

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL ENCINADA, ACCUSED-APPELLANT.

G.R. No. 116720. October 02, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In acquitting the appellant, the Court reiterates the constitutional proscription that evidence (in this case, prohibited drugs) seized without a valid search warrant is inadmissible in any proceeding. A yield of incriminating evidence will not legitimize an illegal search. Indeed, the end never justifies the means.

The Case

This principle is stressed in this appeal from the Judgment,[1] promulgated on July 15, 1994 by the Regional Trial Court of Surigao City, Branch 32,[2] in Criminal Case No. 3668, convicting Appellant Roel Encinada of illegal transportation of prohibited drugs under Section 4 of Republic Act No. 6425, as amended by Batas Pambansa Blg. 179.

An Information,[3] dated May 22, 1992, was filed by Third Asst. Surigao City Prosecutor Virgilio M. Egay charging appellant of said crime allegedly committed as follows:

That on or about May 21, 1992, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in gross disregard of the prohibition of the provisions of Republic Act No. 6425 as amended by Batas Pambansa Bilang 179, did then and there willfully, unlawfully and feloniously have in his possession, custody and control dried marijuana leaves weighing 800 grams, more or less, which he transported to Surigao City from Cebu City aboard a passenger ship, well knowing that such acts are expressly prohibited by law.”

Before arraignment, appellant, assisted by Counsel Antonio Casurra, offered to plead guilty to a lesser offense, i.e., illegal possession of prohibited drugs.[4] The trial court requested the prosecution to study the offer,[5] but the records do not show any agreement on such proposal.

Upon his arraignment, appellant pleaded “not guilty” to the charge.[6] After the prosecution presented its evidence, the defense filed, with leave of court,[7] a “Demurrer to Evidence” dated September 1, 1993,[8] questioning the admissibility of the evidence which allegedly was illegally seized from appellant. The court a quo denied the motion, ruling:[9]

For resolution is the demurrer to evidence dated September 1, 1993 of the accused, Roel Encinada, praying that he be acquitted of the crime charged on the ground of the inadmissibility of the evidence for the prosecution consisting of the marijuana (seized) from him by the police. The accused raised the following issues, to wit: (1) Whether the arrest and search of the accused without a warrant would fall under the doctrine of warrantless search as an incident to a lawful arrest; and, (2) Whether the subject marijuana is admissible in evidence against the accused.

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A scrutiny of the evidence for the prosecution shows that the events leading to the arrest of the accused started when SPO4 Nicolas Bolonia, chief of the PNP vice control section, received a tip from his informer that the accused, Roel Encinada would be arriving on board the M/V Sweet Pearl at about seven o'clock in the morning of May 21, 1992. On cross-examination SPO4 Bolonia testified that the information was given to him by his asset at about four o'clock in the afternoon of May 20, 1992. After receiving the tip he relayed the information to SPO4 Cipriano Iligan, Jr., PNP chief of intelligence. SPO4 Bolonia further declared that he would have applied for a search warrant but there was simply no time for it.

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In the later case of *People vs. Tangliben* (184 SCRA 220) the Supreme Court modified its ruling in the *Aminuddin* case when it held that the arrest and search is lawful when the police had to act quickly and there was no more time to secure a search warrant. It is noted that the tip was given to SPO4 Bolonia by his informant at about the closing time of the offices of the various courts. He still had to inform SPO4 Iligan in order to coordinate with him. The boat carrying the accused was scheduled to dock in Surigao City at seven o'clock the following morning when the courts had not yet opened.

It is therefore quite obvious that the police did not have enough time to apply for a search warrant in the interim. The police cannot be faulted for acting on the tip and for stopping and searching the accused even without a warrant.

In the case at bar, the accused was caught in flagrante delicto in actual possession of the marijuana. The search made upon his personal effects falls squarely under paragraph (a) of Rule 113, Section 5 of the 1985 Rules on Criminal Procedure which allows a warrantless search as an incident to a lawful arrest (*People vs. Malmstedt*, 198 SCRA 401).

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WHEREFORE, premises considered, the demurrer to evidence in question is denied for lack of merit."

After trial in due course, the assailed Judgment was rendered, the decretal portion of which reads:

WHEREFORE, premises considered, the Court finds the accused, Roel Encinada, guilty beyond reasonable doubt of the violation of Section 4, Article II, of Republic Act No. 6425 as amended by Batas Pambansa Bilang 179, and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of twenty thousand pesos (P20,000.00) without subsidiary imprisonment in case of insolvency; and to pay the costs.

The marijuana (Exhibit B) involved in this case is hereby forfeited to the government to be destroyed or disposed of pursuant to present rules and regulations. The two plastic chairs (Exhibits D and D-1) are also forfeited to the government."

The FactsVersion of the Prosecution

The Solicitor General, in the Appellee's Brief, recounts the events leading to appellant's arrest, as follows:[10]

At around 4 p.m. of May 20, 1992, SPO4 Nicolas Bolonia was in his house when he received a tip from an informant that Roel Encinada would be arriving in Surigao City from Cebu City in the morning of May 21, 1992 on board the M/V Sweet Pearl bringing with him 'marijuana.' Bolonia was then Chief of the Vice Control Squad of the Surigao City Police (pp. 27-29; TSN, November 27, 1992, 34-40; p. 10, TSN, May 14, 1993).

Bolonia already knew Encinada because the latter previously was engaged in illegal gambling known as 'buloy-buloy.' After receiving the tip, Bolonia notified the members of his team - SPO3 Marcial Tiro, SPO3

Glen Abot and SPO3 Charlito Duero - as well as his colleague SPO4 Cipriano Iligan, Jr., the chief of the Intelligence and Investigation Division, of the information he received. Because the information came late, there was no more time to secure a search warrant (pp. 38; TSN, November 27, 1992, May 14, 1993, p. 13; pp. 4, 19; TSN, March 3, 1993).

In the early morning of May 21, 1992, Bolonia, Iligan and other police officers deployed themselves in different strategic points at the city wharf to intercept Encinada. At about 8:15 a.m. of the same day, the M/V Sweet Pearl finally docked. The police officers saw Encinada walk briskly down the gangplank, carrying two small colored plastic baby chairs in his hand (p. 11 TSN, May 14, 1993; pp. 4, 5, 15-16 TSN, March 3, 1993; pp. 29-30 TSN, November 27, 1992, pp. 29-30).

From their various positions, the police officers followed Encinada immediately boarded a tricycle at Borromeo Street, still holding the plastic chairs. As the tricycle slowly moved forward, Bolonia chased it and ordered the driver to stop after identifying himself as a police officer. When the vehicle stopped, Bolonia identified himself to Encinada and ordered him to alight from the tricycle. Bolonia asked Encinada to hand over the plastic chairs, to which the latter complied (pp. 5, 6, 17 TSN, March 3, 1993, pp. 30-32, 35 TSN, November 27, 1992).

Bolonia noticed that there were two small chairs, one green and the other blue, stacked together and tied with a piece of string. Between the stack of chairs, there was a bulky package. Bolonia examined it closely and smelled the peculiar scent of marijuana. Making a small tear in the cellophane cover, Bolonia could see and smell the what appeared to be 'marijuana,' a prohibited drug (pp. 6-9 TSN, March 3, 1993, Exh. 'B', 'D' and sub-markings; pp. 32-34, 35-39 TSN, November 27, 1992).

Encinada was brought to the central police station. Bolonia, in the presence of one Nonoy Lerio who is a member of the local media and a friend of Encinada, opened the package. It was discovered that indeed, the contents consisted of dried leaves known as marijuana. In the course of the investigation, Encinada surrendered to Bolonia his passenger ticket issued by M/V Sweet Pearl (pp. 9-11 TSN, March 3, 1993, Exh. 'E'; pp. 34-35, 39-40 TSN, November 27, 1992).

On July 13, 1992, Bolonia brought the package of dried leaves for examination at the PNP Crime Laboratory at Camp Evangelista, Cagayan de Oro City. The forensic chemist, Inspector Vicente Armada, tested the leaves and confirmed that they were positive for marijuana. However, the marijuana only weighed 610 grams, which Armada opined to be probably due to shrinkage and moisture loss (pp. 12-17, 19-21, 24-40, 41; TSN, November 27, 1992, Exh. 'A', 'B', 'C' and sub-markings.)"

Version of the Defense

Appellant sets up denial as his defense. In his brief, he denied ownership and possession of said plastic baby chairs, as follows:[11]

- 1) In the morning of May 21, 1992, at around 8:00 o'clock in the morning, more or less, the accused was seen to have disembarked from MV Sweet Pearl after an overnight trip from Cebu City;
- 2) The accused proceeded to the Surigao PPA Gate and boarded a motorela bound for his residence at Little Tondo, (within the City Proper), Surigao City. The Motorela was fully loaded with passengers, with the accused as the fourth passenger;
- 3) When the motorela was already able to travel a distance of about ten (10) meters more or less, the same was forcibly stopped by persons who ordered the passengers to disembarked (sic). Thereafter, all the (baggage) of the passengers and the driver were ordered to stand in a line for which a body search was made individually (sic);
- 4) After the search was made, the accused was singled out in the line and ordered to board the service vehicle

of the police and was brought to the PNP Police Station.

Before however the accused boarded the jeep, he was openly protesting to the action taken by the police authorities and demanded from the apprehending officers a copy of a search warrant and/or warrant of arrest for the search made and for his apprehension;

5) In the police headquarters, the accused was made to undergo custodial investigation for which a plastic bag was presented to him allegedly containing the subject marijuana leaves. The accused denied that the said plastic bag belonged to him.

The denial was witnessed by Mr. Daniel ‘Nonoy’ Lerio, Jr. a member of the Surigao City Press, who was invited by the Police Investigators to witness the presentation of the alleged marijuana leaves, during the said investigation;

6) After the custodial investigation, the accused was placed immediately behind bars and the Information for Violation of RA 6425 as amended by Batas Pambansa Blg. 179 was filed before the Court;

x x x x x x x x”

Aside from appellant, the defense also presented five (5) other witnesses whose testimony allegedly established the following:[12]

8.a) Ruben Concha – the driver of the motorela who testified that he was surprised when the motorela he was driving was forcibly stopped (while already in motion) by the police authorities while directing his four (4) passengers, (3 males and 1 female) to disembarked (sic) together with their (baggage).

That after the search was made, the accused was singled out, and despite the protests made, was ordered to board the Police service vehicle, while the 2 other male passengers just left the scene while the female passenger continued to board the motorela who directed him to proceed to the residence of Baby Encinada to verify whether the person picked up by the police authorities was related to the latter;

8.b) Josephine Nodalo – testified that she is a beautician, and that she was one of the four (4) passengers of the motorela driven by Ruben Concha, which motorela was forcibly stopped by men who are chasing it after travelling a distance of 5 to 10 meters away from its loading area near the PPA Gate.

All the four (4) passengers were ordered to disembarked (sic) from the motorela whereupon they were all subjected to body search including their (baggage).

That it was the male passenger who was sitting at the rear portion of the motorela who was picked up by the Police Authorities and despite the protests made was ordered to board the Police service vehicle.

Upon learning from the persons who were gathered at the scene, that the one who was picked up was the son of Mr. Encinada, the latter boarded back the motorela and directed the driver to proceed to the residence of the Encinada’s at Little Tondo to verify whether it was really their son who was picked up by the police authorities. She made this, as Mrs. Encinada, (the mother of the accused) is his (regular) customer;

8.c) Mr. Daniel ‘Nonoy’ Lerio, Jr. – testified that, being a member of the Press, he was requested by the police authorities to witness the custodial investigation conducted upon the person of the accused, who, during the entire proceedings of the investigation vehemently denied having any knowledge about the marijuana leaves placed inside the plastic bag;

8.d) Isabelita Encinada – testified that she was informed by her manicurist (Josephine Nodalo) about the arrest x x x (of) her son, somewhere at the PPA Port Area and upon being informed, she and her husband immediately went to the Surigao PNP Headquarters to verify the (news) x x x;”

x x x x x x x x

x.”

Ruling of the Trial Court

The trial court rejected appellant’s claim that he was merely an innocent passenger and that his package contained mango and otap samples, not marijuana. Emphasizing that the Surigao City Police had no ill motive against appellant, the trial court gave credence to SPO4 Bolonia’s story that he actually received from his police asset the information regarding appellant’s arrival in Surigao City. The trial court further emphasized that appellant was caught carrying marijuana in flagrante delicto. Hence, the warrantless search following his lawful arrest was valid and the marijuana obtained was admissible in evidence.

Assignment of Errors

In his Brief, appellant submits the following assignment of errors:[13]

- I. The lower court erred in finding that the accused was caught in flagrante (sic) delicto in possession of the subject marijuana leaves and is the one responsible in transporting the same;
- II. The lower court gravely erred in finding that search and the arrest of the accused without a warrant would fall under the doctrine of warrantless search as incident to a lawful arrest --
- III. The lower court gravely erred in finding that the subject marijuana leaves is admissible in evidence --”

In short, the main issues are (1) the sufficiency of the evidence showing possession of marijuana by appellant and (2) the validity of the search conducted on the person and belongings of the appellant.

The Court’s Ruling

The petition is meritorious.

First Issue: Illegal Possession of Prohibited Drugs

Appellant claims that the prosecution failed to prove his possession and ownership of the plastic baby chairs. He contends that the testimonies of Bolonia and Iligan conflicted as to the number of passengers riding the motorela. Such alleged conflict is peripheral and irrelevant. Hence, it deserves scant consideration. Appellant adds that such testimonies also conflicted as to the place where appellant sat inside the motorela. This claim, aside from being flimsy, is also not supported by the transcript of stenographic notes.

In his testimony, appellant vehemently denied possession of the plastic baby chairs, stressing that he was not holding them when the search was conducted. However, his denial is easily rebutted by Bolonia’s testimony:[14]

Q: When you saw Roel Encinada who disembarked from M/V Sweet Pearl, what did you observe in his person, if any?

A: He was carrying a (sic) baby chairs.

Q: What kind of chairs?

A: A (sic) plastic chairs.

x x x x x x x x

Q: After you saw Roel Encinada disembarked (sic) from the boat, what did you and your companions do?

A: We followed him behind because we posted in the different direction(s) in the wharf.

x x x x x x x x

Q: You said you followed Roel Encinada, what happened next when you followed him

A: I saw Roel Encinada took (sic) a ride with a motorcycle so I chased him and let him stopped (sic).

x x x x x x x x

Q: By the way, where was (sic) this (sic) two plastic chairs placed in the motorize tricycle?

A: He was sitting at the back of the motor at the right portion of the seat and the chairs was (sic) placed besides him. ([W]itness indicating that he was sitting (sic) an imaginary seat at the back of the motor and holding an (sic) imaginary chairs with his left arm)."

Between these two contentions, the choice of the trial court prevails because this is a matter that involves credibility of witnesses. On this subject of credibility, the opinion of the trial court deserves great respect as it was in a better position to observe the demeanor and deportment of the witnesses on the stand;^[15] hence, it was in a superior situation to assess their testimonies.

Furthermore, proof of ownership of the marijuana is not necessary in the prosecution of illegal drug cases;^[16] it is sufficient that such drug is found in appellant's possession.

Second Issue: Illegal Search and Seizure

Based on the foregoing discussion, appellant's conviction could have been affirmed by this Court. However, the very evidence implicating him -- the prohibited drugs found in his possession -- cannot be used against him in this case or, for that matter, in "any proceeding."

Generally, a search and seizure must be validated by a previously secured warrant; otherwise, such search and seizure is subject to challenge.^[17] Section 2, Article III of the 1987 Constitution, is apropos:

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 this provision is legally inadmissible in evidence as a "fruit of the poisonous tree." This principle is covered by this 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."

The plain import of the foregoing provision is that a search and seizure is normally unlawful unless authorized by a validly issued search warrant or warrant of arrest. This protection is based on the principle that, between a citizen and the police, the magistrate stands as a mediator, nay, an authority clothed with power to issue or refuse to issue search warrants or warrants of arrest.^[18]

The right against warrantless searches, however, is subject to legal and judicial exceptions, as follows: (1) search incidental to a lawful arrest, (2) search of moving vehicles, (3) seizure in plain view, (4) customs searches, and (5) waiver by the accused themselves of their right against unreasonable search and seizure.^[19] In these cases, the search and seizure may be made only upon probable cause as the essential requirement. Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's 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.[20]

In this case, Bolonia received at 4:00 p.m. on May 20, 1992 an intelligence report that appellant who was carrying marijuana would arrive the next morning aboard the M/V Sweet Pearl. Although such report could have been the basis of probable cause, Bolonia explained that he could not secure a warrant because the courts in Surigao City were already closed for the day. Thus, he and the other lawmen had no choice but to proceed the next morning to the port area. After appellant disembarked from the ship and rode a motorela, Bolonia stopped the motor vehicle and conducted the search. He rummaged through the two strapped plastic baby chairs which were held by appellant and found inserted between them a package of marijuana wrapped in a small plastic envelope.

Appellant contended before the lower court that the warrantless search of his belongings was proscribed by the Constitution. But the trial judge rejected this contention, opining that appellant was caught in flagrante delicto at the time of his arrest. Hence, it concluded that the warrantless search conducted after his “lawful arrest” was valid and that the marijuana was admissible in evidence.

Rule 113, Section 5, discusses the instances when a warrantless arrest may be effected, as follows:

SEC. 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x x x x x.”

In this case, appellant was not committing a crime in the presence of the Surigao City policemen. Moreover, the lawmen did not have personal knowledge of facts indicating that the person to be arrested had committed an offense. The search cannot be said to be merely incidental to a lawful arrest. Raw intelligence information is not a sufficient ground for a warrantless arrest. Bolonia’s testimony shows that the search preceded the arrest:[21]

Q: You said you followed Roel Encinada, what happened next when you followed him?

A: I saw Roel Encinada took (sic) a ride with a motorcycle so I chased him and let him stopped (sic).

x x x x x x x x

Q: You said you stopped the motor tricycle in which Roel Encinada (sic) riding, what did you do?

A: At first I identified myself to the driver and to some of the passengers.

x x x x x x x x

Q: And after that, what happened next?

A: I requested Roel Encinada to disembark from the motor tricycle because of that information given to us in his possession.

Q: Possession of what?

A: Possession of marijuana, Sir.

Q: And Roel Encinada alighted from the motor vehicle?

A: Yes, Sir.

Q: After Roel Encinada alighted from the motor tricycle, what happened next?

A: I requested to him to see his chairs that he carried.”

Contrary to the trial court’s ruling, *People vs. Tangliben*[22] is factually inapplicable to the case at bar. The prosecution’s evidence did not show any suspicious behavior when the appellant disembarked from the ship or while he rode the motorela. No act or fact demonstrating a felonious enterprise could be ascribed to appellant under such bare circumstances.

We disagree with the trial court’s justification for the search:

The arrest of the accused without warrant was lawful because there was a probable cause or ground for his apprehension. The police had received reliable, albeit confidential information from their informant that Roel Encinada would be bringing in marijuana from Cebu City on board the M/V Sweet Pearl. Unfortunately there was no more time for the police to apply for and secure a search warrant as the information was received late in the afternoon of May 20, 1992 and the accused was expected to arrive at seven o’clock the following morning. The different courts were closed by then. Nevertheless the police felt constrained to act on the valuable piece of information.”

Even if the information was received by Bolonia about 4:00 p.m. of May 20, 1992 at his house, there was sufficient time to secure a warrant of arrest, as the M/V Sweet Pearl was not expected to dock until 7:00 a.m. the following day. Administrative Circular No. 13 allows applications for search warrants even after court hours:

3. Raffling shall be strictly enforced, except only in case where an application for search warrant may be filed directly with any judge in whose jurisdiction the place to be searched is located, after office hours, or during Saturdays, Sundays, and legal holidays, in which case the applicant is required to certify under oath the urgency of the issuance thereof after office hours, or during Saturdays, Sundays and legal holidays;” (Emphasis supplied)

The same procedural dispatch finds validation and reiteration in Circular No. 19, series of 1987, entitled “Amended Guidelines and Procedures on Applications for Search Warrants for Illegal Possession of Firearms and Other Serious Crimes Filed in Metro Manila Courts and Other Courts with Multiple Salas”:

This Court has received reports of delay while awaiting raffle, in acting on applications for search warrants in the campaign against loose firearms and other serious crimes affecting peace and order. There is a need for prompt action on such applications for search warrant. Accordingly, these amended guidelines in the issuance of a search warrant are issued:

1. All applications for search warrants relating to violation of the Anti-subversion Act, crimes against public order as defined in the Revised Penal Code, as amended, illegal possession of firearms and/or ammunition and violations of the Dangerous Drugs Act of 1972, as amended, shall no longer be raffled and shall immediately be taken cognizance of and acted upon by the Executive Judge of the Regional Trial Court, Metropolitan Trial Court, and Municipal Trial Court under whose jurisdiction the place to be searched is located.
2. In the absence of the Executive Judge, the Vice-Executive Judge shall take cognizance of and personally act on the same. In the absence of the Executive Judge or Vice-Executive Judge, the application may be taken cognizance of and acted upon by any judge of the Court where the application is filed.
3. Applications filed after office hours, during Saturdays, Sundays and holidays, shall likewise be taken cognizance of and acted upon by any judge of the Court having jurisdiction of the place to be searched, but in

such cases the applicant shall certify and state the facts under oath, to the satisfaction of the judge, that its issuance is urgent.

4. Any judge acting on such application shall immediately and without delay personally conduct the examination of the applicant and his witnesses to prevent the possible leakage of information. He shall observe the procedures, safeguards, and guidelines for the issuance of search warrants provided for in this Court's Administrative Circular No. 13, dated October 1, 1985."

In *People vs. Aminnudin*, the Court declared as inadmissible in evidence the marijuana found in appellant's possession during a search without a warrant, because it had been illegally seized. The Court firmly struck down the policemen's cavalier disregard for the Bill of Rights, explaining:

"The present case presented no urgency. From the conflicting declarations of the PC witnesses, it is clear that they had at least two days within which they could have obtained a warrant to arrest and search Aminnudin who was coming to Iloilo on the M/V Wilcon 9. His name was known. The vehicle was identified. The date of its arrival was certain. And from the information they had received, they could have persuaded a judge that there was probable cause, indeed, to justify the issuance of a warrant. Yet they did nothing. No effort was made to comply with the law. The Bill of Rights was ignored altogether because the PC lieutenant who was the head of the arresting team, had determined on his own authority that a 'search warrant was not necessary.'"

Lawmen cannot be allowed to violate the very law they are expected to enforce. Bolonia's receipt of the intelligence information regarding the culprit's identity, the particular crime he allegedly committed and his exact whereabouts underscored the need to secure a warrant for his arrest. But he failed or neglected to do so. Such failure or neglect cannot excuse him from violating a constitutional right of the appellant.

It is significant that the Solicitor General does not share the trial judge's opinion. Taking a totally different approach to justify the search, the Republic's counsel avers that appellant voluntarily handed the chairs containing the package of marijuana to the arresting officer and thus effectively waived his right against the warrantless search. This, he gleaned from Bolonia's testimony:[23]

Q: After Roel Encinada alighted from the motor tricycle, what happened next?

A: I requested to him to see his chairs that he carried.

Q: Are you referring to the two plastic chairs?

A: Yes, Sir.

Q: By the way, when Roel Encinada agreed to allow you to examine the two plastic chairs that he carried, what did you do next?

A: I examined the chairs and I noticed that something inside in between the two chairs."

We are not convinced. While in principle we agree that consent will validate an otherwise illegal search, we believe that appellant -- based on the transcript quoted above -- did not voluntarily consent to Bolonia's search of his belongings. Appellant's silence should not be lightly taken as consent to such search.[24] The implied acquiescence to the search, if there was any, could not have been more than mere passive conformity given under intimidating or coercive circumstances and is thus considered no consent at all within the purview of the constitutional guarantee.[25] Furthermore, considering that the search was conducted irregularly, i.e., without a warrant, we cannot appreciate consent based merely on the presumption of regularity of the performance of duty.

Appellant's alleged acquiescence should be distinguished from the consent appreciated in the recent case of *People vs. Lacerna*. [26] In said case, the search was conducted at a validly established checkpoint and was made in the regular performance of the policemen's duty. Although it became intrusive when the policemen opened his

baggage, it was validated by the consent of appellant, who testified in open court that he allowed such search because he had nothing to hide. In the present case, there was no checkpoint established. The policemen stopped the motorela and forthwith subjected the passengers to a search of their persons and baggage. In contrast to the accused in Lacerna, herein appellant testified that he openly objected to the search by asking for a warrant.

Without the illegally seized prohibited drug, the appellant's conviction cannot stand. There is simply no sufficient evidence remaining to convict him. That the search disclosed a prohibited substance in appellant's possession, and thus confirmed the police officers' initial information and suspicion, did not cure its patent illegality. An illegal search cannot be undertaken and then an arrest effected on the strength of the evidence yielded by the search.

We should stress that the Court is not unmindful of the difficulties of law enforcement agencies in suppressing the illegal traffic of dangerous drugs. However, quick solutions of crimes and apprehensions of malefactors do not justify a callous disregard of the Bill of Rights. Law enforcers are required to follow the law and to respect the people's rights. Otherwise, their efforts become counterproductive. We remind them of this recent exhortation by this Court:[27]

x x x In the final analysis, we in the administration of justice would have no right to expect ordinary people to be law-abiding if we do not insist on the full protection of their rights. Some lawmen, prosecutors and judges may still tend to gloss over an illegal search and seizure as long as the law enforcers show the alleged evidence of the crime regardless of the methods by which they were obtained. This kind of attitude condones law-breaking in the name of law enforcement. Ironically, it only fosters the more rapid breakdown of our system of justice, and the eventual denigration of society. While this Court appreciates and encourages the efforts of law enforcers to uphold the law and to preserve the peace and security of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law. Truly, the end never justifies the means."

WHEREFORE, the appeal is hereby GRANTED. The assailed Decision is REVERSED and SET ASIDE. Appellant is ACQUITTED. Unless convicted for any other crime or detained for some lawful reason, Appellant Roel Encinada is ORDERED RELEASED immediately.

SO ORDERED.

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

[1] Rollo, pp. 13-25.

[2] Presided by Judge Diomedes M. Eviota.

[3] Rollo, p. 4.

[4] Records, pp. 17 and 19.

[5] Order, October 15, 1992, records, p. 19.

[6] Rollo, p. 13.

[7] Records, p. 33.

[8] Ibid., pp. 34-42.

[9] Ibid., pp. 45-48.

[10] Rollo, pp. 102-105.

[11] Rollo, pp. 39-45.

[12] Ibid.

[13] Rollo, p. 46.

[14] TSN, November 27, 1992, pp. 30-32.

[15] *People vs. Atad*, G.R. No. 114105, January 16, 1997, p. 19; and *People vs. Exala*, 221 SCRA 494, 498-499, April 22, 1993.

[16] *People vs. Exala*, *ibid.*

[17] *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.

[18] Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, Vol. I, first ed., pp. 85-86.

[19] *People vs. Lacerna*, *supra*; *People vs. Fernandez*, 239 SCRA 174, 182-183, December 13, 1994. In the latter case, J. Puno 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.

[20] *Herrera*, *A Handbook on Arrest, Search and Seizure and Custodial Investigation*, p. 40; *Columbia Pictures, Inc. vs. Court of Appeals*, 261 SCRA 144, 176, August 28, 1996; *Burgos, Sr. vs. Chief of Staff*, 133 SCRA 800, 813, December 26, 1984; and *Quintero vs. NBI*, 162 SCRA 467, 477, June 23, 1988.

[21] TSN, November 27, 1992, pp. 30-32.

[22] 184 SCRA 220, April 6, 1990, per Gutierrez, Jr., J.

[23] TSN, November 27, 1992, pp. 32.

[24] *People vs. Barros*, *supra*, p. 574.

[25] *Aniag vs. Commission on Elections*, 237 SCRA 424, 436-437, October 7, 1994, per Bellosillo, J.

[26] *Supra*.

[27] *People vs. Cuizon*, G.R. No. 109287, April 18, 1996, p. 34, per Panganiban, J. See also *People vs. Januario*, G.R. No. 98252, February 7, 1997, p. 43.

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