

ALAIN MANALILI Y DIZON, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 113447. October 09, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure an arrest or a search warrant, policemen should employ limited, flexible responses -- like “stop-and-frisk” -- which are graduated in relation to the amount of information they possess, the lawmen being ever vigilant to respect and not to violate or to treat cavalierly the citizen’s constitutional rights against unreasonable arrest, search and seizure.

The Case

This rule is reiterated as we resolve this petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Decision of the Court of Appeals dated April 19, 1993 and its Resolution dated January 20, 1994 in CA G.R. CR No. 07266, entitled “People of the Philippines vs. Alain Manalili y Dizon.”

In an Information dated April 11, 1988,[1] Petitioner Alain Manalili y Dizon was charged by Assistant Caloocan City Fiscal E. Juan R. Bautista with violation of Section 8, Article II of Republic Act No. 6425, allegedly committed as follows:[2]

“That on or about the 11th day of April 1988 in Caloocan City, MM, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there wilfully, unlawfully and feloniously have in his custody, possession and control crushed marijuana residue, which is a prohibited drug and knowing the same to be such.

Contrary to Law.”

Upon his arraignment on April 21, 1988, appellant pleaded “not guilty” to the charge.[3] With the agreement of the public prosecutor, appellant was released after filing a P10,000.00 bail bond.[4] After trial in due course, the Regional Trial Court of Caloocan City, Branch 124, acting as a Special Criminal Court, rendered on May 19, 1989 a decision[5] convicting appellant of illegal possession of marijuana residue. The dispositive portion of the decision reads:[6]

“WHEREFORE, in view of all the foregoing, this Court finds the accused ALAIN MANALILI Y DIZON guilty beyond reasonable doubt of violation of Section 8, Article II, of Republic Act No. 6425, as amended (Illegal Possession of Marijuana residue), and hereby sentences (sic) said accused to suffer imprisonment of SIX (6) YEARS and ONE (1) DAY; and to pay a fine of P6,000.00; and to pay the costs.

xxx xxx xxx.”

Appellant remained on provisional liberty.[7] Atty. Benjamin Razon, counsel for the defense, filed a Notice of

Appeal[8] dated May 31, 1989. On April 19, 1993, Respondent Court[9] promulgated its assailed Decision, denying the appeal and affirming the trial court:[10]

“ACCORDINGLY, the decision appealed from dated May 19, 1989 is hereby AFFIRMED in all respects. Costs against appellant.”

Respondent Court[11] denied reconsideration via its assailed Resolution dated January 20, 1994, disposing:

“ACCORDINGLY, accused-appellant’s motion for reconsideration is, as is hereby DENIED.”

The FactsVersion of the Prosecution

The facts, as found by the trial court, are as follows:[12]

“At about 2:10 o’clock in the afternoon of April 11, 1988, policemen from the Anti-Narcotics Unit of the Kalookan City Police Station were conducting a surveillance along A. Mabini street, Kalookan City, in front of the Kalookan City Cemetery. The policemen were Pat. Romeo Espiritu and Pat. Anger Lumabas and a driver named Arnold Enriquez was driving a Tamaraw vehicle which was the official car of the Police Station of Kalookan City. The surveillance was being made because of information that drug addicts were roaming the area in front of the Kalookan City Cemetery.

Upon reaching the Kalookan City Cemetery, the policemen alighted from their vehicle. They then chanced upon a male person in front of the cemetery who appeared high on drugs. The male person was observed to have reddish eyes and to be walking in a swaying manner. When this male person tried to avoid the policemen, the latter approached him and introduced themselves as police officers. The policemen then asked the male person what he was holding in his hands. The male person tried to resist. Pat. Romeo Espiritu asked the male person if he could see what said male person had in his hands. The latter showed the wallet and allowed Pat. Romeo Espiritu to examine the same. Pat. Espiritu took the wallet and examined it. He found suspected crushed marijuana residue inside. He kept the wallet and its marijuana contents.

The male person was then brought to the Anti-Narcotics Unit of the Kalookan City Police Headquarters and was turned over to Cpl. Wilfredo Tamondong for investigation. Pat. Espiritu also turned over to Cpl. Tamondong the confiscated wallet and its suspected marijuana contents. The man turned out to be the accused ALAIN MANALILI y DIZON.

Upon receipt of the confiscated suspected marijuana residue from Pat. Espiritu, Cpl. Tamondong wrapped the same with a white sheet of paper on which he wrote ‘Evidence ‘A’ 4/11/88 Alain Manalili’. The white sheet of paper was marked as Exhibit ‘E-3’. The residue was originally wrapped in a smaller sheet of folded paper. (Exhibit ‘E-4’).

Cpl. Tamondong next prepared a referral slip addressed to the NBI Forensic Chemistry Section requesting a chemical analysis of the subject marijuana residue (Exhibit ‘D’). Cpl. Tamondong thereafter prepared a Joint Affidavit of the apprehending policemen (Exhibit ‘A’). Pat. Angel Lumabas handcarried the referral slip (Exhibit ‘D’) to the National Bureau of Investigation (NBI), including the subject marijuana residue for chemical analysis. The signature of Pat. Lumabas appears on the left bottom corner of Exhibit ‘D’.

The Forensic Chemistry Section of the NBI received the aforesaid referral slip and the subject marijuana residue at 7:40 o’clock in the evening of April 11, 1988 as shown on the stamped portion of Exhibit ‘D’.

It was NBI Aida Pascual who conducted the microscopic and chemical examinations of the specimen which she identified. (Exhibit ‘E’)[13] Mrs. Pascual referred to the subject specimen as ‘crushed marijuana leaves’ in her Certification dated April 11, 1988 (Exhibit ‘F’).[14] These crushed marijuana leaves gave positive results for marijuana, according to the Certificate.

Mrs. Pascual also conducted a chromatographic examination of the specimen. In this examination, she also found that the 'crushed marijuana leaves' gave positive results for marijuana. She then prepared a Final Report of her examinations (Exhibit 'G').

After conducting the examinations, Ms. Pascual placed the specimen in a white letter-envelope and sealed it. (Exhibit 'E'). She then wrote identification notes on this letter-envelope. (Exhibit 'E-1').

Pat. Lumabas carried the Certification marked as Exhibit 'F' from the NBI Forensic Chemistry Section to Cpl. Tamondong. Upon receipt thereof, Cpl. Tamondong prepared a referral slip addressed to the City Fiscal of Kalookan City. (Exhibit 'C')"

On rebuttal, Pat. Espiritu testified that appellant was not riding a tricycle but was walking in front of the cemetery when he was apprehended.[15]

Version of the Defense

The trial court summarized the testimonies of the defense witnesses as follows:[16]

"At about 2:00 o'clock in the afternoon of April 11, 1988, the accused ALAIN MANALILI was aboard a tricycle at A. Mabini street near the Kalookan City Cemetery on the way to his boarding house. Three policemen ordered the driver of the tricycle to stop because the tricycle driver and his lone passenger were under the influence of marijuana. The policemen brought the accused and the tricycle driver inside the Ford Fiera which the policemen were riding in. The policemen then bodily searched the accused and the tricycle driver. At this point, the accused asked the policemen why he was being searched and the policemen replied that he (accused) was carrying marijuana. However, nothing was found on the persons of the accused and the driver. The policemen allowed the tricycle driver to go while they brought the accused to the police headquarters at Kalookan City where they said they would again search the accused.

On the way to the police headquarters, the accused saw a neighbor and signaled the latter to follow him. The neighbor thus followed the accused to the Kalookan City Police Headquarters. Upon arrival thereat, the accused was asked to remove his pants in the presence of said neighbor and another companion. The policemen turned over the pants of the accused over a piece of bond paper trying to look for marijuana. However, nothing was found, except for some dirt and dust. This prompted the companion of the neighbor of the accused to tell the policemen to release the accused. The accused was led to a cell. The policemen later told the accused that they found marijuana inside the pockets of his pants.

At about 5:00 o'clock in the afternoon on the same day, the accused was brought outside the cell and was led to the Ford Fiera. The accused was told by the policemen to call his parents in order to 'settle' the case. The policemen who led the accused to the Ford Fiera were Pat. Lumabas, Pat. Espiritu and Cpl. Tamondong. Pat. Lumabas was the policeman who told the accused to call his parents. The accused did not call his parents and he told the policemen that his parents did not have any telephone.

At about 5:30 o'clock in the afternoon of the same day, the accused was brought in the office of an inquest Fiscal. There, the accused told the Fiscal that no marijuana was found on his person but the Fiscal told the accused not to say anything. The accused was then brought back to the Kalookan City Jail.

Loreto Medenilla, the tricycle driver who was allegedly with the accused when he and the accused were stopped by policemen and then bodily searched on April 11, 1988, testified. He said that the policemen found nothing either on his person or on the person of the accused when both were searched on April 11, 1988.

Roberto Abes, a neighbor of the accused, testified that he followed the accused at the Kalookan City Police Headquarters on April 11, 1988. He said that the police searched the accused who was made to take off his pants at the police headquarters but no marijuana was found on the body of the accused."

Appellant, who was recalled to the stand as sur-rebuttal witness, presented several pictures showing that tricycles were allowed to ply in front of the Caloocan Cemetery.[17]

The Rulings of the Trial and the Appellate Courts

The trial court convicted petitioner of illegal possession of marijuana residue largely on the strength of the arresting officers' testimony. Patrolmen Espiritu and Lumabas were "neutral and disinterested" witnesses, testifying only on what transpired during the performance of their duties. Substantially, they asserted that the appellant was found to be in possession of a substance which was later identified as crushed marijuana residue.

The trial court disbelieved appellant's defense that this charge was merely "trumped up," because the appellant neither took any legal action against the allegedly erring policemen nor moved for a reinvestigation before the city fiscal of Kalookan City.

On appeal, Respondent Court found no proof that the decision of the trial court was based on speculations, surmises or conjectures. On the alleged "serious" discrepancies in the testimonies of the arresting officers, the appellate court ruled that the said inconsistencies were insubstantial to impair the essential veracity of the narration. It further found petitioner's contention -- that he could not be convicted of illegal possession of marijuana residue -- to be without merit, because the forensic chemist reported that what she examined were marijuana leaves.

Issues

Petitioner assigns the following errors on the part of Respondent Court:

I

The Court of Appeals erred in upholding the findings of fact of the trial court.

II

The Court of Appeals erred in upholding the conviction of (the) accused (and) in ruling that the guilt of the accused had been proved (beyond) reasonable doubt.

III

The Court of Appeals erred in not ruling that the inconsistencies in the testimonies of the prosecution witnesses were material and substantial and not minor.

IV

The Court of Appeals erred in not appreciating the evidence that the accused was framed for the purpose of extorting money.

V

The Court of Appeals erred in not acquitting the accused when the evidence presented is consistent with both innocence and guilt.

VI

The Court of Appeals erred in admitting the evidence of the prosecution which are inadmissible in evidence.”

Restated more concisely, petitioner questions (1) the admissibility of the evidence against him, (2) the credibility of prosecution witnesses and the rejection by the trial and the appellate courts of the defense of extortion, and (3) the sufficiency of the prosecution evidence to sustain his conviction.

The Court’s Ruling

The petition has no merit.

First Issue: Admissibility of the Evidence Seized During a Stop-and-Frisk

Petitioner protests the admission of the marijuana leaves found in his possession, contending that they were products of an illegal search. The Solicitor General, in his Comment, dated July 5, 1994, which was adopted as memorandum for respondent, counters that the inadmissibility of the marijuana leaves was waived because petitioner never raised this issue in the proceedings below nor did he object to their admissibility in evidence. He adds that, even assuming *arguendo* that there was no waiver, the search was legal because it was incidental to a warrantless arrest under Section 5 (a), Rule 113 of the Rules of Court.

We disagree with petitioner and hold that the search was valid, being akin to a stop-and-frisk. In the landmark case of *Terry vs. Ohio*,^[18] a stop-and-frisk was defined as the vernacular designation of the right of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s):

“x x x (W)here a police officer observes an unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identified himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapon seized may properly be introduced in evidence against the person from whom they were taken.”^[19]

In allowing such a search, the United States Supreme Court held that the interest of effective crime prevention and detection allows a police officer to approach a person, in appropriate circumstances and manner, for purposes of investigating possible criminal behavior even though there is insufficient probable cause to make an actual arrest. This was the legitimate investigative function which Officer McFadden discharged in that case, when he approached petitioner and his companion whom he observed to have hovered alternately about a street corner for an extended period of time, while not waiting for anyone; paused to stare in the same store window roughly 24 times; and conferred with a third person. It would have been sloppy police work for an officer of 30 years’ experience to have failed to investigate this behavior further.

In admitting in evidence two guns seized during the stop-and-frisk, the US Supreme Court held that what justified the limited search was the more immediate interest of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a weapon that could unexpectedly and fatally be used against him.

It did not, however, abandon the rule that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, excused only by exigent circumstances.

In Philippine jurisprudence, the general rule is that a search and seizure must be validated by a previously secured

judicial warrant; otherwise, such search and seizure is unconstitutional and subject to challenge.[20] Section 2, Article III of the 1987 Constitution, gives this guarantee:

“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.”

Any evidence obtained in violation of the mentioned provision is legally inadmissible in evidence as a “fruit of the poisonous tree,” falling under the exclusionary rule:

“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.”

This right, however, is not absolute.[21] The recent case of *People vs. Lacerna* enumerated five recognized exceptions to the rule against warrantless search and seizure, viz.: “(1) search incidental to a lawful arrest, (2) search of moving vehicles, (3) seizure in plain view, (4) customs search, and (5) waiver by the accused themselves of their right against unreasonable search and seizure.”[22] In *People vs. Encinada*,[23] the Court further explained that “[i]n these cases, the search and seizure may be made only with probable cause as the essential requirement. Although the term eludes exact definition, probable cause for a search is, at best, defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.”

Stop-and-frisk has already been adopted as another exception to the general rule against a search without a warrant. In *Posadas vs. Court of Appeals*, [24] the Court held that there are many instances where a search and seizure can be effected without necessarily being preceded by an arrest, one of which is stop-and-frisk. In said case, members of the Integrated National Police of Davao stopped petitioner, who was carrying a buri bag and acting suspiciously. They found inside petitioner’s bag one .38-cal. revolver with two rounds of live ammunition, two live ammunitions for a .22-cal. gun and a tear gas grenade. In upholding the legality of the search, the Court said that to require the police officers to search the bag only after they had obtained a search warrant might prove to be useless, futile and much too late under the circumstances. In such a situation, it was reasonable for a police officer to stop a suspicious individual briefly in order to determine his identity or to maintain the status quo while obtaining more information, rather than to simply shrug his shoulders and allow a crime to occur.

In the case at hand, Patrolman Espiritu and his companions observed during their surveillance that appellant had red eyes and was wobbling like a drunk along the Caloocan City Cemetery, which according to police information was a popular hangout of drug addicts. From his experience as a member of the Anti-Narcotics Unit of the Caloocan City Police, such suspicious behavior was characteristic of drug addicts who were “high.” The policemen therefore had sufficient reason to stop petitioner to investigate if he was actually high on drugs. During such investigation, they found marijuana in petitioner’s possession:[25]

FISCAL RALAR:

Q And why were you conducting surveillance in front of the Caloocan Cemetery, Sangandaan, Caloocan City?

A Because there were some informations that some drug dependents were roaming around at A. Mabini Street

in front of the Caloocan Cemetery, Caloocan City.

xxx xxx xxx

Q While you were conducting your surveillance, together with Pat. Angel Lumabas and one Arnold Enriquez, what happened, if any?

A We chanced upon one male person there in front of the Caloocan Cemetery then when we called his attention, he tried to avoid us, then prompting us to approach him and introduce ourselves as police officers in a polite manner.

xxx xxx xxx

Q Could you describe to us the appearance of that person when you chanced upon him?

A That person seems like he is high on drug.

Q How were you able to say Mr. Witness that that person that you chanced upon was high on drug?

A Because his eyes were red and he was walking on a swaying manner.

Q What was he doing in particular when you chanced upon him?

A He was roaming around, sir.

Q You said that he avoided you, what did you do when he avoided you?

A We approached him and introduced ourselves as police officers in a polite manner, sir.

Q How did you introduce yourselves?

A In a polite manner, sir.

Q What did you say when you introduced yourselves?

A We asked him what he was holding in his hands, sir.

Q And what was the reaction of the person when you asked him what he was holding in his hands?

A He tried to resist, sir.

Q When he tried to resist, what did you do?

A I requested him if I can see what was he was(sic) holding in his hands.

Q What was the answer of the person upon your request?

A He allowed me to examine that something in his hands, sir.

xxx xxx xxx

Q What was he holding?

A He was holding his wallet and when we opened it, there was a marijuana (sic) crushed residue.”

Furthermore, we concur with the Solicitor General’s contention that petitioner effectively waived the inadmissibility of any evidence illegally obtained when he failed to raise this issue or to object thereto during the trial. A valid waiver of a right, more particularly of the constitutional right against unreasonable search, requires the concurrence of the following requirements: (1) the right to be waived existed; (2) the person waiving it had knowledge, actual or constructive, thereof; and (3) he or she had an actual intention to relinquish the right.[26] Otherwise, the Courts will indulge every reasonable presumption against waiver of fundamental safeguards and will not deduce acquiescence from the failure to exercise this elementary right. In the present case, however, petitioner is deemed to have waived such right for his failure to raise its violation before the trial court. In petitions under Rule 45, as distinguished from an ordinary appeal of criminal cases where the whole case is opened for review, the appeal is generally limited to the errors assigned by petitioner. Issues not raised below cannot be pleaded for the first time on appeal.[27]

Second Issue: Assessment of Evidence

Petitioner also contends that the two arresting officers' testimony contained "polluted, irreconcilable and unexplained" contradictions which did not support petitioner's conviction.

We disagree. Time and again, this Court has ruled that the trial court's assessment of the credibility of witnesses, particularly when affirmed by the Court of Appeals as in this case, is accorded great weight and respect, since it had the opportunity to observe their demeanor and deportment as they testified before it. Unless substantial facts and circumstances have been overlooked or misappreciated by the trial court which, if considered, would materially affect the result of the case, we will not countenance a departure from this rule.[28]

We concur with Respondent Court's ruling:

"(e)ven assuming as contended by appellant that there had been some inconsistencies in the prosecution witnesses' testimonies, We do not find them substantial enough to impair the essential veracity of their narration. In *People vs. Avila*, it was held that –'As long as the witnesses concur on the material points, slight differences in their remembrance of the details, do not reflect on the essential veracity of their statements.'"

However, we find that, aside from the presumption of regularity in the performance of duty, the bestowal of full credence on Pat. Espiritu's testimony is justified by tangible evidence on record. Despite Pat. Lumabas' contradictory testimony, that of Espiritu is supported by the Joint Affidavit[29] signed by both arresting policemen. The question of whether the marijuana was found inside petitioner's wallet or inside a plastic bag is immaterial, considering that petitioner did not deny possession of said substance. Failure to present the wallet in evidence did not negate that marijuana was found in petitioner's possession. This shows that such contradiction is minor, and does not destroy Espiritu's credibility.[30]

Third Issue: Sufficiency of Evidence

The elements of illegal possession of marijuana are: (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 said drug.[31]

The substance found in petitioner's possession was identified by NBI Forensic Chemist Aida Pascual to be crushed marijuana leaves. Petitioner's lack of authority to possess these leaves was established. His awareness thereof was undeniable, considering that petitioner was high on drugs when stopped by the policemen and that he resisted when asked to show and identify the thing he was holding. Such behavior clearly shows that petitioner knew that he was holding marijuana and that it was prohibited by law.

Furthermore, like the trial and the appellate courts, we have not been given sufficient grounds to believe the extortion angle in this case. Petitioner did not file any administrative or criminal case against the arresting officers or present any evidence, other than his bare claim. His argument that he feared for his life was lame and unbelievable, considering that he was released on bail and continued to be on bail as early as April 26, 1988.[32] Since then, he could have made the charge in relative safety, as he was no longer in the custody of the police. His defense of frame-up, like alibi, is viewed by this Court with disfavor, because it is easy to concoct and fabricate.[33]

The Proper Penalty

The trial and the appellate courts overlooked the Indeterminate Sentence Law (Act No. 4103, as amended) by sentencing petitioner to a straight penalty of six years and one day of imprisonment, aside from the imposed fine of six thousand pesos. This Act requires the imposition of an indeterminate penalty:

“SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

“SEC. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof.” (Underscoring supplied)

The Dangerous Drugs Law, R.A. 6425, as amended by B.P. 179, imposes the following penalty for illegal possession of marijuana:

“Sec. 8. x x x x

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

Prescinding from the foregoing, the Court holds that the proper penalty is an indeterminate sentence of imprisonment ranging from six years and one day to twelve years.[34]

WHEREFORE, the assailed Decision and Resolution are hereby AFFIRMED with MODIFICATION. Petitioner is sentenced to suffer IMPRISONMENT of SIX (6) YEARS, as minimum, to TWELVE (12) YEARS, as maximum, and to PAY a FINE of SIX THOUSAND PESOS. Costs against petitioner.
SO ORDERED.

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

[1] Docketed as Crim. Case No. C-30549.

[2] CA rollo, p. 4.

[3] Records, p. 12.

[4] Ibid., p. 23.

[5] Penned by Judge Rene Victoriano.

[6] CA rollo, p. 12D.

[7] Records, p. 180.

[8] p. 13.

[9] The Eighth Division composed of JJ. Justo P. Torres, Jr., ponente, Reynato S. Puno (both of whom are now members of the Supreme Court), and Pacita Canizares-Nye.

[10] Rollo, pp. 45-51.

[11] The former Eighth Division was reorganized and J. Emeterio C. Cui replaced J. Reynato S. Puno.

[12] Records, pp. 175-177. The narration of facts by the trial court is reproduced here because it contains more details than the version of Respondent Court.

[13] Exhibit “F,” Exhibits Envelope, p. 2

[14] Exhibit “G,” Exhibits Envelope, p. 3.

[15] TSN, April 19, 1989, pp. 2-4.

[16] Records, pp. 177-178. The Memorandum for the Petitioner did not present the defense’s version of the facts.

[17] TSN, April 19, 1989, pp. 9-12.

[18] 20 L Ed 2d 889; 88 S Ct 1868, 392 US 1, 900, June 10, 1968.

[19] Herrera, A Handbook on Arrest, Search and Seizure and Custodial Investigation, 1995 ed., p. 185; and Terry vs. Ohio, *supra*, p. 911.

[20] Pita vs. Court of Appeals, 178 SCRA 362, 376, October 5, 1989; People vs. Saycon, 236 SCRA 325, 328, September 5, 1994; People vs. Cuizon, 256 SCRA 325, 338, April 18, 1996; and People vs. Lacerna, G.R. No. 109250, September 5, 1997.

[21] Section 12, Rule 126 of the Rules of Court, allows a search without a warrant for “dangerous weapons or anything which may be used as proof of the commission of an offense” of a person lawfully arrested.

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

[23] G.R. No. 116720, October 2, 1997, pp. 15-16, citing A Handbook on Arrest, *supra*, p. 40.

[24] 188 SCRA 288, 292-293, August 2, 1990, per Gancayco, J., concurred in by all members of the First Division, namely: Narvasa, Cruz, Griño-Aquino and Medialdea, JJ.

[25] TSN, May 27, 1988, pp. 6-9.

[26] People vs. Salangga, 234 SCRA 407, 417-4187, July 25, 1994, per Regalado, J.

[27] Manila Bay Club Corporation vs. Court of Appeals, 245 SCRA 715, 729, July 11, 1995; Chua vs. Court of Appeals, 206 SCRA 339, 344-345, February 19, 1992; and Baquiran v.s Court of Appeals, 2 SCRA 873, 877, July 31, 1961.

[28] People vs. Atad, G.R. No. 114105, January 16, 1997, p. 19; People vs. Lua, 256 SCRA 539, 546, April 26, 1996; and People vs. Exala, 221 SCRA 494, 498-499, April 22, 1993.

[29] Exhibits “A” & “A-1,” Exhibits Envelope, p. 1.

[30] People vs. Lua, *supra*, p. 547.

[31] People vs. Lacerna, *supra*.

[32] Records, p. 23.

[33] People vs. Velasco, 252 SCRA 135, 143, January 23, 1996, per Davide, J.

[34] People vs. Tabar, 222 SCRA 144, 155, May 17, 1993, per Davide, J.

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