PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO T. LABANDELO, ACCUSED-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

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This is an appeal from the Judgment rendered by the Regional Trial Court, Branch 75 of Olongapo City dated December 7, 2011 in the consolidated Criminal Case Nos. 231-08 and 228-08, the dispositive portion of which reads:

> "WHEREFORE, the Court renders judgment as follows:
>
> 1) Criminal Case No. 228-08, accused Enrique Lim Ong and Rolando T. Labandelo are "ACQUITTED" of the charge, with costs de officio.
>
> 2) In Criminal Case No. 231-08, accused Rolando T. Labandelo is found GUILTY beyond reasonable doubt of violation of Section 5, RA 9165 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus costs, and to suffer the accessory penalties under Section 35 thereof.
>
> Accused Rolando T. Labandalo being under detention shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.
>
> The Olongapo District Jail Warden is ordered to release Enrique Lim Ong from detention unless he is being held for some other lawful crime.
>
> SO DECIDED."[1]

Antecedents:

Enrique Lim Ong and Rolando T. Labandelo were charged for violation of Section 11, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 in an Information dated June 20, 2008, the accusatory portion of which reads as follows:

> "That on or about the 28[th] day of May, 2008, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their effective possession and control sixty (60) boxes with three hundred (300) plastic bags containing Metamphetamine Hydrochloride, otherwise known as "shabu", a dangerous drug, with an approximate total weight of Six Hundred Twelve and Twenty Two (612.22) kilograms, said accused not having the corresponding license or prescription to possess said dangerous drug.
>
> CONTRARY TO LAW."[2]

The case was docketed as Criminal Case No. 228-08 in the Regional Trial Court of Olongapo City, Branch 75.

Another Information dated June 20, 2008 charged Rolando T. Labandelo, Estrella Olino Ang and Manuel Olino aka "Bobot" of Violation of Section 5, Article II of RA 9165 otherwise known as the Dangerous Drugs Act of 2002, the accusatory portion of which reads as follows:

> "That on or about the twenty-sixth (26th) day of May, 2008, in the City of Olongapo and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, without being lawfully authorized, did then and there willfully, unlawfully and feloniously transport, distribute and deliver to another person sixty (60) boxes with three hundred (300) plastic bags containing Metamphetamine Hydrochloride otherwise known as "shabu", a dangerous drug with an approximate total weight of Six Hundred Twelve and Twenty Two (612.22) kilograms.
>
> CONTRARY TO LAW."[3]

The case was docketed as Criminal Case No. 231-08 with the Regional Trial Court of Olongapo City, Branch 75. The two cases were consolidated and heard together. The accused pleaded "NOT GUILTY" when arraigned on February 3, 2009.[4] The object of the two separate information is the same shabu.

Evidence for the Prosecution:

Culled from the testimonies of the prosecution witnesses:[5]

On May 25, 2008 at around 8:00PM, Diosdado Ednave, Security Officer at the Law Enforcement Department (LED) of the Subic Bay Freeport, together with Security Officer Edwin Pentecostes were on roving inspection at the Riviera Pier at Subic Repair Facility (SRF). They noticed a Chinese vessel docked inside the pier and a red Mitsubishi Outlander with Plate Number RAE-615 parked in front of the vessel. There were four persons loading boxes from the vessel and into the car. Suspicious of the proceedings, Ednave asked the guard on duty at SRF Gate, Wilfredo Agnasada to thoroughly check the red car.[6]

When Agnasada flagged down the red car, he turned his flashlight towards the back of the vehicle and saw eight boxes covered with pink trash bags. He asked the driver of the car who identified himself as Anton Ang, for the documents of the cargoes, but the latter could not show any. Agnasada then asked the driver to pull over and called for back-up. Security Officers Ednave, Pentecostes, Orlando Sepe and their supervisor, Marceliana responded to the call. Anton Ang and his passenger, later identified as Manuel Olino, were brought to their office for investigation and the boxes were confiscated. The duty investigator asked Ang about the contents of the boxes and the latter told him that they were sensitive computer parts. Ang requested that he be allowed to get the documents from his office at Hualong International Incorporated. Officer of the day Ensepe granted the said request and let Ang go, however, Ang did not return anymore.[7]

Notified of the confiscated items, Major Manuel Hiadan, Jr. of the Presidential Anti-Smuggling Group (PASG) Task Force Subic proceeded to the LED office at around 11:00AM on May 27, 2008 to inspect the same. The first box was opened in the presence of a representative from Hualong and Major Tolentino of SBMA. The box contained a green leather bag which when opened contained white colored transparent plastic bags with crystalline substance, just like "shabu". The plastic bags totaled 40 in all. The items were inventoried at the LED office before being brought to the PASG office and there examined by the PDEA and witnessed by the media, SBMA officials and barangay officials.[8]

Around 7:00AM of May 28, 2008, two green leather bags were found floating near the dry dock area of SBMA. Upon inspection, said leather bags contained five packs similar to those found in the boxes inventoried at PASG. The items were brought to the office of PASG and examined.[9]

At around 11:00AM of the same day, May 28, 2008, Major Hiadan received another report that a van was parked

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at a warehouse near Hualong's warehouse. Major Hiadan and members of the SBMA proceeded to the warehouse which was managed by Enrique Ong. Asked how the van came to be parked inside, Ong replied that the van was sent by Hualong. Upon inspection, the van contained sixty boxes which yielded green leather bags with five packs of white crystalline substance suspected to be “shabu”. The boxes were brought to the PASG office where an inventory was conducted in the presence of members of the DOJ, the media, SBMA and PDEA representatives. The driver of the van, Rolando T. Labandelo whose Identification Card was found hanging inside the van was also brought to the PASG office for investigation[10]. SPO3 Rodolfo Bayas of the PASG brought the specimens of the confiscated drugs to the NBI for forensic examination[11]. The NBI Forensic Chemist Felicisima Francisco subjected the specimens of the confiscated items to a preliminary examination which found them positive for Methamphetamine Hydrochloride[12]. The said findings were stated in a confirmatory examination[13].

Version of the Defense:

Anthony Ang, the General Manager of Hualong International Corporation called up Enrique Lim Ong, a warehouseman of Anglo Asia Commodity at around 4:00PM on May 26, 2008. Ang told Ong that one of their vehicles will be parked in their vacant warehouse. Hualong, being a favored client of Anglo Asia, Ang's request was granted. The van arrived at around 5:00PM and Ong instructed the driver to park at warehouse N-2. He did not inspect the contents of the van nor asked the driver about the contents thereof. It was company policy to allow temporary parking of client's vehicles when the client's rented warehouse is full. On May 28, 2008, three men from the office of SBMA LED arrived at the warehouse and asked Ong about the van owned by Anthony Ang. Ong led the three men to the area where the van was parked. The three men opened the van and inspected the contents, then Ong was brought to the PASG office at around 11:00 in the morning.[14]

Rolando T. Labandelo admitted that he is the driver of a Toyota van with Plate Number UKU- 699. As a member of the Maritime Crew Service Shuttle, he holds a Certificate of Accreditation authorizing him to service passengers and cargoes inside the SBMA area. Because of his occupation, he came to know Anthony Ang who was a locator/investor inside SBMA. Anthony was his frequent passenger until such a time that Anthony already rented his van to transport cigarettes and liquor. On May 26, 2008, Anthony called him up at around 4:00 in the morning and told him that he (Anthony) would rent his (Labandelo) van to transport boxes. Labandelo then went to Anthony's house and was instructed by the latter to bring the van to their garage. They went to SBMA where Anthony's brother-in-law Bobot loaded boxes from the warehouse into the van. They proceeded to a Petron gas station and waited for somebody. They stayed there until 5:00 in the afternoon, and when nobody came, Anthony instructed him to bring the van to the warehouse of Anglo Asia Commodity Corporation. Labandelo parked the van inside the warehouse and proceeded to Anthony's office and he was paid P21,000.00 for the use of the van from May 26 to June 1, 2008. Anthony told him to wait for his call and he went home. On May 28, 2008, personnel from SBMA went to his house and told him to go with them. They went to the warehouse where he was asked by the authorities about the contents of the van to which he replied that he was just the driver of the van and he did not know the contents thereof. After that he was brought to the office of Task Force Subic.[15]

The RTC ruling:

The trial court acquitted both Rolando Labandelo and Enrique Lim Ong of the crime of illegal possession of dangerous drugs under Section 11, RA 9165 in Criminal Case No. 228-08. The trial court ratiocinated that the prosecution failed to prove that both Labandelo and Ong had knowledge that the boxes inside the van contained dangerous drugs. Knowledge cannot be presumed. Thus, the court ruled: “One of the elements of drug possession is that the accused freely and consciously possessed the drug. In the present case, he must know or should have known that the van contains boxes of dangerous drugs. Xxx his possession becomes punishable only once it is proved that he knew or should have known that the boxes contained drugs. Knowledge cannot be presumed

xxx."[16]

Accused Rolando T. Labandelo, however, was found Guilty of violation of Section 5, RA 9165 in Criminal Case No. 231-08. The court reasoned that "transport" as used under the Dangerous Drugs Act is defined to mean "to carry or convey from one place to another". The essential element of the charge is the movement of the dangerous drug from one place to another.[17]

On appeal, accused-appellant Rolando T. Labandelo asseverates that the court a quo gravely erred:

> a) in disregarding his testimony that he was a legitimate transport contractor and had no knowledge of the contents of the boxes loaded in his van;
>
> b) in not finding his warrantless arrest and search illegal; in the court's failure to apply the "fruit of poisonous tree" doctrine with respect to the confiscated shabu; and in not finding accused-appellant's rights under Republic Act 7438 violated;
>
> c) in finding the accused-appellant guilty despite the non-compliance with Section 21 of Republic Act No. 9165 and its implementing rules and regulations;
>
> d) in finding the accused-appellant guilty despite the broken chain of custody.

Accused-appellant points out that he was arrested without a valid warrant and that the warrantless search and seizure conducted at the warehouse was illegal for being violative of Section 2, Article II of the Constitution. He was also not provided with counsel during his investigation at the warehouse up to the office of the PASG and he was also not informed of his rights under Republic Act No. 7438. Assuming for the sake of argument that he was validly arrested, still, there was no compliance with Section 21(1) of Republic Act No. 9165 with regard to the immediate photographing and inventory of the seized dangerous drug and said non-compliance was without any justifiable reason. There were several breaks in the chain of custody, to wit: (1) According to Major Manuel, the boxes confiscated were placed at the office of P/Supt. Magno, however, in the testimony of Atty. Joenel, he said that they placed the boxes inside the room of USEC Villar; (2) the six (6) boxes previously seized and the sixty (60) boxes seized at the warehouse were placed in the same room before it was inventoried; and (3) there was no testimony as to how all the boxes confiscated especially the sixty (60) boxes were turned over to Forensic Chemist Felicisima Francisco, hence this casts doubt on the integrity of the corpus delicti and evidentiary value of the seized items. [18]

Is the contention correct?

Our Ruling:

Under the Constitution, no search and seizure can lawfully be conducted without a valid warrant issued by a judicial authority.[19]

However, there are instances when a valid search and seizure maybe effected without the benefit of a warrant, to wit: (1) when the owner of the premises waives his right against such incursion; (2) when the search is incidental to a lawful arrest; (3) when it is made on vessels and aircraft, such as for violation of customs laws; (4) when it is made on automobiles or motor vehicles generally for the purpose of preventing violations of smuggling or immigration laws; (5) when it involves prohibited articles in plain view; or (6) in cases of inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations;[20] (7) in cases of "stop and frisk" under the Terry vs. Ohio doctrine.[21]

The instant case falls within one of the exceptions to the rule,i.e "when it is made on automobiles or motor vehicles generally for the purpose of preventing violations of smuggling or immigration laws. The PASG and

SBMA authorities which conducted the search and seizure in the premises of the van driven by accused-appellant had reasonable ground to suspect that contrabands were loaded inside the van because from the outside, they could peep into the van and see boxes similar to those earlier confiscated from Anthony Ang. There was a time constraint working against the authorities because at any time the vehicle maybe driven out from the premises if they would still secure a warrant from the court. There is therefore a justifiable necessity to immediately effect the search and seizure at that time in order to effectively execute their anti-smuggling mandate. Thus, search and seizure made by the PASG and the SBMA authorities was valid even in the absence of a search warrant.

Accused-appellant was convicted of transporting dangerous drugs in violation of Section 5, RA 9165. The rationale of the trial court is that transporting dangerous drugs is a malum prohibitum, hence, the mere act of transporting or conveying is punishable under RA 9165 which is a special law. Accused-appellant's defense of lack of knowledge therefore is unavailing.[22]

We disagree with the trial court.

Section 5, Article II of Republic Act 9165, otherwise known as the Dangerous Drugs Act of 2002 provides:

> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (P500,000.00) to Ten Million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. Xxx" (Italics Ours)

As clearly evident in the framework of the said law, the acts punishable under Section 5 are selling, trading, administering, dispensing, delivering, giving away to another, distributing, dispatching in transit or transporting of dangerous drugs. The aforesaid punishable acts are cognate or related acts which shall be meted with the same penalty under said Section 5.

The Constitution itself protects the rights of the accused against unreasonable intrusion by the State, hence the accused is presumed innocent until proven guilty. The degree of proof required for conviction is proof beyond reasonable doubt.

Accused-appellant was prosecuted for violation of Sections 5 and 11, Article II of RA 9165. He was acquitted of violation of Section 11 thereof (illegal possession) because the trial court reasoned that the prosecution failed to show that accused-appellant had knowledge that the boxes contained dangerous drugs. Convicting the accused-appellant of transporting dangerous drug under the same law and under the same set of facts and evidence runs counter to the presumption of innocence.

Since the trial court acquitted accused-appellant for illegal possession for lack of proof that he had knowledge of the contents of the box, then accused-appellant must also be acquitted of transporting dangerous drugs for lack of knowledge that what he was transporting are dangerous drugs. We must consider that both offenses of illegal possession and transportation are punishable under the same law, RA 9165, therefore if the defense of lack of knowledge is available for illegal possession, then the same defense should also be available to the act of transporting dangerous drugs. The corpus delicti of both offenses are the same, 612.22 kilos of shabu.

> "Knowledge refers to a mental state of awareness of a fact. Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. Animus possidendi, as a state of mind, maybe determined on a case to case basis taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually

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must be inferred from the attendant events in each particular case."[23]

It is not denied by the prosecution that accused-appellant was a legitimate transport operator accredited by the SBMA. His line of business is transporting people and cargoes within the SBMA area. He asserted from the very beginning of this case that he knew Anthony Ang because of his transportation business; Ang was a frequent customer hiring his van for transporting cigarettes which is the business of Ang. Accused-appellant's subsequent act when he had already parked the van inside the Anglo Asia warehouse supports his claim of innocence. If he truly knew that what was inside his van were dangerous drugs, then he would not have left his ID inside the van laden with dangerous drugs or readily gone to the warehouse when summoned by the authorities.

In the prosecution involving prohibited drugs, the existence of animus posidendi is only prima facie, subject to contrary proof. Thereafter, the accused has the burden of showing that his act or acts are innocent and are not committed with any criminal intent or intentions.[24] In this case, accused-appellant has rebutted the prima facie case of the prosecution by evidence that he did not in fact exercise power and control over the thing/drugs in question because there is no gainsaying that the owner of the drugs was Anthony Ang who himself escaped from prosecution.

The Supreme Court had occasion to rule that while proof of criminal intent is not needed in violation of a special law which is a malum prohibitum, still, knowledge must be proved. [25]

In the case at bar, the prosecution failed to prove beyond reasonable doubt that the accused-appellant knew that the contents of the boxes inside his van were dangerous drugs, thus, the burden of proof was not met.

In the recently decided case of San Juan vs. People[26] (2011), the Supreme Court ruled that in the crime of "transporting" dangerous drugs, the prosecution must prove that the accused travelled a certain distance carrying the dangerous drugs at the time he was apprehended. In the said case, the accused San Juan who was at the driver's seat, was merely sitting inside his car which was parked along the road when the authorities apprehended him. Dangerous drugs were found inside the car. He was prosecuted for transporting illegal drugs, however, the Supreme Court acquitted him on the rationale that there was no proof that at the time he was apprehended, he was in the act of "transporting" or moving the drugs to a certain distance[27]. In the same vein, it is clear from the facts in the present case that at the time of his apprehension, accused-appellant was not in the act of "transporting" or moving the dangerous drugs. As evident in the testimonies of the police officers and the accused-appellant himself, accused-appellant was summoned from his house to go to the warehouse where his van was parked. At the time of his apprehension, the van carrying the dangerous drugs was merely parked inside the warehouse.

It is well-entrenched in our jurisprudence that any doubt in the guilt or innocence of the accused must be appreciated in his favor. An iota of doubt in criminal prosecutions gives rise to an acquittal.

Considering the foregoing, accused-appellant must be acquitted.

WHEREFORE, in view of the foregoing, the instant appeal is GRANTED. Accused-appellant is hereby ACQUITTED of the violation of Section 5, Republic Act 9165 or the Dangerous Drugs Act of 2002. The immediate release of the accused-appellant is ordered unless he is being held for another crime.

SO ORDERED.

Barza, and Reyes-Carpio, JJ., concur.

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[1] Rollo, at 132-152

[2] Records I, at 1

[3] Records II, at 1

[4] Records I, at 309

[5] TSN, 03-06-09; 03-12-09; 10-27-09

[6] TSN, 03-06-09, pp. 22-24

[7] Ibid, pp. 8-47

[8] TSN, 3-12-09, pp. 9-17

[9] Ibid, pp. 18-19

[10] Ibid, pp. 20-30

[11] Exhibit “J”, Rollo, at 516

[12] Exhibit “K”, Rollo, at 517

[13] Exhibit “L”, Rollo, at 518

[14] TSN, May 3, 2011

[15] TSN, May, 9-6, 2011

[16] Rollo, at 150

[17] Ibid, at 151

[18] Brief for the Accused-appellant, pp. 120-129

[19] People vs. Vinecario, 420 SCRA 280

[20] Remedial Law Compendium Vol. II by Florenz D. Regalado, 9th Revised ed., pp. 564-565

[21] ibid

[22] Judgment dated December 7, 2011, p. 20

[23] People vs. De Gracia, 233 SCRA 716

[24] Dizon-Pamintuan vs. People, 234 SCRA 63

[25] Dimat vs. People, G.R. No. 181184, January 25, 2012

[26] G.R. No. 177191, May 30, 2011

[27] ibid

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