

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMELINA TABAR Y CARMILOTES AND ROMMEL ARRIESGADO Y
TABAR, ACCUSED, CARMELINA TABAR Y CARMILOTES,
ACCUSED-APPELLANT.**

G.R. No. 101124. May 17, 1993

Ponente: DAVIDE JR., J.

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DAVIDE JR., J.:

Carmelina Tabar y Carmilotes and her nephew, Rommel Arriesgado y Tabar, of Tres de Abril, Punta Princesa, Cebu City, were charged with the violation of Section 4, Article II of R.A. No. 6425, as amended, in an Information filed by the Office of the City Fiscal of Cebu City with the Regional Trial Court of Cebu City on 9 February 1989, the accusatory portion of which reads as follows:

"That on or about the 8th day of February 1989, at about 3:00 PM, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent, did then and there sell and deliver, without authority of law. Three (3) sticks of marijuana cigarettes, a (sic) prohibited drugs, to a person who posted himself as a buyer, in Viol. of Sec. 4, Art. 11, of RA 6425, as amended, otherwise known as the Dangerous Act of 1972."[1]

The case was docketed as Criminal Case No. CBU-14863 and after it was raffled off to Branch 15 of the said court, the accused were forthwith arraigned. Carmelina entered a plea of not guilty while Rommel, then seventeen (17) years of age, with the conformity of the prosecution, entered a plea of guilty to the lesser offense of possession of marijuana under Section 8, Article II of R.A. No. 6425, as amended.[2] As a consequence of his plea, the trial court handed down on 24 April 1989 an Order which reads in part as follows:

"Therefore this court being satisfied that the accused herein is the same Ramil Tabar described in Annex 1 (Certificate of Birth) of the said accused, and it appearing that he is still a minor (17 years), he is entitled to a suspended sentence of the penalty for possession of marijuana which is a jail term of six (6) years and one (1) day to twelve (12) years and a fine of Six Thousand (P6,000.00) pesos (Sec. 8 RA 6425 as amended of B.P. 179, March 2, 1982).

WHEREFORE, the accused Rommel Tabar y Arriesgado is hereby discharged on probation (Sec. 32 of RA 6425 as amended by B.P. 179) and committed to the custody of the Department of Social Welfare and Development, Cebu Regional Office (No. 7) until he reaches the age of majority, or otherwise finally discharged upon orders of this court pursuant to P.D. 603 and B.P. 179, but to be placed under the Supervision of the Dangerous Drugs Board, the alleged crime being drug related, and for a period of one (1) year from date hereof.

The Regional Director of the DSWD is hereby ordered to conduct and submit a case study of the accused minor to this court, within sixty days and to report on his conduct once every four months, to this court."[3]

Thereafter, trial proceeded as against Carmelina alone. The prosecution presented Pfc. Josephus Trangia and

Myrna P. Arreola, a forensic analyst of the PC Crime Laboratory Service, as its witnesses. The testimony of Pfc. Raul Tumakay was ordered stricken out since he could not be cross-examined. The defense had only Carmelina as its witness.

On 22 December 1990, the trial court promulgated its decision, dated 17 December 1990,[4] finding Carmelina "guilty, beyond reasonable doubt, for (sic) violation of Section 4, Article II RA 6425, otherwise known as the Dangerous Drugs Act of 1972 as amended by PD 1675" and sentencing her to "Reclusion Perpetua and to pay a fine of P20,000.00 for the act of selling and distributing marijuana." [5]

The conviction is premised on the following findings of fact:

"From the evidence which consists of the testimony of Pfc. Josephus Trangia, the court gathered that at about 3:00 P.M. of February 8, 1989, he was with Pfc. Romeo Cortes and Gualberto Gabales on a buy-bust operation for marijuana after receipt of information about marijuana pushers in Punta Princesa, Cebu City and that they had their informant go ahead of them after giving the P5.00 bill for him to purchase marijuana.

He continued saying that their informant stood in front of a shanty while they posted themselves at a distance of about 50 meters from the place where their informant was standing. And that they saw a young boy approached their informant and handed cigarettes to him who in turn handed the marked money to the young boy. Then, their informant gave them the pre-arranged signal of scratching his head with his right hand; that after the signal, he and his companions immediately approached the young boy and the informant introduced them as police officers. This young boy was about 16-17 years old, by the name of Rommel Arriesgado y Tabar. He had earlier pleaded guilty to the lesser offense of mere possession of marijuana and was, in fact, already convicted by this court. Upon being shown a P5.00 bill with the initials written thereon as: GDG-89 and bearing SL L F 637396, he identified the same bill as the one given to their informant and marked as Exh. "A" for the prosecution. He explained the initials GDG which stands for Gualberto G. Gabales, his team member. He further declared that after the pre-arranged signal from their informant, they immediately proceeded to the scene and were given three sticks of marijuana by their informant after buying the same from the boy, Rommel Arriesgado and that they proceeded to confiscate the P5.00 bill from the boy. At this juncture, he claimed that he observed that after the transaction, the boy went inside the shanty and the moment he got out, he handed the three sticks of marijuana to the informant. In fact, he claimed that after proceeding to the shanty, they met Carmelina Tabar, accused herein, and that Carmelina Tabar was holding a white pants from where they found other marijuana sticks in cigarette packs which they confiscated. That they brought Carmelina Tabar to Fuente Police Station for investigation. He claimed that there were 75 sticks of marijuana in the Hope Cigarette pack; 22 sticks of marijuana cigarettes in the Philip Morris pack and 99 sticks of marijuana in the Mark cigarette pack. He said that they also confiscated the pants, but only the marijuana sticks were submitted for testing to the PC Crime Laboratory. That pursuant to this requested analysis, Lieut. Fortunato Quijon of the Police issued a Certification of Field Test, Exh. "B" which showed that the three sticks of handrolled cigarettes marked Rommel-89 were positive for marijuana. Shown the three packs of cigarettes distinctly marked as Hope, Mark and Philip Morris, he identified the same as the ones confiscated from Carmelina Tabar. So did he identify the cream-colored pants he said they confiscated from Carmelina Tabar and which according to him was used to wrap marijuana sticks inside the pack. He finally told the court that this team was composed of Gualberto D. Gabales, Romeo Cortes, Pfc. Tumakay and himself.

On cross-examination, this witness affirmed that when he asked the boy, Rommel where he got the marijuana sticks, he was told he got it from his aunt, the accused herein. He further told the court that they arrested Rommel Tabar first and that they arrested Carmelina Tabar later. When the young boy went inside, they presumed the marijuana came from inside the shanty and that when the accused Carmelina Tabar went out, suspicious-looking and pale and afraid to face them, they told her to stop from going left towards the houses and asked her to open

the pants which revealed the three cigarette packs containing marijuana. The witness candidly admitted they had no search warrant at the time they effected the arrest and confiscation.

From the testimonies of Mrs. Myrna Areola, Police Lieutenant, Forensic Analyst of the PC Crime Laboratory, it was established that the specimens submitted to her were positive of marijuana. She then identified Exh. "C", as her Chemistry Report C-038-89. She also identified her signature, Exh. "C-4" thereon and her findings 'All are positive of Marijuana', Exh. "C-3"; the specimens submitted as Exh. "C-2" and the name of the subject, Carmelina Tabar as Exh. "C-1". She confirmed her findings on all handrolled cigarettes in all cigarette packs; Hope, Exh. "E-1" to "E-75"; Philip Morris pack as Exh. "F-1" to "F-22" and Mark cigarette pack, Exh. "G-1" to "G-99". She informed the court that the specimens were submitted to her by Pfc Gabales on February 11, 1989, at about 10:50 A.M., and that she herself typed her report, Exh. "C"; that she examined the sticks one by one and handrolled them again. She also claimed that the police did not ask for a copy of her report and that this is the first time it is presented in court. She informed the court that she placed the specimens in her evidence store room, with keys, she herself kept."^[6]

The trial court discredited the bare denials of Carmelina and unfavorably considered against her an admission that she had been arrested before by the CANU for possession of marijuana, was charged for the violation of Section 8, Article II of R.A. No. 6425 in Criminal Case No. CBU-8573, was convicted therein, but is now on probation.^[7] It further considered against her an allegedly very damaging admission, thus:

"She made a very damaging admission to the court when the Presiding Judge asked her whether it is not true that she kept on crying because she was caught again and she said, "Yes" and at which juncture she admitted to the court that she was serving probation for the same offense."^[8]

It then concluded that:

"[A]ccused actually employed her nephew, Rommel Arriesgado to sell marijuana from her store and that she has been in that illicit business for quite sometime now. The evidence notwithstanding, talks in the community where the accused lives is rife with accustaions (sic) that she is indeed engaged with members of the family, in the sale and distribution of prohibited drugs such as marijuana. Between the positive testimony of the arresting officers, who appear to be more credible than the accused's worthless and untrustworthy denials, the court gives credence to the evidence of the prosecution."^[9]

Unable to accept the verdict, Carmelina filed her notice of appeal^[10] manifesting therein that she is appealing from the decision to the Court of Appeals. In its Order of 27 February 1991,^[11] the trial court gave due course to the appeal and directed the clerk of court "to submit all the records, evidences (sic) and transcripts of this proceeding to the Hon. Court of Appeals, for proper disposition." Considering that the penalty imposed is reclusion perpetua, the Court of Appeals transmitted to this Court the records of the case on 12 August 1991.^[12] In the Resolution of 11 September 1991, this Court accepted the appeal.

In her Appellant's Brief,^[13] Carmelina, hereinafter referred to as the Appellant, imputes upon the trial court the commission of the following errors in the appealed decision:

"I

X X X IN CONVICTING ACCUSED-APPELLANTS (sic) OF VIOLATION OF SECTION 4, ARTICLE II, REPUBLIC ACT 6425 AS AMENDED WHEN THE EVIDENCE DOES NOT WARRANT IT.

II

X X X IN ADMITTING EVIDENCE SEIZED WITHOUT ANY SEARCH WARRANT." [14]

As to the first assigned error, the appellant claims that the prosecution presented no evidence that she sold marijuana and since there exists no convincing, positive and conclusive proof of conspiracy between her and her co-accused, Rommel Arriesgado, she cannot be held liable for violation of Section 4, Article II of R.A. No. 6425, as amended.

In support of the second assigned error, the appellant maintains that the marijuana cigarettes seized from her are inadmissible in evidence because they were obtained in violation of the constitutional guarantee against unreasonable search and seizure.

After a careful perusal of the records and evaluation of the evidence, this Court is inclined to agree with the appellant that she should not be convicted under Section 4, Article II of R.A. No. 6425. We rule, however, that she is liable under Section 8, Article II of the said Act. Her conviction by the trial court under Section 4 is primarily based on its conclusion that the appellant "actually employed her nephew Rommel Arriesgado to sell marijuana from her store and that she had been in that illicit business for quite sometime now." This conclusion is based on the trial court's sweeping statement that "talks in the community where the accused lives is rife with accusations that she is indeed engaged with members of the family, in the sale and distribution of prohibited drugs such as marijuana." We find no evidence on record to sustain this charge. It may thus be said that such a conclusion is not based on established facts but on "talks in the community." If indeed such was the fact, it would not have been difficult for the prosecution to provide the court with overwhelming evidence. Yet, it presented only Pat. Trangia who, rather unfortunately, did not even testify or volunteer information that the main target of the buy-bust operation was the appellant. He did not also disclose in his testimony that the appellant was among the reported "pushers" in Punta Princesa, Cebu City. It may be recalled that the buy-bust operation on 8 February 1989 was conducted because, as he alleged:

"A Before that time we have already received information from the community of Punta Princesa regarding marijuana pushers in that place." [15]

Nevertheless, the prosecutor who conducted the direct-examination of Trangia did not ask further as to the identity of the pushers such that it was not proven that the appellant was one of them. The Solicitor General, however, maintains that there was conspiracy, established by circumstantial evidence, between accused Rommel Arriesgado who was caught in flagrante selling three (3) sticks of handrolled marijuana to the informant and accepting the marked money. We are not persuaded since the evidence for the prosecution does not show that (a) the appellant was in the mind of the members of the team when they planned the buy-bust operation and when they carried out such plan, (b) the three (3) sticks of handrolled marijuana came from the appellant, and (c) the appellant used Rommel as her agent to sell the three (3) sticks to the informant. Moreover, if indeed the prosecution truly believed that such conspiracy existed, it should not have willingly given its conformity to Rommel's plea to the lesser offense of illegal possession of prohibited drugs under Section 8, Article II of R.A. No. 6425, as amended. Having been caught in flagrante for selling marijuana, it was not difficult to prove Rommel's culpability under Section 4, Article II of the Act. Yet it readily consented to his offer to plead guilty to the said lesser offense.

It was, however, established beyond any shadow of doubt and, therefore, with moral certainty, that the appellant kept in her possession handrolled sticks of marijuana placed in empty Hope, Philip Morris and Mark cigarette packs. [16] She does not have any authority to possess them. She may have acquired them with the intention to sell them for profit; but without proof of sale, she cannot be held liable under Section 4, Article II of the Dangerous

Drugs Act. For such possession, her liability is covered by Section 8 of the said Article which penalizes possession or use of prohibited drugs. The last paragraph thereof reads:

x x x

"The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use Indian hemp."

Indian hemp is otherwise known as Marijuana.[17]

Appellant, therefore, may specifically be penalized under the aforesaid last paragraph of Section 8, Article II of the Act. Applying the Indeterminate Sentence Law,[18] the penalty of eight (8) years as Minimum to twelve (12) years as Maximum and a fine of P10,000.00 may then be imposed upon her.

The second assigned error is without merit. The evidence for the prosecution discloses that the appellant placed the packs of marijuana sticks under the rolled pair of pants which she was then carrying at the time she hurriedly left her shanty after noticing the arrest of Rommel. When she was asked to spread it out, which she voluntarily did, the package containing the packs of marijuana sticks were thus exposed in plain view to the members of the team. A crime was thus committed in the presence of the policemen. Pursuant to Section 5, Rule 113 and Section 12, Rule 126 of the Revised Rules of Court, she could lawfully be arrested and searched for anything which may be used as proof of the commission of an offense without the corresponding arrest and search warrants. Her own counsel on cross-examination of prosecution witness Josephus Trangia further obtained a re--affirmation of these facts, thus:

"Q You mean to say that when you saw Carmelina Tabar allegedly went (sic) out of the shanty you only saw the white long pants and not the cigarettes?

A Only the pants.

Q Did you say that in order to find out what are the contents of the pants, you asked her to open the pants. Isn't it?

A Yes.

Q Now, after she opened it, what did you see?

A Three (3) packs of marijuana cigarettes.

Q Who among you in your team approached Carmelina Tabar?

A It was PFC Raul Tumakay."[19]

Even assuming *ex gratia argumenti* that the search and seizure were without a warrant, the appellant had effectively waived her constitutional right relative thereto by voluntarily submitting to the search and seizure. In *People vs. Malasugui*,[20] this Court ruled:

"When one voluntarily submits to a search and consents to have it made of his person or premises, he is precluded from later complaining thereof (*Cooley, Constitutional Limitations*, 8th ed., vol. I, page 631). The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly."

The exclusionary rule relied upon by the appellant does not provide her a safe refuge.

Before We close this case, a final observation for the guidance of trial judges must be made.

For the violation of Section 4, Article II of R.A. No. 6425, as amended, the trial court imposed the penalty of reclusion perpetua. The penalty provided for therein is "life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos." In view of Section 19(1), Article III of the 1987 Constitution which prohibits the imposition of the death penalty, the maximum penalty then imposable thereunder would only be life imprisonment. Life imprisonment, however, is not synonymous with reclusion perpetua. We have reiterated this time and again^[21] and admonished judges to employ the proper legal terminology in the imposition of imprisonment penalties because of their different accompanying legal accessories and effects.^[22]

IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered modifying the challenged Decision of Branch 15 of the Regional Trial Court of Cebu in Criminal Case No. CBU-14863 dated 17 December 1990 and, as modified, finding appellant CARMELINA TABAR y CARMILOTES guilty beyond reasonable doubt of illegal possession of marijuana under Section 8, Article II of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and, applying the Indeterminate Sentence Law, she is sentenced to suffer imprisonment of eight (8) years as minimum to twelve (12) years as maximum and to pay a fine of Ten Thousand Pesos (P10,000.00).

Costs against the appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), 1.

[2] Id., 14.

[3] OR, 16.

[4] Id., 63-72; Rollo, 15-24.

[5] Id., 72; Id., 24.

[6] OR, 68-70; Rollo, 20-22.

[7] OR, 71; Rollo, 23.

[8] Id., Id.

[9] Id., Id.

[10] Id., 75.

[11] OR, 76.

[12] Rollo, 1.

[13] Id., 40, et seq.

[14] Appellant's Brief, 1.

[15] TSN, 14 November 1989, 4.

[16] Exhibits "E", "E-1" to "E-75", inclusive; "F", "F-1" to "F-22", inclusive; and "G", "G-1" to "G-99", inclusive.

[17] Section 2(i), Article I, R.A. No. 6425, as amended.

[18] Act No. 4103, as amended by Act No. 4225 and R.A. No. 4203. Section 1 thereof provides, inter alia, that in imposing a prison sentence for an offense punished by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by the said law and the minimum shall not be less than the minimum term prescribed by the same. See *People vs. Ramos*, 186 SCRA 184 [1990].

[19] TSN, 21 May 1990, 7.

[20] 63 Phil. 221, 226 [1936]. See also *Vda. de Garcia vs. Locsin*, 65 Phil. 689 [1938]; *People vs. Donato*, 198 SCRA 130 [1991]; *People vs. Rodriguez*, 205 SCRA 791 [1992]; *People vs. Omaweng*, G.R. No. 99050, 2 September 1992.

[21] For instance, *People vs. Mobe*, 81 Phil. 58 [1948]; *People vs. Abletes*, 58 SCRA 241 [1974]; *People vs. Gonzales*, 58 SCRA 265 [1974]; *People vs. Pilonas*, 84 SCRA 167 [1978]; *People vs. Baguio*, 196 SCRA 459 [1991]; *People vs. Penillos*, 205 SCRA 546 [1992].

[22] *People vs. Torrejas*, G.R. No. 94187, 4 November 1992.

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