

## EN BANC

[ G.R. No. 119246, January 30, 1998 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANTONIO CORREA Y CAYTON @ "BOYET," RITO GUNIDA Y  
SESANTE @ "DODONG," AND LEONARDO DULAY Y SANTOS @  
"BOY KUBA" ACCUSED-APPELLANTS.**

### D E C I S I O N

**MARTINEZ, J.:**

The courts should not hesitate to wield the sword against drug traffickers whose conscience has been seared by their insatiable greed for instant wealth, thus propelling them to boldly pursue their abominable trade, utterly unconcerned of the pernicious effects of their venomous merchandise which have destroyed the lives and shattered the dreams of hapless victims, especially the vulnerable youth.

This the trial court did in the present case when it imposed the most severe penalty of death and a fine of Ten Million Pesos against the three (3) appellants for delivering and transporting more than 16 kilograms of prohibited dried marijuana flowering tops.

While the conviction of the appellants of the crime charged is proper, we find, however, that the penalty of death imposed by the trial court is not in accordance with the law.

On 12 July 1994, an Information was filed with the Regional Trial Court of Manila (Branch 35), docketed as Criminal Case No. 94-137528, indicting appellants Antonio Correa y Cayton @ "Boyet," Rito Gunida y Sesante @ "Dodong," and Leonardo Dulay y Santos @ "Boy Kuba" for having violated Section 4, Article II of Republic Act No. 6425,<sup>[1]</sup> as amended, allegedly committed as follows:

"That on or about June 18, 1994, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, not being authorized by law to possess, sell, deliver, transport, give away to another or distribute any prohibited drug, did then and there wilfully, unlawfully, knowingly and jointly deliver or transport eight (8) bundles of dried flowering tops of MARIJUANA wrapped in pieces of papers and plastic tapes weighing 16.1789 kilograms, a prohibited drug.

"CONTRARY TO LAW."<sup>[2]</sup>

The Information indicated that the appellants were "All Under Arrest" and that "No Bail (was) Recommended."<sup>[3]</sup>

When arraigned, the appellants pleaded "NOT GUILTY."

After trial, the lower court found the appellants guilty as charged, the dispositive portion of the decision dated 03 March 1995 reading thus:

"WHEREFORE, judgment is rendered pronouncing the three accused ANTONIO CORREA y CAYTON, @ "Boyet," RITO GUNIDA y SESANTE @ "Dodong," and LEONARDO DULAY y SANTOS @ "Boy Kuba" guilty beyond reasonable doubt of unlawful delivery and transportation of dried marijuana flowering tops weighing 16.1789 kilograms, penalized under Section 4, Article II of Republic Act No. 6425, as amended, and further amended by Section 13 in relation to Section 17 of Republic Act No. 7659, and sentencing each of the said three accused to DEATH to be executed by the means provided by law, and to pay a fine of P 10,000,000.00, plus the costs.

"The eight (8) bundles in brick form of dried marijuana flowering tops (Exhibits B-1 to B-8, inclusive), weighing 16.1789 kilograms are ordered confiscated and forfeited to the Government to be disposed of in accordance with law under the direction and supervision by the Dangerous Drugs Board. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of this Court, is ordered to turn over the two (2) bundles of dried marijuana flowering tops left with this Court to the Dangerous Drugs Custodian, National Bureau of Investigation, as appointed by the Dangerous Drugs Board, for appropriate disposition. The other six (6) bundles of said dried marijuana flowering tops have been left in the custody of the NBI, Forensic Chemistry Division.

"The owner-type jeep with plate No. FMR 948 used by the three accused as a means to commit the offense is also ordered confiscated and forfeited in favor of the Government, unless it can be shown that it is in the property of a third person not liable for the offense.

"Serve a copy of this Decision on the Executive Director, Dangerous Drugs Board, for his information and guidance.

"SO ORDERED."<sup>[4]</sup>

The verdict of conviction by the trial court rested mainly on the testimony of prosecution witness SPO3 Jesus Faller, a police officer assigned at Police Station 3, Western Police District, City of Manila.<sup>[5]</sup> He was among the nine-member police team of the Drug Enforcement Unit - Western Police District Command (DEU-WPDC) which arrested the three (3) appellants in the early morning of 18 June 1994.<sup>[6]</sup> His account of the arrest, as correctly narrated in the Appellee's Brief, is as follows:

"About a week prior to June 18, 1994, the Police Operatives from the Drug Enforcement Unit of the Western Police District Command (DEU-WPDC) had placed under surveillance the movements and activities of appellant Leonardo Dulay on account of confidential and intelligence reports received in said Unit about his drug trafficking around Bambang Street, Tondo, Manila. The police surveillance brought forth positive results and confirmed Dulay's illegal drug trade (TSN, Nov. 22, 1994, pp. 16-17).

"On June 17, 1994, at around 8:00 o'clock in the evening, the Unit's Operatives, DEU-WPDC, U.N. Avenue, Ermita, Manila was alerted by a police informant that Dulay, coming from Quezon City, would deliver and transport that night, to Bambang Street, Manila a certain quantity of drugs. Dulay reportedly would pass A. Bonifacio Street on board a semi-stainless owner-type jeep with Plate No. FMR-948. Forthwith, a nine-man team headed by SPO3 Jesus Faller was organized to pursue and bag the suspect. Thereafter, the operatives, together with the informer proceeded to A. Bonifacio Street on board three vehicles. They inconspicuously parked along the side of North Cemetery, boundary of Quezon City and Manila, at around 11:00 o'clock that same evening, and waited for the suspect (Id., pp. 4; 19-20).

"Around 3:00 o'clock in the morning of June 18, 1994, the police informant spotted the approaching vehicle of Dulay and immediately alerted the waiting policemen. The operatives tailed the subject jeepney, taking care that its passengers would not notice that they were being followed (Id., p. 5).

"Upon reaching the intersection of Bambang Extension and Jose Abad Santos Avenue, Tondo, Manila, the subject vehicle stopped and parked at a corner. Thereupon, the operatives also stopped and parked their vehicles around the suspect's vehicle and accosted the passengers of the owner-type jeepney. Appellant Antonio Correa was at the driver's seat with appellant Leonardo Dulay sitting beside him in the front seat and appellant Rito Gunida at the back seat (Id., p. 21). The team inspected a cylindrical tin can of El Cielo Vegetable Cooking Lard (Exhibit 'B'), about two feet high, loaded in the vehicle of the appellants. The can contained eight bundles of suspected dried marijuana flowering tops wrapped in pieces of paper and plastic tapes. The team seized the suspected contrabands and marked each bundle consecutively with 'IDR-1' to 'IDR-8' (Exhibits 'B-1' to 'B-8' inclusive). The three suspects were brought to the police headquarters at DEU-WPDC for investigation (Id., pp. 5-9; Exhs. 'E,' 'F' and 'G').

"The packages of suspected marijuana were submitted to the National Bureau of Investigation for laboratory analysis to determine their chemical composition. The tests confirmed that the confiscated stuff were positive for marijuana and weighed 16.1789 kilograms (TSN, Nov. 15, 1994, p. 11; Exhs. 'D' and 'D-1')."<sup>[7]</sup>

The appellants, on the other hand, had a different story on their arrest. The trial court, in its decision subject for review, has summarized the appellants' version thus:

"The common defense interposed by the three accused is in the nature of alibi. The core of their contention is that they were arrested without warrant in Camarin D, Caloocan City. They also denied that they were delivering and transporting dried marijuana flowering tops when they were apprehended.

"Also stripped of incidental details, the version of the defense is to the effect that on June 17, 1994, at about 5:00 o'clock in the afternoon, Leonardo Dulay rushed to the Metropolitan Hospital his gravely ill and very weak six months old son Jon-Jon. He was accompanied by his co-accused Antonio Correa, who drove the owner-type jeep which they used, and a neighbor known only as 'Bulik.' At around 11:00 o'clock the same evening, Leonardo Dulay, Antonio Correa and 'Bulik' went back home to get the things of the sick child. However, when they were already near the house of Leonardo Dulay in Camarin D, Caloocan City, some elements of the Western Police District Command blocked their (accused) way, and apprehended them for an alleged charge of trafficking on 'shabu,' and were brought to the WPDC headquarters at U.N. Avenue, where they were detained.

"x x x according to accused Rito Gunida, he was picked-up by the police in his house at Camarin II, Area D, Caloocan City, on June 17, 1994, at around 12:00 o'clock midnight. The arresting officers rose (sic) him from his sleep. He was also taken to the headquarters of the WPDC at U.N. Avenue, and there placed in a cell.

"In addition to their respective declarations, the three accused likewise offered the testimonies of Marilene de la Rosa, Violeta Almugela, Juanito Balino, Rogelio Altis and Pascual Gillego to corroborate the claim of the defense."<sup>[8]</sup>

Assailing the verdict of conviction, the appellants interpose the following assignment of errors:

"THE LOWER COURT ERRED:

#### I

IN TAKING COGNIZANCE OF THE CASE, AS ALL THE ACCUSED WERE APPREHENDED AT THEIR RESPECTIVE RESIDENCES IN CAMARIN, KALOOKAN CITY, NOT IN MANILA AS THE LAWMEN MADE IT APPEAR WHERE THE THREE (3) ACCUSED ALLEGEDLY COMMITTED THE OFFENSE.

#### II

IN ADMITTING THE EVIDENCE ALLEGEDLY CONFISCATED FROM THE ACCUSED, THE SAME BEING INADMISSIBLE BEING THE FRUIT OF AN ILLEGAL SEARCH CONDUCTED WITHOUT ANY SEARCH WARRANT.

#### III

IN BASING ITS DECISION OF CONVICTION OF APPELLANTS SOLELY ON THE UNCORROBORATED TESTIMONY OF SPO3 JESUS FALLER OF THE WPDC DESPITE THE PARTICIPATION OF THE OTHER EIGHT MEMBERS OF THE OPERATIVES THAT ALLEGEDLY TOOK PART IN THE ARREST OF THE THREE (3) ACCUSED.

#### IV

IN CONVICTING THE THREE (3) ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.”<sup>[9]</sup>

The appellants’ submission is palpably without merit.

The first, third and fourth assigned errors aforequoted are closely interrelated and, therefore, the same shall be discussed jointly.

The appellants plead in exculpation that their version should be believed because the defense has “indubitably established” that they were arrested in their respective residences in Camarin, Calookan City by the police team of SPO3 Jesus Faller of the Western Police District Command, Manila. The appellants claim that -

“x x x. Witnesses Juanita Balino, Marlene dela Rosa, Violeta Almojuela and Rogelio Altis are unanimous in their declaration that the arresting officers were in Camarin, Kalookan City, when they arrested the three accused. As against the testimony of SPO3 Jesus Faller, the positive declaration of the foregoing witnesses for the defense should prevail. Since SPO3 Jesus Faller belongs to the Western Police District Command, **he orchestrated his testimony to make it appear that the arrest of the three accused and the confiscation of the alleged marijuana took place in Bambang, Sta. Cruz, Manila,** which is too far and remote from the residences of the three accused who are all residents of Camarin, Kalookan City. The arrest of the three accused in Camarin, Kalookan City, were illegal and the alleged confiscation of evidence invalid, granting that there really were evidence confiscated from the three accused. **To cure the flaw in the arrest of the accused and the warrantless confiscation, Faller made it appear that the accused were transporting marijuana in Bambang, Sta. Cruz, Manila** and that they tailed the accused until Bambang Street, when in truth and in fact, the three accused were illegally apprehended in Camarin, Kalookan City, and they really have to pass through A. Bonifacio Street, on their way to Western Police Headquarters at the U.N. Avenue.

**“To avoid inconsistencies in their statements and oral declaration in court, the other eight (8) members of the arresting team x x x were not presented as witnesses and their testimonies were withheld by the prosecution. We do not find any reason why not one of them corroborated the testimony of SPO3 Faller. There is a legal presumption that if an evidence is intentionally withheld when there is opportunity to offer the same, (the said evidence) is deemed to be adverse to the party withholding the same.** Not a single corroboration came for the said eight members of the arresting team.”<sup>[10]</sup> (Emphasis ours)

That is all the appellants could say in assailing the credibility of prosecution star witness SPO3 Jesus Faller. Nothing suggestion was mentioned about any inconsistencies in the testimony of Faller. Neither was there any that Faller harbored ill-feeling against the appellants.