

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GO SHIU LING, MARY ONG, TERESITA BAJAR Y OBEDOZA, AND TEODORO EVANGELISTA Y DE LOS REYES, ACCUSED, ANTONIO COMIA Y QUINERY, AC...

G.R. No. 115156. December 14, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court of Pasay City, Branch CX, finding accused-appellant Antonio Comia guilty of conspiring with four others to import regulated drugs in violation of Art. III, §14 in relation to Art. IV, §21 of the Dangerous Drugs Act (Rep. Act No. 6425, as amended).

The facts are as follows:

About the middle of August 1992, Chief Inspector Amador Pabustan of the Criminal Investigation Section of the Philippine National Police received a report from the International Police Organization (Interpol) that a large shipment of narcotics was arriving in Manila by air mail. Accordingly, he conferred with the Collector of Customs at the Ninoy Aquino International Airport, Pastor Guiao, who ordered an inspection of parcels of commercial quantity coming from Hongkong, Singapore, Indonesia and Bangkok.

On September 3, 1992, accused-appellant Antonio Comia went to the Airmail Distribution Center (ADC) at the NAIA to inquire about packages sent through TASCOS, a brokerage firm engaged in freight facilitating and forwarding, in which Comia was working. Comia had been asked by TASCOS Manager Lydia Dizon to follow up the release of the parcels of a client, Mary Ong, which were supposed to have left the Hongkong Airport on September 2, 1992. The cargo consisted of about 30 parcels which were addressed to various individuals and bearing the identifying marks "VGM" or "VGMO."

Comia was informed by Teresita Bajar at the Air Parcel Division of the ADC that the packages had arrived but that they were being held for inspection, possibly even for seizure. He was informed that one of the packages marked "VGM" had arrived in bad order and that its contents, which turned out to be watches, had spilled out.

Comia told Dizon what he had been told. Dizon, in turn, called up Mary Ong to inform her of the condition of the shipment.

Comia talked to several officials of the ADC. Having failed to convince them to release his cargo, Comia went to see Acting Supervising Appraiser of the Air Parcel Division of the Airmail Distribution Center Emmanuel Laudit on September 9, 1992 to make an appointment for Teodoro Evangelista, the owner of TASCOS and Comia's brother-in-law, to see Laudit.

The same morning, Evangelista came and interceded for the release of the packages by suggesting to Laudit, "Perahin na lang eka iyan." Laudit advised Evangelista to speak instead with Collector Guiao.

Meanwhile, the other packages of TESCO, marked "VGM," "VGMO," and "TRE," were inspected. On September 8, 1992, a package marked "VGMO" and addressed to a certain "COMIA," was found to contain plastic bags containing crystals. When examined at the National Bureau of Investigation, the shipment turned out to be metamphetamine hydrochloride or shabu.

The matter was reported to the Commissioner of Customs and the Postmaster General. The following day, September 9, 1992, in their presence and in the presence of the PNP, nine parcels marked "VGMO" were opened. The parcels were addressed to different individuals. Two parcels, both addressed to "COMIA," were found to contain crystalline powder which when tested was found to be shabu. A total of 21.8 kilograms of shabu, with an estimated value of P50 million, was uncovered.

Evangelista, who was present, was confronted with the cargo. He gave a statement to the police denying any knowledge of the importation and claiming that the cargo belonged to Mary Ong.

Accordingly, Mary Ong was invited for questioning. She executed an affidavit admitting that the packages marked "VGM" were hers, but she claimed they were actually meant for Mrs. Go Shiu Ling, the sister of the sender in Hongkong. Ong claimed that she had merely been asked by Go Shiu Ling to facilitate the importation of the boxes which she (Mary Ong) thought contained watches. Based on Mary Ong's statement, Go Shiu Ling was also apprehended.

In an Information dated September 11, 1992, Comia, Teresita Bajar, Mary Ong, and Go Shiu Ling were charged with violation of Art. III, §14, in relation to Art. IV, §21 of R.A. No. 6425, as amended. The information alleged

That on or about the 9[th] day of September, 1992, in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and mutually helping one another, without authority of law, did then and there wilfully, unlawfully, and feloniously import or bring into the Philippines thru the Airmail Distribution Center, Domestic Road, this City, Metamphetamine Hydrochloride (shabu), a regu-lated drug.

Upon their arraignment on September 18, 1992, the accused pleaded "not guilty."

On October 12, 1992, the Information was amended to include Teodoro Evangelista, who, however, has remained at large.

Trial proceeded except as to Evangelista. After the prosecution had rested its case, the accused filed separate demurrers to the prosecution's evidence.

On April 15, 1993, the trial court dismissed the case against Bajar, on the ground that her complicity consisted merely of being in the working area of the customs examiners of the ADC, locating Comia's parcels, where she had no authority to be. The trial court held that this circumstance was insufficient to prove that she was in conspiracy with the others in the importation of shabu.

On April 22, 1993, the trial court also granted the demurrers of Ong and Go. It held that Evangelista's affidavit, which implicated Ong, was inadmissible as evidence because Evangelista was not presented to identify it. Likewise, Ong's own affidavit, in which she pointed to Go as the real consignee of the packages, was also held to be inadmissible on the ground that it had been taken while she was under custodial investigation without assistance of counsel. (Ong was not confronted with the three parcels marked "VGMO." She admitted owning packages marked "VGM" but made no mention of the packages marked "VGMO" in her affidavit. Moreover, what she admitted was that the parcels were sent to her by one Yu Yen Jian, whereas the three parcels appeared to have been shipped by a certain Ching Ming).

Comia's demurrer was, however, denied. He was found guilty and sentenced to suffer life imprisonment and to pay a fine of P30,000.00.

The trial court found that TASCOS's modus operandi was to have the cargo of clients divided into parcels which were then addressed to different individuals in order to reduce or entirely avoid customs duties. The addressees were people close to Evangelista, such as accused-appellant, who is his brother-in-law, Lydia Dizon, his sister-in-law, Joel Evangelista, his son, and Bert Tuazon, his neighbor. The names and addresses were likewise interchanged or fictitious addresses were given. The packages were coded with the initials of TASCOS's clients so that they could be identified. The code names "VGM" and "VGMO" stood for Mary Ong.

Comia's job was to monitor the packages as they arrived at the ADC, although they were not released there but at pilot post offices to which they were forwarded. Teresita Bajar knew the coded initials of TASCOS's clients, having been given a list of them. She would monitor the packages of TASCOS that had arrived and relay the information to Comia so that the latter could claim them at the Sta. Mesa satellite post office. In claiming them, Comia, did not have to sign nor show any identification for the packages he received for TASCOS. The person in charge of the Sta. Mesa post office simply checked the items on his list. Comia refused to name the personnel from whom he claimed his packages.

In this particular instance, Comia was following up the parcels of Mary Ong which left the Airmail Center of Hongkong on September 2, 1992. They were supposed to contain watches misdeclared as toys and gifts. In this way Ong was in the past able to import dutiable goods, such as calculators, without paying the corresponding taxes.

Comia testified that although TASCOS clients had used his name, it was the first time that Mary Ong used his name as a dummy addressee. Previously, Mary Ong had used the names of the other dummy addressees which had been given to her by Lydia Dizon. On the other hand, Comia's name was used by Rudy Hernandez, another client of TASCOS. Comia said he consented to the use of his name by Ong at the instance of Lydia Dizon. Comia claimed he was a mere employee and delivery man and got nothing in exchange for the use of his name. Lydia Dizon, on the other hand, denied that she ever allowed Mary Ong to use Comia's name.

In finding Comia guilty, the trial court held that he acted on his own in conspiracy with unknown partners, by using Mary Ong's coded initials "VGMO" and thereby making it appear they were part of Ong's shipment, since only the three parcels all addressed to Comia and marked "VGMO" contained shabu. The trial court held that the fact that Comia was persistent in his follow up showed that he knew the contents of the three parcels. The trial court held:

If, as Comia claimed, he had been going to the ADC daily from the last week of August 1992 up to the first week of September 1992, he could not have failed to determine that the three parcels had arrived on September 3, 1992 and, therefore, there was no longer any need to follow-up even up to September 9, 1992 if his purpose was merely to determine whether or not they had arrived. That he had religiously gone to the ADC to follow up even after becoming aware of the arrival of the packages is an indication that he was there not merely to know if they had arrived but to secure their immediate dispatch to the satellite office. That he informed Lapid about Evangelista's wanting to see him (Lapid) as in fact Evangelista went to see Lapid to whom he proposed "Perahin na lang eka iyan" is an indication of his keen interest in having the parcels released. Such keen interest indicates prior knowledge of the contents of the parcels, for if, as claimed, they knew them to contain merely watches, and also as claimed, he got nothing for the use of his name, why the persistent follow-up?

Comia has appealed, making the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONCLUDING FROM THE MAZE OF DUBIOUS CIRCUMSTANCES THAT ACCUSED-APPELLANT HAS PRIOR KNOWLEDGE OF THE CONTENTS OF THE THREE PARCELS IN QUESTION WHICH WERE FOUND TO CONTAIN PROHIBITED DRUGS.[1]

II

THE TRIAL COURT ERRED IN HOLDING THAT THE PARCELS IN QUESTION WERE TO GO TO COMIA AND HIS CONSPIRATOR/S WHICH CONCLUSION WAS BASED ON THE UNDUE AND ERRONEOUS INFERENCE DERIVED FROM THE TESTIMONY OF LYDIA DIZON TO THE EFFECT THAT SHE DID NOT GIVE THE NAME OF ACCUSED-APPELLANT FOR PARCELS OF MARY ONG AS IT WAS A CERTAIN RUDY HERNANDEZ WHO WAS USING THE NAME OF ACCUSED-APPELLANT.[2]

III

THE TRIAL COURT ERRED IN HOLDING THAT THE EVIDENCE AGAINST ACCUSED-APPELLANT "SHOWS PROOF OF CONSPIRACY BEYOND REASONABLE DOUBT IN THE IMPORTATION OF THE THREE PARCELS OF SHABU SUBJECT OF THE CASE AT BAR." [3]

IV

THE TRIAL COURT ERRED IN NOT ABSOLVING ACCUSED-APPELLANT OF THE OFFENSE CHARGED ON THE GROUND THAT HIS GUILT HAS NOT BEEN SHOWN BY PROOF BEYOND REASONABLE DOUBT.[4]

The Solicitor General filed in lieu of an appellee's brief a Manifestation that, in his opinion, the guilt of the accused has not been proven beyond reasonable doubt and, for this reason, recommending the acquittal of accused-appellant Comia.

We find accused-appellant's contentions and the Solicitor General's manifestation to be without merit.

First. Accused-appellant and the Solicitor General contend that, instead of showing that Comia knew that the packages contained shabu, the fact that Comia was persistent in seeking the release of the packages shows that he did not know what the parcels contained.

They contend that Comia knew that one parcel had been discovered to contain watches in commercial quantity, not toys or gifts as stated in the customs declaration; that the next step would be the seizure of the cargo; and that in following up the matter at the ADC, his only purpose was to try to prevent the seizure of the goods. They contend that if Comia knew that the packages contained shabu, he would have stopped going to the ADC and instead would have gone into hiding.

This contention has no merit. It is clear from the evidence that Evangelista and his firm had connections with the people inside the ADC and the Sta. Mesa Post Office, because of which Evangelista and his firm were able to slip through customs commercial quantities of highly dutiable goods. Accused-appellant himself states in his brief that the fact that Emmanuel Laudit of the ADC allegedly warned Lydia Dizon that the shipment was going to be discovered "indicates [the] existence of an alliance with Laudit." Without such an "alliance," merely using dummy addressees with fictitious or inaccurate addresses on the parcels handled by the TASCO would not be enough to make the smuggling of goods and contraband possible.

Indeed, Lydia Dizon herself, the TASCO manager, testified:

ATTY. MARCOLETA:

Q

You said at the outset, Madam Witness, that you are presently jobless and that you last reported for work middle of August 1992, will you please explain to the Court the interruption in your work?

A

Because in mid-August 1992 ADC called up our office, informing me to stop working and since then I have stopped working.

COURT:

Q

Now, tell us, who in the ADC called you up?

A

Mr. Manny Laudit, Your Honor.

Q

Did it occur to you to inquire from him why he advised you to stop working?

A

Because according to him "mainit na daw ho" because it is from him was [sic] that we really get the information.

q

Now tell us, what did you understand by "mainit?"

A

I cannot understand what he meant by "mainit." He just told me so.

Comia's role was to monitor the packages as they arrived at the ADC. He saw to it that the packages bearing false addresses were not sent to the dead letter office or returned to their senders. He was known at the Sta. Mesa post office to which the packages were forwarded. This fact enabled him to have them released without having to sign for anything or produce proof of identity, as would have been the procedure for claiming parcels.

Thus it is more likely that Comia kept on working for the release of the packages despite the discovery of the watches because of his friends at the ADC. He had reason to work hard for the release of the packages, now that the watches had been discovered and ranking officials of the ADC presumably already knew that TASCO's packages had been misdeclared. He had to have them released before the rest of the packages were inspected. When his efforts failed, Comia called on his brother-in-law, Teodoro Evangelista, who was the owner of the firm and a former customs policeman, so that the latter could use his influence. When Evangelista arrived, he assured Laudit that the packages contained only watches and boldly offered "Perahin na lang eka iyan."

This is far different from the scenario which the Solicitor General has portrayed where an innocent man's name is used by another for unlawful purposes without his knowledge or consent. Comia was not a victim, nor was he framed up. Comia was not an ordinary employee of the TASCO. He is the brother-in-law of the owner of

TASCO, Teodoro Evangelista, and the one entrusted by the latter to follow up matters at the ADC and the Sta. Mesa Post Office. He was the one who was in fact known to the employees there. Bajar testified that Comia would inquire from her about TASCO's expected packages two or three times a week or sometimes daily.[5] Laudit testified that in the four years he had known Evangelista, he had seen him only about five times, while he had been seeing accused-appellant regularly:

FISCAL BERON :

q

Now, do you know of a person by the name of Teodoro Evangelista?

a

Teddy Evangelista, not Teodoro.

q

Why do you know Teddy?

a

Because he was one of the facilitators/forwarders there who has some commercial parcels there that are coming from abroad sir.

q

Since when have you known Teddy Evangelista?

a

Since four (4) years ago sir.[6]

x x x

q

How often was Teddy Evangelista in your office for the four (4) years that you say had been in this business of facilitating release of parcels?

a

I have seen him only a maximum of five (5) times.

COURT:

q

Five (5) times during the four years?

a

Yes, Your Honor because he seldom comes to the office. It is only Tonying who goes to...

q

Who is that Tonying that you mentioned?

a

Tonying, that fellow seated there Your Honor.

(witness approaching the gallery and tap [sic] the shoulder of a man who responded to the name Tonying Comia)

COURT:

q

He is the one accused here?

a

Yes, Your Honor.

q

What about him, why did you mention him when I was asking you about Teddy Evangelista?

a

Tonying is the one who frequents our office to follow up their importations.[7]

Even granting that Comia acted in good faith, he cannot escape criminal responsibility. The crime with which he is charged is a *malum prohibitum*. Lack of criminal intent and good faith are not exempting circumstances. As held in *People v. Lo Ho Wing*:^[8]

Moreover, the act of transporting a prohibited drug is a "*malum prohibitum*" because it is punished as an offense under a special law. It is a wrong because it is prohibited by law. Without the law punishing the act, it cannot be considered a wrong. As such, the mere commission of said act is what constitutes the offense punished and suffices to validly charge and convict an individual caught committing the act so punished, regardless of criminal intent.

Likewise, in *People v. Bayona*, it was held:

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 to act."^[9]

Indeed, Comia cannot claim to have acted in good faith. Even assuming that he did not know that the packages contained shabu, the fact is that he tried to facilitate the importation of dutiable goods free of customs duties. It comes as a surprise therefore that in moving for the acquittal of accused-appellant the Solicitor General should downplay or minimize the role of accused-appellant by insisting that the latter was a "mere employee" who did not have a choice "but to assent to whatever his employer wanted to do," and that "besides, this practice of TASCOC of using different addresses for a client has been admitted by no less than its manager, Lydia Dizon herself."^[10]

The fact is that accused-appellant Antonio Comia gave his consent for the importers of the illegal cargo to use his name for the purpose of concealing it from the authorities. He cannot now wash his hands and say he did not know that they would use his name to import shabu. He gave them license to use his name for whatever purpose and it was not at all unforeseeable that clients could employ the scheme to import shabu or other drugs and other contraband.

Second. Accused-appellant argues that the trial court also erred in relying upon the testimony of Lydia Dizon that Mary Ong never used Comia's name, on the basis of which the trial court concluded that Comia had acted on his own together with his co-conspirators. Accused-appellant claims that Dizon had every reason to implicate him (Comia) as the sole perpetrator of the crime because as manager of TASCO she knew she could possibly be implicated in the crime. Accused-appellant points out that it was upon her instruction that Comia had gone to ADC on September 3, 1992 to inquire about the arrival of the parcels.

But while this may be true, as already discussed the evidence against Comia, even without Dizon's testimony, is sufficient to support a finding of his guilt.

Third. Appellant argues further that he cannot be convicted of conspiracy because the cases against his alleged co-conspirators, Mary Ong and Go Shiu Ling, were dismissed.

The contention is without merit. In *People v. Dramayo*,^[11] the Court affirmed the conviction of two out of seven conspirators originally accused of murder. This Court noted that there had been cases where, notwithstanding that a majority of the defendants have been acquitted, the accused had been held responsible for the crime charged, a moral certainty having arisen as to their culpability.^[12]

ACCORDINGLY, the judgment appealed from is AFFIRMED. Pursuant to §17 of Republic Act No. 7659, however, the penalty of life imprisonment is MODIFIED to reclusion perpetua.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Francisco, JJ., concur.

[1] Rollo, p. 87.

[2] Ibid, p. 91.

[3] Ibid, p. 92.

[4] Ibid, p. 93.

[5] TSN, June 29, 1993, p. 51.

[6] TSN, Sept. 24, 1992, p. 26.

[7] Ibid., p. 88.

[8] 193 SCRA 122 (1991).

[9] 61 Phil. 181 (1935) citing *U.S. v. Go Chico*, 14 Phil. 128.

[10] *Manifestation in Lieu of Brief*, p. 16.

[11] 42 SCRA 59 (1971).

[12] This Court cited the following cases: *People v. Bernal*, 91 Phil. 619 (1952); *People v. Hufana*, 103 Phil. 304 (1958); *People v. Amajul*, L-14626-27, Feb. 28, 1961, 1 SCRA 682; *People v. Dueñas*, L-15307, May 30, 1961, 2 SCRA 221, *People v. Hernandez*, L-6025, May 30, 1964, 11 SCRA 223; *People v. Sagario*, L-18659, June 29, 1965, 14 SCRA 468; *People v. Chaw Yaw Shun*, L-19590, April 25, 1968, 23 SCRA 127; *People v. Wong*, L-22130-32, April 25, 1968, 23 SCRA 146; *People v. Provo*, L-28347, Jan. 20, 1971, 37 SCRA 19 (*Id.*, at 67, n.

13).

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