

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO GOMEZ AND FELIPE IMMACULATA, ACCUSED, FELIPE IMMACULATA, ACCUSED-APPELLANT.

G.R. No. 101817. March 26, 1997

Ponente: VITUG, J.

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VITUG, J.:

Quite unfortunately, in the war on drugs, almost invariably, it is the little fellow who easily gets the axe but the barons come out unscathed.

Accused Eduardo Gomez, a bartender, and Felipe Immaculata, a former bus driver, were implicated in the crime of transporting twenty (20) kilograms of heroin, estimated to be worth \$40,000,000.00,[1] contained in two golfbags. Arraigned, tried and ultimately convicted, Gomez and Immaculata were each meted the penalty of reclusion perpetua and ordered to pay a P20,000.00 fine by the Regional Trial Court of Pasay City, Branch 113,[2] in Criminal Case No. 90-4717.

Also charged, along with the duo, with having violated Section 4, Article II, in relation to Section 21, Article IV, of Republic Act No. 6425 (the Dangerous Drugs Act of 1972), as amended, were Aya Yupangco, Art David, Lito Tuazon and Benito Cunanan, who all were able to evade arrest. Gomez, an American citizen of Filipino ancestry, surrendered to the officer-in-charge of the then Clark Air Force Base in Angeles City, while Immaculata was apprehended by agents of the National Bureau of Investigation ("NBI").

Gomez and Immaculata entered a plea of "not guilty" to the accusation.[3] The prosecution moved to discharge Gomez so that he could be a state witness.[4] The motion was strongly opposed by Immaculata.[5] Eventually, the trial court refused to discharge Gomez holding that, among other things, "it (was) evident throughout his affidavit that his only purpose in executing the same was to exculpate himself and (to) lay the blame on his co-accused." [6]

The events that transpired leading to the filing of the charges were recounted in good detail during the trial of the case.

On 27 February 1990, David, an employer[7] of Immaculata sent the latter to Bangkok, Thailand, to canvass ready-to-wear clothes.[8] David and Gomez followed Immaculata about a week later (04 March 1990). Immaculata fetched the two at the Bangkok Airport. Immaculata, David and Gomez proceeded to and stayed at the Union Towers Hotel.[9] After two days, they transferred to the apartment of one Lito Tuazon where they spent the rest of their stay in Bangkok.[10]

On 14 March 1990, Immaculata, Gomez and Aya Yupangco left Bangkok and boarded Manila-bound flight numbered PR-731. Immaculata and Yupangco occupied seats No. 52A and No. 54D. Gomez was on the same flight.[11] He checked-in two golfbags, and he was issued interline claim tags No. PR 77-28-71[12] and No. 77-28-72.[13]

In Manila, Gomez deposited the two golfbags with the interline baggage room for his connecting flight from

Manila to San Francisco via United Airlines ("UAL") flight numbered 058 scheduled to depart the following morning (15 March 1990). The golfbags were kept in the transit rack baggage along with other pieces of luggage destined for San Francisco via the UAL flight.[14]

Well before flight time on 15 March 1990, Romeo Dumag, a customs policeman at the Ninoy Aquino International Airport ("NAIA"), was requested by Customs Collector Edgardo de Leon to help facilitate the checking-in of Eduardo Gomez. Dumag sought from his security officer, a certain Capt. Reyes, the latter's permission. Having received the go-signal, Dumag accepted from De Leon the ticket and passport of Gomez. Dumag proceeded to the UAL check-in counter. The airline's lady staff, Annabelle Lumba, directed Dumag to first claim the passenger's items to be checked-in at the interline baggage room.[15]

At the interline baggage room, Dumag spoke to Michael Angelo Benipayo, a PAL employee assigned at the NAIA central baggage division and baggage handling section, and presented the two claim tags of Gomez together with the latter's passport and plane ticket. Convinced that Dumag had been duly authorized to retrieve the baggages, Benipayo released, upon the approval of a customs examiner named Nick,[16] the two golfbags wrapped in blue cloth. To acknowledge the release, Dumag affixed his signature[17] to the "unclaimed baggage/transit list." [18]

PAL loader Edgardo Villafuerte helped carry the golfbags to the UAL check-in counter. Annabelle Lumba attached a San Francisco laser tag (UA Tag No. 594513 and Tag No. 594514) and wrote the name "Gomez" on each side of the golfbags. She then handed to Dumag the boarding pass and UAL plane ticket for Gomez.[19] Dumag proceeded to Patio Manila, a restaurant at the NAIA, where he turned over to Collector De Leon the travel papers of Gomez.[20]

Gomez failed to board the UAL flight. The two golfbags were off-loaded from the aircraft. At around four o'clock in the afternoon, PAL staff Dennis Mendoza brought the golfbags back to the check-in counter for a security check-up. The x-ray machine showed unidentified dark masses. Alarmed, Mendoza immediately relayed the information to Capt. Ephraim Sindico of the 801st Aviation Security Squadron of the Philippine Air Force Security Command ("PAFSECOM") then deployed at the NAIA. Capt. Sindico rushed to the check-in area. He instructed his men to get the golfbags pass through the x-ray machine once again. Satisfied that something was indeed wrong, Capt. Sindico reported the matter to Col. Claudio Cruz who ordered his men to have the golfbags go, for the third time, through the x-ray machine. The unidentified dark masses having been definitely confirmed, Col. Cruz ordered his men to open the glued bottom zipper of the golfbags. The golfbags yielded thirty-one single packs,[21] each with an approximate size of 1" x 6" x 4," containing a white powder substance suspected to be "heroin" with a total weight of 20.1159 kilograms.[22] The examination by the PAFSECOM personnel was witnessed by the NAIA manager, a representative of the UAL and other customs personnel.[23]

Initial PAFSECOM investigation established that the two golfbags were interline baggages which arrived on 14 March 1990 on board PAL flight PR-731 from Bangkok. The identity of the owner was traced, through UAL claim tags No. 594513 and No. 594514, to Gomez. Before turning over the golfbags and the thirty-one packs of white powder, together with the UAL claim tags, to the authorities,[24] the packs were first individually weighed at the office of the District Collector of NAIA in the presence and with the participation of three personnel of the Bureau of Customs and three agents of the NBI.

Leonora Vallado, chief of the NBI Forensic Chemistry Section, who later conducted a laboratory examination on the white powder, issued a report, dated 23 March 1990, to the effect that the substance was positive "for the presence of HEROIN HCL in the amount of 70.6% and 86.1% respectively." [25]

Immaculata and Gomez denied having anything to do with the confiscated drug.

A former shuttle bus driver for six years, Immaculata said he was hired by David to be a "stay-in driver" with a monthly salary of P2,000.00. He would at times be asked to likewise do some special errands for David.[26]

Gomez, on his part, stated that he had met David for the first time in 1986 on board a plane flight from the Philippines to Los Angeles, U.S.A. Gomez was a bartender at the Horseshoe Hotel in Las Vegas, while David was a jewelry trader in Texas and Los Angeles. The two got to be on friendly terms after their second chance meeting at a wedding anniversary celebration in Los Angeles. On Mondays thereafter, Gomez would meet David in Las Vegas to play golf with Benny Cunanan.[27] Once, Gomez was asked if he would be willing to "bring in" some dollars to the Philippines. Gomez showed no interest to accept the deal until some time in 1990 when he finally agreed. Gomez was to receive a free round-trip ticket (US-Manila-US) plus \$2,500.00. Upon his return to the U.S., Gomez would then get another \$2,500.00. During the first week of February, 1990, Cunanan told Gomez that he had bought himself a golf set which Gomez could use in the Philippines. A few weeks later, one Andy Bombao requested Gomez to also take with him another golf set for Cunanan.

Gomez left the U.S. for the Philippines on 26 February 1990. He checked-in the two golfbags and a luggage. He handcarried a small traveler's bag and the US\$30,000.00 cash he was commissioned to bring with him. At the NAIA, Gomez was met by David and Immaculata. The three proceeded to a house in Bicutan where David took the golfbags and the dollars.[28] From Bicutan, Gomez, David and Immaculata went to Nasugbu, Batangas, where they stayed for about two or three days. From Nasugbu, they went to Vito Cruz and then back to Bicutan. Here, Gomez was handed two (2) plane tickets, a PAL round-trip ticket to Bangkok (Manila-Bangkok-Manila) and a UAL ticket for San Francisco, U.S.A.[29]

On 27 February 1990, David sent Immaculata to Bangkok to canvass prices of ready-to-wear clothes. Immaculata stayed at the Asia Hotel for four days. On the fourth day of his stay, Immaculata called David to inform him that he was running out of cash. David instructed Immaculata to wait for him in Bangkok and to meanwhile stay with Lito Tuazon in the latter's apartment.

David and Gomez left for Thailand on 04 March 1990 bringing with them a golf set each. Immaculata fetched the two at the Bangkok Airport and brought them to the Union Towers Hotel where they stayed for two days. On the third day, David and Gomez played golf while Immaculata cleaned and prepared Lito Tuazon's apartment for David where the latter transferred and spent the rest of his stay in Bangkok.[30]

David returned to Manila on 09 March 1990.[31] On 10 March 1990, Lito Tuazon had the tickets of Gomez and Immaculata also confirmed for the return trip to Manila. David, who was by then in Manila, called up Gomez to tell him that Aya Yupangco was arriving in Thailand and that the latter should not be allowed to see the golfbags.[32] Gomez became suspicious but David assured Gomez that the golfbags merely contained precious jewels and stones.

On 12 March 1990, Yupangco, who claimed to be a NARCOM agent, arrived in Thailand. He had dinner with Gomez.[33] The following day, Gomez was told by Immaculata to pick up the golfbags from Lito Tuazon's apartment. On 14 March 1990, Gomez picked up the golfbags. He noticed that the golfbags were heavier than usual. Tuazon explained casually to Gomez that there were pieces of jewelry and precious stones inside the golfbags. At the Bangkok Airport, Tuazon checked-in the golfbags for Gomez.[34] Immaculata and Yupangco took the same flight. Gomez was met at the NAIA lobby by David.

On 15 March 1990, Charlie Rivera and David took the ticket and passport of Gomez in order to confirm the latter's flight to the U.S. The following day, 16 March 1990, Rivera informed Gomez that he could not take his flight to San Francisco. Gomez confronted David about the matter. The latter promised to clear up things and invited David to Nasugbu where they stayed until 21 March 1990.[35] Thereafter, Gomez stayed with a certain

Jhun Guevarra at Bicutan. It was there that Gomez called up his stepfather and told him about the situation he was in. Gomez's stepfather convinced him to give himself up to the American authorities. On 23 March 1990, Gomez, his stepfather and his half-brother named Frankie, went to the then officer-in-charge of Clark Airbase in Angeles City. The latter turned over custody of Gomez to the Drug Enforcement Agency ("DEA") of the United States in Manila. The DEA, in turn, surrendered him to the NBI.[36]

Meanwhile, on 22 March 1990, David and Immaculata left for Hongkong reportedly to get some spare parts for David's Mercedes Benz car.[37] In Hongkong, after buying the car spare parts, David and Immaculata went to the U.S. Department of Justice in Hongkong. While waiting for David, Immaculata was confronted by a group of people, who turned out to be from the Hongkong Immigration office, requesting for his travel papers. Immaculata was brought in for investigation because of an expired visa, then turned over to the police authorities and finally to the court which decreed his imprisonment.

In the Hongkong prison, Immaculata was visited by NBI agents for his implication in the "heroin" case. He denied the accusation. Later, he agreed, without the assistance of counsel, to execute a sworn statement at the Stanley Prison. After his prison term, Immaculata was deported to Manila.[38] According to the NBI, when Immaculata was apprehended by the Hongkong immigration authorities, he and David were preparing to leave for Mexico.[39]

The trial court found Gomez and Immaculata guilty beyond reasonable doubt of the crime charged. While Gomez and Immaculata filed separate notices of appeal to this Court from their conviction,[40] only Immaculata, however, filed his brief.[41] Gomez, assisted by counsel, filed a "manifestation of withdrawal of appeal"[42] to which the Solicitor General interposed no objection.[43] The Court would only thus consider the appeal of Immaculata.

In his appeal, Immaculata[44] insists that the trial court has erred in including him in the drug conspiracy and in admitting in evidence his sworn statement taken, without the assistance of counsel, by an NBI agent at the Stanley Prison in Hongkong.

Unquestionably, heroin, a prohibited drug, was being transported when discovered by the authorities at the NAIA. That the contraband failed to reach its final destination would not preclude the commission of the crime of transporting illegal drugs; the fact of actual conveyance would suffice to support a finding of guilt.[45]

The trial court found appellant Immaculata to have been part of the conspiracy in the illegal traffic of drugs, and it deduced appellant's conspiratorial participation in the crime from the following facts: (1) appellant was not only an employee but a business partner or associate of David; (2) appellant, Yupangco and Gomez were all on board the same PAL flight No. PR-731 from Bangkok to Manila in which flight the golfbags containing the heroin were checked-in, and (3) all three stayed in one apartment while in Bangkok.

Conspiracy is deemed to arise -

"x x x `when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.' Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence therefore must reasonably be strong enough to show a community of criminal design." [46]

Conspiracy, to be the basis for a conviction, should be proved in the same manner as the criminal act itself. It is also essential that a conscious design to commit an offense must be established. Conspiracy is not the product of

negligence but of intentionality on the part of the cohorts.[47]

Appellant, it might be true, was an incorporator, along with David, of AD-333, Inc.; however, nothing could be gathered from the records to show that the corporation was engaged in or used at one time or another for any unlawful purpose, let alone in the illegal traffic of drugs. It would, in fact, appear that appellant was made to be a signatory of the incorporation papers of AD-333, Inc., only because David needed to comply with the minimum number of incorporators required by law for its registration.[48]

The trip to Bangkok of appellant and his co-accused might perhaps elicit suspicion on the real nature of his association with David, but an assumed intimacy between two persons of itself does not give that much significance to the existence of criminal conspiracy. Conspiracy certainly transcends companionship.[49]

While the sworn statement taken from appellant by an NBI agent at the Stanley Prison in Hongkong during his incarceration was not made the basis for Immaculata's conviction by the court a quo, a word could be said about the manner in which it was procured. It would seem that appellant was merely apprised in general terms of his constitutional rights to counsel and to remain silent. He then was asked if he would be willing to give a statement. Having answered in the affirmative, the NBI investigating agent asked him whether he needed a lawyer. Appellant answered:

"S. Sa ngayon po ay hindi na at totoo lang naman ang aking sasabihin. Kung mayroon po kayong tanong na hindi ko masasagot ay sasabihin ko na lang po sa inyo." [50]

After that response, the investigation forthwith proceeded. This procedure hardly was in compliance with Section 12(1), Article III, of the Constitution which requires the assistance of counsel to a person under custody even when he waives the right to counsel.[51] It is immaterial that the sworn statement was executed in a foreign land. Appellant, a Filipino citizen, should enjoy these constitutional rights, like anyone else, even when abroad.

Under our laws, the onus probandi in establishing the guilt of an accused for a criminal offense lies with the prosecution. The burden must be discharged by it on the strength of its own evidence and not on the weakness of the evidence for the defense or the lack of it. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence.

Here, it is not unlikely for one to suspect that appellant has had an inkling on the existence of the conspiracy but the essential connecting link showing a definite community of design between him and the others just has not been adequately shown. When the circumstances obtaining in a case are capable of two or more inferences, one of which is consistent with the presumption of innocence while the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit.[52]

WHEREFORE, the judgment of the trial court convicting appellant Felipe Immaculata of the crime charged is hereby REVERSED and SET ASIDE on the basis of reasonable doubt. His immediate release from the New Bilibid Prisons is ordered unless he is detained for any other lawful cause. Costs de oficio.
SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] RTC Decision, p. 19. Rollo, p.48.

[2] Presided by Judge Baltazar Relativo Dizon.

[3] Records, pp. 33-36.

[4] Ibid., p. 55.

[5] Ibid., p. 74.

[6] Ibid., p. 230.

[7] Immaculata and Artem B. David, along with three others, were also incorporators of AD-333, Inc., a corporation registered with the Securities and Exchange Commission and organized for the purpose of setting up tourist resorts.

[8] TSN, January 4, 1991, pp. 6-7.

[9] TSN, January 9, 1991, p. 4.

[10] Ibid., pp. 6-7.

[11] Evidenced by the Philippine Commission on Immigration and Deportation arrival card No. 4990000 accomplished and signed by him.

[12] Exh. D-1.

[13] Exh. C-1.

[14] TSN, August 17, 1990, p. 13.

[15] TSN, October 10, 1990, pp. 4-13.

[16] TSN, August 17, 1990, p. 12.

[17] Exh. Y-1.

[18] Exh. Y.

[19] TSN, August 10, 1990, pp. 10-12.

[20] TSN, October 10, 1990, p. 18.

[21] Exhs. K-1 to K-18 and L-1 to L-11.

[22] Exh. T.

[23] TSN, August 6, 1990, pp. 30-36.

[24] TSN, August 6, 1990, p. 35.

[25] Exh. A-2.

[26] TSN, January 4, 1991, pp. 3-5.

[27] TSN, February 1, 1991, pp. 1-5.

[28] Ibid., pp. 8-15.

[29] TSN, February 11, 1991, pp. 10-11.

[30] TSN, January 4, 1991, pp. 4-8.

[31] TSN, February 11, 1991, p. 19.

[32] Ibid., pp. 20-23.

- [33] Ibid., p. 24.
- [34] Ibid., pp. 30-31.
- [35] TSN, February 13, 1991, pp. 11-12.
- [36] TSN, February 13, 1991, pp. 14-17.
- [37] TSN, January 4, 1991, p. 10.
- [38] TSN, January 4, 1991, pp. 10-12.
- [39] TSN, August 23, 1990, p.12.
- [40] Records, pp. 555 & 565.
- [41] Rollo, p. 74.
- [42] Ibid., p. 122.
- [43] Ibid., p. 152.
- [44] Gomez withdrew his own appeal.
- [45] People vs. Lo Ho Wing, 193 SCRA 122.
- [46] Magsuci vs. Sandiganbayan, 240 SCRA 13, 17.
- [47] Ibid., at p.18, cited in Sabiniano vs. Court of Appeals, 249 SCRA 24.
- [48] TSN, January 4, 1991, p.12.
- [49] People vs. Paguntalan, 242 SCRA 753, citing People vs. Padrones, 189 SCRA 496 and People vs. Custodio, 47 SCRA 289.
- [50] Exh. EE.
- [51] People vs. Rodriguez, 205 SCRA 791.
- [52] People vs. Fider, 223 SCRA 117.

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