

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORIEL LACERNA Y CORDERO & MARLON LACERNA Y ARANADOR, ACCUSED. MARLON LACERNA Y ARANADOR, ACCUSED-APPELLANT.

G.R. No. 109250. September 05, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The unrelenting and pervading war against illegal drugs has absorbed the attention of all branches of government, both national and local, as well as media, parents, educators, churches and the public at large. This case is one more intrepid battle in such all-out war. Herein appellant seeks acquittal on the ground that his acts did not constitute the crime of “giving away prohibited drugs” penalized by Section 4 of Republic Act No. 6425, as amended (The Dangerous Drugs Act). Nonetheless, he cannot escape the law because the very same deeds, which appellant admits to have performed, show his culpability for “illegal possession of prohibited drugs” -- penalized in Section 8 of R.A. 6425, as amended -- which is necessarily included in the crime charged in the Information.

Statement of the Case

This ruling is explained by the Court as it resolves this appeal from the Decision,[1] dated February 24, 1993, of the Regional Trial Court of Manila, Branch 16,[2] convicting Appellant Marlon Lacerna y Aranador “of violation of Section 4 of Republic Act No. 6425, as amended x x x.”

Asst. City Prosecutor of Manila Juan O. Bermejo, Jr. charged appellant and Noriel Lacerna in an Information,[3] dated September 16, 1992, which reads as follows:[4]

The undersigned accuses NORIEL LACERNA Y CORDERO and MARLON LACERNA Y ARANADOR of a violation of Section 4 Art. II, in relation to Section 21, Art. IV of Republic Act 6425, as amended by Presidential Decree No. 1675, xxx

“That on or about September 12, 1992, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, deliver or give away to another or distribute any prohibited drug, did then and there wilfully, unlawfully and jointly sell, deliver or give away to another the following, to wit:

Eighteen (18) blocks of marijuana

flowering tops - weight – 18.235 kilograms

which is a prohibited drug.”

When the case was called for arraignment on October 7, 1992, appellant and his co-accused appeared without counsel but they alleged that they had engaged the services of a certain Atty. Kangleon. Thus, the trial court provisionally appointed Atty. Rodolfo P. Libatique of the Public Attorney’s Office as counsel de oficio, in case Atty. Kangleon did not appear for the arraignment on October 28, 1992.[5] Because the alleged counsel de parte failed to show up during the arraignment on that date, Atty. Libatique assisted the accused who pleaded “not

guilty.”[6]

After trial on the merits, the court a quo promulgated the assailed Decision, the dispositive portion of which reads:[7]

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

I. The guilt of the accused Marlon Lacerna having been established beyond reasonable doubt for the crime of violation of Section 4 of RA 6425, as amended, he is found guilty of the same, sentencing him to life imprisonment and to pay a fine of P20,000. With costs.

II. The guilt for the crime charged of accused Noriel Lacerna not having been established beyond reasonable doubt he is hereby ACQUITTED. The warden of the Manila City Jail is ordered to release his person, unless held on other charges.

The evidence seized in this case is to remain in the custody of the NBI Director as Drugs Custodian of the Dangerous Drugs Board. (RA 425, Sec. 36; Supreme Court Circular No. 9 dated July 18, 1973) to be properly disposed of after the final disposition of this case.”

Hence, only Marlon Lacerna (his co-accused having been acquitted) interposed this appeal direct to the Supreme Court in view of the life penalty imposed.[8]

The Facts

Version of the Prosecution

The prosecution presented the following witnesses: PO3 Carlito P. Valenzuela, Forensic Chemist Aida A. Pascual, and PO3 Rafael Melencio. Their testimonies are summarized by the Solicitor General in the Appellee’s Brief as follows:[9]

On September 12, 1992, Police Officer 3 (PO3) Carlito P. Valenzuela, a member of the Mobile Patrol Division of the Western Police District (WPD), was assigned to man the checkpoint and patrol the area somewhere along the sidestreets of Radial Road near Moriones Street. The assignment to monitor strategic places in the city and barangays of Manila was a direct order from General Nazareno. Thus, he and his companion PO3 Angelito Camero went about cruising the area in their Mobile Patrol car, with PO3 Valenzuela at the helm. At about 2:00 p.m., appellant and co-accused, who were aboard a taxicab, passed by PO3 Valenzuela’s place of assignment, which was then heavy with traffic, looking suspicious (t.s.n., PO3 Valenzuela, Nov. 11, 1992, pp. 3-4; Nov. 20, 1992, pp. 2-7).

Appellant was seated beside the taxi driver while co-accused was seated at the left back seat of the taxi. When PO3 Valenzuela looked at the occupants of said taxi, the latter bowed their heads and slouched, refusing to look at him. Feeling that something was amiss, PO3 Valenzuela and his companion stopped the vehicle, signaling the driver to park by the side of the road (t.s.n., PO3 Valenzuela, Nov. 11, 1992, pp. 3-4).

PO3 Valenzuela and his co-police officer asked permission to search the vehicle. As the occupants readily agreed, the police officers went about searching the luggages in the vehicle which consisted of a knapsack and a dark blue plastic grocery bag. They asked appellant what the contents of the plastic bag were. Co-accused Noriel Lacerna immediately answered that the bag contained his vomit (t.s.n., PO3 Valenzuela, Nov. 11, 1992, pp. 4-5).

Skeptical of what appellant and co-accused disclosed as regards the contents of the plastic bag, PO3 Valenzuela made a hole in the bag and peeped inside. He found several blocks wrapped in newspaper, with the distinct smell of marijuana emanating from it. PO3 Valenzuela opened one of the boxes and saw dried marijuana leaves. He told appellant and co-accused that the contents of the bag were marijuana, which

co-accused readily affirmed. According to both Lacernas, the bag was a 'padala' of their uncle. Specifically, they claimed that the bag was sent by their uncle, who happened to be in Baguio City, for shipment to Iloilo (t.s.n., PO3 Valenzuela, Nov. 11, 1992, pp. 5-7; Nov. 20, 1992, pp. 8-10).

Appellant and co-accused, and the plastic bag containing blocks of marijuana were brought by PO3 Valenzuela and PO3 Camero to the WPD Headquarters on UN Avenue, Manila.[10] At about 9:00 p.m. of the same day, both appellant and co-accused were turned over to PO3 Rafael Melencio for investigation while the blocks were turned over to Lt. de Soto (tsn., PO3 Melencio, Dec. 11, 1992, pp. 3-5. 20).

Lt. de Soto counted the blocks of marijuana, numbering eighteen (18) in all. Each block was wrapped in newspaper. After seeing what the contents of the blocks were, the specimens (Exhs. 'B' to 'B-19') were brought to the National Bureau of Investigation (NBI) for further examination.[11] On the other hand, PO3 Melencio investigated appellant and co-accused, informing them of their constitutional rights during a custodial investigation. Thereafter, he prepared the Affidavit of Apprehension and the Booking Sheet and Arrest Report (Exhs. 'A', 'G', List of Exhibits, pp. 1, 15; tsn., PO3 Melencio, Dec. 11, 1992, pp. 15-24).

NBI Forensic Chemist Aida A. Pascual examined the eighteen (18) confiscated blocks which tested positive of containing marijuana (Exhs. 'C', 'F' to 'F-9'. List of Exhibits, pp. 2-14; tsn., A. Pascual, Dec. 2, 1992, pp. 2-5)."

Version of the Defense

Appellant sets up the defense of denial, alleging that the blue plastic bag was owned by his uncle who requested him to bring it to Iloilo. He also denied knowing that it contained marijuana. In his Brief prepared by the Public Attorney's Office, he narrated his version of the factual circumstances of this case, as follows:[12]

"On September 12, 1992, at about 2:00 P.M., accused Marlon and Noriel Lacerna were riding in a taxicab on their way to (the) North Harbor to board a boat bound for Iloilo City. While plying along Pier 15 their taxicab was flagged down by a patrol mobile car. Accused Marlon Lacerna (appellant herein) was sitting in front while accused Noriel Lacerna was at the back of the taxicab. The accused carried two bags. One bag contained their personal belongings and the other bag contained things which their uncle Edwin Lacerna asked them to bring along. When their taxicab was stopped, the two policemen in the Mobile car requested them that they and their baggage be searched. Confident that they have not done anything wrong, they allowed to be searched. During the (search), the two accused were not allowed to alight from the taxicab. The knapsack bag which contained their clothes was first examined in front of them. The second bag was taken out from the taxi and was checked at the back of the taxicab. The accused were not able to see the checking when the policemen brought the plastic bag at the back of the taxi. After checking, the policemen told them its 'positive'. The accused were (asked) to alight and go to the patrol car. They were brought to the WPD Headquarters at United Nations. While there, they were brought inside a room. They asked what wrong they have done but the policemen told them to wait for Major Rival. At about 8:00 o'clock P.M., Major Rival talked to them and asked them where the baggage came from and they answered that it was given to them by their uncle. Then Major Rival asked them to hold the marijuana and pictures were taken. Later, they were brought inside the cell where they were maltreated by the 'Kabo'. The 'Kabo' forced them to admit ownership of the marijuana. Noriel was boxed on the chest, blindfolded and a plastic (bag) was placed on his neck and was strangled. The mauling took place for about 30 minutes inside the toilet. They refused to sign the Booking and Arrest Report but they impressed their fingerprint on a white bond paper. They were brought by Melencio to the Inquest Prosecutor at the City Hall. On the way to the Inquest Prosecutor, Melencio told them to admit the charge against them before the Inquest Fiscal, because if they will deny, something (would happen) to them in the afternoon and Melencio even uttered to them 'vulva of your mother.' Because they were apprehensive and afraid, they admitted the charge before the Inquest Fiscal.

(Appellant) Marlon Lacerna first met his uncle Edwin Lacerna at Munoz Market. The second time was on September 11, 1992, when his uncle went to his brother's house in Caloocan City and requested him to bring his (uncle) personal belongings upon learning that he (Marlon) is leaving for Iloilo city the next day, September 12, 1992. He told his uncle to bring his personal belongings either in the evening of that day or the following day at the (Grand) Central (Station), Monumento because he was going to buy a ticket for Noriel as he intend (sic) to bring the latter with him in going home to the province. His uncle already gave a ticket for him. When he and Noriel (arrived) at the Grand Central at about 10:00 o'clock A.M. on September 12, 1992, their uncle was already there. The latter placed the plastic bag besides their baggages. They no longer inspected the contents of the bag as the same was twisted and knotted on top. After getting a ticket from the office of Don Sulpicio Lines, Marlon told Noriel to hail a taxi and then they proceeded to the pier.

(Appellant's) purpose in going home to Iloilo was to get all the requirements needed in his application to enter the Marines.

Accused Noriel just arrived in Manila three days before September 12, 1992 to look for a job and was staying with (appellant) at Caloocan City. In the evening of September 11, 1992, (appellant) requested him to come xxx with him to Iloilo and assured him that he (would) be the one to pay for (Noriel's) fare. (TSN., January 6, 1993, pp. 3-23; January 8, 1993, pp. 2-12; January 11, 1993, pp. 2-18; January 20, 1992, pp. 2-6; January 22, 1993, pp. 2-14)"

Ruling of the Trial Court

The court a quo observed that appellant could not be convicted of "delivering" prohibited drugs because the Information did not allege that he knowingly delivered marijuana. Neither could he be convicted of "transporting or dispatching in transit" such prohibited drugs because these acts were not alleged in the Information. The trial court mused further that appellant could not be convicted of "selling" marijuana because the elements constituting this crime were not proven. However, the Information charged appellant with "giving away to another" prohibited drugs, a charge which was different from "delivery" defined under Section 2 (f) [13] of R.A. 6245, as amended. Citing *People vs. Lo Ho Wing*,^[14] the trial court ruled that "giving away" to another is akin to "transporting" prohibited drugs, a *malum prohibitum* established by the mere commission of said act. Thus, the court a quo convicted appellant of "giving away" marijuana to another on the following premise:^[15]

"It is not denied by (appellant) that he did give to his co-accused cousin Noriel Lacerna the bundled 18 blocks of marijuana who thereupon seated himself at the rear of the taxi with the marijuana. His claim that he did not know the contents of the blue plastic bag can hardly be believed because it is within judicial notice that the marijuana contents readily emits a pungent odor so characteristic of marijuana as what happened when the 18 blocks were displayed in open Court. But as stated, guilty knowledge is not required by the phrase 'GIVE AWAY TO ANOTHER' (Sec. 4). It was clearly established that he gave the stuff to another, that is, to his co-accused Noriel Lacerna. The law does not distinguish as to whether the word 'another' refers to a third person other than a co-accused or to a co-accused. The information, as in the case at bar, need not allege guilty knowledge on the part of Marlon Lacerna in 'giving away' to another the marijuana. (Appellant) should, therefor be found culpable for violating Section 4 of RA 6425, as amended, as charged for 'giving away to another' the marijuana."

Accused Noriel Lacerna, on the other hand, was acquitted for insufficiency of evidence. The court a quo reasoned that "it cannot be said that he did 'give away to another' the marijuana for it was (appellant) who gave the marijuana to (Noriel)." Besides, unlike appellant who was urbanized in mannerism and speech, Noriel Lacerna manifested probinsyano traits and was, thus, unlikely to have dealt in prohibited drugs.

The Issues

Appellant objects to the trial court's Decision and assigns the following errors:[16]

I

The lower court erred in making a sweeping statement that the act of 'giving away to another(') is not defined under R.A. 6425 specifically requiring knowledge what intent one (sic) is passing is a dangerous drug, as contradistinguished from the term 'deliver; where knowledge is required.

II

The lower court erred in not giving credence to the assertion of accused-appellant that he had no knowledge that what were inside the plastic bag given to him by his uncle were marijuana leaves.

III

The trial court erred in convicting accused-appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt."

The Court's Ruling

After meticulously reviewing the records of the case and taking into account the alleged errors cited above and the argument adduced in support thereof, the Court believes that the issues can be restated as follows: (1) Was appellant's right against warrantless arrest and seizure violated? (2) Was the trial court correct in convicting appellant for "giving away to another" 18 blocks of marijuana? and (3) May the appellant be held guilty of "illegal possession" of prohibited drugs? The Court answers the first two questions in the negative and the third in the affirmative.

First Issue: Appellant's Right Against

Warrantless Search and Seizure

The defense argues that the bricks of marijuana were inadmissible in evidence as they were obtained through illegal search and seizure. Appellant alleges that at the time of the search and seizure, he and his co-accused were not committing any crime as they were merely riding a taxicab on the way to Pier 15, North Harbor in Manila. Hence, the precipitate arrest and seizure violated their constitutional right and the marijuana seized constituted "fruits of the poisonous tree."

The Solicitor General disagrees, contending that the search and seizure were consistent with recent jurisprudential trend liberalizing warrantless search and seizure where the culprits are riding moving vehicles, because a warrant cannot be secured in time to apprehend the mobile target.

Both contentions are inaccurate. In the recent case of *People vs. Cuison*,[17] this Court reiterated the principles governing arrest, search and seizure. To summarize, let us begin with Section 2, Article III of the 1987 Constitution which provides:

"SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

The Constitution further decrees that any evidence obtained in violation of the provision mentioned is

inadmissible in evidence:

“SEC. 3. x x x

(2) Any evidence obtained in violation of x x x the preceding section shall be inadmissible for any purpose in any proceeding.”

However, not being absolute, this right is subject to legal and judicial exceptions. The Rules of Court, Section 12 of Rule 126, provides that a person lawfully arrested may be searched for “dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.”

Five generally accepted exceptions to the rule against warrantless arrest have also been judicially formulated as follows: (1) search incidental to a lawful arrest, (2) search of moving vehicles, (3) seizure in plain view, (4) customs searches, and (5) waiver by the accused themselves of their right against unreasonable search and seizure.[18] Search and seizure relevant to moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances. In such cases however, the search and seizure may be made only upon probable cause, i.e., upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains an item, article or object which by law is subject to seizure and destruction.[19] Military or police checkpoints have also been declared to be not illegal per se as long as the vehicle is neither searched nor its occupants subjected to body search, and the inspection of the vehicle is merely visual.[20]

In the case at bar, the taxicab occupied by appellant was validly stopped at the police checkpoint by PO3 Valenzuela. It should be stressed as a caveat that the search which is normally permissible in this instance is limited to routine checks -- visual inspection or flashing a light inside the car, without the occupants being subjected to physical or body searches. A search of the luggage inside the vehicle would require the existence of probable cause.[21]

In applicable earlier Decisions, this Court held that there was probable cause in the following instances: (a) where the distinctive odor of marijuana emanated from the plastic bag carried by the accused;[22] (b) where an informer positively identified the accused who was observed to have been acting suspiciously;[23] (c) where the accused fled when accosted by policemen;[24] (d) where the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a large quantity of marijuana;[25] and (e) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy -- one who participated in the drug smuggling activities of the syndicate to which the accused belonged -- that said accused were bringing prohibited drugs into the country.[26]

In the case at hand, however, probable cause is not evident. First, the radio communication from General Nazareno, which the arresting officers received and which they were implementing at that time, concerned possible cases of robbery and holdups in their area.[27] Second, Noriel Lacerna’s suspicious reactions of hiding his face and slouching in his seat when PO3 Valenzuela’s car passed alongside the taxicab might have annoyed the latter, or any other law enforcer, and might have caused him to suspect that something was amiss. But these bare acts do not constitute probable cause to justify the search and seizure of appellant’s person and baggage. Furthermore, the Claudio ruling cannot be applied to this case because the marijuana was securely packed inside an airtight plastic bag and no evidence, e.g., a distinctive marijuana odor, was offered by the prosecution.

Nonetheless, we hold that appellant and his baggage were validly searched, not because he was caught in flagrante delicto, but because he freely consented to the search. True, appellant and his companion were stopped

by PO3 Valenzuela on mere suspicion -- not probable cause -- that they were engaged in a felonious enterprise. But Valenzuela expressly sought appellant's permission for the search. Only after appellant agreed to have his person and baggage checked did the actual search commence. It was his consent which validated the search, waiver being a generally recognized exception to the rule against warrantless search.[28]

We are aware that this Court in *Aniag, Jr. vs. COMELEC* outlawed a search based on an implied acquiescence, because such acquiescence was not consent within the purview of the constitutional guaranty, but was merely passive conformity to the search given under intimidating and coercive circumstances.[29] In the case before us, however, appellant himself who was "urbanized in mannerism and speech" expressly said that he was consenting to the search as he allegedly had nothing to hide and had done nothing wrong.[30] In his brief, appellant explicitly, even if awkwardly, reiterated this: "Confident that they [the accused] have not done anything wrong, they allowed to be searched." This declaration of appellant is a confirmation of his intelligent and voluntary acquiescence to the search. The marijuana bricks were, therefore, obtained legally through a valid search and seizure. They were admissible in evidence; there was no poisonous tree to speak of.

Second Issue: Did Appellant

"Give Away" the Prohibited Drug?

The trial court justified the conviction of appellant for "giving away to another" the prohibited drugs, because he literally handed to Noriel the plastic bag containing marijuana, manually transferring the plastic bag from the front seat to the backseat of the taxicab. We hold, however, that this is not the act penalized by the Dangerous Drugs Act of 1972.

Section 4 of R.A. 6425, as amended, the violation of which is charged in the Information, penalizes "any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions."

The phrase "give away" is commonly defined as "to make a present of; to donate, or to make a sacrifice." [31] As used in a statute making it an offense to "sell, give away, or otherwise dispose of" liquor without a license, this phrase was construed as extending only to a disposition in ejusdem generis with a sale or a gift.[32] It is synonymous with "to furnish," a broad term embracing the acts of selling and giving away with the intent of transferring ownership. Selling by itself is one distinct mode of committing the offense, and furnishing is intended only to include other modes of affording something to others besides selling it.[33]

As distinguished from "delivery," which is an incident of sale, "giving away" is a disposition other than a sale. It is, therefore, an act short of a sale which involves no consideration. The prohibited drug becomes an item or merchandise presented as a gift or premium (giveaway), where ownership is transferred.

According to appellant, he gave the plastic bag and the knapsack to Noriel because the latter got into the taxicab first and because there was more room in the backseat than in the front. By handing the plastic bag to Noriel, appellant cannot be punished for giving away marijuana as a gift or premium to another. In *Cuison*, [34] this Court acquitted an accused of carrying and transporting prohibited drugs because the act per se of handing over a baggage at the airport cannot in any way be considered criminal.

Further, adopting the trial court's interpretation would lead to absurd conclusions. Following the trial court's line of reasoning, Noriel should have been held liable for the same crime when he gave the plastic bag to PO3 Valenzuela for the latter's inspection. And yet, the trial court inexplicably acquitted him. Valenzuela would similarly be criminally culpable as he testified that he turned over the plastic bag to his superior, Lt. de Soto. It is a well-settled rule that statutes should receive a sensible construction so as to give effect to the legislative

intention and to avoid an unjust or an absurd conclusion.[35]

Third Issue:

May Appellant Be Convicted of Illegal Possession?

Appellant's exoneration from giving away a prohibited drug to another under Section 4 of the Dangerous Drugs Act does not, however, spell freedom from all criminal liability. A conviction for illegal possession of prohibited drugs, punishable under Section 8 of the same Act, is clearly evident.

In *People vs. Tabar*,[36] the Court convicted appellant of illegal possession under Section 8 of said Act, although he was charged with "selling" marijuana under Section 4, Article II thereof.[37]

The prevailing doctrine is that possession of marijuana is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.[38]

Possession is a necessary element in a prosecution for illegal sale of prohibited drugs. It is indispensable that the prohibited drug subject of the sale be identified and presented in court.[39] That the corpus delicti of illegal sale could not be established without a showing that the accused possessed, sold and delivered a prohibited drug clearly indicates that possession is an element of the former. The same rule is applicable in cases of delivery of prohibited drugs and giving them away to another.

In *People vs. Manzano*,[40] the Court identified the elements of illegal sale of prohibited drugs, as follows: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. Although it did not expressly state it, the Court stressed delivery, which implies prior possession of the prohibited drugs. Sale of a prohibited drug can never be proven without seizure and identification of the prohibited drug, affirming that possession is a condition sine qua non.

It being established that illegal possession is an element of and is necessarily included in the illegal sale of prohibited drugs, the Court will thus determine appellant's culpability under Section 8.

From the penal provision under consideration and from the cases adjudicated, the elements of illegal possession of prohibited drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug.[41]

The evidence on record established beyond any doubt that appellant was in possession of the plastic bag containing prohibited drugs, without the requisite authority. The NBI forensic chemist's identification of the marijuana or Indian hemp was conclusive.

Appellant protests the trial court's finding that he knew that the plastic bag contained marijuana. The lower court ruled that appellant could not have possibly missed the pervasive pungent smell emitted by marijuana which was duly noted when the marijuana was exhibited in open court. This reasoning, however, is not supported by the evidence; the plastic bag, at the time of the search and seizure, was "twisted and tied at the top," and thus airtight. PO3 Valenzuela did not even notice this pervasive characteristic smell until he poked a hole in the plastic bag and unwrapped the newspaper covering one of the marijuana bricks.

It is well-settled that criminal intent need not be proved in the prosecution of acts mala prohibita. On grounds of public policy and compelled by necessity, courts have always recognized the power of the legislature, as "the greater master of things," to forbid certain acts in a limited class of cases and to make their commission criminal without regard to the intent of the doer.[42] Such legislative enactments are based on the experience that

repressive measures which depend for their efficiency upon proof of the dealer's knowledge or of his intent are of little use and rarely accomplish their purposes; besides, the prohibited act is so injurious to the public welfare that, regardless of the person's intent, it is the crime itself.[43]

This, however, does not lessen the prosecution's burden because it is still required to show that the prohibited act was intentional.[44] Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but if he did intend to commit an act, and that act is, by the very nature of things, the crime itself, then he can be held liable for the *malum prohibitum*. [45] Intent to commit the crime is not necessary, but intent to perpetrate the act prohibited by the special law must be shown. In *Bayona*, the Court declared:[46]

xxx The law which the defendant violated is a statutory provision, and the intent with which he violated it is immaterial. x x x The act prohibited by the Election Law was complete. The intention to intimidate the voters or to interfere otherwise with the election is not made an essential element of the offense. Unless such an offender actually makes use of his revolver, it would be extremely difficult, if not impossible, to prove that he intended to intimidate the voters.

The rule is that in acts *mala in se* there must be a criminal intent, but in those *mala prohibita* it is sufficient if the prohibited act was intentionally done. 'Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate the act. * * *' (U.S. vs. *Go Chico*, 14 Phil., 128)."

In illegal possession of prohibited drugs under Section 8 of the Dangerous Drugs Act, the prosecution is not excused from proving that possession of the prohibited act was done "freely and consciously," which is an essential element of the crime.

In the case at bar, appellant was found to have in his possession a plastic bag containing 18 kg of marijuana formed into 18 bricks which were separately wrapped. His possession thereof gives rise to a disputable presumption under Section 3[j], Rule 131 of the Rules of Court,[47] that he is the owner of such bag and its contents. His bare, unpersuasive, feeble and uncorroborated disavowal -- that the plastic bag was allegedly given to him by his uncle without his knowing the contents -- amounts to a denial which by itself is insufficient to overcome this presumption.[48] Besides, this defense, unless substantiated by clear evidence, is invariably viewed with disfavor by courts, for it can just as easily be concocted. Verily, it is a common and standard defense ploy in most prosecutions involving dangerous drugs.[49]

Further, the trial court did not give credence to appellant's denial. It is axiomatic that appellate courts accord the highest respect to the assessment of witnesses' credibility by the trial court, because the latter was in a better position to observe their demeanor and deportment on the witness stand.[50] The defense failed to present sufficient reasons showing that the trial court had overlooked or misconstrued any evidence of substance that would justify the reversal of its rejection of appellant's defense of denial.

Appellant is, therefore, liable for illegal possession of prohibited drugs under Section 8 of the Dangerous Drugs Act.[51]

WHEREFORE, the assailed Decision is hereby MODIFIED. Appellant is CONVICTED of illegal possession of prohibited drugs under Section 8 of R.A. 6425; SENTENCED, in accordance with the Indeterminate Sentence Law, to eight (8) years as minimum to twelve (12) years as maximum; and ORDERED to pay a fine of twelve thousand pesos (P12,000.00). Costs de oficio.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 16-31.

[2] Presided by Judge Ramon O. Santiago.

[3] Records, p. 1.

[4] Ibid.

[5] Id., p. 11.

[6] Id., p. 22. In *People vs. Mario Serzo, Jr.*, G.R. No. 118435, June 20, 1997, we ruled that the accused's right to counsel is absolute, but his right to be represented by a counsel of his choice is limited.

[7] Rollo, p. 31.

[8] Id., p. 22.

[9] Ibid., pp. 85-89.

[10] The plastic bag was destroyed during the media presentation at the WPD Headquarters in U.N. Avenue, which was attended by newspaper and television reporters (TSN, November 20, 1992, p. 12).

[11] There was another media coverage at the Narcotics Division of the NBI (Ibid., p. 17).

[12] Rollo, pp. 49-51.

[13] "(f) 'Deliver' – refers to a person's act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration;"

[14] 193 SCRA 122, 130, January 21, 1991.

[15] Rollo, p. 30.

[16] Rollo, pp. 51-52.

[17] 256 SCRA 325, 338, April 18, 1996.

[18] *People vs. Fernandez*, 239 SCRA 174, 182-183, December 13, 1994. In the same case, J. Puno proposed a sixth exception: exigent circumstances, as a catch-all category that would encompass a number of diverse situations where some kind of emergency makes obtaining a search warrant impractical, useless, dangerous or unnecessary.

[19] *People vs. CFI of Rizal*, Br. IX, 101 SCRA 86, 99, November 17, 1980; and *People vs. Mago*, 22 SCRA 857, 872-873, February 28, 1968.

[20] *Aniag, Jr. vs. Commission on Elections*, 237 SCRA 424, 433, October 7, 1994.

[21] *People vs. Barros*, supra, p. 565-572; *People vs. Saycon*, 236 SCRA 325, 239-240, September 5, 1994 citing *Valmonte vs. De Villa*, 178 SCRA 211 (1989).

[22] *People vs. Claudio*, 160 SCRA 646, April 15, 1988.

[23] *People vs. Tangliben*, 184 SCRA 220, April 6, 1990.

[24] *Posadas vs. Court of Appeals*, 188 SCRA 288, August 2, 1990.

[25] *People vs. Maspil, Jr.*, 188 SCRA 751, August 20, 1990.

[26] *People vs. Lo Ho Wing*, 193 SCRA 122, January 21, 1991.

[27] TSN, November 20, 1992, p. 3.

[28] *People vs. Fernandez*, supra; *Aniag, Jr. vs. Commission on Elections*, supra, p. 436; *People vs. Exala*, 221 SCRA 494, 500-501, April 23, 1993; *People vs. Barros*, 231 SCRA 557, 573-574, March 29, 1994; *People vs. Damaso*, 212 SCRA 547, 555-556, August 12, 1992.

[29] *Ibid.*, p. 436-437.

[30] TSN, January 6, 1993, p. 8.

[31] Webster's Third New World International Dictionary, p. 960.

[32] Words & Phrases, permanent ed., Vol. 18, p. 679, citing *Maxwell v. State*, 37 So. 266, 140 Ala. 131.

[33] *Ibid.*, p. 678, citing *State v. Freeman*, 27 Vt. 520.

[34] *Supra*, p. 341.

[35] *Ramirez vs. Court of Appeals*, 248 SCRA 590, 596, September 28, 1995; *People vs. Rivera*, 59 Phil. 236, 242 (1933).

[36] 222 SCRA 144, 152, May 17, 1993.

[37] From the civil law point of view, however, sale is totally different from possession. Article 1458 of the Civil Code defines sale as a contract whereby "one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent," while "possession is the holding of a thing or the enjoyment of a right" as defined by Article 523 of the Civil Code.

[38] *People vs. Angeles*, 218 SCRA 352, 364-365, February 2, 1993; and *People vs. Catan*, 205 SCRA 235, 243, January 21, 1992.

[39] *People vs. Mendiola*, 235 SCRA 116, 122, August 4, 1994; *People vs. Martinez*, 235 SCRA 171, 179, August 5, 1994; *People vs. Dismuke*, 234 SCRA 51, 60-61, July 11, 1994; *People vs. Gireng*, 240 SCRA 11, 17, February 1, 1995; *People vs. Florez*, 243 SCRA 374, 381, April 6, 1995.

[40] 227 SCRA 780, 785, November 16, 1993.

[41] David G. Nitafan, *Annotations on the Dangerous Drugs Act*, 1995 ed., p. 226. The adjudicated cases include those decided under the old Opium Law which required that before an accused can be convicted of illegal possession of opium, there must be a demonstration of: (1) the occupancy or possession and (b) the intent to possess opium.

[42] *People vs. Bayona*, 61 Phil. 181, 185 (1935); *People vs. Ah Chong*, 15 Phil. 488, 500 (1910); and *U.S. vs. Go Chico*, 14 Phil. 128, 132 (1909).

[43] Ramon C. Aquino, *The Revised Penal Code*, Vol. I, 1987 ed., pp. 52-54.

[44] *People vs. Bayona*, supra, p. 185

[45] *U.S. vs. Go Chico*, 14 Phil. 128, 132 (1909).

[46] *Op. cit.*

[47] SEC. 3. Disputable presumptions.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx xxx xxx

“(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, the things which a person possesses, or exercises acts of ownership over, are owned by him;”

[48] *People vs. Burton*, G.R. No. 114396, February 19, 1997, p. 27.

[49] *People vs. Solon*, 244 SCRA 554, 560, May 31, 1995; and *People vs. Angeles*, *supra*, p. 361.

[50] *People vs. Flores*, *supra*, pp. 378-379; and *People vs. Ang Chun Kit*, 251 SCRA 660, 666, December 25, 1995.

[51] Since the crime was committed on September 12, 1992, or prior to the effectivity of R.A. 7659, the applicable law is R.A. 6425, as amended by B.P. 179, which provides that:

“xxx xxx xxx

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.”

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