

FIRST DIVISION

[G.R. No. 137612, September 25, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO ANTINERO BERIARMENTE, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

This is an appeal from the Decision of the Regional Trial Court of Barili, Cebu, Branch 60, in Criminal Case No. CEB-BRL-190, the dispositive portion of which reads:

JUDGMENT is therefore rendered on the basis of the weight of the dried marijuana which is 1,500 grams, and pursuant to Republic Act 6425, Sec. 4, Article II, accused, Francisco A. Beriarmente, is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) which is the minimum. The Provincial Prosecutor is directed to turn over the marijuana leaves, subject of the case, to the Court within ten (10) days from receipt of this Decision.

SO ORDERED.^[1]

The prosecution's evidence showed that in the early morning of July 20, 1997, SPO2 Orlando Caballero, who was assigned at the Badian Police Station, was informed by a police informant that a certain person, later identified as the accused-appellant Francisco Beriarmente, was looking for buyers of a sack of marijuana plants.

At about the same time, a certain Randy Sinarlo was visiting with relatives in Badian, staying in the house of his uncle, SPO2 Marcial Sinarlo, who also happened to be detailed at the Badian Police Station. He overheard the informant's story about a person selling a sack of marijuana. He was convinced by his policeman uncle to pose as a buyer so they could arrest the prospective seller, who had been under surveillance for about a month.

Randy Sinarlo acceded and followed the instructions given him. First, he went with the informant to a restaurant owned by a certain Ferdinand Sabanal at the public market. After several drinks, he was introduced to accused Francisco Beriarmente. Together they rode on a tricycle, taking Sawang Street to the provincial road, stopping and alighting at the house of one Boy Bebelone. They were followed by SPO2 Caballero, SPO2 Marcial Sinarlo and other policemen.

In front of Boy Bebelone's house, accused Beriarmente handed over to Randy Sinarlo a straw sack that Beriarmente had picked up from a house along Sawang Street. As soon as the policemen saw the sack change hands, they arrested accused Beriarmente. They examined the contents of the sack and concluded that it contained marijuana plants, prompting them to confiscate the same. They then

brought accused Beriarmente to the police station.

A bundle of the plants weighing 1,500 grams was subjected to scientific analysis at the PNP Crime Laboratory for Region 7. Police Inspector Mutchit Salinas, forensic analyst, submitted a report^[2] certifying that the sample or specimen composed of one (1) bundle of fresh stalks, leaves, buds and seeds weighing 1,500 grams were indeed marijuana plants.

The prosecution witnesses identified accused Francisco Beriarmente in open court as the person who sold and handed over the sack of marijuana plants to witness Randy Sinarlo. The latter also identified the sack and its contents, which SPO2 Caballero had placed inside a plastic container, as the very same sack and marijuana plants that the accused sold and gave to him.

For his part, accused Beriarmente professed his innocence, testifying that on said occasion, he went to Badian not to sell a sack of marijuana plants, but to buy corn grits from a certain Tining. It was while he was inside the store of Tining that he was hailed by his cousin-in-law, Roel Beona, who invited him for a round of drinks. They proceeded to the restaurant of Ferdinand Sabanal, and when he was already feeling intoxicated, Roel Beona introduced him to Randy Sinarlo.

He was instructed by Roel Beona to get a sack from a certain Rosita and Mercado at a house along Sawang Street and to deliver said sack to the NFA Milling. He and Randy Sinarlo then rode a tricycle and he fetched the sack from Rosita as instructed. Without knowing the contents of the sack, he gave the same to Randy Sinarlo. On the way to the NFA area, they were intercepted by the police and he was arrested, while Randy Sinarlo was not apprehended. He was brought to the municipal building where the police tried to interrogate him. However, since the lawyer they assigned to him did not show up, the investigation did not push through. Thereafter, he was incarcerated in the municipal jail.

On September 18, 1997, the following Information was filed before the RTC of Barili, Cebu, Branch 60:

That on the 20th day of July 1997 at 10:00 o'clock in the morning, more or less, at Barangay Poblacion, Municipality of Badian, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control One and One Half (1½) Kilos of dried marijuana (subject of sale) weighing 1,500 grams, which when subjected to laboratory examination gave positive results for the presence of marijuana classified as a prohibited drug under the Dangerous Drugs Act of 1972 as amended.

CONTRARY TO LAW.^[3]

From the evidence and testimonies presented by the prosecution and the defense, the trial court culled the following conclusions:

The testimony of witness Sinarlo to the effect that he pretended to buy marijuana (Indian Hemp) from the accused and that he accompanied him by riding on a trisikad in going to a house in Sawang, Badian, Cebu, to

get the marijuana leaves and proceeded to the house of a certain Boy Bebelone, was clearly corroborated by the testimony of Patrolman Orlando Caballero. The testimony (sic) of both Sinarlo and Caballero is (sic) convincing and credible. The fact that the marijuana leaves were really marijuana was testified to and confirmed by Mutchit Salinas of the NBI laboratory.

The version of the defense that he was innocent and that he did not know what was inside the sack is not convincing to the Court. It is improbable for one not to ask the person who was with him at the time what was the contents of the sack. He told the Court that he was just riding in the trisikad going to the house of a certain Bebelone as the wish of Randy Sinarlo that they will proceed there.

The accused at the time of the arrest did not raise a single question as to why he is placed under arrest when he did not know what was inside the sack.

Of the two (2) versions, the Court is inclined to believe that of the prosecution. The evidence of the prosecution is sufficient enough (sic) to sustain conviction. Positive testimony is superior and is more convincing than the denial by the accused himself.

It is therefore the finding of this Court that the prosecution was able to prove the guilt of the accused beyond reasonable doubt.^[4]

Accordingly, accused Francisco Beriamente was sentenced to suffer the penalty of *reclusion perpetua* and to pay a minimum fine of Five Hundred Thousand (P500,000.00) Pesos.

Hence, this appeal, raising the following errors:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED WHEN IN TRUTH AND IN FACT THE PROSECUTION FAILED TO PRODUCE THE MONEY USED DURING THE BUY-BUST OPERATION.

II

THE LOWER COURT ERRED IN GIVING MUCH WEIGHT AND CREDENCE TO THE ALLEGATION OF THE PROSECUTION WITNESSES THAT THE ACCUSED WAS UNDER SURVEILLANCE FOR ONE MONTH BEFORE ITS ARREST WHEN THE PROSECUTION FAILED TO PRODUCE ANY SURVEILLANCE REPORT TO SUPPORT SAID ALLEGATION.

III

THE LOWER COURT ERRED IN CONVICTING ACCUSED OF VIOLATION OF SEC. 4 OF RA 6425, AS AMENDED BEYOND REASONABLE DOUBT.