

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO CORREA Y CAYTON @ “BOYET,” RITO GUNIDA Y SESANTE
@ “DODONG,” AND LEONARDO DULAY Y SANTOS @ “BOY KUBA”
ACCUSED-APPE...**

G.R. No. 119246. January 30, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

The courts should not hesitate to wield the sword against drug traffickers whose conscience has been seared by their insatiable greed for instant wealth, thus propelling them to boldly pursue their abominable trade, utterly unconcerned of the pernicious effects of their venomous merchandise which have destroyed the lives and shattered the dreams of hapless victims, especially the vulnerable youth.

This the trial court did in the present case when it imposed the most severe penalty of death and a fine of Ten Million Pesos against the three (3) appellants for delivering and transporting more than 16 kilograms of prohibited dried marijuana flowering tops.

While the conviction of the appellants of the crime charged is proper, we find, however, that the penalty of death imposed by the trial court is not in accordance with the law.

On 12 July 1994, an Information was filed with the Regional Trial Court of Manila (Branch 35), docketed as Criminal Case No. 94-137528, indicting appellants Antonio Correa y Cayton @ “Boyet,” Rito Gunida y Sesante @ “Dodong,” and Leonardo Dulay y Santos @ “Boy Kuba” for having violated Section 4, Article II of Republic Act No. 6425,[1] as amended, allegedly committed as follows:

“That on or about June 18, 1994, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, not being authorized by law to possess, sell, deliver, transport, give away to another or distribute any prohibited drug, did then and there wilfully, unlawfully, knowingly and jointly deliver or transport eight (8) bundles of dried flowering tops of MARIJUANA wrapped in pieces of papers and plastic tapes weighing 16.1789 kilograms, a prohibited drug.

“CONTRARY TO LAW.”[2]

The Information indicated that the appellants were “All Under Arrest” and that “No Bail (was) Recommended.”[3]

When arraigned, the appellants pleaded “NOT GUILTY.”

After trial, the lower court found the appellants guilty as charged, the dispositive portion of the decision dated 03 March 1995 reading thus:

“WHEREFORE, judgment is rendered pronouncing the three accused ANTONIO CORREA y CAYTON, @ “Boyet,” RITO GUNIDA y SESANTE @ “Dodong,” and LEONARDO DULAY y SANTOS @ “Boy Kuba”

guilty beyond reasonable doubt of unlawful delivery and transportation of dried marijuana flowering tops weighing 16.1789 kilograms, penalized under Section 4, Article II of Republic Act No. 6425, as amended, and further amended by Section 13 in relation to Section 17 of Republic Act No. 7659, and sentencing each of the said three accused to DEATH to be executed by the means provided by law, and to pay a fine of P 10,000,000.00, plus the costs.

“The eight (8) bundles in brick form of dried marijuana flowering tops (Exhibits B-1 to B-8, inclusive), weighing 16.1789 kilograms are ordered confiscated and forfeited to the Government to be disposed of in accordance with law under the direction and supervision by the Dangerous Drugs Board. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of this Court, is ordered to turn over the two (2) bundles of dried marijuana flowering tops left with this Court to the Dangerous Drugs Custodian, National Bureau of Investigation, as appointed by the Dangerous Drugs Board, for appropriate disposition. The other six (6) bundles of said dried marijuana flowering tops have been left in the custody of the NBI, Forensic Chemistry Division.

“The owner-type jeep with plate No. FMR 948 used by the three accused as a means to commit the offense is also ordered confiscated and forfeited in favor of the Government, unless it can be shown that it is in the property of a third person not liable for the offense.

“Serve a copy of this Decision on the Executive Director, Dangerous Drugs Board, for his information and guidance.

“SO ORDERED.”[4]

The verdict of conviction by the trial court rested mainly on the testimony of prosecution witness SPO3 Jesus Faller, a police officer assigned at Police Station 3, Western Police District, City of Manila.[5] He was among the nine-member police team of the Drug Enforcement Unit - Western Police District Command (DEU-WPDC) which arrested the three (3) appellants in the early morning of 18 June 1994.[6] His account of the arrest, as correctly narrated in the Appellee’s Brief, is as follows:

“About a week prior to June 18, 1994, the Police Operatives from the Drug Enforcement Unit of the Western Police District Command (DEU-WPDC) had placed under surveillance the movements and activities of appellant Leonardo Dulay on account of confidential and intelligence reports received in said Unit about his drug trafficking around Bambang Street, Tondo, Manila. The police surveillance brought forth positive results and confirmed Dulay’s illegal drug trade (TSN, Nov. 22, 1994, pp. 16-17).

“On June 17, 1994, at around 8:00 o’clock in the evening, the Unit’s Operatives, DEU-WPDC, U.N. Avenue, Ermita, Manila was alerted by a police informant that Dulay, coming from Quezon City, would deliver and transport that night, to Bambang Street, Manila a certain quantity of drugs. Dulay reportedly would pass A. Bonifacio Street on board a semi-stainless owner-type jeep with Plate No. FMR-948. Forthwith, a nine-man team headed by SPO3 Jesus Faller was organized to pursue and bag the suspect. Thereafter, the operatives, together with the informer proceeded to A. Bonifacio Street on board three vehicles. They inconspicuously parked along the side of North Cemetery, boundary of Quezon City and Manila, at around 11:00 o’clock that same evening, and waited for the suspect (Id., pp. 4; 19-20).

“Around 3:00 o’clock in the morning of June 18, 1994, the police informant spotted the approaching vehicle of Dulay and immediately alerted the waiting policemen. The operatives tailed the subject jeepney, taking care that its passengers would not notice that they were being followed (Id., p. 5).

“Upon reaching the intersection of Bambang Extension and Jose Abad Santos Avenue, Tondo, Manila, the subject vehicle stopped and parked at a corner. Thereupon, the operatives also stopped and parked their vehicles around the suspect’s vehicle and accosted the passengers of the owner-type jeepney. Appellant Antonio Correa was at the driver’s seat with appellant Leonardo Dulay sitting beside him in the front seat and

appellant Rito Gunida at the back seat (Id., p. 21). The team inspected a cylindrical tin can of El Cielo Vegetable Cooking Lard (Exhibit 'B'), about two feet high, loaded in the vehicle of the appellants. The can contained eight bundles of suspected dried marijuana flowering tops wrapped in pieces of paper and plastic tapes. The team seized the suspected contrabands and marked each bundle consecutively with 'IDR-1' to 'IDR-8' (Exhibits 'B-1' to 'B-8' inclusive). The three suspects were brought to the police headquarters at DEU-WPDC for investigation (Id., pp. 5-9; Exhs. 'E,' 'F' and 'G').

"The packages of suspected marijuana were submitted to the National Bureau of Investigation for laboratory analysis to determine their chemical composition. The tests confirmed that the confiscated stuff were positive for marijuana and weighed 16.1789 kilograms (TSN, Nov. 15, 1994, p. 11; Exhs. 'D' and 'D-1')." [7]

The appellants, on the other hand, had a different story on their arrest. The trial court, in its decision subject for review, has summarized the appellants' version thus:

"The common defense interposed by the three accused is in the nature of alibi. The core of their contention is that they were arrested without warrant in Camarin D, Caloocan City. They also denied that they were delivering and transporting dried marijuana flowering tops when they were apprehended.

"Also stripped of incidental details, the version of the defense is to the effect that on June 17, 1994, at about 5:00 o'clock in the afternoon, Leonardo Dulay rushed to the Metropolitan Hospital his gravely ill and very weak six months old son Jon-Jon. He was accompanied by his co-accused Antonio Correa, who drove the owner-type jeep which they used, and a neighbor known only as 'Bulik.' At around 11:00 o'clock the same evening, Leonardo Dulay, Antonio Correa and 'Bulik' went back home to get the things of the sick child. However, when they were already near the house of Leonardo Dulay in Camarin D, Caloocan City, some elements of the Western Police District Command blocked their (accused) way, and apprehended them for an alleged charge of trafficking on 'shabu,' and were brought to the WPDC headquarters at U.N. Avenue, where they were detained.

"x x x according to accused Rito Gunida, he was picked-up by the police in his house at Camarin II, Area D, Caloocan City, on June 17, 1994, at around 12:00 o'clock midnight. The arresting officers rose (sic) him from his sleep. He was also taken to the headquarters of the WPDC at U.N. Avenue, and there placed in a cell.

"In addition to their respective declarations, the three accused likewise offered the testimonies of Marilene de la Rosa, Violeta Almugela, Juanito Balino, Rogelio Altis and Pascual Gillego to corroborate the claim of the defense." [8]

Assailing the verdict of conviction, the appellants interpose the following assignment of errors:

"THE LOWER COURT ERRED:

I

IN TAKING COGNIZANCE OF THE CASE, AS ALL THE ACCUSED WERE APPREHENDED AT THEIR RESPECTIVE RESIDENCES IN CAMARIN, KALOOKAN CITY, NOT IN MANILA AS THE LAWYERS MADE IT APPEAR WHERE THE THREE (3) ACCUSED ALLEGEDLY COMMITTED THE OFFENSE.

II

IN ADMITTING THE EVIDENCE ALLEGEDLY CONFISCATED FROM THE ACCUSED, THE SAME BEING INADMISSIBLE BEING THE FRUIT OF AN ILLEGAL SEARCH CONDUCTED WITHOUT ANY SEARCH WARRANT.

III

IN BASING ITS DECISION OF CONVICTION OF APPELLANTS SOLELY ON THE UNCORROBORATED TESTIMONY OF SPO3 JESUS FALLER OF THE WPDC DESPITE THE

PARTICIPATION OF THE OTHER EIGHT MEMBERS OF THE OPERATIVES THAT ALLEGEDLY TOOK PART IN THE ARREST OF THE THREE (3) ACCUSED.

IV

IN CONVICTING THE THREE (3) ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.”[9]

The appellants’ submission is palpably without merit.

The first, third and fourth assigned errors aforequoted are closely interrelated and, therefore, the same shall be discussed jointly.

The appellants plead in exculpation that their version should be believed because the defense has “indubitably established” that they were arrested in their respective residences in Camarin, Calookan City by the police team of SPO3 Jesus Faller of the Western Police District Command, Manila. The appellants claim that -

“x x x. Witnesses Juanita Balino, Marlene dela Rosa, Violeta Almojuela and Rogelio Altis are unanimous in their declaration that the arresting officers were in Camarin, Kalookan City, when they arrested the three accused. As against the testimony of SPO3 Jesus Faller, the positive declaration of the foregoing witnesses for the defense should prevail. Since SPO3 Jesus Faller belongs to the Western Police District Command, he orchestrated his testimony to make it appear that the arrest of the three accused and the confiscation of the alleged marijuana took place in Bambang, Sta. Cruz, Manila, which is too far and remote from the residences of the three accused who are all residents of Camarin, Kalookan City. The arrest of the three accused in Camarin, Kalookan City, were illegal and the alleged confiscation of evidence invalid, granting that there really were evidence confiscated from the three accused. To cure the flaw in the arrest of the accused and the warrantless confiscation, Faller made it appear that the accused were transporting marijuana in Bambang, Sta. Cruz, Manila and that they tailed the accused until Bambang Street, when in truth and in fact, the three accused were illegally apprehended in Camarin, Kalookan City, and they really have to pass through A. Bonifacio Street, on their way to Western Police Headquarters at the U.N. Avenue.

“To avoid inconsistencies in their statements and oral declaration in court, the other eight (8) members of the arresting team x x x were not presented as witnesses and their testimonies were withheld by the prosecution. We do not find any reason why not one of them corroborated the testimony of SPO3 Faller. There is a legal presumption that if an evidence is intentionally withheld when there is opportunity to offer the same, (the said evidence) is deemed to be adverse to the party withholding the same. Not a single corroboration came for the said eight members of the arresting team.”[10] (Emphasis ours)

That is all the appellants could say in assailing the credibility of prosecution star witness SPO3 Jesus Faller. Nothing suggestion was mentioned about any inconsistencies in the testimony of Faller. Neither was there any that Faller harbored ill-feeling against the appellants.

The appellants’ allegations that “(t)o cure the flaw in (their) arrest,” SPO3 Jesus Faller “orchestrated his testimony” and “made it appear that the accused were transporting marijuana in Bambang, Sta. Cruz, Manila” and were arrested thereat, and that “(t)o avoid inconsistencies in their statements and oral declaration in court, the other eight (8) members of the arresting team...were not presented as witnesses,” are nothing but mere conjectures and suspicions which have zero probative value. Conjectures and suspicions are not evidence; ergo, they prove nothing.

Moreover, the testimonies of the other members of the apprehending team would, at best, have been merely corroborative of Jesus Faller’s testimony. Thus, the trial court did not err in giving credence to the uncorroborated testimony of Jesus Faller and in rejecting the appellants’ defense of alibi and denial.

There is no law requiring that a testimony of a witness be corroborated in order to be believed.[11] The testimony of a single witness, if credible and positive, is sufficient to produce a conviction.[12] The failure to present all the eyewitnesses to an act does not necessarily give rise to an unfavorable presumption, especially when the testimony of the witness sought to be presented is merely corroborative.[13] A corroborative testimony is not necessary where the details of the crime have clearly been testified to with sufficient clarity.[14]

The matter of selecting and presenting witnesses for the People is a prerogative of the public prosecutor.[15] Thus, the non-presentation by the prosecution of certain witnesses is not a valid defense for the accused, neither does it work against the prosecution's cause.[16] Where, as here, the accused believes that the testimonies of said witnesses are important to his cause, as when he expects them to make declarations inconsistent with that of the principal prosecution witness, then he should avail of them even by compulsory judicial process if necessary.[17]

In any case, the public prosecutor's choice of SPO3 Jesus Faller as the only witness to testify on the appellants' arrest was proper. Faller was the one who received from the informant the confidential information about the illegal drug trafficking activities of appellant Leonardo Dulay.[18] Since the said information was so confidential, Faller placed appellant Dulay under police surveillance with only PO3 Ebia and their informant as his (Faller's) companions.[19] After a week of surveillance, the informant again reported to Faller in the evening of 17 June 1994 that the appellants would deliver illegal drugs that night to Bambang on board a vehicle, and it was Faller who also headed the nine-man police team in tailing the appellants and arresting them after finding the illegal drugs in their possession.[20] Thus, Faller was the best witness to testify on the circumstances of the appellants' arrest.

We have carefully examined the testimony of SPO3 Jesus Faller to determine whether or not his testimony is a product of fabrication and we find his testimony to be credible. Moreover, being a law enforcer, Faller is presumed to have regularly performed his duty in the absence of proof to the contrary.[21] We fully agree with the observation of the trial court when it said:

"Apart from their inherently weak defense, the three accused have not provided this Court with any other ground to warrant disbelief of the testimony of SPO3 Jesus Faller. They have not as much as hinted that SPO3 Jesus Faller was ill-motivated in testifying against them. This witness of the People is a police officer. As such he is presumed to have carried out and performed regularly his official duties, especially in the absence of any indication in the record showing otherwise. It has not been claimed that SPO3 Jesus Faller has a personal stake and interest in the final outcome of this case, or that he would be benefited or some personal advantage would inure to him if the three accused were convicted. Whatever is the result of this case he would continue to receive his usual remuneration as a police officer. More than these, SPO3 Jesus Faller has been subjected to a lengthy and searching cross-examination by an able and determined defense counsel de parte, such that any falsehood in his narration could have been easily detected and exposed. However, he came out from the ordeal with his narration unimpaired and maintained.

"It is a familiar rule consistently applied by the Supreme Court in a long line of cases, thereby making further citations academic, that where there appears no evidence in the record indicating that the principal prosecution witness has been actuated by improper motive in testifying against the accused, the presumption is that he has not been so actuated and his testimony is entitled to full faith and belief.

"The contentions of the defense that on June 18, 1994, at about 5:00 o'clock in the afternoon, Leonardo Dulay and Antonio Correa rushed the gravely ill six months old son of the former to the Metropolitan Hospital located at Magdalena Street, Sta. Cruz, Manila, according to Leonardo Dulay (TSN, Dec. 13, 1994, p. 11), or at the corner of Masangkay and Mayhaligue Streets, according to Antonio Correa (TSN, Dec. 19, 1994, p. 22), and that at around 11:00 o'clock in the evening on the same date they returned to Camarin in Caloocan City to get the things of the child, but they were not able to do so because elements of the Western Police District

Command, who were waiting near the house of Leonardo Dulay, arrested them (TSN, Dec. 13, 1994, pp. 12 & 15; Id., Dec. 19, 1994, pp. 23-26), do not deserve belief by this Court. Aside from the observed discrepancy in their testimonies about the location of the Metropolitan Hospital, the Booking Sheets and Arrest Reports (Exhibits E and G) conclusively reveal that as early as 4:00 o'clock in the morning on June 18, 1994, they had been in the custody of the Drug Enforcement Unit of the Western Police District Command at U.N. Avenue, Ermita, Manila, undergoing police investigation. Although objected to by the defense counsel on the ground that Antonio Correa and Leonardo Dulay signed Exhibits E and G, respectively, without the assistance of counsel, these documents, however, were offered by the prosecution and admitted by the Court only for the purpose of showing that a police investigation was conducted following the arrest of the two accused. The signatures of the two accused on these documents are, thus, immaterial and will not alter the fact that they were in the Office of the DEU-WPDC at U.N. Avenue, Ermita, Manila, from 4:00 o'clock in the morning on June 18, 1994, being investigated by the police authorities in connection with the offense now in question.

“One more thing. The clear implication of the claim of the defense is that the sick child of Leonardo Dulay was confined in the Metropolitan Hospital, otherwise its contention that Leonardo Dulay and Antonio Correa went back to Camarin, Caloocan City to get the things of the child would bear no sense. The hospital records of said child are, therefore, the best evidence which would conclusively confirm their pretense. Surprisingly, however, and for no stated reason, the defense failed to offer in the evidence those hospital records of the son of Leonardo Dulay. The significance of this omission is fatal to the cause of the defense. It means that there were no such hospital records because no child of Leonardo Dulay was hospitalized on or about June 18, 1994, and that this was merely fabricated by the defense to provide some loopholes through which these two accused may elude the law.

“The alibi of Rito Gunida that he was sleeping in his house at Camarin II, Area D, Caloocan City, on June 17, 1994, when at around midnight he was awakened and arrested by some policemen cannot outweigh and prevail over the testimony of SPO3 Jesus Faller that he and his co-police officers arrested this accused, together with Leonardo Dulay and Antonio Correa, on June 18, 1994, at more or less, 3:45 o'clock in the morning at Bambang Extension corner Jose Abad Santos Avenue in Tondo, Manila, in the act of delivering and transporting marijuana, using a motorized vehicle. In weighing conflicting statements and declarations of opposing witnesses, the accepted rule consistently applied by the courts is that where the testimony of the principal witness of the prosecution regarding the commission by the accused of the offense in question is positive, clear and trustworthy, like in the case at bar, the latter's denials and explanation cannot outweigh and prevail over such positive, clear and trustworthy evidence of the prosecution. (People vs. Chavez, et al., 117 SCRA 221, 227; People vs. Campana, 124 SCRA 271, 281.)

“The attempt of the defense to corroborate its claim that the three accused were arrested in Camarin, Caloocan City, and not in Bambang Extension corner of Abad Santos Avenue, Tondo, Manila, with the testimonies of Marilene de la Rosa, Violeta Almugela, Juanita Balino, Rogelio Altisi and Pascual Gillego, did not provide any improvement to its weak and crippled position.

“Marilene de la Rosa is the niece of Leonardo Dulay who finances her studies. (TSN, Jan. 9, 1995, p. 4.) In view of her close relationship with her uncle and the financial support he extends to her, it would be unnatural if she does not feel a very strong bias in favor of her uncle and provider.

“Violeta Almugela contradicted the testimonies of Leonardo Dulay and Antonio Correa on a vital aspect of their defense. In the course of her direct examination, she declared:

ATTY. MORALES (Defense counsel)

Madam witness, where were you on June 17, 1994, at about midnight?

A:

I was at the Hospital, sir.

Q:

What Hospital are you referring to?

A:

Infant Jesus, sir.

Q:

What time did you arrive at Infant Jesus Hospital?

A:

At 5:00, sir.

Q:

Who were with you when you arrived?

A:

I was with Boy Dulay and Josephine Dulay and a certain Antonio, sir.

x x x x x x x x

Q:

Where did you proceed?

A:

We proceeded to Metro Hospital, sir.

Q:

Where is that situated?

A:

At Tayuman, Tondo, sir. (TSN, Jan. 9, 1995, pp. 12-14.)

“Leonardo Dulay, on the other hand, declared under the direct examination of his counsel:

Q:

Where is that Metropolitan Hospital situated?

A:

In Magdalena, sir.

Q:

Magdalena what?

A:

At Magdalena, Sta. Cruz, Manila, sir.

x x x x x x x x

Q:

When did you bring your son to the Metropolitan Hospital?

A:

On June 18, sir.

Q:

What time?

A:

5:00 o'clock, sir. (TSN, Dec. 13, 1994, pp. 11-12)

“There was no mention in the testimony of Leonardo Dulay that his sick son was first taken to the Infant Jesus Hospital at 5:00 o’clock in the afternoon on June 18, 1994.

“Antonio Correa, testifying on the same incident, gave another version. He declared:

Q:

Where is Metropolitan Hospital?

A:

At Masangkay corner Mayhaligue Street.

Q:

What City?

A:

Manila, sir.

x x x x x x x x

Q:

Why did you go to Metropolitan Hospital?

A:

In order to have the child of Leonardo Dulay medically attended, sir.

x x x x x x x x

Q:

What time did you bring the son of Dulay to the Metropolitan Hospital?

A:

From 5:00 o’clock in the afternoon up to past 11:00 o’clock.

x x x x x x x x

Q:

Now, what time did you leave the Metropolitan Hospital?

A:

Past 11:00 o'clock, sir. (TSN, Dec. 19, 1994, pp. 22-23)

"The discrepancies in the testimonies of defense witness Violeta Almugela, accused Leonardo Dulay and accused Antonio Correa cannot be lightly ignored as discrepancies in minor details, because such alleged incident forms a major link in the defense of the accused, and the main basis of their alibi defense.

"The testimony of Juanita Balino deserves but a passing consideration by this Court. According to her on June 17, 1994, at about midnight she was in her house in Camarin Petchayan, Caloocan City, when Boy Dulay, Antonio Correa, Gunida and one Violeta Almugela were taken by armed police officers. But because after they passed by she got afraid she went back to sleep. (TSN, Jan. 9, 1995, p. 23-24.) Her testimony was so trivial, such that even the Assistant Prosecutor found her unworthy for further cross-examination.

"We have no test of the truth of human testimony, except its conformity to our common knowledge, usual observation, and daily experience. To be worthy of credence, the testimony of a witness should be so natural, reasonable and probable in view of the event which it describes or to which it relates, so as to make it easy for the mind to accept. In this case, despite the startling occurrence which happened before her eyes, which even scared her, Juanita Balino nonchalantly went back to sleep, unconcerned with what may happen next. This is not the usual way a person of her age, 57 years old, and status conducts himself(sic) in the face of a shocking event.

"Rogelio A. Altis, Sr., a barangay kagawad of Barangay 178, Zone 15, of Caloocan City, had no personal knowledge of the alleged incident which supposedly took place at about midnight on June 17, 1994. He learned it only on June 20, 1994, when one Ursula Gunida reported it to him. (TSN, Jan. 11, 1995, p. 3) It has not been explained why it took Ursula Gunida until June 20, 1994 to report to the barangay authorities the incident which allegedly happened on June 17, 1994.

"The same may be said with respect to the testimony of defense witness Pascual Gillego. He admitted that he learned of the alleged arrest of the three accused only from his neighbors. But he took no steps to report the matter to his superiors in the barangay. x x x. (TSN, Jan. 11, 1995, pp. 6, 9).

"The testimonies of Rogelio Altis, Sr. and Pascual Gillego are hearsay, and as such it has no probative value and should be disregarded whether objected to or not. If no objection is made, it becomes evidence only by reason of want of such objection, but its admission does not confer upon it any new attribute in point of weight. Its nature and quality remains the same, so far as its intrinsic weakness and incompetency to satisfy the mind are concerned. (People vs. Valero, 112 SCRA 661, 675.)"[22]

We should accord great weight and respect to the findings of fact of the trial court which is in a better position to determine questions involving the credibility of witnesses, it having directly heard them and observed their deportment and manner of testifying.[23] In the absence of any showing that the trial court had overlooked certain substantial facts which would alter the conviction of the appellants, we do not find any reason to overturn the trial court's findings as to facts.

What is of paramount importance in the present case is the positive identification by prosecution witness SPO3 Jesus Faller of the three (3) appellants, who were caught in flagrante delicto transporting the subject dried marijuana flowering tops. This should prevail over the appellants' alibi and denials of having committed the crime with which they were charged in the lower court, since as between the positive declaration of the

prosecution witness and the negative statements of the appellants, the former deserves more credence.[24]

In the second, and final assigned error, the appellants assail the admission of the seized marijuana flowering tops as evidence against them, arguing that the same was “the fruit of an illegal search conducted without any search warrant.”

The appellants’ contention is untenable. However, it would serve no useful purpose to discuss at length this alleged error, for the following reasons:

(1) The appellants are now precluded from assailing the warrantless search and seizure when they voluntarily submitted to it as shown by their actuation during the search and seizure. The appellants never protested when SPO3 Jesus Faller, after identifying himself as a police officer, opened the tin can loaded in the appellants’ vehicle and found eight (8) bundles.[25] And when Faller opened one of the bundles, it smelled of marijuana.[26] The NBI later confirmed the eight (8) bundles to be positive for marijuana.[27] Again, the appellants did not raise any protest when they, together with their cargo of drugs and their vehicle, were brought to the police station for investigation and subsequent prosecution. We have ruled in a long line of cases[28] that:

“When one voluntarily submits to a search or consents to have it made on his person or premises, he is precluded from later complaining thereof (Cooley, Constitutional Limitations, 8th ed., vol. I, page 631). The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly.”

(2) The appellants effectively waived their constitutional right against the search and seizure in question by their voluntary submission to the jurisdiction of the trial court, when they entered a plea of not guilty upon arraignment and by participating in the trial.[29]

We agree with the trial court that the appellants conspired to commit the offense which they knew to be unlawful:

“The established circumstances of this case, considered collectively, demonstrate beyond reasonable doubt the conspiracy among the three accused to commit the offense at bar. They were apprehended at the same time; travelling together in a motorized vehicle from the time they were first spotted by the arresting police officers at A. Bonifacio Street until their actual arrest at Bambang Extension corner Jose Abad Santos Avenue in Tondo, Manila; at an unholy hour of the night (until) around 3:00 to 3:45 o’clock in the morning on June 18,1994; with Antonio Correa at the steering wheel, Leonardo Dulay seated in front beside the driver and Rito Gunida seated at the back of the motor vehicle; carrying for delivery and transportation a large quantity of dried marijuana flowering tops wrapped in tightly with plastic tapes and concealed in a big tin can of El Cielo Vegetable Cooking Oil (Exhibit B). These factors leave the mind of this Court at ease and free from any doubt that indeed the three accused had conspired and helped one another in the delivery and transportation of the said contraband. Section 21 of Republic Act No. 6425 provides:

‘Sec. 21. Attempt and Conspiracy. – The same penalty prescribed by this Act for the commission of the offence shall be imposed in case of any attempt or conspiracy commit the same in the following cases:

(a) xxx xxx xxx

(b) sale, administration, delivery, distribution and transportation of dangerous drugs;

xxx xxx xxx’ ”[30]

It was also duly established that the total weight of the dried marijuana flowering tops involved in this case is 16.1789 kilograms as testified to by NBI Forensic Chemist Emilia A. Rosales.[31]

The only error committed by the trial court, as we stated in the beginning, is its imposition of the death penalty on the appellants. Although this matter is not assigned as an error by the appellants, however, in a criminal case, an

appeal to this Court throws the whole case open to review and it becomes our duty to correct an error as may be found in the judgment appealed from, whether it is made the subject of assignment of errors or not.[32]

The trial court considered the appellants' use of a motor vehicle in the commission of the offense as an aggravating circumstance, thus raising the penalty from reclusion perpetua – which is the imposable penalty prescribed by law[33] – to death. Justifying the penalty of death, the trial court made the following observation:

“In view of the volume of dried marijuana flowering tops involved in this case, and the attendance of the aggravating circumstance that the crime was committed by means of a motor vehicle, the Court, with deep regret and sorrow, finds no other alternative but to impose on each of the three accused the supreme penalty of death and fine prescribed by law. Undoubtedly the three accused used an owner-type jeep with plate No. FMR 948 as a means to carry, deliver and transport their illegal merchandise; to elude detection of their drug trafficking activities by the police authorities; and to facilitate escape in case their crime is discovered. (People vs. Espejo, 36 SCRA 400.)”[34] (Emphasis ours)

True, Section 20, Article 14 of the Revised Penal Code considers as aggravating circumstance a situation when “the crime be committed x x x by means of motor vehicles, airships, or other similar means.” However, the use by the appellants of a motor vehicle in this case should not be appreciated as an aggravating circumstance because the very act of transporting the prohibited drug is what is being punished under Section 4, Article II of Republic Act No. 6425 (the Dangerous Drugs Act of 1972), as amended by Section 13 of Republic Act No. 7659 (the “heinous crimes” law). The said law provides:

“SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million 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.

Notwithstanding the provision of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.” (Emphasis ours)

The act of transporting a prohibited drug, like the one at bar, is a *malum prohibitum* since it is punished as an offense under a special law.[35] The use of a motor vehicle is inherent in the crime of transporting the prohibited drug. It is a wrongful act because it is prohibited by law.[36] Without the law punishing the act, it cannot be considered a wrong.[37] As such, the mere commission of said act is constitutive of the offense punished and suffices to validly charge and convict an individual caught committing the act so punished, regardless of criminal intent.[38]

Admittedly, the law does not define how the act of transporting can be committed. But, how else can one transport something to another place except by the use of a carrier. Black's Law Dictionary defines “transport” as “to carry or convey from one place to another.”[39] Under Section 4, “Transportation of Prohibited Drugs” is by itself an offense. Again, Black defines “transportation” as “the movement of goods or persons from one place to another, by a carrier.”[40] The operative words in the definition are “to carry or convey.”[41] The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed and it is immaterial whether or not the place of destination is reached.[42]

Simply stated, the motor vehicle which was used to transport prohibited drugs was not purposely sought to facilitate the commission of the crime since such act of transporting constitutes the crime itself, punishable under Section 4, Article II of Republic Act No. 6425, as amended. That a motor vehicle was used in committing the crime is merely incidental to the act of transporting prohibited drugs. The use of a motor vehicle is inherent in the

crime of transporting as it must of necessity accompany the commission thereof; hence, such use is not an aggravating circumstance.

Article 62 of the Revised Penal Code, as amended by Section 23 of Republic Act No. 7659, reads:

“Art. 62. Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency. – Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

- Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

x x x x x x x x

- The same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof.

x x x x x x x x

(Emphasis ours)

The case of *People vs. Espejo* cited by the trial court in support of its ruling that the use of a motor vehicle in this case is an aggravating circumstance, is one for robbery with homicide punishable under the Revised Penal Code, which has an entirely different factual setting and, therefore, the ruling therein should not be applied in the case at bench. In any event, the finding of the trial court that the appellants’ use of the motor vehicle was intended “to elude detection of their drug trafficking activities by the police authorities and to facilitate escape in case their crime is discovered” is baseless. The prosecution failed to establish this matter. Such intention cannot simply be presumed but must be proved by clear and convincing evidence as conclusively as the crime itself.

There being no aggravating or mitigating circumstance which attended the commission of the offense in this case, and considering that the quantity of the subject prohibited drug exceeded 750 grams, the proper penalty that should be imposed on each of the appellants is reclusion perpetua and a fine of Ten Million Pesos.[43]

WHEREFORE, the judgment of the Regional Trial Court of Manila, Branch 35, in Criminal Case No. 94-137528 is hereby MODIFIED in the sense that the accused-appellants ANTONIO CORREA y CAYTON, RITO GUNIDA y SESANTE and LEONARDO DULAY y SANTOS shall suffer the penalty of reclusion perpetua in its entire duration. In all other respects, the judgment of the trial court is hereby AFFIRMED, with costs against the accused-appellants.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Panganiban, JJ., concur.

[1] Otherwise known as “The Dangerous Drugs Act of 1972.”

[2] RTC record, p. 1.

[3] *Ibid.*, pp. 1-2.

[4] Penned by Judge Ramon P. Makasiar; RTC record, pp. 131-154.

- [5] Transcript of Stenographic Notes (TSN), hearing of 22 November 1994, p. 3.
- [6] Ibid., pp. 3-4.
- [7] Rollo, pp. 118-120.
- [8] RTC record, p. 136.
- [9] Appellants' Brief, pp. 1-2; Rollo, pp. 57-58.
- [10] Appellants' Brief, pp. 11-12; Rollo, pp. 67-68.
- [11] *People vs. Marilao*, 177 SCRA 271, 278.
- [12] Ibid., citing *People vs. Cortez*, G.R. No. L-32246, 30 June 1988; *People vs. Trigo*, 174 SCRA 93.
- [13] Ibid., citing *People vs. Salufrania*, 159 SCRA 401.
- [14] Ibid.
- [15] Ibid., citing *People vs. Obenque*, 147 SCRA 488; *People vs. Laureta*, 159 SCRA 256; *People vs. Pinto*, 230 SCRA 847, 857.
- [16] Ibid.
- [17] Ibid.
- [18] TSN, 22 November 1994, p. 16.
- [19] Ibid., pp. 16-17.
- [20] Ibid., pp. 17-23.
- [21] *People vs. Claudio*, 160 SCRA 646.
- [22] Rollo, pp. 25-30.
- [23] *People vs. Sanchez*, 199 SCRA 414.
- [24] *People vs. Melgar*, 157 SCRA 718.
- [25] TSN, 22 November 1994, p. 21.
- [26] Ibid., p. 8.
- [27] Ibid., pp. 9-11; Exhibits D and D1.
- [28] *People vs. Fernandez*, G.R. No. 113474, 13 December 1994, 239 SCRA 174, 184; *People vs. Ramos, et al.*, G.R. Nos. 101804-07, 25 May 1993, 222 SCRA 557, 575; *People vs. Tabar*, G.R. No. 101124, 17 May 1993, 222 SCRA 144; *People vs. Malasugui*, No. 44335, 30 July 1936, 63 Phil. 221; *Vda de Garcia vs. Locsin*, 65 Phil. 689 [1938]; *People vs. Donato*, 198 SCRA 130 [1991]; *People vs. Rodriguez*, 205 SCRA 791 [1992]; *People vs. Omaweng*, G. R. No. 99050, 02 September 1992, 213 SCRA 462-463.
- [29] *People vs. Macam*, 238 SCRA 306, 315 [1994], citing *People vs. Rabang*, 187 SCRA 682 [1990].
- [30] RTC Decision, pp 21-22; Rollo, pp 33-34.
- [31] TSN, 15 November 1994, pp. 9-10.

[32] *People vs. Ofindo, et al.*, 47 Phil. 1; *People vs. Borbano*, 76 Phil. 702, 708.

[33] Sec. 4, Art. II, R.A. No. 6425, as amended by Sec. 13, R.A. No. 7659, in relation to Sec. 20, Art. IV, R.A. No. 6425, as amended by Sec. 17, R.A. No. 7659.

[34] Decision, p. 23; Rollo, p. 35.

[35] *People vs. Lo Ho Wing, et.al.*, G.R. No. 88017, January 21, 1991, 193 SCRA 122, 130.

[36] *Ibid.*

[37] *Ibid.*

[38] *Ibid.*

[39] 1979 edition, p. 1344.

[40] *Ibid.* (Emphasis ours).

[41] *People vs. Lo Ho Wing, et al.*, *supra*.

[42] *Ibid.*

[43] Sec. 4, Art. II, R.A. No. 6425, as amended by Sec. 13, R.A. No. 7659, in relation to Sec. 20, Art. IV, R.A. No. 6425, as amended by Sec. 17, R.A. No. 7659.

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