

SECOND DIVISION

[G.R. No. 105084, September 18, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONNIE VILLAVIRAY Y ALOLINO AND EDGAR GUTIERREZ Y
VILLAVIRAY, ACCUSED-APPELLANTS.**

DECISION

ROMERO, J.:

All too often, in their desire to eradicate the drug menace in the country, overeager law enforcement agents unwittingly fail to observe the procedural requirements of the law. For failure to comply with seemingly innocuous procedures, malefactors go unpunished and the innocent languish behind bars. To be sure, such perverted justice is far from what the Constitution has envisioned nor the kind that this Court would tolerate.

This is an appeal from a decision rendered by the Regional Trial Court of Quezon City, Branch CIII convicting the accused-appellants, Ronnie Villaviray y Alolino and Edgar Gutierrez as principal and co-conspirator, respectively, for violation of Article II, Sec. 4 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, the dispositive portion of which reads as follow,

"Accordingly, judgment is hereby rendered finding the accused guilty beyond reasonable doubt as principal and co-conspirator in the sale of marijuana tops, a prohibited drug in violation of Sec. 4 Article II, RA 6425, and they are both sentenced to suffer an imprisonment term of Reclusion Perpetua (known popularly as Life Imprisonment) and to pay a fine of P20,000. No costs.

So ordered."^[1]

A perusal of the prosecution's records reveal the following facts.

In the morning of May 21, 1991, CAPCOM Constable Alfredo Enano together with six other police officers led by Lt. Gilbert Cruz of the RPIU CAPCOM Camp Bagong Diwa, Bicutan Manila, was dispatched by their Commanding Officer to investigate a report made by an informant that somebody was selling marijuana at Frisco, Quezon City.

^[2] Constable Enano was supposed to act as the poseur buyer but since the informant was known to the pusher, Enano allowed the informant to go ahead of the police officers to transact with the accused. When they arrived at the place fifteen minutes later, the police officers positioned themselves a few meters away.^[3] When Constable Enano saw the accused Ronnie Villaviray handing over to the informant some plastic bags of suspected marijuana leaves, Enano immediately approached them to arrest Villaviray and his companion, Edgar Gutierrez. The latter was arrested because he was in the company of Villaviray and because the informant

told the CAPCOM men that he was a pusher too.^[4]

Sgt. Jessie Cayabyab testified that as backup of the team, he was positioned about twenty-five meters away from the place where the accused were arrested. Consequently, he did not manage to observe the ongoing transaction between the informant and the accused. When he first saw the plastic bags of suspected marijuana, they were already in the hands of their team leader, Lt. Gilbert Cruz of CAPCOM. He was told by his companions that the plastic bags were confiscated from the herein accused.^[5]

The defense on the other hand presented a different version altogether. Accused Ronnie Villaviray y Alolino, a fish vendor, goes to Navotas fishport to buy fish from 8:00 P.M. to 3:00 A.M. and sells the same at 6:00 A.M. On May 21, 1991 at around 12:00 noon, several men roused him from sleep inside his room at No. 18 Bautista Street, San Francisco del Monte, Quezon City and had him handcuffed. He asked the armed men what his offense was but he was just told to go with them and he would know what offense he was guilty of.^[6]

Edgar Gutierrez, a resident of Bukana Nasugbu, Batangas, was staying with his cousin Ronnie in Quezon City while his application for a job overseas was pending. On May 21, 1991 while washing clothes in the backyard, armed men arrested him without giving him a chance to explain. Just like Ronnie, he was brought to Bicutan and detained there for around three weeks.^[7]

This story is corroborated by the testimony of Ronnie's father, Honorato Villaviray. Honorato transferred to Ronnie's residence when the latter's wife left for abroad. On May 21, 1991, he saw his nephew Edgar washing clothes in the backyard on his way to the comfort room located outside the house. A few minutes later, he heard a commotion. When he rushed out, he saw several men holding Edgar while the others were talking to his son Ronnie inside the house. When he asked the men to produce their search warrant, he was just instructed to follow them later to their office. Honorato went from one precinct to another looking for Ronnie and Edgar in vain. Ronnie later called up to inform him that they were being detained at Bicutan.^[8] The accused attributed their arrest to a certain Mr. Teodoro Evangelista, a Barangay Chairman in Frisco, who harbored a grudge against the Villavirays due to political differences with Honorato.^[9]

The trial court, relying mainly on the presumption of regularity of duty performed and the lack of motive on the part of the policemen to impute such a grave offense against the accused, convicted them and sentenced them to Reclusion Perpetua. Hence this appeal.

It is well established that where credibility is in question, the appellate court will not disturb the findings of the trial court, the latter being in a better position to observe the witnesses, their deportment and manner of testifying during the trial, unless certain facts of substance and value had been overlooked which, if taken into account, might affect the outcome of the case.^[10]

However, in this instant case, it is significant to note that the informant who actually transacted with the accused Villaviray was never presented in court as a witness.

Although, as a general rule, the presentation of the poseur buyer is not fatal in buy-bust cases, especially if his testimony is merely corroborative,^[11] in this case, the informant was the only one who negotiated with Villaviray for the purchase of some 1,213.89 grams of marijuana. The "star witness" of the prosecution, Constable Enano was not even privy to the transaction between him and the accused. Under the original plan, Enano was supposed to act as poseur buyer but he changed strategies and allowed the informant to transact with the accused because the former was known to the latter. Enano, being three meters away from where the negotiation was taking place, did not hear the conversation between the informant and accused.^[12] He could not even categorically state from whom the plastic bags containing marijuana were taken. Enano earlier testified that he confiscated the plastic bags containing marijuana from the accused Villaviray^[13] but when recalled later to the witness stand, declared that these were actually handed to him by the informant.^[14] The other witness presented by the prosecution, Sgt. Jessie Cayabyab, did not see the plastic bag containing marijuana being handed by Villaviray to the informant.^[15] From the foregoing, it is evident that the testimony of the informer-poseur buyer is crucial as he was the only one who could have testified on what transpired between him and the accused. Without such testimony, no evidence could be adduced positively identifying the accused as having sold marijuana, the sale not having been unequivocally established.

Furthermore, no marked money was presented in evidence to corroborate the claim of the prosecution. While it may be argued that such a lapse may not have adversely affected the prosecution's evidence, it could have, nonetheless substantially bolstered the testimonies of the prosecution's witnesses which were replete with inconsistencies.

Constable Enano alleged that although he asked the informant to transact with the accused, he kept the marked money worth P1,000.00 which he later returned to his commanding officer. He explained that he did not turn over the marked money to the fiscal anymore for examination inasmuch as he was not asked to do so by his superior.^[16] Considering that he had been in the police force for ten years,^[17] Enano should have known from experience, even without his superior telling him, that the money used in the buy-bust operation, would be a vital piece of evidence for the prosecution. While the marked money was not used by the buyer in transacting with the accused and is not in itself proof that the sale of marijuana took place, its presentation in evidence, given the peculiar circumstances of this case, could have reenforced the prosecution's claim that there was an ongoing buy-bust operation. It strains credulity to believe that the accused would simply turn over publicly some 1,213.89 grams of marijuana to the buyer who could not produce any money to pay for it.^[18] In any case, the failure to present the marked money in court served to cast further doubt as to the guilt of the accused.

Another fatal flaw in the prosecution's case was its failure to prove that the plastic bags containing marijuana which were allegedly confiscated from Villaviray were identical to those examined by the forensic chemist and presented in court. Constable Enano stated that he brought the plastic bags containing marijuana to the police station after having confiscated them from the accused.^[19] No mention was made, however, as to who received the marijuana from Enano at the police station and what transpired thereafter. Lt. Elizabeth Ayonon, the forensic chemist