

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEAN BALINGAN Y BOBBONAN ALIAS “SUSAN”; “JANE” AND “JUANA”; ACCUSED-APPELLANT.

G.R. No. 105834. February 13, 1995

Ponente: PUNO, J.

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PUNO, J.:

On April 4, 1989, appellant Jean Bobbonan Balingan was arraigned and pleaded not guilty [1] to the charge of Violation of Sec. 4, Art. II of Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act," under an Information, dated October 24, 1988, which alleges:

"That on or about the 31st day of August, 1988, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously and knowingly transport and deliver prohibited drugs consisting of marijuana leaves weighing, more or less, three (3) kilos and 500 grams from Baguio City to Metro Manila, in violation of the above-mentioned provisions of law.

"CONTRARY TO LAW."

At the trial that ensued, the prosecution and the accused presented divergent versions of what occurred on August 31, 1988.

The prosecution evidence established that on August 31, 1988, the Narcotics Intelligence Division of the Baguio City Police Station received a telephone call from an unnamed male informant. He passed the information that appellant was going to Manila with a bag filled with marijuana. Acting on the information, then P/Lt. Manuel Obrera [2] formed a surveillance team to monitor appellant's movements. [3] The team was deployed at different places in Baguio City, including appellant's house on Brookside and bus stations. [4]

The surveillance yielded positive results. The conduct of the operations which led to the apprehension of appellant was accurately narrated by the trial court in its Decision, viz.:

"xxx Cpl. Garcia soon reported seeing Balingan move out from her residence at Brookside and board a taxicab which proceeded to the direction of Bonifacio Street. Balingan was wearing a pink dress and carrying a gray luggage (like a "maleta") with orange or yellow belts. She also reported the make and plate number of the taxicab which Balingan boarded. Upon receiving the report, Lt. Obrera ordered Cpl. Garcia to proceed to the Philippine Rabbit Terminal in case Balingan would go there.

"Pat. Kimay, who must have intercepted Cpl. Garcia's message, also reported that the taxicab described by the latter passed along Bonifacio Rotunda. Lt. Obrera instructed him to move out and proceed to the Police Checkpoint at Kennon Road going to the Philippine Military Academy.

"From his post at the Dangwa Bus Station, Pat. Bueno informed Lt. Obrera that Balingan boarded a Dangwa

Bus with plate number NTU-153 bound for Manila. Lt. Obrera promptly proceeded to the bus station to verify the report. There, he went up the bus described by Pat. Bueno, and he saw Balingan on the third or fourth seat behind the driver's seat. (I)n the luggage carrier above her head was the gray luggage earlier described by Cpl. Garcia. He then left and positioned himself with Ong at the Lakandula burned area to wait for the bus to depart.

"At about 11:00 o'clock of the same morning, the bus moved out (on its way) to Manila via Kennon Road. Lt. Obrera instructed Pat. Kimay, who was at the Kennon Road Checkpoint, to stop the bus when it reaches the place. Meanwhile, Lt. Obrera and Lt. Ong tailed the bus at about fifteen to twenty meters behind. As instructed, Pat. Kimay stopped the bus at the Kennon Road Checkpoint. That was already at 11:30 o'clock in the morning. Lt. Obrera and Pat. Ong arrived at the Checkpoint less than a minute after the bus (did) and immediately boarded it. Lt. Obrera announced a routinary check-up. Pat. Ong identified himself as a policeman to Balingan and asked her permission to check her luggage xxx. (S)he did not respond and just looked outside the window. He opened the luggage in the luggage carrier overhead and above Balingan and found suspected marijuana in it. He pulled out the luggage and turned it over to Lt. Obrera.

"Thereupon, Lt. Obrera tried to arrest Balingan but the latter resisted and tried to bite his hand and furthermore held tightly (onto) the window pane. Lt. Obrera asked Pat. Ong to fetch Cpl. Garcia from the Philippine Rabbit Terminal in the City proper, so that she would be the one to bring out Balingan from the bus. In the meantime, he remained inside the bus holding the confiscated luggage while the other passengers alighted from the bus.

"After some thirty minutes, Garcia arrived and pulled Balingan out of the bus and brought her to the Baguio City Police Station and there locked her up in jail." [5]

The gray bag confiscated from appellant contained suspected marijuana flowering tops divided into four bundles separately wrapped in plastic bags. [6] Samples were taken from the bundles and preliminary tests were conducted on them by Pat. Juanito G. Kimay, Jr. [7] Using the Duquonois levine reagent test, he found traces of THC, an active component of marijuana, in the samples. [8] Further laboratory examinations conducted on the contents of the bag by P/Capt. Carlos V. Figueroa, [9] forensic chemist and chief of the PC-INP Crime Laboratory at Camp Dangwa, La Trinidad, Benguet yielded the following findings:

"Qualitative examination conducted on the above-mentioned specimen gave POSITIVE result to the tests for marijuana, a prohibited drug." [10]

Appellant, as lone witness, denied the prosecution's version. She claimed that prior to her arrest, she was living at Asin Road, Baguio City, in the house of her employer, Esper Chinonchon. Part of her duties was to go to Manila to pick up orders for Chinonchon's woodcarving enterprise. She was allegedly on such an errand when she was arrested by narcotics agents on August 31, 1988. [11]

Appellant testified that she left Asin Road early in the morning of that fateful August day, carrying nothing but her purse and a handkerchief. [12] Instead of going directly to the bus station, she passed by her daughter's boarding house at Brookside to drop off some money. From there, she went by jeep to the Dangwa bus terminal where she boarded a bus going to Manila. [13]

It was around eleven o'clock in the morning (11:00 a.m.) when the Dangwa bus she was riding left the terminal. [14] Shortly after, the vehicle was flagged down by policemen at a checkpoint at Kennon Road. Several officers boarded the bus, and one of them took a gray bag from somewhere. Despite her protestations, the officer insisted that she was "Susan" and that she owned the gray bag. Appellant was arrested and brought to the Baguio City Police Station, where she was investigated and consequently incarcerated. During her interrogation, appellant insisted on her innocence. [15]

After trial, appellant was convicted by the Regional Trial Court of Baguio City, Branch 4, [16] and sentenced as

follows:

"WHEREFORE, the Court finds and declares the accused JEAN BALINGAN Y BOBBOBAN guilty beyond reasonable doubt of the crime of illegal transportation of prohibited drugs as charged, and hereby sentences her to suffer the penalty of life imprisonment; to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency; and to pay the costs.

"In the service of her sentence, the accused shall be credited with her preventive imprisonment under the terms and conditions prescribed in Article 29 of the Revised Penal Code, as amended.

"The confiscated marijuana flowering tops are hereby declared forfeited in favor of the Government; and upon the finality of this decisions, the Branch Clerk of Court is directed to turn them over to the Dangerous Drugs Custodian (NBI) for disposition in accordance with law.

"SO ORDERED."

In this appeal, appellant submits that the trial court erred in: (1) not acquitting her on the ground that her guilt had not been proved beyond reasonable doubt; (2) not considering material evidence on record, which if considered will lead to her acquittal; (3) convicting her based entirely on conclusions based on hearsay and concocted evidence; (4) holding that she was caught in the act of transporting the subject prohibited drugs based on hearsay evidence; (5) holding that there was sufficient probable cause for the police officers to believe that she was then and there committing a crime so as to justify the warrantless search and seizure of the bag; and (6) not excluding the subject prohibited drugs which are clearly products of an illegal search. [17]

We are not persuaded by appellant's arguments. We affirm the trial court's Decision.

Appellant raises two (2) basic issues. The first issue is whether the required quantum of proof to support her guilt was established by the prosecution; the second is whether the search done inside the Dangwa bus and the consequent seizure of the marijuana flowering tops were done in violation of the Constitution.

We hold that the prosecution was able to adduce evidence to prove appellant's guilt beyond reasonable doubt. Witness Obrera clearly set forth in his three-day testimony [18] the events that led to appellant's arrest, starting from the receipt by him of an informant's tip. He was able to establish that: appellant had physical possession of the subject gray luggage bag from the time she left her house at Brookside until she boarded and sat on the third row behind the driver of Dangwa bus with plate number NTU-153 bound for Manila; when they conducted a search of the same bus at the Kennon Road checkpoint, they found the subject gray bag on the overhead luggage compartment corresponding to appellant's seat; upon inspection, the bag was found to contain suspected marijuana flowering tops which even during preliminary tests yielded positive for the presence of THC, an active component of marijuana.

After a painstaking analysis, the trial court found Obrera's testimony credible, and we find no cogent reason to set aside its characterization. Contrary to the contention of appellant, there were no major discrepancies in Obrera's testimony that would compromise his credibility as a witness. Furthermore, that he alone testified on the whole surveillance, search, seizure, and arrest proceedings does not detract at all from the prosecution's case, since as the trial court stated in the impugned Decision:

"The prosecution also offered the testimonies of Cpl. Garcia and Pat. Ong but after the direct testimony of Garcia and even before Ong could take the stand, the defense admitted that their testimonies would be corroborative to Lt. Obrera's; and, hence, the cross-examination of Garcia and the presentation of Ong were dispensed with." [19]

The prosecution clinched its evidence against appellant with the uncontested finding of P/Capt. Carlos V.

Figueroa that the bundles found inside the gray luggage bag seized from appellant contained marijuana.

We also find no merit in appellant's argument that the marijuana flowering tops should be excluded as evidence, they being the products of an alleged illegal warrantless search. The search and seizure in the case at bench happened in a moving, public vehicle. In the recent case of *People v. Lo Ho Wing*, 193 SCRA 122 (1991), this Court gave its approval to a warrantless search done on a taxicab which yielded the illegal drug commonly known as shabu. In that case, We ratiocinated:

"Anent the first assignment of error, appellant contends that the warrantless search and seizure made against the accused is illegal for being violative of Section 2, Article III of the Constitution. He reasons that the PC-CIS officers concerned could very well have procured a search warrant since they had been informed of the date and time of arrival of the accused at the NAIA well ahead of time, specifically two (2) days in advance. The fact that the search and seizure in question were made on a moving vehicle, appellant argues, does not automatically make the warrantless search herein fall within the coverage of the well-known exception to the rule of the necessity of a valid warrant to effect a search because, as aforementioned, the anti-narcotics agents had both time and opportunity to secure a search warrant.

"The contentions are without merit. As correctly averred by appellee, that search and seizure must be supported by a valid warrant is not an absolute rule. There are at least three (3) well-recognized exceptions thereto. As set forth in the case of *Manipon, Jr. vs. Sandiganbayan*, these are: [1] a search incidental to an arrest, [2] a search of a moving vehicle, and [3] seizure of evidence in plain view (emphasis supplied). The circumstances of the case clearly show that the search in question was made as regards a moving vehicle. Therefore, a valid warrant was not necessary to effect the search on appellant and his co-accused.

In this connection, We cite with approval the averment of the Solicitor General, as contained in the appellee's brief, that the rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge — a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. We might add that a warrantless search of a moving vehicle is justified on the ground that 'it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.'

"In the instant case, it was firmly established from the factual findings of the trial court that the authorities had reasonable ground to believe that appellant would attempt to bring in contraband and transport it within the country. The belief was based on intelligence reports gathered from surveillance activities on the suspected syndicate, of which appellant was touted to be a member. Aside from this, they were also certain as to the expected date and time of arrival of the accused from China. But such knowledge was clearly insufficient to enable them to fulfill the requirements for the issuance of a search warrant. Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case." (Citations omitted.)

Unquestionably, the warrantless search in the case at bench is not bereft of a probable cause. The Baguio INP Narcotics Intelligence Division received an information that appellant was going to transport marijuana in a bag to Manila. Their surveillance operations revealed that appellant, whose movements had been previously monitored by the Narcotics Division, boarded a Dangwa bus bound for Manila carrying a suspicious-looking gray luggage bag. When the moving, public bus was stopped, her bag, upon inspection, yielded marijuana. Under those circumstances, the warrantless search of appellant's bag was not illegal.

IN VIEW WHEREOF, the conviction of appellant JEAN BOBBOBAN BALINGAN is affirmed in toto. Costs against appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Bidin, Regalado, and Mendoza, JJ., concur.

- [1] Original Records, p. 35.
- [2] At the time of his testimony on November 5, 12 and 27, 1990, witness was already a police captain.
- [3] TSN of September 22, 1987, p. 4; TSN of November 5, 1990, pp. 2-3.
- [4] Ibid.; TSN of September 22, 1987, p. 5.
- [5] Impugned Decision, pp. 1-2; Rollo, pp. 16-17.
- [6] TSN of September 26, 1990, p. 5.
- [7] TSN of November 12, 1990, pp. 4-7.
- [8] Exhibit "E", Certification of Pat. Juanito G. Kimay, Jr., addressed to the Baguio City Fiscal, dated August 31, 1988; Original Records, p. 241.
- [9] Testified on September 26, 1990. He was then 55 years old, married, and a resident of 578 Aquilina, Sto. Niño, Marikina, Metro Manila.
- [10] See Exhibit "C", Chemistry Report No. D-154-88, dated September 7, 1988; Original Records, p. 239.
- [11] TSN of November 11, 1991, pp. 4-5.
- [12] Ibid., at pp. 4, 7.
- [13] Id.
- [14] Id., at p. 8.
- [15] Id., at pp. 9-11. See TSN of November 11, 1991.
- [16] In a Decision penned by Acting Presiding Judge Salvador J. Valdez, Jr.
- [17] Brief for Accused-Appellant, pp. 9-10; Rollo, pp. 44-45.
- [18] He testified on November 5, 12 and 27, 1990.
- [19] Impugned Decision, p. 18.

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