

THIRD DIVISION

[G.R. No. 110163, December 15, 1997]

**EDUARDO A. ZANORIA, PETITIONER, VS. THE COURT OF
APPEALS, RESPONDENT.
D E C I S I O N**

ROMERO, J.:

Petitioner Eduardo A. Zanoria was indicted for violation of Section 9,^[1] Article II of Republic Act No. 6425^[2] before the Regional Trial Court of Cebu, Branch 15, in an information which reads as follows:

"That on or before the 16th day of February, 1988, at about 5:00 o'clock in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there plant, till, cultivate and culture marijuana plants, a source of a prohibited drug, without authority of law.

CONTRARY TO LAW."^[3]

On arraignment, petitioner pleaded not guilty to the charges.

The prosecution's recital of facts is summarized as follows:

Sergeants Joel Absin and Hermes Recla, both members of the Philippine Army detailed with the 7th Narcotics Command (Narcom) stationed at Camp Lapu-lapu, Cebu City, testified that on or about 3:30 o'clock in the morning of February 16, 1988, they were briefed by their commanding officer, Major Vivencio Ramilo, on a mission to uproot full-grown marijuana plants in the mountains of Sitio Kabulihan, Barangay Guba and Talamban, Cebu, allegedly cultivated or cultured by a certain Eddie. The assault teams proceeded on board a military truck to the area and reached the place at around 5:00 o'clock a.m. With the help of a guide, the group was able to determine the exact location of the marijuana plantation.^[4]

While casing the area, they noticed a person, later identified as petitioner, emerging from a nipa hut to inspect the plantation. The Narcom agents immediately apprehended him and they alleged that during tactical interrogation, he broke down and cried and admitted ownership of the field. The agents uprooted a total of 3,500 marijuana plants and loaded the same on a military truck and brought them to their headquarters. Twenty samples of the seized items were submitted to the Philippine Constabulary Crime Laboratory in Cebu City and forensic chemist Myrna Areola confirmed that they were indeed marijuana plants. The rest of the plants were incinerated.^[5]

Petitioner denied the charge against him and implicated a certain Eusebio Geonzon

Jr. and his military friends of framing him. The following witnesses were presented by the defense: Expedita Zanoria, Pedro Borres, and petitioner himself.

Petitioner's wife Expedita testified that sometime in July 1987, he and their neighbor, Eusebio Geonzon Jr., had a dispute when the latter killed their pig for destroying his plants. Upon his refusal to pay P950.00 as indemnity, Geonzon was summoned before Barangay Captain Pedro Borres. He paid the amount after a week but, allegedly, not without uttering threatening remarks such as, "Do not regret, because I have friends in the army." On this ground, she surmised that Geonzon had something to do with the arrest of her husband.^[6]

As Barangay Captain of Adlawan at the time of the occurrence of the incident, Borres narrated that at about 9:00 o'clock a.m. of February 16, 1988, he saw petitioner with the Narcom agents on board a truck. He asked the latter why he was with such group and the latter answered that he was requested to help uproot marijuana plants in the mountains of Taptap some five kilometers from Adlawan. In support of Expedita's theory, he stated that he was apprised of the dispute between Geonzon and petitioner and did, in fact, call the parties for conciliation to his barangay office. After settling the same, however, he observed Geonzon's demeanor to be vindictive. When Borres testified on May 14, 1990, he presented to the court the record book during his incumbency as barangay captain. Upon cross-examination, he admitted however, that the entries therein concerning the settlement of the subject dispute were not signed because the parties agreed to make the necessary payments at their house.^[7]

Petitioner, on the other hand, testified that on February 16, 1988, at about 3:00 o'clock a.m., his wife woke him up and disclosed that somebody was calling him downstairs. When he opened the door, several persons pointed their firearms at him and immediately effected a search of his house. Subsequently, he was forced to board a six by six military truck en route to the mountains of Sitio Kabulihan. He was apparently ordered by his captors to help them carry freshly uprooted grass to their vehicle. When the "grasses" had been secured, the truck left for the city. On their way back, the truck passed by their house and he asked the driver to stop so he could alight. An officer beside him rejected his request and declared that he would be investigated at Camp Lapu-lapu in Lahug for his participation in the cultivation of the seized marijuana plants. In the course of the investigation, he was allegedly maltreated by an investigator and was coerced to sign a waiver under threat of summary execution.^[8]

He denied Sgt. Absin's allegation that he admitted planting or owning the marijuana plantation. He likewise averred that at the time he carried the grass, he did not know what it was and was under the impression that it was plain grass. On cross-examination, he professed that he never heard of nor saw marijuana prior to February 16, 1988.^[9]

After trial on the merits, petitioner was found guilty beyond reasonable doubt in a decision by the trial court, ^[10] the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing evidences (sic), arguments and considerations, this court hereby finds the accused Eduardo Zanoria

GUILTY beyond reasonable doubt, of the crime of Violating Sec. 9, Art. II of RA 6425 in relation to Sec. 2 thereof which is defined as follows: 'Cultivate or culture - which means the act of knowingly planting, growing, raising or permitting the planting, growing or raising of any plant which is the source of a prohibited drug,' as he is hereby sentenced to Twenty Years and a fine of Twenty Thousand (P20,000.00) Pesos.

IT IS SO ORDERED.”^[11]

On appeal, the Court of Appeals in its November 23, 1992, decision, affirmed the findings of the trial court but modified it as to the penalty imposed, viz.:

“WHEREFORE, the decision appealed from is hereby AFFIRMED, subject to the modification that the accused-appellant Eduardo A. Zanoria is sentenced to suffer an indeterminate prison term of from twelve (12) years, five (5) months and twelve (12) days, as minimum, to fourteen (14) years, eight (8) months and one (1) day, as maximum and to pay a fine of P20,000.00 with subsidiary imprisonment in case of insolvency; and to pay the costs.

SO ORDERED.”^[12]

Petitioner assails the appellate court in giving credence to the testimony of the prosecution witnesses in spite of the blatant inconsistency between their joint affidavit and their testimonies in court.

After an exhaustive review of the evidence on record, this Court is constrained to uphold the conviction of petitioner.

Sgts. Absin and Recla testified that upon arriving at the plantation site, they immediately surrounded the area. After a few minutes, they saw petitioner come down from a nipa hut and inspect the marijuana plants. When he became conscious of their presence at such time of the day, they instantly pounced on him.

The joint affidavit^[13] of prosecution witnesses Sgts. Absin, Recla and a certain Yparraguirre, however, stated that appellant “personally led us to the plantation site.” Petitioner contends that if he were the one who personally led the agents to the site, as claimed in the joint affidavit, then he could not have been the person whom they saw emerge from the nipa hut and who inspected the marijuana plants. He submits that this inconsistency is irreconcilable and, therefore, fatal to the case of the prosecution.

The alleged inconsistency is impertinent in the case at bar. The relevant portions of the joint affidavit are hereunder reproduced as follows:

“That on or about 5:00 o’clock in the morning of the same date, we arrived at the plantation site and thought (sic) the aide (sic) of our guide, we were able to locate the place wherein the prohibited plants are (sic) being cultured, as we approach(ed) to (sic) the place, we saw a small hut a few meters away from the plantation. At a discreet distance, one male person came out from the hut and walk(ed) straight to the