

THIRD DIVISION

[G.R. No. 126998, September 14, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL ELLOREG DE LOS SANTOS, GEORGE CASAMIS AND FELIPE ELLOREG, ACCUSED, JOEL ELLOREG DE LOS SANTOS, APPELLANT.

D E C I S I O N

PANGANIBAN, J.:

Where the inculpatory circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other with his guilt, then the evidence does not meet the test of moral certainty. Necessarily, a judgment of acquittal must issue.

The Case

Joel Ellorege De los Santos^[1] appeals the Decision^[2] of the Regional Trial Court of Parañaque (Branch 260) in Criminal Case Nos. 95-1001 to 95-1004. The assailed Decision convicted him of illegal possession and sale of dried marijuana flowering tops and sentenced him to *reclusion perpetua*. Its decretal portion reads as follows:

"WHEREFORE, this Court finds JOEL ELLOREG DELOS SANTOS GUILTY beyond reasonable doubt of the crime of violation of Sections 4 and 8, Republic Act 6425 as amended and sentences him to reclusion perpetua and to pay a fine of P500,00.00. FELIPE ELLOREG and GEORGE CASAMIS are hereby acquitted.

"The Branch Clerk of Court is hereby directed to immediately surrender the marijuana to the Dangerous Drugs Board."^[3]

On January 2, 1995, Second Assistant Prosecutor Elizabeth Yu-Guray filed four separate Informations^[4] against the appellant and his cousins George Mariano Casamis and Felipe Casamis Ellorege. Appellant was charged with sale and possession of marijuana; and the two other accused, with possession of the substance.

In the first Information on possession of marijuana, Appellant De los Santos was charged thus:

"That on or about the 13th day of December 1994, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any prohibited drug, did then and there willfully, unlawfully and feloniously have in his possession and under

his control and custody 2.575 kilograms of dried marijuana flowering tops which is a prohibited drug.”^[5]

The second Information charged appellant with the sale of marijuana, allegedly committed as follows:

“That on or about the 13th day of December 1994, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously give away, distribute and sell to a customer P30.00 worth of dried marijuana flowering tops which is a prohibited drug, in violation of the above-cited law.”^[6]

When arraigned on January 30, 1995, De los Santos, Casamis and Ellorege -- all of whom were assisted by Counsel de Parte Dante O. Garin -- pleaded not guilty.^[7]

After trial, the lower court promulgated its Decision on April 15, 1996, convicting Appellant Joel E. De los Santos and acquitting Felipe Ellorege and George Casamis.

Hence, this appeal.^[8]

The Facts

Version of the Prosecution

In its Brief,^[9] the Office of the Solicitor General presents the following narration of the facts:

“In the morning of December 13, 1994, PO3 Jose Soreta [‘PO3 Soreta’], while on duty at the Parañaque Police Station, admitted a woman named ‘Linda’ who claimed that her live-in partner was engaged in the sale of marijuana at their dwelling at No. 59, Sitio GSIS, Barangay San Martin de Porres, Parañaque. Linda related that she was often beaten by her live-in partner, ‘Joe’.

“Without delay, PO3 Soreta formed a surveillance team from operatives of the Intelligence and Drug Enforcement Unit, Parañaque Police Station, composed of SPO1 Gaspar Macatunggal [‘SPO1 Macatunggal’],^[10] SPO2 Nestor Serrona [‘SPO2 Serrona’] and PO3 Soreta. At around 11:00 a.m., the surveillance team personally visited the site to check and verify the information received.

“Once the site was confirmed as a possible venue in the sale of illegal drugs, SPO1 Macatunggal, PO3 Soreta and SPO2 Serrona went back to the police station and planned a buy-bust operation. The buy bust was to be held in the afternoon of the same day. SPO1 Macatunggal was to act as the poseur-buyer while PO3 Soreta and SPO2 Serrona were to act as his backups.

“At around 4:30 p.m., SPO1 Macatunggal situated himself at No. 59, Sitio GSIS, Barangay San Martin de Porres and summoned xxx ‘Joe’. The site

was actually a narrow alley ['iskinita'], about a meter wide, amidst a densely populated area which allows only a person to pass through. Meanwhile, PO3 Soreta and SPO2 Serrona distanced themselves to about twenty (20) meters away and stood vigilant.

"Seconds later, a male person came into view and approached SPO1 Macatunggal. SPO1 Macatunggal declared that he was referred by Linda to see 'Joe' so he could buy marijuana. The man thereafter introduced himself as 'Joe' and forthwith asked how much marijuana sticks [would] be bought. 'Joe' intimated that the marijuana [was] P3.00 per stick. SPO1 Macatunggal contracted [to] buy ten (10) sticks and immediately handed P30.00 in the denomination of one (1) P10.00 bill and one (1) P20.00 bill.

"Joe thereafter instructed SPO1 Macatunggal to wait as he ushered towards the interior of the alley. When Joe returned, he delivered the ten (10) sticks of marijuana to SPO1 Macatunggal.

"To signify the consummation of the sale, SPO1 Macatunggal deliberately scratched his head, being the pre-arranged signal for the back-ups to now come in.

"However, when PO3 Soreta and SPO2 Serrona loomed closer, Joe was alerted of the cover-up and began to run towards his house.

"A chase ensued. It did not take long, however, when Joe was overtaken and caught by SPO1 Macatunggal near the door of the former's house. This time, SPO2 Serrona recovered the buy bust money in the amount of P30.00 from Joe.

"While SPO1 Macatunggal held Joe, PO3 Soreta and SPO2 Serrona darted their eyes towards the door of appellant's house and saw the other accused, George Casamis and Felipe Ellorege, in the act of rolling marijuana into sticks. Hence, they, too, were apprehended by the police officers. The marijuana bricks and handrolled cigarettes found in the vicinity were confiscated.

"A request for laboratory examination on the confiscated marijuana bricks and cigarettes was thereafter forward[ed] to the Forensic Chemistry Division of the National Bureau of Investigation.

"Accordingly, Report No. DDM-94-802 from the Forensic Chemistry Division divulged the following, viz:

- SPECIMEN:1. Dried flowering tops contained in three (3) separate plastic bags with marking; and
2. One thousand two hundred eighty two (1,282) handrolled cigarettes contained in fifteen (15) separate plastic bags with markings altogether placed inside a nylon bag allegedly confiscated from the possession of one JOEL DE LOS SANTOS Y

ELLOREG, 25 years old, single, jobless of No. 59
Sitio GSIS, San Martin De Porres, Parañaque, Metro
Manila.

TIME SUBMITTED: December 14, 1994 at 11:50 a.m. By: P/A
Constantino Esguerra

CHARGED CASE: Re-Violation of R.A. 6425 as amended.

PURPOSE OF THE LABORATORY EXAMINATION:

To determine whether or not the specimens submitted are Marijuana.

Total Net Weight Specimens No. 1 = 2.575 kilograms

Total Net Weight Specimen No. 2 = 580.3703 grams

Microscopic, chemical and chromatographic examinations conducted on
the above mentioned specimens all gave POSITIVE RESULTS for
MARIJUANA. xxx"^[11]

Version of the Defense

Alleging that he was falsely charged and erroneously convicted, appellant controverts the account of the prosecution and summarizes the testimonies of the defense witnesses as follows:

"ERLINDA NAPOLES: She was the common-law wife of the [a]ppellant. On November 5, 1994, a certain Anthony Alvarez went to their house on the occasion of [a]ppellant's birthday. On December 10, 1994, at about 3:00 p.m., Alvarez again [went] to their house, this time with a bag. He talked with her husband and after two hours, he left, leaving behind the bag which she thought contained clothes. The next day, December 11, 1994, Alvarez returned to their house and opened the bag in the presence of [a]ppellant. He left, still leaving the bag at their house. On December 12, 1994, she talked with [a]ppellant about the bag and the [a]ppellant told her that the bag contained marijuana and Alvarez wanted to use their house as a place to sell the stuff but he refused. The [a]ppellant told her to go to the police and make a report. On December 13, 1994, at about 2:00 p.m., she went to the Bicutan police station and made her report. She was brought to the police station at Coastal where many policemen were gathered to accompany her to their house. When they reached their house, the policemen took not only the contents of the bag but also the [a]ppellant, in spite of the [a]ppellant's protestations that the bag was owned by Alvarez. When the policemen and the [a]ppellant went out of the house, they passed by George Casamis and Felipe Ellorege who were then seated by the door of their neighbor's house. Felipe asked the [a]ppellant in chabacano what was happening and where he was being brought. The policemen also took the two to the police station.

"JOEL ELLOREG DELOS SANTOS ([a]ppellant): This [was] the first time

that he was charged with a crime. He came to know Anthony Alvarez about six months before at the basketball court, within 1994. On December 10, 1994, at about 4:00 p.m., Alvarez came to their house and asked to leave his bag at their house as he had to go home to his province, Pangasinan, but he had to go first to some place in Parañaque. On December 11, 1994, in the afternoon, Alvarez came to their house and afterwards told him that the contents of the bag was marijuana worth a big sum of money. He told Alvarez to take away the bag as he and his wife were afraid to have the marijuana contained in the bag in their house. Alvarez, however, told him he had nowhere else to leave the bag and he left, saying he would come back later for the same. When he did not return to get the bag. Appellant and his wife decided to report the same to the police. On December 13, 1994, his wife went to Bicutan police station and then to the Coastal headquarters of the Parañaque police. When his wife and many police men arrived at their house, he let them in and he showed the bag of Alvarez to them. However, the policemen took not only the bag but also him with them saying he should allegedly tell his story at the police station. When they were out of the house, they passed by his cousins Felipe Ellorege and George Casamis who asked him in Zamboangueno (chabacano) what was happening and where he was being taken. The policemen, when informed that they were his cousin, decided to also bring the two to the police station. When they were at the police station at Coastal, one of those who came to his house to arrest him told the three of them, in the presence of the other participating policemen, that they should come up with P10,000 in order that they would be released. He told them that he had no money, not even P1,000.00. Thus, they were told that they would rot in jail. Thereafter, criminal charges were filed against him and his cousins.

"FELIPE ELLOREG: He was a high school graduate and was never charged with a crime before. He came to Metro Manila to look for work. In November, 1994, he found work as construction worker at Corinthian Garden. In the afternoon of December 13, 1994, at about 4:00 p.m., he and George Casamis were near their neighbor's door, along the alley, when the policemen arrested him and George and brought them to Coastal, together with the [a]ppellant. At Coastal, they were asked if the marijuana was the [a]ppellant's. When they answered they did not know, they were placed in jail. He was told that he would stay in jail for 36 hours and after that he could leave. But he was not able to leave the jail because the policemen asked for P10,000.00 as it was allegedly Christmas time and he was not able to produce the amount. He saw the bag allegedly containing marijuana at the Coastal in the possession of the policemen. He answered, in reply to questions from the Court that he did not know marijuana and was not using marijuana.

"GEORGE CASAMIS: He finished third year high school and was never charged with any crime before. He came to Metro Manila in November 1994 and he landed a job as laborer at Corinthian Gardens in Quezon City. In the afternoon of December 13, 1994, he and his cousin Felipe Ellorege were seated along the alley near the door of the house of Aling Ising, a neighbor, when policemen arrested the [a]ppellant inside his house. When the policemen and the [a]ppellant passed them, he asked