

## FIRST DIVISION

[ G.R. No. 141532, April 14, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GATUDAN BALAG-  
EY AND EDWIN ALIONG Y SUNGOT, APPELLANTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Those who engage in the illicit trade of dangerous drugs and who prey on misguided members of society must be caught and put behind bars. To do this, however, the prosecution must prove their guilt beyond reasonable doubt. Without such proof, acquittal is the only recourse.

#### The Case

Gatudan Balag-ey and Edwin Aliong appeal the October 20, 1999 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Baguio City (Branch 6) in Criminal Case No. 16100-R, in which they were found guilty of illegal possession and attempted sale of prohibited drugs. The dispositive portion of the assailed Decision reads:

"Wherefore, the Court finds accused Gatudan Balag-ey and Edwin Aliong guilty beyond reasonable doubt of the offense of illegal possession of and attempt to sell marijuana with a total weight of 18,352.82 grams in violation of Section 21, Article IV in relation to Section 4, Article II of Republic Act 6425, as amended by Republic Act 7659 as charged in the Information which is included in the offense of sale or delivery of marijuana proved and hereby sentences each of them to the penalty of Reclusion Perpetua and to pay the fine of P500,000.00 each, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"The accused Gatudan Balag-ey and Edwin Aliong, being both detention prisoners, are entitled to be credited 4/5 of their preventive imprisonment in the service of their sentence in accordance with Article 29 of the Revised Penal Code.

"The 18,352.82 grams of bricks of marijuana contained in the cigarette box with the marking Philip Morris are forfeited in favor of the State to be destroyed immediately in accordance with law."<sup>[2]</sup> (Citations omitted)

Appellants were charged in an Amended Information<sup>[3]</sup> dated December 9, 1998, as follows:

"That on or about the 28th day of September, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding x x x each other, without any authority of law, did then and there

willfully, unlawfully and feloniously have in their possession and attempt to sell twenty (20) bricks of dried marijuana leaves/fruited tops, a prohibited drug, weighing about 18,352.82 grams (actual weight) more or less, to SPO1 DANILO P. NATIVIDAD, a member of the Philippine National Police, 14th Narcotics Regional Office, who acted as poseur buyer, for P1,000.00 per kilo, in violation of the aforementioned provision of law.”<sup>[4]</sup>

During their respective arraignments on December 21, 1998<sup>[5]</sup> and January 21, 1999,<sup>[6]</sup> appellants, with the assistance of their counsels *de parte*,<sup>[7]</sup> pleaded not guilty to the charge. After trial in due course, the court *a quo* rendered the assailed Decision. It also denied appellants’ Motion for Reconsideration.<sup>[8]</sup>

### **The Facts**

#### **Version of the Prosecution**

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“About 10:30 in the morning of September 28, 1998, the 14th Narcotics Regional Office (NARCOM) with office at DPS Compound, Baguio City, received a confidential information from Roger Imasa that a certain Gatudan of La Trinidad, Benguet, was engaged in the sale of marijuana. He was allegedly looking for buyers. Police Senior Inspector Rodolfo Castel formed a team for the possible arrest of Gatudan. SPO1 Danilo Natividad was designated as poseur buyer with SPO1 Pedro Rabago and PO2 Emerson Lingbawan as back-up. SPO1 Natividad was given the boodle money.

“Later in the morning of the same day, SPO1 Natividad and Imasa were able to locate Gatudan at the Universal Martial Arts Gym along Zanduenta Street, Baguio City. Imasa introduced SPO1 Natividad to Gatudan as a friend and a drug user. After a brief conversation, Gatudan agreed to sell to SPO1 Natividad all of his available marijuana, about 20 kilos in all, at P1,000.00 per kilo. They agreed to meet at five in the afternoon in front of Jollibee at the Session Road. The buy-bust team was alerted and briefed.

“About 4:30 in the afternoon of the same day, Imasa, SPO1 Natividad, SPO1 Rabago and PO2 Lingbawan proceeded to Jollibee Session Road on board a taxi. SPO1 Rabago and PO2 Lingbawan positioned themselves in the vicinity while SPO1 Natividad proceeded to wait in front of Jollibee.

“Not long after, Gatudan alighted from a Tamaraw FX Taxi. His companion, co-accused Aliong, remained inside the taxi with the cigarette box marked Philip Morris at the back compartment of the taxi. After seeing Gatudan, SPO1 Natividad approached him and inquired about the deal. Gatudan told him that the stuff was ready and opened the [back] compartment of the taxi. He noticed the plastic straw and opened the cigarette box containing the marijuana bricks. After confirming the contents, SPO1 Natividad gave the pre-arranged signal by removing his bull cap.

"SPO1 Rabago and PO2 Lingbawan rushed to the scene. After identifying themselves as police officers, they arrested Balag-ey and Aliong. They (Balag-ey and Aliong) were informed of their constitutional rights. The box was confiscated and SPO1 Natividad put his initials on it for identification. They were brought to the NARCOM office in the same Tamaraw FX taxi driven by Vicente Garbo.

"At the NARCOM office, they issued a receipt of the property seized, prepared the booking sheet and arrest report of Gatudan. SPO1 Natividad executed his Affidavit regarding the buy-bust and arrest of Gatudan and Aliong as well as the Joint Affidavit of the back-up team.

"Preliminary findings of Alma Margarita Villaseñor, forensic chemist of the PNP Crime Laboratory in Camp Bado Dangwa, La Trinidad, Benguet, found the bricks to be positive for marijuana. A more detailed laboratory examination embodied in Chemistry Report No. D-011-98 confirmed the findings about the 20 bricks of marijuana with a total weight of 18,352.82 grams."<sup>[9]</sup> (Citations omitted)

### **Version of the Defense**

Vehemently denying that he was arrested during the alleged buy-bust operation, Appellant Balag-ey states his version of the facts in this manner:

"x x x [Balag-ey] was surprised when policemen in civilian [clothes] suddenly arrested him at around 5:00 p.m. of September 28, 1998, at the Universal Martial Arts Gym. The policemen immediately handcuffed him, and brought him to the NARCOM office. Upon [his] arrival at the NARCOM office, he saw Roger Imasa and accused-appellant Edwin Aliong in handcuffs.

"The NARCOM agents interrogated him and insisted that he divulge the name of the supplier of marijuana from Sagada. Accused Balag-ey retorted that he had no knowledge of the matters being asked of him and that he was merely a student at the Universal Martial Arts Gym. However, the NARCOM agents persisted and continued to inquire for the identity of the alleged supplier of the marijuana. He was even threatened that he will rot in jail, if he failed to disclose the identity of the marijuana supplier. During his custody, accused Balag-ey was never informed of his constitutional rights and he was not provided with any counsel."<sup>[10]</sup>

For his part, Appellant Aliong narrates the facts in this wise:

"1. [Aliong] is a martial arts instructor teaching kick boxing, combat aikido, boxing, among others at his gym at No. 49-B, Zanduetta Street, Baguio City. His gym is known as the Universal Martial Arts Organization;

"2. He knows one Roger Imasa, a known asset of the x x x NARCOM, his *kumpadre* and one of the Martial Arts instructors at the Universal Martial Arts Organization;

"3. Likewise, he knows his co-accused, Gatudan Balag-ey. Gatudan

Balag-ey is his friend way back during the 1980's;

"4. Sometime in 1997 and again in 1998, Gatudan Balag-ey visited him at his gym. Considering that they are friends, he allowed Gatudan to practice in his gym;

"5. One time, x x x Gatudan Balag-ey asked him if he would like to have money. He asked how and Gatudan said that he knew of somebody who was looking for a buyer of marijuana.

"6. He then told Gatudan that he hates that kind of job. He even advised Gatudan to avoid that kind of job because that is difficult;

"7. He mentioned his conversation to his friend, Roger Imasa, the NARCOM asset. Roger then told him that if he likes, they would cause the arrest of Gatudan;

"8. Roger Imasa then told him to introduce him to Gatudan. Roger told him that he introduced him as someone who knows a buyer. Thereafter, he introduced Roger Imasa to Gatudan Balag-ey and when the two were introduced, they talked to each other;

"9. In the afternoon of September 28, 1998, Roger Imasa, the NARCOM [a]sset, convinced him to tell Gatudan to go somewhere. Gatudan refused. He and Roger Imasa then went to the Hangar Market. Roger then went out and when he came back, he was carrying one [carton box]. He never saw the contents of the [carton];

"10. Roger then loaded the [carton] in an [FX] Taxi. [Thereafter,] Roger told the taxi driver to bring them to the DPS Compound. However, they dropped by at the Jollibee Session Road. Roger then went out of the taxi and then told him to wait. Thus, he just sat down inside the F[X] Taxi. After 5 minutes, a man who introduced himself as a police officer went inside and sat down. He was told to sit at the front seat. About 4 men who introduced themselves as police officers went near the taxi;

"11. After the men who introduced themselves as police officers came inside the taxi, Roger Imasa was nowhere to be found. Then they proceeded to the NARCOM Office at DPS Compound, where someone -- later to be identified as Police Officer Lingbawan -- asked his companions[:] 'Kumusta?' (How is it?), to which one of his companions answered. 'Palpak' (It was a failure). The one who answered 'it was a failure' was the alleged poseur buyer, Police Officer Natividad;

"12. He was thereafter told to 'just relax.' Police officer Lingbawan then convinced him to testify that Gatudan Balag-ey was with him inside the taxi. Thereafter, Officer Lingbawan convinced him that if he would cooperate, he will become an asset and that if he refuses to cooperate, he will be implicated just the same. Thus, he agreed to become an asset and [he said] that 'Gatudan Balag-ey was with him inside the taxi.' For this reason, he was made to sign [an] Affidavit. Incidentally, it was the NARCOM officers who prepared the said affidavit and they merely told

him to sign the same;

"13. For the record, he never saw the contents of the box and it was only at the NARCOM Office that he was informed of its contents;

"14. He was then made to stay at the NARCOM Office. The next day, September 29, 1998, he was released. And he was released because he was totally innocent of the transaction between Gatudan Balag-ey, the 'CI' Roger Imasa and the alleged poseur buyer, Police Officer Danilo Natividad."<sup>[11]</sup> (Citations omitted)

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

Disregarding the defenses proffered by appellants, the trial court ruled that they had been caught, in *flagrante delicto*, selling or delivering 20 bricks of marijuana weighing 18,352.82 grams to the poseur-buyer -- SPO1 Natividad.

In the case of Balag-ey, the court *a quo* found it difficult to believe that police operatives would plant evidence against him. It also discredited his claim that he had been arrested at the Universal Martial Arts Gym along Zandueta Street, rather than at a Jollibee fast-food restaurant chain along Session Road ("Jollibee-Session Road").

With regard to Aliong, the RTC held that he, together with Balag-ey, had loaded a cigarette box containing marijuana in a taxi, brought it to Jollibee-Session Road, and delivered it to the poseur-buyer. Thus, the trial court brushed aside the claim of Aliong that he had no knowledge of Balag-ey's marijuana transaction.

Hence, this appeal.<sup>[12]</sup>

### **The Issues**

Appellant Balag-ey raises the following supposed errors for our consideration:

"I

The trial court erred in giving full weight and credence to the testimonies of the arresting officers despite glaring inconsistencies and improbabilities.

"II

The trial court erred in finding that the guilt of Accused-appellant Gatudan Balag-ey for the crime charged has been proven beyond reasonable doubt."<sup>[13]</sup>

Appellant Aliong, on the other hand, alleges the following errors:

"I

Whether or not the honorable trial court was correct in convicting the accused despite the conflicting testimonies of the prosecution witnesses. The police officers testified that accused and Gatudan Balag-ey rode