her to sign the piece of bond paper which was used to wrap the marijuana sticks before they were submitted to the laboratory for examination. [13]

For their part, Sgt. Cubillan and Cpl. de Guzman executed a joint affidavit to support the complaint that was to be filed against appellant. [14]

The confiscated and dried leaves were turned over to Sgt. Dominador Berjuega who sent the specimen to the National Bureau of Investigation (NBI) in Cagayan de Oro City. NBI Forensic Chemist Bernabe Arenga, who conducted the examination, executed a Certification, dated August 29, 1988, (Exh. D) [15] stating that the laboratory examinations conducted on the eleven (11) confiscated cigarette sticks and the "crushed dried stalks and flowering tops suspected to be marijuana" yielded "positive results for marijuana." [16] He also submitted Dangerous Drugs Report No. DDM-88-107 (Exh. E) finding: [17]

"Gross weight of specimens . . . . .15.3280 grams

Microscopic, chemical and chromatographic examinations conducted on the above-mentioned specimens gave POSITIVE RESULTS for MARIJUANA."

### **According to the Defense**

The defense presented Jeanife Mission, appellant's 12-year-old daughter, to testify on the manner by which the arrest was conducted by the NARCOM agents. According to Jeanife, at around 1:35 p.m. on August 23, 1988, she was at home with her mother. Jeanife was watching their sari-sari store in front of their house as her mother took a nap. Two persons arrived and went inside their house. One of them ransacked their things. When her mother woke up, she was held by one of the two persons and taken to the sala. Jeanife failed to hear their conversation, but she saw the two persons take her mother away. It was at the jail when she next saw her mother. [18]

In her own defense, Nena Salazar testified that at around 1:30 p.m. of August 23, 1988, she was sleeping in the only bedroom of their house which was separated from the sala by a bamboo divider. When she heard someone "doing something" in the sala, she stood up to see what the matter was, but she was met by a big fellow who, by the identification card he showed her, was named Jimmy Cubillan. She also identified the other person as de Guzman by his ID card.

Cubillan held her left hand. She tried to untangle herself from Cubillan's hold and asked him, "why do you hold my hand, sir?" Cubillan said, "This is (a) raid, we are looking for something." He did not, however, show any search warrant, but he asked her where she had placed the marijuana that she was allegedly selling. She denied selling the contraband as she was still on probation after she had been convicted of selling marijuana in 1986. [19]

Because Cubillan could not find marijuana in her house, he pulled out his pistol and told her threateningly that should she refuse to tell him where the marijuana was, he would "salvage" her. The two persons brought her to the PC headquarters where she was investigated by Cubillan. She was not informed of her right to counsel nor her right to remain silent. However, she kept silent, not answering any of Cubillan's questions. Later, they held her right hand and forced her to sign something. They also asked her to affix her thumbmark to a piece of paper, telling her that she could refuse to do so only if she would divulge to them the names of drug pushers in the

area. She just signed and affixed her thumbmark to a piece of paper the contents of which she was not even allowed to read. By then, it was almost midnight. The following day, she was brought to the city jail. Bayotas was also arrested, but she was already in the PC headquarters when she (appellant) was brought there. [20]

As stated earlier, Saturnina "Nena" Salazar was convicted of the crime charged. Thus, the case was disposed in this wise: [21]

"WHEREFORE, finding the accused Saturnina Salazar guilty beyond reasonable doubt of selling a prohibited drug without being authorized by law, she is hereby sentenced to life imprisonment and to pay a fine of P20,000.00.

Costs against accused.

SO ORDERED."

Through her counsel, she interposed the instant appeal. [22]

After the parties had filed their respective briefs, appellant, through the Public Attorney's Office, filed an urgent manifestation and motion stating that since she was found in possession of five (5) grams of dried marijuana leaves and eleven (11) sticks of marijuana which, at .02 gram per stick, would all sum up to less than 6 grams only and therefore would involve a penalty of only six (6) years, her appeal should be referred to the Court of Appeals for review. As legal basis therefor, she cited the Decision in *People vs. Simon* [23] and the August 15, 1994 Resolution in G.R. No. 113360, *People vs. Margarita Joseco y Magbanua*, where the total weight of the subject illegal drugs was 400 grams. [24] However, in the Resolution of March 27, 1995, the Court merely noted the said urgent manifestation and motion. [25] Hence, notwithstanding the insignificant amount of marijuana involved, the Court itself shall consider this case. [26] After all, the penalty actually imposed by the trial court was life imprisonment.

### **Ruling of the Trial Court**

The trial court gave full faith and credence to the testimonies of the prosecution witnesses. On the other hand, it found that the defense was unable to sufficiently rebut the presumption of regularity in the government witnesses' performance of their duty, finding it hard to believe that the NARCOM agents brought her to their headquarters to force her into divulging the identity of other drugs pushers in the area and that the case against her was only a "trumped-up charge". Appellant's defense consisting of denials did not overcome the positive testimony of the prosecution witnesses.

### **Assignment of Errors**

Appellant alleges in this appeal that the trial court gravely erred in (a) convicting her of the crime charged despite the unreasonable and unlawful search and seizure conducted by the NARCOM agents; (b) disregarding her constitutional right to presumption of innocence, and (c) finding her guilty beyond reasonable doubt of the

offense charged.

### **The Court's Ruling**

Appellant's Guilt Sufficiently Proven

Section 4, Article II of R.A. 6425 provides:

"SEC. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.* — The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

Indispensable in every prosecution for illegal sale of marijuana, a prohibited drug, is the submission of proof that the sale of the illicit drug took place between the poseur-buyer and the seller thereof, coupled with the presentation of the corpus delicti as evidence in court. [27] The element of sale must be unequivocally established in order to sustain a conviction.

This is precisely the import of the testimony of Cpl. de Guzman when he said: [28]

Q And what was your purpose in coming to Oroquieta City?

A We came here because we were informed by our informant that there were drung (sic) pushers here.

xxx      xxx xxx

Q And after you met your informant in Oroquieta City what happened next?

A He accompanied us to the store of the pusher.

xxx      xxx xxx

Q And what happened when you reached the place where the pusher was?

A When he pointed to us the alleged drug pusher we talked with Sgt. Cubillan who got a marked money and I posed as a buyer.

Q Did you approach the store pointed to you by your informant?

A Yes.

Q And what happened at the store (sic) of the alleged pusher?

A I went to the store and talked to the owner that I wanted to buy marijuana.

Q How exactly did you tell the owner of the store?

A I said I wanted to score.

COURT: