

**RICHARD HIZON, SILVERIO GARGAR, ERNESTO ANDAYA, NEMESIO GABO, RODRIGO ABRERA, CHEUNG TAI FOOK, SHEK CHOR LUK, EFREN DELA PENA, JONEL AURELIO, GODOFREDO VILLAVERDE, ANGELITO DUMA...**

*G.R. No. 119619. December 13, 1996*

Ponente: PUNO, J.

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**PUNO, J.:**

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. CR No. 15417 affirming the decision of the Regional Trial Court, Branch 52, Palawan in Criminal Case No. 10429 convicting petitioners of the offense of illegal fishing with the use of obnoxious or poisonous substance penalized under Presidential Decree (P.D.) No. 704, the Fisheries Decree of 1975.

In an Information dated October 15, 1992, petitioners were charged with a violation of P.D. 704 committed as follows:

"That on or about the 30th day of September 1992, at Brgy. San Rafael, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused crew members and fishermen of F/B Robinson owned by First Fishermen Fishing Industries, Inc., represented by Richard Hizon, a domestic corporation duly organized under the laws of the Philippines, being then the owner, crew members and fishermen of F/B Robinson and with the use of said fishing boat, did then and there wilfully, unlawfully and feloniously the said accused conspiring and confederating together and mutually helping one another catch, take or gather or cause to be caught, taken or gathered fish or fishery aquatic products in the coastal waters of Puerto Princesa City, Palawan, with the use of obnoxious or poisonous substance (sodium cyanide), of more or less one (1) ton of assorted live fishes which were illegally caught thru the use of obnoxious/poisonous substance (sodium cyanide)."[1]

The following facts were established by the prosecution: In September 1992, the Philippine National Police (PNP) Maritime Command of Puerto Princesa City, Palawan received reports of illegal fishing operations in the coastal waters of the city. In response to these reports, the city mayor organized Task Force Bantay Dagat to assist the police in the detection and apprehension of violators of the laws on fishing.

On September 30, 1992 at about 2:00 in the afternoon, the Task Force Bantay Dagat reported to the PNP Maritime Command that a boat and several small crafts were fishing by "muro ami" within the shoreline of Barangay San Rafael of Puerto Princesa. The police, headed by SPO3 Romulo Enriquez, and members of the Task Force Bantay Dagat, headed by Benito Marcelo, Jr., immediately proceeded to the area and found several men fishing in motorized sampans and a big fishing boat identified as F/B Robinson within the seven-kilometer shoreline of the city. They boarded the F/B Robinson and inspected the boat with the acquiescence of the boat captain, Silverio Gargar. In the course of their inspection, the police saw two foreigners in the captain's deck. SPO3 Enriquez examined their passports and found them to be mere photocopies. The police also discovered a large aquarium full of live lapu-lapu and assorted fish weighing approximately one ton at the bottom of the

boat.[2] They checked the license of the boat and its fishermen and found them to be in order. Nonetheless, SPO3 Enriquez brought the boat captain, the crew and the fishermen to Puerto Princesa for further investigation.

At the city harbor, members of the Maritime Command were ordered by SPO3 Enriquez to guard the F/B Robinson. The boat captain and the two foreigners were again interrogated at the PNP Maritime Command office. Thereafter, an Inspection/Apprehension Report was prepared and the boat, its crew and fishermen were charged with the following violations:

- "1. Conducting fishing operations within Puerto Princesa coastal waters without mayor's permit;
2. Employing excess fishermen on board (Authorized--26; On board--36);
3. Two (2) Hongkong nationals on board without original passports."[3]

The following day, October 1, 1992, SPO3 Enriquez directed the boat captain to get random samples of fish from the fish cage of F/B Robinson for laboratory examination. As instructed, the boat engineer, petitioner Ernesto Andaya, delivered to the Maritime Office four (4) live lapu-lapu fish inside a plastic shopping bag filled with water. SPO3 Enriquez received the fish and in the presence of the boat engineer and captain, placed them inside a large transparent plastic bag without water. He sealed the plastic with heat from a lighter.[4]

The specimens were brought to the National Bureau of Investigation (NBI) sub-office in the city for examination "to determine the method of catching the same for record or evidentiary purposes." [5] They were received at the NBI office at 8:00 in the evening of the same day. The receiving clerk, Edna Capicio, noted that the fish were dead and she placed the plastic bag with the fish inside the office freezer to preserve them. Two days later, on October 3, 1992, the chief of the NBI sub-office, Onos Mangotara, certified the specimens for laboratory examination at the NBI Head Office in Manila. The fish samples were to be personally transported by Edna Capicio who was then scheduled to leave for Manila for her board examination in Criminology.[6] On October 4, 1992, Ms. Capicio, in the presence of her chief, took the plastic with the specimens from the freezer and placed them inside two shopping bags and sealed them with masking tape. She proceeded to her ship where she placed the specimens in the ship's freezer.

Capicio arrived in Manila the following day, October 5, 1992 and immediately brought the specimens to the NBI Head Office. On October 7, 1992, NBI Forensic Chemist Emilia Rosaldes conducted two tests on the fish samples and found that they contained sodium cyanide, thus:

"FINDINGS:

Weight of Specimen...1.870 kilograms Examinations made on the above-mentioned specimen gave POSITIVE RESULTS to the test for the presence of SODIUM CYANIDE x x x"

REMARKS:

Sodium Cyanide is a violent poison."[7]

In light of these findings, the PNP Maritime Command of Puerto Princesa City filed the complaint at bar against the owner and operator of the F/B Robinson, the First Fishermen Fishing Industries, Inc., represented by herein petitioner Richard Hizon, the boat captain, Silverio Gargar, the boat engineer, Ernesto Andaya, two other crew members, the two Hongkong nationals and 28 fishermen of the said boat.

Petitioners were arraigned and they pled not guilty to the charge. As defense, they claimed that they are legitimate fishermen of the First Fishermen Industries, Inc., a domestic corporation licensed to engage in fishing. They alleged that they catch fish by the hook and line method and that they had used this method for one month and a

half in the waters of Cuyo Island. They related that on September 30, 1992 at about 7:00 A.M., they anchored the F/B Robinson in the east of Podiado Island in Puerto Princesa City. The boat captain and the fishermen took out and boarded their sampans to fish for their food. They were still fishing in their sampans at 4:00 P.M. when a rubber boat containing members of the PNP Maritime Command and the Task Force Bantay Dagat approached them and boarded the F/B Robinson. The policemen were in uniform while the Bantay Dagat personnel were in civilian clothes. They were all armed with guns. One of the Bantay Dagat personnel introduced himself as Commander Jun Marcelo and he inspected the boat and the boat's documents. Marcelo saw the two foreigners and asked for their passports. As their passports were photocopies, Marcelo demanded for their original. The captain explained that the original passports were with the company's head office in Manila. Marcelo angrily insisted for the originals and threatened to arrest everybody. He then ordered the captain, his crew and the fishermen to follow him to Puerto Princesa. He held the magazine of his gun and warned the captain "Sige, huwag kang tatakas, kung hindi babarilin ko kayo!"[8] The captain herded all his men into the boat and followed Marcelo and the police to Puerto Princesa.

They arrived at the city harbor at 7:45 in the evening and were met by members of the media. As instructed by Marcelo, the members of the media interviewed and took pictures of the boat and the fishermen.[9]

The following day, October 1, 1992, at 8:00 in the morning, Amado Villanueva, one of the fishermen at the F/B Robinson, was instructed by a policemen guarding the boat to get five (5) fish samples from the fish cage and bring them to the pier. Villanueva inquired whether the captain knew about the order but the guard replied he was taking responsibility for it. Villanueva scooped five pieces of lapu-lapu, placed them inside a plastic bag filled with water and brought the bag to the pier. The boat engineer, Ernesto Andaya, received the fish and delivered them to the PNP Maritime Office. Nobody was in the office and Andaya waited for the apprehending officers and the boat captain. Later, one of the policemen in the office instructed him to leave the bag and hang it on a nail in the wall. Andaya did as he was told and returned to the boat at 10:00 A.M.[10]

In the afternoon of the same day, the boat captain arrived at the Maritime office. He brought along a representative from their head office in Manila who showed the police and the Bantay Dagat personnel the original passports of the Hongkong nationals and other pertinent documents of the F/B Robinson and its crew. Finding the documents in order, Marcelo approached the captain and whispered to him "Tandaan mo ito, kapitan, kung makakaalis ka dito, magkikita pa rin uli tayo sa dagat, kung hindi kayo lulubog ay palulutangin ko kayo!" It was then that SPO3 Enriquez informed the captain that some members of the Maritime Command, acting under his instructions, had just taken five (5) pieces of lapu-lapu from the boat. SPO3 Enriquez showed the captain the fish samples. Although the captain saw only four (4) pieces of lapu-lapu, he did not utter a word of protest.[11] Under Marcelo's threat, he signed the "Certification" that he received only four (4) pieces of fish.[12]

Two weeks later, the information was filed against petitioners. The case was prosecuted against thirty-one (31) of the thirty-five (35) accused. Richard Hizon remained at large while the whereabouts of Richard Estremos, Marlon Camporazo and Joseph Aurelio were unknown.

On July 9, 1993, the trial court found the thirty one (31) petitioners guilty and sentenced them to imprisonment for a minimum of eight (8) years and one (1) day to a maximum of nine (9) years and four (4) months. The court also ordered the confiscation and forfeiture of the F/B Robinson, the 28 sampans and the ton of assorted live fishes as instruments and proceeds of the offense, thus:

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused SILVERIO GARGAR, ERNESTO ANDAYA, NEMESIO GABO, RODRIGO ABRERA, CHEUNG TAI FOOK, SHEK CHOR LUK, EFREN DELA PENA, JONEL AURELIO, GODOFREDO VILLAVERDE, ANGELITO DUMAYBAG, DEOMEDES ROSIL, AMADO VILLANUEVA, FRANCISCO ESTREMOS, ARNEL

VILLAVERDE, NEMESIO CASAMPOL, JORNIE DELACRUZ, JESUS MACTAN, FERNANDO BIRING, MENDRITO CARPO, LUIS DUARTE, RONNIE JUEZAN, BERNARDO VILLACARLOS, RICARDO SALES, MARLON ABELLA, TEODORO DELOS REYES, IGNACIO ABELLA, JOSEPH MAYONADO, JANAIRI LANGUYOD, DODONG DELOS REYES, ROLANDO ARCENAS and JOLLY CABALLERO guilty beyond reasonable doubt of the crime of Illegal Fishing with the use of obnoxious or poisonous substance commonly known as sodium cyanide, committed in violation of section 33 and penalized in section 38 of Presidential Decree No. 704, as amended, and there being neither mitigating nor aggravating circumstances appreciated and applying the provisions of the Indeterminate Sentence Law, each of the aforementioned accused is sentenced to an indeterminate penalty of imprisonment ranging from a minimum of EIGHT (8) YEARS and ONE (1) DAY to a maximum of NINE (9) YEARS and FOUR (4) MONTHS and to pay the costs.

Pursuant to the provisions of Article 45, in relation to the second sentence of Article 10 of the Revised Penal Code, as amended:

- a) Fishing Boat (F/B) Robinson;
- b) The 28 motorized fiberglass sampans; and
- c) The live fishes in the fish cages installed in the F/B Robinson, all of which have been respectively shown to be tools or instruments and proceeds of the offense, are hereby ordered confiscated and declared forfeited in favor of the government.

SO ORDERED."[13]

On appeal, the Court of Appeals affirmed the decision of the trial court. Hence, this petition.

Petitioners contend that:

"I  
THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE MERE "POSITIVE RESULTS TO THE TEST FOR THE PRESENCE OF SODIUM CYANIDE" IN THE FISH SPECIMEN, ALBEIT ILLEGALLY SEIZED ON THE OCCASION OF A WARRANTLESS SEARCH AND ARREST, IS ADMISSIBLE AND SUFFICIENT BASIS FOR THE PETITIONERS' CONVICTION OF THE CRIME OF ILLEGAL FISHING.

II  
THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE STATUTORY PRESUMPTION OF GUILT UNDER SEC. 33 OF PRESIDENTIAL DECREE NO. 704 CANNOT PREVAIL AGAINST THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE, SUCH THAT THE GRAVAMEN OF THE OFFENSE OF ILLEGAL FISHING MUST STILL BE PROVED BEYOND REASONABLE DOUBT.

III  
THE HONORABLE COURT OF APPEALS ERRED IN NOT REVERSING THE JUDGMENT OF THE TRIAL COURT AND ACQUITTING THE PETITIONERS."[14]

The Solicitor General submitted a "Manifestation in Lieu of Comment" praying for petitioners' acquittal.[15]

The petitioners, with the concurrence of the Solicitor General, primarily question the admissibility of the evidence against petitioners in view of the warrantless search of the fishing boat and the subsequent arrest of petitioners. More concretely, they contend that the NBI finding of sodium cyanide in the fish specimens should not have been admitted and considered by the trial court because the fish samples were seized from the F/B Robinson without a search warrant.

Our constitution proscribes search and seizure and the arrest of persons without a judicial warrant.[16] As a general rule, any evidence obtained without a judicial warrant is inadmissible for any purpose in any proceeding. The rule is, however, subject to certain exceptions. Some of these are:[17] (1) a search incident to a lawful arrest;[18] (2) seizure of evidence in plain view; (3) search of a moving motor vehicle;[19] and (4) search in violation of customs laws.[20]

Search and seizure without search warrant of vessels and aircrafts for violations of customs laws have been the traditional exception to the constitutional requirement of a search warrant. It is rooted on the recognition that a vessel and an aircraft, like motor vehicles, can be quickly moved out of the locality or jurisdiction in which the search warrant must be sought and secured. Yielding to this reality, judicial authorities have not required a search warrant of vessels and aircrafts before their search and seizure can be constitutionally effected.[21]

The same exception ought to apply to seizures of fishing vessels and boats breaching our fishery laws. These vessels are normally powered by high-speed motors that enable them to elude arresting ships of the Philippine Navy, the Coast Guard and other government authorities enforcing our fishery laws.[22]

We thus hold as valid the warrantless search on the F/B Robinson, a fishing boat suspected of having engaged in illegal fishing. The fish and other evidence seized in the course of the search were properly admitted by the trial court. Moreover, petitioners failed to raise the issue during trial and hence, waived their right to question any irregularity that may have attended the said search and seizure.[23]

Given the evidence admitted by the trial court, the next question now is whether petitioners are guilty of the offense of illegal fishing with the use of poisonous substances. Again, the petitioners, joined by the Solicitor General, submit that the prosecution evidence cannot convict them.

We agree.

Petitioners were charged with illegal fishing penalized under sections 33 and 38 of P.D. 704[24] which provide as follows:

"Sec. 33. Illegal fishing, illegal possession of explosives intended for illegal fishing; dealing in illegally caught fish or fishery/aquatic products. -- It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substance, or by the use of electricity as defined in paragraphs (l), (m) and (d), respectively, of section 3 hereof: Provided, That mere possession of such explosives with intent to use the same for illegal fishing as herein defined shall be punishable as hereinafter provided: Provided, That the Secretary may, upon recommendation of the Director and subject to such safeguards and conditions he deems necessary, allow for research, educational or scientific purposes only, the use of explosives, obnoxious or poisonous substance or electricity to catch, take or gather fish or fishery/aquatic products in the specified area: Provided, further, That the use of chemicals to eradicate predators in fishponds in accordance with accepted scientific fishery practices without causing deleterious effects in neighboring waters shall not be construed as the use of obnoxious or poisonous substance within the meaning of this section: Provided, finally, That the use of mechanical bombs for killing whales, crocodiles, sharks or other large dangerous fishes, may be allowed, subject to the approval of the Secretary.

It shall, likewise, be unlawful for any person knowingly to possess, deal in, sell or in any manner dispose of, for profit, any fish or fishery/aquatic products which have been illegally caught, taken or gathered.

The discovery of dynamite, other explosives and chemical compounds containing combustible elements, or obnoxious or poisonous substance, or equipment or device for electric fishing in any fishing boat or in the possession of a fisherman shall constitute a presumption that the same were used for fishing in violation of this Decree, and the discovery in any fishing boat of fish caught or killed by the use of explosives, obnoxious or

poisonous substance or by electricity shall constitute a presumption that the owner, operator or fisherman were fishing with the use of explosives, obnoxious or poisonous substance or electricity."

x x x x x x x x

Sec. 38. Penalties. -- (a) For illegal fishing and dealing in illegally caught fish or fishery/aquatic products.-- Violation of Section 33 hereof shall be punished as follows:

x x x x x x x x

(2) By imprisonment from eight (8) to ten (10) years, if obnoxious or poisonous substances are used: Provided, That if the use of such substances results 1) in physical injury to any person, the penalty shall be imprisonment from ten (10) to twelve (12) years, or 2) in the loss of human life, then the penalty shall be imprisonment from twenty (20) years to life or death;"

x x x x x x x x."[25]

The offense of illegal fishing is committed when a person catches, takes or gathers or causes to be caught, taken or gathered fish, fishery or aquatic products in Philippine waters with the use of explosives, electricity, obnoxious or poisonous substances. The law creates a presumption that illegal fishing has been committed when: (a) explosives, obnoxious or poisonous substances or equipment or device for electric fishing are found in a fishing boat or in the possession of a fisherman; or (b) when fish caught or killed with the use of explosives, obnoxious or poisonous substances or by electricity are found in a fishing boat. Under these instances, the boat owner, operator or fishermen are presumed to have engaged in illegal fishing.

Petitioners contend that this presumption of guilt under the Fisheries Decree violates the presumption of innocence guaranteed by the Constitution.[26] As early as 1916, this Court has rejected this argument by holding that:[27]

"In some States, as well as in England, there exists what are known as common law offenses. In the Philippine Islands no act is a crime unless it is made so by statute. The state having the right to declare what acts are criminal, within certain well-defined limitations, has the right to specify what act or acts shall constitute a crime, as well as what proof shall constitute prima facie evidence of guilt, and then to put upon the defendant the burden of showing that such act or acts are innocent and are not committed with any criminal intent or intention."[28]

The validity of laws establishing presumptions in criminal cases is a settled matter. It is generally conceded that the legislature has the power to provide that proof of certain facts can constitute prima facie evidence of the guilt of the accused and then shift the burden of proof to the accused provided there is a rational connection between the facts proved and the ultimate fact presumed.[29] To avoid any constitutional infirmity, the inference of one from proof of the other must not be arbitrary and unreasonable.[30] In fine, the presumption must be based on facts and these facts must be part of the crime when committed.[31]

The third paragraph of section 33 of P.D. 704 creates a presumption of guilt based on facts proved and hence is not constitutionally impermissible. It makes the discovery of obnoxious or poisonous substances, explosives, or devices for electric fishing, or of fish caught or killed with the use of obnoxious and poisonous substances, explosives or electricity in any fishing boat or in the possession of a fisherman evidence that the owner and operator of the fishing boat or the fisherman had used such substances in catching fish. The ultimate fact presumed is that the owner and operator of the boat or the fisherman were engaged in illegal fishing and this presumption was made to arise from the discovery of the substances and the contaminated fish in the possession of the fisherman in the fishing boat. The fact presumed is a natural inference from the fact proved.[32]

We stress, however, that the statutory presumption is merely *prima facie*.<sup>[33]</sup> It can not, under the guise of regulating the presentation of evidence, operate to preclude the accused from presenting his defense to rebut the main fact presumed.<sup>[34]</sup> At no instance can the accused be denied the right to rebut the presumption,<sup>[35]</sup> thus:

"The inference of guilt is one of fact and rests upon the common experience of men. But the experience of men has taught them that an apparently guilty possession may be explained so as to rebut such an inference and an accused person may therefore put witnesses on the stand or go on the witness stand himself to explain his possession, and any reasonable explanation of his possession, inconsistent with his guilty connection with the commission of the crime, will rebut the inference as to his guilt which the prosecution seeks to have drawn from his guilty possession of the stolen goods."<sup>[36]</sup>

We now review the evidence to determine whether petitioners have successfully rebutted this presumption. The facts show that on November 13, 1992, after the information was filed in court and petitioners granted bail, petitioners moved that the fish specimens taken from the F/B Robinson be reexamined.<sup>[37]</sup> The trial court granted the motion.<sup>[38]</sup> As prayed for, a member of the PNP Maritime Command of Puerto Princesa, in the presence of authorized representatives of the F/B Robinson, the NBI and the local Fisheries Office, took at random five (5) live lapu-lapu from the fish cage of the boat. The specimens were packed in the usual manner of transporting live fish, taken aboard a commercial flight and delivered by the same representatives to the NBI Head Office in Manila for chemical analysis.

On November 23, 1992, Salud Rosales, another forensic chemist of the NBI in Manila conducted three (3) tests on the specimens and found the fish negative for the presence of sodium cyanide,<sup>[39]</sup> thus:

"Gross weight of specimen = 3.849 kg.

Examination made on the above-mentioned specimens gave NEGATIVE RESULTS to the tests for the presence of SODIUM CYANIDE."<sup>[40]</sup>

The Information charged petitioners with illegal fishing "with the use of obnoxious or poisonous substance (sodium cyanide), of more or less one (1) ton of assorted live fishes." There was more or less one ton of fishes in the F/B Robinson's fish cage. It was from this fish cage that the four dead specimens examined on October 7, 1992 and the five live specimens examined on November 23, 1992 were taken. Though all the specimens came from the same source allegedly tainted with sodium cyanide, the two tests resulted in conflicting findings. We note that after its apprehension, the F/B Robinson never left the custody of the PNP Maritime Command. The fishing boat was anchored near the city harbor and was guarded by members of the Maritime Command.<sup>[41]</sup> It was later turned over to the custody of the Philippine Coast Guard Commander of Puerto Princesa City.<sup>[42]</sup>

The prosecution failed to explain the contradictory findings on the fish samples and this omission raises a reasonable doubt that the one ton of fishes in the cage were caught with the use of sodium cyanide.

The absence of cyanide in the second set of fish specimens supports petitioners' claim that they did not use the poison in fishing. According to them, they caught the fishes by the ordinary and legal way, i.e., by hook and line on board their sampans. This claim is buttressed by the prosecution evidence itself. The apprehending officers saw petitioners fishing by hook and line when they came upon them in the waters of Barangay San Rafael. One of the apprehending officers, SPO1 Demetrio Saballuca, testified as follows:

"ATTY. TORREFRANCA ON CROSS-EXAMINATION:

Q :

I get your point therefore, that the illegal fishing supposedly conducted at San Rafael is a *moro ami* type of fishing [that] occurred into your mind and that was made to understand by the Bantay Dagat personnel?

A :

Yes, sir.

Q :

Upon reaching the place, you and the pumpboat, together with the two Bantay Dagat personnel were SPO3 Romulo Enriquez and Mr. Benito Marcelo and SPO1 Marzan, you did not witness that kind of moro ami fishing, correct?

A :

None, sir.

Q :

In other words, there was negative activity of moro ami type of fishing on September 30, 1992 at 4:00 in the afternoon at San Rafael?

A :

Yes, sir.

Q :

And what you saw were 5 motorized Sampans with fishermen each doing a hook and line fishing type?

A :

Yes, sir. More or less they were five.

Q :

And despite the fact you had negative knowledge of this moro ami type of fishing, SPO3 Enriquez together with Mr. Marcelo boarded the vessel just the same?

A :

Yes, sir.

x x x x x x x x."[43]

The apprehending officers who boarded and searched the boat did not find any sodium cyanide nor any poisonous or obnoxious substance. Neither did they find any trace of the poison in the possession of the fishermen or in the fish cage itself. An Inventory was prepared by the apprehending officers and only the following items were found on board the boat:

"ITEMS

QUANTITY

REMARKS

F/B Robinson

(1) unit

operating

engine

(1) unit

ICE-900-BHP

sampans

28 units

fiberglass

outboard motors

28 units

operating

assorted fishes

more or less than 1 ton live

hooks and lines

assorted

xxx"[44]

We cannot overlook the fact that the apprehending officers found in the boat assorted hooks and lines for catching fish.[45] For this obvious reason, the Inspection/Apprehension Report prepared by the apprehending officers immediately after the search did not charge petitioners with illegal fishing, much less illegal fishing with the use of poison or any obnoxious substance.[46]

The only basis for the charge of fishing with poisonous substance is the result of the first NBI laboratory test on the four fish specimens. Under the circumstances of the case, however, this finding does not warrant the infallible conclusion that the fishes in the F/B Robinson, or even the same four specimens, were caught with the use of sodium cyanide.

Prosecution witness SPO1 Bernardino Visto testified that for the first laboratory test, boat engineer Ernesto Andaya did not only get four (4) samples of fish but actually got five (5) from the fish cage of the F/B Robinson.[47] This Certification that four (4) fish samples were taken from the boat shows on its face the number of pieces as originally "five (5)" but this was erased with correction fluid and "four (4)" written over it.[48] The specimens were taken, sealed inside the plastic bag and brought to Manila by the police authorities in the absence of petitioners or their representative. SPO2 Enriquez testified that the same plastic bag containing the four specimens was merely sealed with heat from a lighter.[49] Emilia Rosaldes, the NBI forensic chemist who examined the samples, testified that when she opened the package, she found two ends of the same plastic bag knotted.[50] These circumstances as well as the time interval from the taking of the fish samples and their actual examination[51] fail to assure the impartial mind that the integrity of the specimens had been properly safeguarded.

Apparently, the members of the PNP Maritime Command and the Task Force Bantay Dagat were the ones engaged in an illegal fishing expedition. As sharply observed by the Solicitor General, the report received by the Task Force Bantay Dagat was that a fishing boat was fishing illegally through "muro ami" on the waters of San Rafael. "Muro ami" according to SPO1 Saballuca is made with "the use of a big net with sinkers to make the net submerge in the water with the fishermen surround[ing] the net." [52]

This method of fishing needs approximately two hundred (200) fishermen to execute.[53] What the apprehending officers instead discovered were twenty eight (28) fishermen in their sampans fishing by hook and line. The authorities found nothing on the boat that would have indicated any form of illegal fishing. All the documents of the boat and the fishermen were in order. It was only after the fish specimens were tested, albeit under suspicious circumstances, that petitioners were charged with illegal fishing with the use of poisonous substances.

IN VIEW WHEREOF, the petition is granted and the decision of the Court of Appeals in CA-G.R. CR No. 15417 is reversed and set aside. Petitioners are acquitted of the crime of illegal fishing with the use of poisonous substances defined under the Section 33 of Republic Act No. 704, the Fisheries Decree of 1975. No costs.

**SO ORDERED.**

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

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[1] Information, Records, pp. 1-2.

[2] TSN of February 1, 1993, pp.16-22.

[3] Exhibit "C," "C-5".

[4] Exhibit "F;" TSN of February 1, 1993, pp.39-40; TSN of February 2, 1993, pp.13-16.

[5] Exhibit "G".

[6] Exhibit "N," Exhibit "8;" TSN of March 11, 1993, p.9.

[7] Exhibit "I," "I "7".

[8] TSN of April 25, 1993, pp. 4-19; TSN of April 22, 1993, pp. 14-16

[9] TSN of March 23, 1993, pp. 15-16; TSN of April 22, 1993, p. 17; TSN of April 25, 1993, pp. 19-23.

[10] TSN of March 23, 1993, pp. 19-21; TSN of March 24, 1993, pp. 3-12.

[11] TSN of April 25, 1993, pp. 25-31.

[12] Id., pp. 30-31; Exhibit "F" and Exhibit "4."

[13] Decision, pp. 21-22, Records, pp. 264-265.

[14] Petition, p.8; Rollo, p.16.

[15] Manifestation, pp.13-20, Rollo, pp. 80-87.

[16] Article III, Sections 2 and 3 [2].

[17] *People v. Lo Ho Wing*, 193 SCRA 122, 128 [1991]; *Manipon, Jr. v. Sandiganbayan*, 143 SCRA 267, 276 [1986].

[18] 1985 Rules on Criminal Procedure, Rule 113, section 5.

[19] *People v. Bagista*, 214 SCRA 63, 69 [1992]; *People v. Lo Ho Wing*, *supra*, at 126-128.

[20] *Roldan v. Arca*, 65 SCRA 336 [1975]; *Magoncia v. Palacio*, 80 Phil. 770, 774 [1948]; *Papa v. Mago*, 22 SCRA 857, 871-874 [1968].

[21] Papa v. Mago, *supra*, at 873.

[22] Roldan, Jr. v. Arca, *supra*, at 348.

[23] People v. Exala, 221 SCRA 494, 499 [1993]; and Demaisip v. Court of Appeals, 193 SCRA 373, 382 [1991] on waiver of objection to the legality of the search and the admissibility of evidence obtained in a warrantless search; People v. Lopez, Jr., 245 SCRA 95, 105 [1995]; People v. Rivera, 245 SCRA 421, 430 [1995]; and People v. Codilla, 224 SCRA 104, 117 [1993] on waiver of objection to the warrantless arrest.

[24] as amended by P.D. 1058.

[25] Emphasis supplied.

[26] Article III, section 14 (2).

[27] United States v. Luling, 34 Phil. 725, reiterating and expounding the ruling in United States v. Tria, 17 Phil. 303 [1910]; Cooley, Treatise on Constitutional Limitations, vol. 1, 639-641 [1927]; see also People v. Mingoa, 92 Phil. 857, 858 [1953].

[28] United States v. Luling, *supra*, at 728.

[29] Underhill, A Treatise on the Law of Criminal Evidence, vol. 1, pp. 76-77 [1956]; see also Wigmore, A Treatise on the Anglo-American System of Evidence in Trials at Common Law, vol. 9, pp. 423-424 [1940].

[30] Underhill, *supra*;

[31] Underhill, *supra*, at 76, citing People v. Marcello, 25 N.Y.S. 2d 533; People v. Mingoa, 92 Phil. 857, 859.

[32] People v. Mingoa, *supra*; United States v. Catimbang, 35 Phil. 367, 371-372 [1916].

[33] Conclusive statutory presumptions are generally held unconstitutional (Underhill, *supra*, at 76 citing State v. Kelly, 218 Minn. 247, 15 N.W. 2d 554, 162 A.L.R. 477; Kellogg v. Murphy, 349 Mo. 1165, 164 S.W. 2d 285; Miller v. Commonwealth, 172 Va. 639, 2 S.E. 2d 343).

[34] Underhill, *supra*.

[35] People v. Mingoa, *supra*, at 859.

[36] United States v. Catimbang, *supra*, at 371-372; This case involved stolen cattle found in the possession of the accused.

[37] Records, pp. 67-69.

[38] *Id.*, pp. 71-73; Exhibit "14."

[39] TSN of March 26, 1993, pp.22, 28.

[40] Exhibit "16".

[41] TSN of March 10, 1993, pp.63-64.

[42] Records, p. 79.

[43] TSN of March 10, 1993, pp. 29-31.

[44] Exhibit "D."

[45] TSN of February 1, 1993, pp.22-23.

[46] Exhibit "C."

[47] TSN of March 9, 1993, p. 9.

[48] Exhibit "F," "F-3;" Exhibit "4."

[49] TSN of February 2, 1993, p. 14.

[50] TSN of February 3, 1993, pp. 45-46.

[51] Six days.

[52] TSN of March 10, 1993, p. 26; TSN of February 1, 1993, p. 66.

Fisheries Administrative Order No. 163, Series of 1986, "Prohibiting the Operation of 'Muro-Ami' and 'Kayakas' in all Philippine Waters" defines "muro-ami" as:

"Sec. 1 (a). "'Muro-ami' or drive-in-net means a Japanese fishing gear used in reef fishing which consists of a movable bagnet and two detachable wings effecting the capture of fish bay spreading the net in an arc form around reefs or shoals and with the aid of scaring devices, a cordon of fishermen drive the fish from the reefs toward the bag portion of the whole net." ( 82 O.G. No. 48, 5052 Dec. 1, 1986).

[53] TSN of March 10, 1993, p. 28.

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