

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SUCHINDA LEANGSIRI (AT LARGE), ACCUSED, FATI OMOGBOLAHAN Y ALABI, YAMBA LISASI BHOLA, AND ZARIATU AMIDU, ACCUSED-APPELLANTS.**

*G.R. No. 112659. January 24, 1996*

Ponente: PUNO, J.

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**PUNO, J.:**

On June 7, 1993, appellants FATI OMOGBOLAHAN Y ALABI,[1] YAMBA LISASI BHOLA,[2] and ZARIATU AMIDU[3] pleaded not guilty to the charge of Violation of Section 4, Article II, Republic Act (R.A.) No. 6425[4] embodied in an Information, dated April 2, 1993, as follows:

"xxx xxx xxx

"That on or about the 31st of March, 1993 and sometime prior thereto in Manila and other parts of Metro Manila, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, without authority of law, deliver, give away, distribute, dispatch in transit or transport 8,225.31 grams of heroin, a prohibited drug, and/or act as brokers in any of the aforesaid transactions with or without consideration.

"CONTRARY TO LAW."

A fourth accused, Thai national SUCHINDA LEANGSIRI, escaped from the Pasay City Jail before the arraignment. He remains at large.[5]

The evidence of the prosecution establish that in the early afternoon of May 31, 1993, accused Leangsiri was arrested at the arrival area of the Ninoy Aquino International Airport (NAIA). He was in the act of bringing into the country 8,225.31 grams of heroin[6] hidden under the false bottom of a black suitcase.[7] He informed the authorities that he was to deliver the contraband to three (3) people[8] at the Las Palmas Hotel in Manila.[9]

Leangsiri was brought to the headquarters of the Narcotics Command (NARCOM) at the Old MIA for further investigation.[10] The head of the command, MAJOR ALBINO SABLAYAN, formed a team, headed by SR. INSP. ADOLFO SAMALA,[11] to conduct follow-up operations in the case.[12] The team and agents of the Bureau of Customs proceeded to the Las Palmas Hotel,[13] where they allowed Leangsiri to check into Room 504 with the confiscated black suitcase containing the heroin.[14]

At around eight o'clock in the evening, two hours after checking in, Leangsiri received a telephone call from his contact. Leangsiri was told that the black suitcase would be picked up at about ten o'clock that night.[15] He relayed the information to his escorts, NARCOM agents SPO3 FABIAN GAPIANGAO[16] and SPO4 ELPIDIO BALNEG.[17] Thereupon, the two NARCOM agents positioned themselves inside the washroom, with its door opened a fraction to give them visual access to the rest of the hotel room.[18]

On the ground floor and outside perimeters of the Las Palmas hotel, Samala and other NARCOM and Bureau of Customs agents were watching for unusual and suspicious events.[19] From where he sat at the hotel's coffee shop, Samala noticed appellant Amidu paced around the lobby for nearly an hour.[20] At about ten p.m., Amidu's co-appellants, Omogbolahan and Bhola, arrived at the hotel.[21] As Amidu flashed a "thumbs up" sign to them, they all headed for the elevator and went up to the fifth floor of the hotel.[22]

They knocked on the door of Room 504. Leangsiri stood up from the bed in which he sat,[23] opened the door, and let the three appellants in.[24] Leangsiri took the black suitcase[25] and brought it to the dining area of the room where appellants stood in full view of NARCOM agents Gapiangao and Balneg. Leangsiri opened the suitcase and displayed its contents to his visitors.[26]

Appellants briefly examined the black suitcase and two (2) transparent plastic bags which contained the heroin.[27] After the examination, Leangsiri closed the suitcase and handed it over to appellants.[28] Appellants started to leave the hotel room with the contraband when Gapiangao and Balneg barged out of the washroom, identified themselves as NARCOM agents, and made the arrest.[29]

Minutes later, Samala and his companions joined Gapiangao, Balneg, and the four foreigners in Room 504.[30] Appellants Omogbolahan and Bhola identified themselves by presenting their respective passports. Appellant Amidu, on the other hand, merely said she was staying in Room 413 of the same hotel.[31] Further questioning of appellants revealed that Omogbolahan and Bhola were billeted at the Royal Palm Hotel, also located in Manila.[32]

Accompanied by the hotel's owner and security officer, Samala searched appellant Amidu's room. Tucked within the pages of her telephone and address book was a piece of paper with the name "SUCHINDA LEANGSIRI" written on it.[33] The paper and Amidu's other possessions were confiscated.[34]

The NARCOM and Customs teams then proceeded to the Royal Palm Hotel where appellants Omogbolahan and Bhola were billeted. The agents coordinated with the security officers of the hotel, who stood as witnesses when the former entered and searched said appellants' room. Their efforts yielded two black suitcases each with false bottoms and both smaller than that confiscated from Leangsiri.[35] Masking tape and an empty transparent bag were also found in the room.[36]

Appellants denied any involvement in the transport of heroin by Leangsiri. They told a different tale.[37]

Appellants Omogbolahan and Bhola were staying at Royal Palm Hotel. On that fateful night of March 31, 1993, they went to the Las Palmas Hotel to meet co-appellant Amidu and an American named David. When they got to the fourth floor of the hotel, and as they made their way to Room 413 (Amidu's room), they were accosted by some people who forcibly brought them to Room 504. They explained that they were at the hotel to meet Amidu. Some of those who intercepted them left the room and returned with Amidu. Appellants' money and jewelry were taken from them. Those who dispossessed them turned out to be policemen.

Appellants were driven to the Royal Palm Hotel. Only one of the policemen entered its premises as appellants and the others remained in the car. Afterwards, appellants were brought to NARCOM headquarters. Together with Leangsiri, they were presented to the media as members of an international drug syndicate.

On August 31, 1993, the trial court convicted appellants, finding them guilty of conspiring to transport heroin in violation of Section 4, R.A. 6425. The dispositive portion of the decision reads:

"xxx xxx xxx

"WHEREFORE, premises considered, judgment is hereby rendered, finding all the accused (herein appellants)

FATI OMOGBOLAHAN y ALABI, YAMBA LISASI BHOLA and ZARIATU AMIDU, 'guilty' beyond reasonable doubt of the crime described in the Information, and hereby sentences them to suffer a penalty of 'life imprisonment' plus a fine of P30,000 for each of (them).

"The case as against accused Suchinda Leangsiri is hereby ordered archived.

"The 'Heroin' of about 8,225.31 kgs. is hereby ordered destroyed in the manner provided by law.

"SO ORDERED."

On September 9, 1993, appellants filed a motion for new trial grounded on the following --

"I. THAT ERRORS OF LAW OR IRREGULARITIES HAVE BEEN COMMITTED DURING THE TRIAL PREJUDICIAL TO THE SUBSTANTIAL RIGHTS OF HEREIN ACCUSED (HEREIN APPELLANTS);

"II. THAT NEW AND MATERIAL EVIDENCE HAS BEEN DISCOVERED WHICH THE ACCUSED (APPELLANTS) COULD NOT WITH REASONABLE DILIGENCE HAVE DISCOVERED AND PRODUCED AT THE TRIAL, AND WHICH IF INTRODUCED AND ADMITTED, WOULD PROBABLY CHANGE THE JUDGMENT."

The purported new and material evidence consists of the testimony of a certain Julita Thach Camerino, a Thai citizen, who narrated in her affidavit:

"1. That (she) is at present a detention prisoner at the Manila City Jail, Old Bilibid Prison Compound, Sta. Cruz, Manila;

"2. That on or about 11:00 o'clock in the morning of 31 August 1993, (she) noticed the arrival of inmates (appellants) into (the prison) compound, and (Amidu) was still crying;

"3. That after a few minutes, Zariatu Amidu started banging her head against the concrete wall, but after a few attempts she was prevailed upon to stop by another woman;

"4. That (she) inquired from some of the inmates the reason why Zariatu Amidu was behaving that way, and found out that she and the two other male detainees were just sentenced by the Court of very severe penalty of life imprisonment;

"5. That (she) pitied (appellants) of the fate that befell them and (her) conscience rebelled and started tormenting (her) since (she) knows that they are innocent of the crime charged against them of transporting heroin into the country;

"6. That (her) conscience compelled (her) to approach them and voluntarily offered (her) help, if it is still possible under the situation, whatever assistance (she) could extend to let justice prevail and reveal the truth out of that incident on the evening of 31 March 1993, at Las Palmas Hotel, because (she) was with the police at the NAIA, acting as an interpreter between Suchinda Leangsiri and the police when the former was being interrogated at the NARCOM Headquarters at the Ninoy Aquino International Airport (NAIA) in the afternoon of 31 March 1993, and into the evening of said date at Las Palmas Hotel;

"7. That in the process of (her) questioning of Leangsiri, the latter revealed to (them) that he was going to deliver his stuff of heroin to someone at Las Palmas Hotel but did not identify the person whom he was going to meet at the hotel nor mention the name/s of the same;

"8. That on or about 6:00 o'clock in the evening of 31 March 1993, (she), Suchinda Leangsiri, and the police team arrived at Las Palmas Hotel wherein (she) and Leangsiri were instructed to proceed to the desk counter and check-in, and got Room 504 to occupy;

"9. That (she), Suchinda Leangsiri and a police officer whom (she) knew as Emil went to Room 504 to await

for someone who would allegedly pick up the stuff of heroin but the claim or testimony that SPO3 Gapiangao and SPO4 Balneg were also inside Room 504 together with Suchinda Leangsiri is absolutely false;

"10. That at around 9:30 that evening, the police brought inside Room 504 two black males whom (she) later knew as Yamba Lisasi Bhola and Fati Omogbolahan Alabi;

"11 . That while inside Room 504, (she) heard the two, Yamba Lisasi Bhola and Fati Omogbolahan Alabi, protesting and complaining to the police why they were brought inside Room 504;

"12. That the two further explained to the police that they were about to visit a lady friend billeted at Room 413 of the same hotel;

"13. That after hearing that information, (she) was requested by Sr. Insp. Dela Cruz to go with him, and (they) immediately went inside Room 413 and forcibly brought Zariatu Amidu to Room 504 to join with the two male black nationals already inside;

"14. That afterwards, (they) brought (appellants) in the vicinity of Royal Palm Hotel, where (they) search the room of the two black males and found no prohibited drugs;

"15. That from Royal Palm Hotel, (they) went back to NARCOM Headquarters at NAIA, where (she) divested the three black nationals of their cash and pieces of jewelry, and turn them over to Sr. Insp. Dela Cruz for safekeeping;

"16. That (she is) am going to state further the other details and related matters in court during my testimony in the trial of the case against (appellants);

"xxx xxx xxx"[38]

The trial court denied the motion, ratiocinating thus:

xxx xxx xxx

"The Court reviewed the records of the case, the transcript of stenographic notes, and the pertinent laws and jurisprudence, and the Court finds, and so holds, that the findings and conclusions regarding the guilt of the herein accused (appellants), as well as the sufficiency of the evidence against them, are amply supported by the evidence, and the present motion did not ventilate any new matter as to warrant the said findings to be disturbed and/or set aside.

"With respect to the alleged newly discovered evidence, the Court disagrees with the stance taken by the accused (appellants) on this point. The testimony of Julita Thach Camerino could not be considered newly discovered, as said person was brought to the premises of the Court for identification during the trial of this case. Besides, her testimony, summarized in the undated Affidavit submitted by the accused (appellants) on September 24, 1993, does not inspire confidence, considering that this witness was convicted by this Court for violation of the dangerous drugs law, as amended.

"xxx xxx xxx"[39]

Appellants now impugn the trial court's decision and its denial of their motion for new trial, and raise the following assignments of error:

"I. THAT THE LOWER COURT GRAVELY ERRED IN CONSIDERING THE EXISTENCE OF CONSPIRACY BETWEEN AND AMONG THE ACCUSED;

"II. THAT THE PROSECUTION FAILED TO INTRODUCE DIRECT AND/OR CIRCUMSTANTIAL EVIDENCE TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT;

"III. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE CREDIBLE TESTIMONIES AND OTHER SUBSTANTIAL EVIDENCE PRESENTED BY THE THREE ACCUSED.

"IV. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE CONFLICTING TESTIMONIES OF THE PROSECUTION AND OTHER EVIDENCE FAVORABLE TO THE ACCUSED;

"V. THE LOWER COURT ERRED IN DENYING ACCUSED'S MOTION FOR NEW TRIAL." [40]

We affirm appellants' conviction for reasons we shall discuss in seriatim.

One. We hold that the trial court correctly found that appellants conspired with Leangsiri to transport eight-and-a-half kilos of heroin.

Appellants submit a two-pronged argument assailing the finding of conspiracy. The first prong urges that there is neither direct nor circumstantial evidence linking them to the transport of heroin by Leangsiri. The second prong posits that only Leangsiri's testimony can prove their alleged conspiracy. The running fault in appellants' line of reasoning is obvious to the eye.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[41] It is well-entrenched in our jurisprudence that conspiracy need not be proved by direct evidence.[42] Proof of previous agreement to commit the crime is not also essential to establish conspiracy. Conspiracy may be inferred from the acts of the accused, whose conduct before, during, and after the commission of the crime can show its existence. In a host of cases, we have upheld the finding of conspiracy where it is shown that the accused acted in concert to attain the same objective.

In the case at bar, the positive testimonies of prosecution witnesses Gapiangao, Balneg, and Samala established the concerted acts of appellants aimed at carrying out the unlawful design of transporting the heroin confiscated from Leangsiri. When Leangsiri was interrogated after his arrest, he revealed to the authorities that he was to deliver the contraband to three (3) people at the Las Palmas Hotel. Later, while in Room 504 of said hotel, Leangsiri received a telephone call in the presence of Gapiangao and Balneg, by which he was informed that the heroin would be picked up from him at ten o'clock in the evening. Shortly before the designated pick-up time, Samala saw appellant Amidu (who had been waiting in the lobby of the hotel for almost an hour) flash a "thumbs up" sign to appellants Omogbolahan and Bhola when they arrived at the hotel. The three (3) appellants then took the elevator and went up to the fifth floor. They knocked on the door of Room 504, and Leangsiri let them into the room. In full view of Gapiangao and Balneg, appellants examined Leangsiri's heroin, and took it and the suitcase with the false bottom in which it was hidden. Appellants were on their way out of the room with the suitcase and heroin when they were arrested by Gapiangao and Balneg. These facts show beyond doubt that appellants conspired with Leangsiri to transport the illegal drug heroin.

Two. We also hold that there was delivery of the heroin under Section 4 of R.A. 6425, from Leangsiri to appellants even though Leangsiri and the heroin were already under the control of the NARCOM on the evening of March 31, 1993. Too far out from the fringes of reason is appellants' argument that since the NARCOM agents had already taken Leangsiri and the heroin into their custody and control, it is the NARCOM agents who should be liable for transporting the said heroin confiscated from Leangsiri.

Section 4, Article II of R.A. 6425 provides, *inter alia*:

"The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon 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. xxx" (Emphasis supplied)

The proviso applies to the NARCOM agents in the case at bar. In bringing Leangsiri and the heroin to Las Palmas Hotel, the NARCOM agents were performing a lawful act in furtherance of their follow-up operations. They went to the hotel to apprehend appellants to whom delivery of the illegal drug was to be made.

Appellants also argue that, even assuming arguendo, they were caught in possession of the heroin, they cannot be held liable under Section 4 of R.A. 6425 because they were neither delivering nor transporting the drug. They postulate that said provision does not penalize the recipient of the delivered contraband.[43]

The same argument was raised and rejected by this Court in *People vs. Lo Ho Wing*.<sup>[44]</sup> In *Lo Hong Wing*, the authorities gathered from their intelligence and surveillance activities that the accused were going to bring illegal drugs (shabu) into the country. The accused were arrested while on-board a taxi cab which they hailed and boarded at the NAIA. In rejecting the defense argument that there was no delivery, transporting or dispatching of shabu made by the accused therein, we held:

"xxx

"The information charged the accused of delivering, transporting or dispatching fifty-six (56) tea bags containing metamphetamine, a regulated drug. The conjunction 'or' was used, thereby implying that the accused were being charged of the three specified acts in the alternative. Appellant argues that he cannot be convicted of 'delivery' because the term connotes a source and a recipient, the latter being absent under the facts of the case. It is also argued that 'dispatching' cannot apply either since appellant never sent off or disposed of drugs. As for 'transporting,' appellant contends that he cannot also be held liable therefor because the act of transporting necessarily requires a point of destination, which again is non-existent under the given facts.

"The contentions are futile attempts to strain the meaning of the operative acts of which appellant and his co-accused were charged in relation to the facts of the case. There is no doubt that law enforcers caught appellant and his co-accused in flagrante delicto of transporting a prohibited drug. The term 'transport' is defined as 'to carry or convey from one place to another.' The operative words in the definition are 'to carry or convey.' The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed. It is immaterial whether or not the place of destination is reached. Furthermore, the argument of appellant gives rise to the illogical conclusion that he and his co-accused did not intend to bring the metamphetamine anywhere, i.e., they had no place of destination.

"The situation in the instant case is one where the transport of a prohibited drug was interrupted by the search and arrest of the accused. Interruption necessarily infers that an act had already been commenced. Otherwise, there would be nothing to interrupt.

"xxx"

In the case at bar, appellants were on their way out of Room 504 of the Las Palmas Hotel carrying the suitcase with a false bottom containing 8.5 kilos of heroin when they were arrested by the NARCOM agents. At that point, they were in the act of conveying the heroin to an unknown destination. Their act was part of the process of transporting the heroin. They were all involved in a conspiracy. The act of Leangsiri in transporting the heroin is appellants' act. They cannot isolate and separate themselves from Leangsiri, for in conspiracy, the act of one is the act of all.

Three. We further rule that the heroin (Exhs. "C" and its sub-exhibits) and the suitcase with false bottom (Exh. "F") are admissible against appellants.

It is inaccurate for appellants to claim that these evidentiary exhibits were formally offered only against Leangsiri.

They were also offered against them. As correctly noted by the Solicitor General in his Brief:

"xxx xxx xxx

"The records show that on July 2, 1993, Assistant Chief State Prosecutor Jovencio Zuño and State Prosecutor Reynaldo Lugtu formally offered Exhibits "A" to "Q" and their submarkings against Leangsiri, (Omogbolahan), Bhola and Amidu (Original Records, pp. 67-71). xxx"[45]

Four. We now come to the argument of appellants that the piece of paper found in Amidu's hotel room, with the name "SUCHINDA LEANGSIRI" written on it,[46] should not have been admitted by the trial court.

The Revised Rules of Court provide 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."[47] We interpreted this provision in *Nolasco vs. Paño*,[48] thus:

"xxx xxx xxx

"The better and established rule is a strict application of the exception provided xxx that is to absolutely limit a warrantless search of a person who is lawfully arrested to his or her person at the time of and incident to his or her arrest and to 'dangerous weapons or anything which may be used as proof of the commission of the offense.' Such warrantless search obviously cannot be made in a place other than the place of arrest."

We then held that the warrantless search made by the authorities on the accused's apartment which was located a few blocks away from where she was arrested was illegal for being "an untenable violation, if not nullification, of the basic constitutional right and guarantee against unreasonable searches and seizures."

*Nolasco*, however, has undergone some mutations. In subsequent cases, we validated warrantless searches made not only on the person of the suspect but also in a permissible area within his reach.[49] We ruled that the reach of a valid warrantless search goes beyond the person of the one arrested and includes the premises or surroundings under his immediate control.[50] The immediate control test was enunciated in the American case of *Chimel vs. State of California*.<sup>[51]</sup> In that case, defendant was arrested in his home for burglary of a coin shop. Afterwards, the arresting officers conducted a search of his entire three-bedroom house, including the attic, the garage, a small workshop, and drawers. Various items -primarily coins - were found through the search, and were admitted in evidence against him by the trial court, which convicted him of burglary. The United States Supreme Court reversed the conviction as it struck down the warrantless search on the ground that the search of the accused's home went far beyond his person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him.

The inadmissibility of evidence obtained in a warrantless search incident to a lawful arrest outside the suspect's person and the premises under his immediate control admits of an exception. The exception obtains when the Plain View Doctrine applies as explained in *People vs. Musa*,<sup>[52]</sup> in this wise:

"xxx Objects in the 'plain view' of an officer who has the right to be in the position to have that view are subject to seizure and may be presented as evidence."

"In *Ker v. California*, police officers, without securing a search warrant but having information that the defendant husband was selling marijuana from his apartment, obtained from the building manager a passkey to defendant's apartment, and entered it. There they found the defendant husband in the living room. The defendant wife emerged from the kitchen, and one of the officers, after identifying himself, observed through the open doorway of the kitchen, as small scale atop the kitchen sink, upon which lay a brick-shaped package containing green leafy substance which he recognized as marijuana. The package of marijuana was used as evidence in prosecuting defendants for violation of the Narcotic Law. The admissibility of the package was

challenged before the U.S. Supreme Court, which held, after observing that it was not unreasonable for the officer to walk to the doorway of the adjacent kitchen on seeing the defendant wife emerge therefrom, that 'the discovery of the brick of marijuana did not constitute a search, since the officer merely saw what was placed before him in full view.' x x x The U.S. Supreme Court ruled that the warrantless seizure of the marijuana was legal on the basis of the 'plain view' doctrine and upheld the admissibility of the seized drugs as part of the prosecution's evidence.

"The 'plain view' doctrine may not, however, be used to launch unbridled searches and indiscriminate seizures nor to extend a general exploratory search made solely to find evidence of defendant's guilt. The 'plain view' doctrine is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. x x x Furthermore, the U.S. Supreme Court stated the following limitations on the application of the doctrine.

'What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification - whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused - and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges."

In the case at bar, appellants were arrested in Room 504 of the Las Palmas Hotel. The piece of paper bearing Leangsiri's name was obtained through a warrantless search of Room 413 of the same hotel, and found tucked within the pages of appellant Amidu's telephone and address book. Clearly, the warrantless search is illegal and the piece of paper bearing Leangsiri's name cannot be admitted as evidence against appellants. The inadmissibility of this evidence will not, however, exculpate appellants. Its exclusion does not destroy the prosecution's case against appellants. The remaining evidence still established their guilt beyond reasonable doubt.

Five. We uphold the calibration of the credibility of witnesses made by the court a quo. The trial court judge had the opportunity to observe the demeanor of the witnesses first-hand, and his findings are entitled to great weight.

The inconsistencies in Gapiangao's, Balneg's, and Samala's testimonies alluded to by appellants hardly relate to the material parts of their testimonies which sufficiently proved the elements of the crime at bar. It is a well-entrenched rule of evidence that corroborative testimonies, in order to be credible, need not coincide on all aspects. Given the natural limitations of the human senses, the immaterial and slight discrepancies in the testimonies of witnesses, far from weakening their probative value, serve to strengthen their credibility. Imperfect senses cannot be the source of perfect testimonies.[53]

Neither is the credibility of the prosecution witnesses crumpled by the fact that the testimonies of some prosecution witnesses during the trial were not exactly and totally reflected in their Joint Affidavit, dated April 1, 1993.[54] We have held before that:

"The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete. Affidavits are generally subordinated in importance to open court declarations because they are oftentimes not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. xxx"[55]

In checkered contrast, the testimonies of appellants are incongruous with reality. The story proffered by appellant

Omogbolahan, for instance, is too obviously melodramatic and incredible to be believed. His story begins in February, 1992, with his wife and two children being killed in a civil war in his native land of Liberia. Distraught, he decided to migrate to the United States of America.[56] He first flew to Thailand, where he stayed for six months without managing to learn a single Thai word.[57] Despite his language inadequacy, he was able to land a job in a cargo company in that country. He did not befriend any Thai national. Neither did he apply for an American visa in Thailand.[58]

He then heard from two co-Liberians named Jabar and Samsi that it was easy to obtain an American visa from the United States embassy in the Philippines. Omogbolahan flew from Thailand to our country. He stepped on Philippine soil on March 16, 1993, only to learn that Jabar and Samsi had long left the country.[59] Instead of going to the United States embassy at Roxas Boulevard or any of the many travel agencies doing business in the country, he spent his first two weeks here making the rounds of bars and clubs in the Ermita area, hoping to meet fellow Africans and American citizens who could help him obtain an American visa. In this clubs, he allegedly befriended his co-appellant Bhola[60] and an American named David whom he was supposed to meet on the fateful night of March 31, 1993. Omogbolahan soon moved in with Bhola at the Royal Palm Hotel, and David promised to help him obtain his American passport.[61]

Omogbolahan's story is clearly a fabrication designed to provide him with a convenient defense and to elicit sympathy from the courts. The testimonies of his co-appellants are equally incredulous. They are also tattered with inconsistencies. As observed by the Solicitor General, they could not even get their occupations straight, viz.:

"xxx

"Appellant Zariatu Amidu is a native of Ghana, Africa, 38 years old at the time she testified, a widow and as shown in her passport, a seamstress by occupation. However, in her testimony, she stated that she is a plain housewife. (tsn July 21, 1993, pp. 4 and 27)

"On the other hand, appellant Yamba Lisasi Bhola is a native of Kinshasha, Zaire, Central Africa, 37 years old at the time he testified, married and a high school graduate xxx. In his testimony, he stated that he is a trader xxx. Later on, he stated that he was working for the New Star Investment in Thailand as marketing officer."[62] (tsn July 16, 1993, p. 23)

"Lastly, Fati Omogbolahan Alabi was 27 years old at the time he testified and an elementary graduate and plumber according to his passport. In his testimony, however, he claimed to be a technician."[63](tsn July 13, 1993 p. 4).

Six. We finally hold that the trial court did not gravely abuse its discretion in denying appellants' motion for new trial.

We find appellants' first argument in moving for a new trial as baseless. As discussed above, the purported errors and irregularities committed in the course of the trial against the substantive rights of appellants do not exist.

Appellants' second argument as to the necessity of a new trial is likewise unmeritorious. Section 1, Rule 37 of the Revised Rules of Court grants an aggrieved party the right to move for new trial on the ground, among others, of "(n)ewly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result (thereof)."[64] Newly discovered evidence, in order to warrant a new trial, must meet three requirements, viz: (1) it must have been discovered after trial; (2) it could not have been discovered and produced at the trial despite reasonable diligence; and (3) if presented, it would probably alter the results of the action.[65]

In the case at bar, appellants were unable to prove that, even with the use of reasonable diligence, they could not

have obtained Camerino's testimony during the trial. On the contrary, as correctly noted by the trial court, Camerino was identified in open court by appellant Bhola on July 26, 1993.

Furthermore, it is unlikely that Camerino's prospective testimony would acquit appellants. Firstly, her affidavit embodies a narration of events almost identical to that presented by appellants. As has been discussed earlier, the defense version of what occurred on the evening of March 31, 1993 is incredible and difficult to believe. Secondly, Camerino's claim that she was a member of the team that arrested appellants is belied by the testimony of prosecution witness Samala on rebuttal, viz:

xxx xxx xxx

**"STATE PROS.:**

One Julita Camerino appeared before this Honorable Court and accused through counsel claim she was a member of the team which arrested the three Africans now the accused in this case. What can you say to that?

"A: I don't know that person, sir.

"Q: Were there instances or occasions before the date of March 31, 1993 when you met this Julita Camerino?

"A: I don't know, sir.

"Q: You don't recall any?

"A: I don't recall any, sir."

"xxx xxx xxx

"Court:

Cross?

**"ATTY. BORJA:**

Capt. Samala, is it not a fact that Julita Camerino served as your interpreter during the custodial investigation after the arrest of the Thai National in the person of Suchinda Leangsiri?

"A: No, sir.

**"ATTY. BORJA:**

She was not there at any moment from March 31 to April 1, 1993 at the police headquarters or at the Las Palmas Hotel?

"A: I don't know that person, sir."[66]

Her credibility is also questionable considering the fact that she herself has been previously convicted of violating the Dangerous Drugs Act.

IN VIEW WHEREOF, the Decision, dated August 31, 1993, and the Order, dated October 11, 1993, of the RTC of Manila, Branch 47, in Criminal Case No. 93-118913 are AFFIRMED. Costs against appellants.

**SO ORDERED.**

Regalado (Chairman), Romero, and Mendoza, JJ., concur.

[1] A national of Liberia.

[2] A national of Zaire.

[3] A national of Ghana.

[4] Dangerous Drugs Act of 1972.

[5] The case was raffled to Regional Trial Court, Manila, Branch 47, presided over by Judge Lorenzo B. Veneracion.

[6] The substance was tested by NBI forensic chemist and prosecution witness Insp. Noemi P. Austerio, and was found to be heroin. (See, TSN of June 7, 1993, pp. 13-16; see also Exh. "A", which is Laboratory Report No. 299-93).

[7] Pre-trial stipulation. See TSN of June 7, 1993, pp. 7-8.

[8] TSN of June 7, 1993, p. 23; TSN of June 15, 1993, p. 29.

[9] TSN of June 7, 1993.

[10] TSN of June 9, 1993, p. 23.

[11] Testified on June 15, 18, and 29, 1993.

[12] TSN of June 9, 1993, p. 23.

[13] TSN of June 7, 1993, p. 24.

[14] Ibid., at p. 27; TSN of June 9, 1993, pp. 9, 11; TSN of June 15, 1993, pp. 12-13.

[15] TSN of June 7, 1993, pp. 26-27, 41.

[16] Testified on June 7, 1993; TSN of June 9, 1993, pp. 12-13.

[17] Testified on June 9, 1993; TSN of June 9, 1993; p. 28.

[18] TSN of June 7, 1993, pp. 27-29; TSN of June 9, 1993, pp. 27, 37-38.

[19] TSN of June 15, 1993, p. 13.

[20] Ibid., at pp. 14, 37.

[21] Id., at p. 15.

[22] Id., at pp. 16, 39.

[23] TSN of June 9, 1993, p. 13.

[24] TSN of June 7, 1993, p. 30; TSN of June 9, 1993, pp. 14-15.

[25] Ibid., at p. 13.

[26] TSN of June 7, 1993, p. 40; TSN of June 9, 1993, pp. 15, 35.

[27] Ibid., at p. 35.

[28] Id., at pp. 15-16.

[29] TSN of June 7, 1993, p. 32; TSN of June 9, 1993, p. 17.

[30] TSN of June 7, 1993, pp. 33-34; TSN of June 9, 1993, p. 18.

[31] TSN of June 7, 1993, pp. 34, 35, 39; TSN of June 9, 1993, p. 18; TSN of June 15, 1993, p. 18.

[32] TSN of June 7, 1993, p. 40.

[33] Ibid., at pp. 46, 49; TSN of June 15, 1993, p. 19.

[34] Ibid., at p. 18.

[35] TSN of June 18, 1993, pp. 5-6.

[36] TSN of June 7, 1993, pp. 46-47.

[37] See TSN of July 13, 1993, July 16, 1993, and July 21, 1993.

[38] Original Records, pp. 197-198.

[39] Ibid., p. 202.

[40] Brief For The Appellants, p. 1; Rollo, p. 44.

[41] Article 8, Revised Penal Code.

[42] See *People vs. Lug-aw*, 229 SCRA 308 (1994); *People vs. Pinzon*, 206 SCRA 93 (1992); *People vs. Uy*, 206 SCRA 270 (1992).

[43] See Brief for Appellants, p. 5; Rollo, p. 48.

**[44] 193 SCRA 123 (1991).**

[45] Brief for Appellee, page 12; Rollo, p. 126.

[46] It must be noted that, although two black luggages with false bottoms, an empty transparent bag, and masking tape were gathered by the Narcom agents in a similar warrantless search made on the hotel room of appellants Omogbolahan and Bhola, these were not formally offered in evidence by the prosecution. Only the note found in Amidu's room was so offered and marked as Exh. "E".

[47] Rule 126, Section 12.

**[48] 147 SCRA 509 (1987).**

[49] *People vs. Santos*, 236 SCRA 689 (1994); *People vs. Catan*, 205 SCRA 235 (1992); *People vs. Lique*, 212 SCRA 288 (1992).

[50] *People vs. Musa*, 217 SCRA 597 (1993), citing *Marron vs. United States*, 275 U.S. 192, 72 L. ed. 231 (1927).

[51] 395 US 752, 23 L. Ed. 2d 685 (1969).

[52] 217 SCRA 597 (1993), In the case, the suspect was arrested for selling dried marijuana to a police poseur buyer somewhere along Bonifacio Avenue, Marikina, Metro Manila.

[53] *People vs. Coral*, 230 SCRA 499 (1994).

[54] Original Records, p. 6.

[55] *People vs. Sarellana*, 233 SCRA 31(1994).

[56] TSN of July 13, 1993, pp. 6-7.

[57] *Ibid.*, at pp. 38,43.

[58] *Id.*, at pp. 34-35.

[59] *Id.*, at pp. 23-25.

[60] *Ibid.*, at p. 25.

[61] *Id.*, at p. 30.

[62] Brief for Appellee, p. 15; Rollo, p. 129.

[63] *Id.*, p. 16.

[64] Section 1(b), Rule 137, Revised Rules of Court.

[65] F. Regalado, 1 Remedial Law Compendium, 1988 ed., p. 247, citing *National Shipyards Corp. vs. Asuncion*, 54 O.G. 6246.

[66] TSN of July 28, 1993, pp. 5-7.

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