

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HEDISHI SUZUKI, APPELLANT.

G.R. No. 120670. October 23, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision[1] of the Regional Trial Court, Branch 45, Bacolod City in Criminal Case No. 94-16100 convicting Hedishi Suzuki, appellant, of illegal possession of marijuana, defined and penalized under Section 8, Article II of R.A. No. 6525, as amended,[2] and sentencing him to suffer the penalty of death and to pay a fine of P10,000,000.00.

The Information[3] against appellant reads:

"That on or about the 12[th] day of April, 1994, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being lawfully authorized to possess, prepare, administer or otherwise use any prohibited drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control 1.9 kilos or 1,900 grams, more or less, of marijuana which is a prohibited drug, in violation of the aforementioned laws.

"Acts contrary to law."

Upon arraignment, appellant entered a plea of not guilty. Thereafter, trial followed.

The prosecution presented P/Inspector Rea Abastillas Villavicencio, the forensic chemist of the Philippine National Police (PNP) Crime Laboratory, SPO1 Arturo Casugod, Sr. of the Police Aviation Security Command (PASCOP), PO3 Rhodelin Poyugao, also of the PASCOP, and SPO1 Gilbert Linda of the Narcotics Command (NARCOM), all of Bacolod City. Their testimonies, woven together, established the following facts:

Sometime in November, 1993, the PNP Narcotics Command issued a directive to all Chiefs of Narcotics Regional Field Units to cover all domestic airport terminals within their respective areas of responsibility, following reports that drug trafficking is prevalent in domestic airports; and to coordinate with local airport authorities and the PASCOP.

In the morning of April 12, 1994, while the prosecution witnesses were in their respective stations, appellant and Takeshi Koketsu, both Japanese nationals, entered the pre-departure area of the Bacolod Airport Terminal. Appellant was bound for Manila via flight No. 132 of the Philippine Airlines and was carrying a small traveling bag and a box marked "Bongbong's piaya." [4] At the pre-departure area, upon the advice of Corazon Sinosa, a civilian personnel of the PASCOP, appellant proceeded to the "walk-through metal detector," a machine which produces a red light and an alarm once it detects the presence of metallic substance or object. Thereupon, the red light switched on and the alarm sounded, signifying the presence of metallic substance either in his person or in the box he was carrying. This prompted PO3 Poyugao to frisk him bodily. Finding no metallic object in his body, PO3 Poyugao picked up the box of piaya and passed it through the machine. Again, the machine was activated.

PO3 Poyugao then ordered appellant to go to the hand-carried luggage inspection counter where several PASCOM and NARCOM personnel were present. SPO1 Casugod requested appellant to open the box. He appeared tense and reluctant and started to leave, but SPO1 Casugod called him. Eventually he consented, saying in faltering English, "open, open." SPO1 Casugod opened the box and found therein eighteen (18) small packs, seventeen (17) of which were wrapped in aluminum foil. SPO1 Casugod opened one pack. Inside were dried fruiting tops which looked like marijuana. Upon seeing this, appellant ran outside the pre-departure area but he was chased by PO3 Poyugao, SPO1 Linda and Donato Barnezo of the PASCOM.

They apprehended appellant near the entrance of the terminal and brought him to the PASCOM office. They also brought Takeshi and his wife, Lourdes Linsangan, to the office, being suspects as conspirators with appellant in drug trafficking. Lourdes asked permission to call Atty. Silvestre Tayson. When he arrived, the police apprised appellant of his constitutional rights.

Meanwhile, SPO1 Casugod weighed the contents of the box and inventoried the same. The total weight of the suspected marijuana fruiting tops was 1.9 kilograms or 1,900 grams. He then drafted a "confiscation receipt" which appellant, upon the advice of Atty. Tayson, refused to acknowledge. SPO1 Casugod turned over appellant to SPO1 Linda for investigation.

Subsequently, appellant and his companions were brought to the prosecutor's office for inquest and placed under the custody of C/Inspector Ernesto Alcantara at the NARCOM office. The box with its contents was brought to the PNP Crime Laboratory. Inspector Villavicencio conducted three tests on the specimen samples which proved positive for marijuana.

The defense presented appellant as its sole witness whose testimony is as follows: On April 9, 1994, he and Takeshi Koketsu arrived in Manila from Osaka, Japan. The purpose of his trip was to collect from Takeshi Y2.5 million or P500,000.00 which the latter owed him. Waiting for them at the airport was Takeshi's wife, Lourdes. On the same day, the three flew to Bacolod City. Appellant stayed at the house of Takeshi.

Two days later, appellant asked Takeshi to pay. When Takeshi admitted he had no money, appellant got angry and went to the Casino Filipino where he stayed until 10:30 in the evening. Upon leaving the casino, he met Pinky who enticed him to have sex with her. They then proceeded to the Moonlight Motel. Moments later, Pinky left, while appellant stayed there for the night. He told her he was leaving the following morning.

The following day or on April 12, 1994, appellant went to the airport. Pinky, who was there waiting, gave him a box of "Bongbong's piaya" as "pasalubong" from Bacolod City. He did not ascertain the contents of the box since he trusted Pinky although he just met her the previous night.

Appellant found and joined Takeshi and Lourdes at the coffee shop. Takeshi apologized for his failure to pay his debt, assuring him that he would settle his obligation next month.

When it was time to leave, appellant, accompanied by Takeshi, proceeded to the pre-departure area. When he passed through the metal detector, a policeman frisked him, got the box and placed it inside the metal detector. The machine produced a red light, hence, the policeman brought the box to the inspection table, with appellant following him. Thereafter, the policeman, whom he later knew as SPO1 Arturo Casugod, pointed to the box uttering something appellant did not understand. Appellant said, "wait a minute," (in Japanese) and went outside to ask Takeshi and Lourdes to interpret for him, but they did not respond. When PO3 Rhodelin Poyugao called him back to the pre-departure area, he found Takeshi near the table and the box containing something wrapped in aluminum foil already opened. Takeshi told him that he was carrying marijuana. He replied it was given to him by a woman that morning. Then he and SPO1 Casugod went to the PASCOM office where the latter weighed the

contents of the box. He did not sign the "Confiscation Receipt" presented to him. They then proceeded to the NARCOM office with C/Inspector Ernesto Alcantara, SPO1 Linda, PO3 Poyugao, and three other officers. From the NARCOM office, appellant was brought to the Bacolod Police Station.

Shortly thereafter, they went to the Nagoya Restaurant owned by Takeshi where appellant saw C/Inspector Alcantara and Lourdes talking. When he inquired from Takeshi what was going on, he was told they needed money in dealing with the police. Appellant was then brought to the prosecutor's office. There Takeshi told him to keep silent as he would make a deal with the prosecutor. Then they went to Takeshi's house where appellant stayed for two days.

On April 14, 1994, C/Inspector Alcantara and SPO1 Linda brought appellant to the Bacolod City Jail. Takeshi visited him twice, advising him to ask someone from Japan to send him money and be discreet, otherwise he would be killed; and to admit he has in his possession less than 750 grams of marijuana so he could post bail. However, he refused.

Five days later, appellant, escorted by the police, went to Takeshi's house to retrieve his money (Y120,000 equivalent to P30,000.00), but Takeshi told him that it was already spent for the food and drinks of the NARCOM agents and the airport policemen.

On December 7, 1994, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, finding the accused HEDISHI SUZUKI guilty beyond reasonable doubt of the offense charged, he is hereby sentenced to suffer the maximum penalty of death, to pay a fine of Ten Million Pesos (P10,000,000.00), and to pay the costs.

"Pursuant to Section 20, Article IV of Republic Act No. 6425, as amended by Section 17 of Republic Act No. 7659, let the 1,547.07 grams of dried marijuana fruiting tops, subject matter of this case, be confiscated and forfeited in favor of the government and be turned over to the Dangerous Drugs Board Custodian, NBI, to be disposed according to law.

"SO ORDERED."

Hence the instant mandatory review.

In his brief, appellant ascribes to the trial court the following errors:

"I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GOVERNMENT AGENTS HAD THE LEGAL AUTHORITY WHEN THEY OPENED AND SEARCHED THE SMALL CARTON IN QUESTION.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT SUFFICIENT PROBABLE CAUSE EXISTS FOR THE OPENING AND SEARCH OF THE SUBJECT CARTON AND IN DECLARING LEGAL AND VALID THE SEIZURE OF SAID CARTON AND THE SUBSEQUENT ARREST OF THE APPELLANT.

III

THE TRIAL COURT GRAVELY ERRED IN ADMITTING IN EVIDENCE THE MARIJUANA CONTENTS OF THE SUBJECT CARTON AGAINST THE APPELLANT.

IV

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE SEARCH ON THE CARTON IN QUESTION WAS INCIDENTAL TO A LAWFUL ARREST.

V

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE SEARCH ON THE SUBJECT CARTON WAS MADE UNDER THE EXCEPTION OF SEIZURE OF EVIDENCE IN PLAIN VIEW.

VI

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ARREST OF THE APPELLANT WAS VALID AS HE WAS CAUGHT IN FLAGRANTE DELICTO POSSESSING MARIJUANA.

VII

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THERE WAS UNQUALIFIED, VOLUNTARY AND AUTHORITATIVE CONSENT GIVEN BY THE APPELLANT TO THE OPENING OF THE CARTON.

VIII

ON THE ASSUMPTION EX GRATIA ARGUMENTI THAT THE APPELLANT WAS CAUGHT IN POSSESSION OF MARIJUANA, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM, FOR THE PROSECUTION FAILED TO PROVE THE NEGATIVE ELEMENT OF THE OFFENSE.

IX

ON THE ASSUMPTION EX GRATIA ARGUMENTI THAT HE WAS CAUGHT IN PHYSICAL POSSESSION OF THE CARTON IN QUESTION (CONTAINING MARIJUANA), THE TRIAL COURT GRAVELY ERRED IN FINDING THAT APPELLANT INTENDED TO POSSESS SAID PACKS OF MARIJUANA.

X

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT APPELLANT'S PETITION TO BE RELEASED ON BAIL CONSTITUTES WAIVER OF ANY IRREGULARITY ATTENDING HIS ARREST AND ESTOPS HIM FROM QUESTIONING ITS VALIDITY.

XI

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING DUE WEIGHT, CONSIDERATION AND CREDIT TO THE TESTIMONY OF THE APPELLANT AND IN DECLARING THE SAME SELF-SERVING AND NOT AMPLY PROVEN.

XII

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING SUBSTANTIAL CONTRADICTIONS IN THE EVIDENCE FOR THE PROSECUTION WHICH CREATE REASONABLE DOUBT ON THE GUILT OF THE APPELLANT.

XIII

THE TRIAL COURT GRAVELY ERRED IN GOING BEYOND THE EVIDENCE PRESENTED BY THE PROSECUTION IN SUPPORT OF ITS DECISION CONVICTING APPELLANT.

XIV

THE TRIAL COURT GRAVELY ERRED IN SENTENCING APPELLANT TO THE MAXIMUM

PENALTY OF DEATH AND IMPOSING A FINE OF TEN MILLION PESOS.

XV

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE APPELLANT WAS PROVEN BY THE PROSECUTION BEYOND REASONABLE DOUBT AND IN NOT ACQUITTING HIM."

Considering that the above assigned errors are interrelated, they will be discussed jointly.

Appellant invokes his constitutional right against unreasonable search and seizure, contending that: (1) the authority to open and investigate suspicious packages and cargoes under Section 8 of Republic Act No. 6235[5] does not apply to PASCOM and NARCOM agents but is limited only to aircraft companies or operators of aircraft for hire; (2) he did not consent to be searched by the authorities; (3) the prohibited substances confiscated by the authorities were not actually in their plain view; and (4) the search they conducted was not incidental to a lawful arrest.

Pertinent is Section 8 of Republic Act No. 6235 which reads:

"SECTION 8. Aircraft companies which operate as public utilities or operators of aircraft which are for hire are authorized to open and investigate suspicious packages and cargoes in the presence of the owner or shipper, or his authorized representatives if present, in order to help the authorities in the enforcement of the provisions of this Act: Provided, That if the owner, shipper or his representative refuses to have the same opened and inspected, the airline or air carrier is authorized to refuse the loading thereof."

In line with the afore-cited law, the trial court correctly upheld the PASCOM's authority to open packages and cargoes, thus:

"This Court does not subscribe to the contention of the accused. The Police Aviation Security Command (PASCOM) is the implementing arm of the National Action Committee on Anti-Hijacking (NACAH), which is a creation of Presidential Letter of Instruction (LOI) No. 399, dated April 28, 1976.

"On February 18, 1978, a Memorandum of Understanding among the Secretary of National Defense, the Secretary of Public Works, Transportation and Communication, the Secretary of Justice, the Director General, National Intelligence and Security Authority and the Secretary of Finance was signed. The purpose was to establish a working arrangement among cognizant agencies, set up guidelines and procedures for the security of the airport complex throughout the Philippines particularly handling, coordination and disposition of hijacking and other criminal incidents that may occur thereat (PAFM 3-9, page 1-3).

`Under the said Memorandum of Understanding the then AVSECOM (now PASCOM) shall have the following functions and responsibilities:

- Secure all airports against offensive and terroristic acts that threaten civil aviation;
- Undertake aircraft anti-hijacking operations;
- Exercise operational control and supervision over all agencies involved in airport security operations;
- Take all necessary preventive measures to maintain peace and order, and provide other pertinent public safety services within the airports;

x x x

`One of its guidelines before the passenger can enter the sanitized area (pre-departure area) is to check the hand-carried luggage and personal effects of passengers (PAFM 3-9, page 2-3).

`Passengers are allowed one hand-carried bag or attaché case with the following limitation:

- x x x x x x

- x x x x x x

- It can be readily opened for inspection (PAFM 3-9, page 2-4).

`Based upon the Memorandum of Understanding, pursuant to President LOI 399, in relation to R.A. 6235, the PASCOM had the legal authority to be at the Bacolod Airport, Bacolod City and to inspect luggages or hand-carried bags.

`Under DOC 8973/3, Security Manual for Safeguarding Civil Aviation against Acts of Unlawful Interference, particularly paragraph 3.6.4 `when x-ray inspection is not possible or when the x-ray image of a bag gives rise to suspicion, x x x, a manual search must be carried out' (Memorandum of the Prosecution, pp. 15-16; underscoring supplied).'

"The prosecution correctly argued that the PASCOM established a system of checkpoint at the pre-departure area of the Bacolod Airport to quickly inspect or screen persons or hand-carried baggages for illegal items pursuant to said Memorandum of Agreement, which in turn derived its life from LOI 399. In short, the setting up of checkpoint at the Bacolod Airport on April 12, 1994 does not have only jurisprudential basis (*Valmonte vs. De Villa, et al.*, G.R. No. 83288, September 29, 1989, 178 SCRA 211, more popularly known as the `checkpoints cases') but also statutory basis.

"Moreover, to sustain the stand of the accused exclusively limiting the authority to open and search `suspicious' luggages would result to absurdity. It would deprive law enforcers of their authority to perform their duty of maintaining order, preserving peace, protecting life and property and other police works such as crime detection, while within the airport premises. The construction given by the accused conveniently omitted the phrase found in Section 8 of Republic Act No. 6235 which reads `in order to help the authorities in the enforcement of the provisions of this Act.' The word `authorities' evidently refers to police officers and other law enforcers such as the PASCOM officers. It follows that in allowing or authorizing aircraft companies which operate as public utilities or operators of aircraft which are for hire, to open and investigate suspicious packages and seizures, the authors of the law does not disallow or prohibit law enforcement agencies of the government from assisting or conducting the opening and investigation of suspicious packages and cargoes. Otherwise, they will be remiss in their sworn duty of protecting the public in general and more particularly those in the aviation industry. x x x. It becomes crystal-clear that the PASCOM officers and personnel had the legal authority when they opened and investigated the box in the presence of the accused and his counsel."

This is not the first time we recognize a search conducted pursuant to routine airport security procedure as an exception to the proscription against warrantless searches. In *People vs. Canton*,^[6] and *People vs. Johnson*,^[7] we validated the search conducted on the departing passengers and the consequent seizure of the shabu found in their persons, thus:

"Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests

involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures." (Underscoring ours)

Clearly, the PASCOM agents have the right under the law to conduct search of prohibited materials or substances. To simply refuse passengers carrying suspected illegal items to enter the pre-departure area, as claimed by appellant, is to deprive the authorities of their duty to conduct search, thus sanctioning impotence and ineffectivity of the law enforcers, to the detriment of society.[8]

It should be stressed, however, that whenever the right against unreasonable search and seizure is challenged, an individual may choose between invoking the constitutional protection or waiving his right by giving consent to the search or seizure.[9]

Here, appellant voluntarily gave his consent to the search conducted by the PASCOM agents. The testimony of SPO1 Arturo Casugod, Sr. is quite revealing, thus:

"Q

And when the said carton box was passed for the second time thru the walk-through machine it indicated this metallic element by flashing a red light, is that correct?

A

Yes, sir.

Q

And because of that, what did you do?

A

Rhodelin Poyugao put the box on top of the inspection table.

Q

What happened then?

A

And then our non-uniformed personnel, Mr. Donato Barnezo, asked the passenger Mr. Hedishi Suzuki, saying, 'kindly open your box for inspection'.

Q

What happened after he asked the accused to open the box?

A

Mr. Hedishi Suzuki refused to open, sir. He signaled 'no, no'.

Q

What happened then?

A

At that juncture, sir. I advised the said passenger, Mr. Hedishi Suzuki: `Very sorry, sir, we need to open your luggage because it indicated a red light'.

Q

When you say open the luggage you are referring to the box?

A

Referring to the small carton marked Bongbong Piaya.

Q

What happened then?

A

Mr. Hedishi Suzuki tried to get outside of the pre-departure area instead of opening the box.

Q

Where did Mr. Suzuki go if he went away?

A

Before he could get out of the door of the pre-departure area I called his attention to come back.

Q

Did he come back?

A

He came back and I explained to him again, sir, that we are very sorry but we need to open your small carton marked Bongbong Piaya. I told him, `I am very sorry, sir, but we need to open your small carton marked Bongbong Piaya'.

Q

And what did Mr. Suzuki do?

A

Mr. Suzuki answered me, `open'.

Q

What did you do?

A

I said `kindly open your carton' and he repeated, `open'.

Q

For the second time?

A

Yes, sir.

Q

What did you do then because he said `open'?

A

I explained to him, sir, and I asked him again, `sir, I am going to open this' and he told me `you open'.

Q

Then, what did you do?

A

I got hold of the carton and opened it by means of cutting the masking tape that bound both ends of the carton.

Q

And what did you find inside the said box?

A

When I opened the box, sir, I found out that it contained suspected dried marijuana fruiting tops wrapped in an aluminum foil, sir, and transparent cellophane.

x x x."[10]

That appellant gave his consent when PO1 Casugod asked him to open the box was confirmed by SPO1 Linda and PO3 Poyugao.[11] As succinctly found by the trial court, appellant cannot deny that he consented by feigning ignorance of the English language, thus:

"Accused through counsel would want this Court to believe that the opening of the carton containing marijuana fruiting tops was without the consent of the accused. The defense relied on the alleged inability of the accused to understand nor speak the English language because he is a Japanese national. It made capital on the presence of Japanese interpreters, Tsuyushi Tsuchida and Hideo Agarie, who assisted during the trial.

"The Court has no doubt in the positive testimonies of the prosecution witnesses and their categorical declaration that accused Hedishi Suzuki gave his consent not only nodding his head but also by saying `Open. Open. Open.' There was even a `third-party consent' given by his Japanese companion Takeshi Koketsu.

"The allegation of the accused that he does not understand English is indeed incredible to believe. As aptly observed by Assistant City Prosecutor Rafael Guanco, the trial prosecutor, `the accused might not be able to speak straight English yet he might understand English' (Memorandum of the Prosecution, page 21). The prosecution witnesses categorically declared that accused Hedishi Suzuki was speaking English during the airport encounter with the PASCOM and NARCOM operatives and while being investigated at the PASCOM Office. While it may be true that Lourdes Linsangan participated on some occasions, her participation merely facilitated the conversation.

"The Court cannot believe accused's protestation of ignorance of the English language. There are several indications that accused understand the English language. It may be noted that in filing a motion to terminate the legal services of Atty. Nicanor Villarosa, it appeared that accused caused its preparation or filing without the assistance of a lawyer (Motion To Terminate Services of Counsel, page 53, expediente). The accused testified that his wife is proficient in English. Accused was able to play games in the casino, the night before the airport incident. He was able to give direction to the driver from the motel to the airport. He has traveled to the Philippines about ten (10) times. He claims to be an owner and manager of a company where some clients or customers are non-Japanese such as Germans and Americans. During the trial accused appeared to be an

intelligent witness and this Court has keenly observed that accused had shown eagerness and readiness to answer the questions propounded in the English language even before the Japanese translation. Above all, accused answered in the affirmative when queried by the Court whether he was able to attend English classes while in college. In short, the Court was literally taken for a ride when initially made to believe that the accused could not read, speak and understand the English language."

It is axiomatic that a reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case.[12] Given the circumstances obtaining here, we find the search conducted by the airport authorities reasonable and, therefore, not violative of his constitutional rights. Hence, when the search of the box of piaya revealed several marijuana fruiting tops, appellant is deemed to have been caught in flagrante delicto, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure.[13] The packs of marijuana obtained in the course of such valid search are thus admissible as evidence against appellant.[14]

Nonetheless, we find the trial court's reliance on the plain view doctrine misplaced. Such doctrine finds application only when the incriminating nature of the object is in the "plain view" of the police officer.[15] Here, it is beyond cavil that the marijuana seized from appellant is contained in the box of piaya, wrapped in aluminum foil and not immediately apparent to the airport authorities.

Neither was the search incidental to a lawful arrest since appellant was not yet arrested at the time of the search. To be considered a search incidental to a lawful arrest, the law requires that there must be a lawful arrest before the search can be made.[16]

At this point, it bears stressing that mere possession of the prohibited substance is a crime per se and the burden of proof is upon appellant to show that he has a license or permit under the law to possess the prohibited drug.[17] Here, appellant failed to prove that he has a license to possess the marijuana. In *People vs. Bongcarawan*,[18] we held that such possession constitutes prima facie evidence of animus possidendi sufficient to convict an accused in the absence of any satisfactory explanation.

Appellant vigorously contends that the trial court should have sustained his un rebutted testimony that he was a victim of frame-up contrived by Takeshi in connivance with the arresting officers, especially C/Inspector Ernesto Alcantara, accused in several criminal charges.

It is noteworthy that aside from appellant's testimony, not a shred of evidence was presented by the defense to prove his claim that he was framed-up. Not even Pinky who allegedly gave him the box of piaya containing marijuana was presented as a witness to confirm his story. We have ruled that clear and convincing evidence is required to prove the defense of "frame-up" because in the absence of proof of any intent on the part of the police authorities to falsely impute such crime against appellant, the presumption of regularity in the performance of official duty stands.[19] Also, allegations of frame-up are easily fabricated, making it the common and standard line of defense in prosecutions involving the Dangerous Drugs Law.[20]

We are not swayed by appellant's reference to C/Inspector Alcantara's criminal records. Suffice it to state that he is neither an accused in this case or a prosecution witness.

We have carefully reviewed the records and found no cogent reason to overthrow the findings of fact and conclusions of law by the trial court. That this is a matter exclusively within its competence, since it had the unique opportunity of observing the witnesses and their manner of testifying during trial, had long been established. Hence, its findings are accorded respect and will not be disturbed on appeal, except when there is a clear showing that facts of weight and substance which would affect the outcome of the case have been overlooked, misunderstood, or misapplied.[21] This exception is not present here.

However, the trial court imposed the wrong penalty.

Under Republic Act No. 6425, as amended by Republic Act No. 7659, the penalty of reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00 shall be imposed if the quantity of marijuana or Indian hemp shall be 750 grams or more.[22] Section 63 of the Revised Penal Code provides that when the law prescribes a penalty composed of two indivisible penalties, the lesser penalty shall be applied in the absence of any aggravating or mitigating circumstance. [23]

In the case at bar, there being no mitigating or aggravating circumstance, appellant's possession of 1,547.70 grams[24] of marijuana does not merit the supreme penalty of death but only reclusion perpetua.

While the imposition of a fine is mandatory in cases of conviction of possession of illegal drugs,[25] we, however, reduce the fine imposed by the trial court to P1,000,000.00, considering that courts may fix any amount within the limits established by law.[26]

WHEREFORE, the Decision of the Regional Trial Court, Branch 45, Bacolod City in Criminal Case No. 94-16100 finding appellant Hedishi Suzuki guilty beyond reasonable doubt of violation of Section 8, Article II of R.A. No. 6425, as amended, is hereby AFFIRMED with the MODIFICATION in the sense that he is sentenced to reclusion perpetua and fined One Million (P1,000,000.00) Pesos.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Records at 219.

[2] The Dangerous Drugs Act of 1972, as amended by R.A. No. 7659, An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, Other Special Penal Laws, And For Other Purposes.

[3] Records at 1.

[4] A delicacy in Bacolod City.

[5] An Act Prohibiting Certain Acts Inimical to Civil Aviation and For Other Purposes.

[6] G.R. No. 148825, December 27, 2002.

[7] G.R. No. 138881, December 18, 2000, 348 SCRA 526.

[8] People vs. Canton, supra, citing People v. Malmstedt, 198 SCRA 401 (1991).

[9] People vs. Bongcarawan, G.R. No. 143944, July 11, 2002.

[10] TSN dated August 11, 1994 at 14-16.

[11] TSN dated August 12, 1994 at 34; August 16, 1994 at 17.

[12] Valmonte vs. De Villa, G.R. No. 83988, September 29, 1989, 178 SCRA 211, reiterated in People vs. Chua Ho San, G.R. No. 128222, June 17, 1999, 308 SCRA 432.

[13] "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;

x x x"

[14] People vs. del Mundo, G.R. No. 138929, October 2, 2001; Co vs. Court of Appeals, G.R. No. 123943, March 14, 2001.

[15] People vs. Musa, G.R. No. 96177, January 27, 1993, 217 SCRA 597.

[16] People vs. Cuizon, G.R. No. 109287, April 18, 1996, 256 SCRA 325; People vs. Canton, supra, citing People vs. Chua Ho San, supra.

[17] People vs. Johnson, supra.

[18] Supra.

[19] People vs. Sy, G.R. 147348, September 24, 2002; People v. Bongalon, G.R. No. 125025, January 23, 2002, 374 SCRA 289; People vs. Julian-Fernandez, supra; People vs. Lacap, G.R. No. 139114, October 23, 2001, 368 SCRA 124; People vs. Mustapa, G.R. No. 141244, February 19, 2001, 352 SCRA 252; People vs. Uy, G.R. No. 129019, August 16, 2000, 338 SCRA 232.

[20] People vs. So, G.R. No. 133861, November 22, 2001, 370 SCRA 252; People vs. Tan, G.R. No. 133001, December 4, 2000, 348 SCRA 116.

[21] People vs. Remerata, G.R. No. 147230, April 29, 2003; People vs. Almendras, G.R. No. 145915, April 24, 2003, citing People vs. Chen Tiz Chang, G.R. Nos. 131872-73, February 17, 2000, 325 SCRA 776; People vs. Gonzales, G.R. No. 143805, April 11, 2002; People vs. Mustapa, supra, citing People vs. Salamat, G.R. No. 103295, August 20, 1993, 225 SCRA 499.

[22] People v. Tee, G.R. Nos. 140546-47, January 20, 2003.

[23] People vs. Remerata, supra, citing People vs. Gonzales, supra; People vs. Lacap, supra; People vs. Paredes, G.R. No. 136105, October 23, 2001, 368 SCRA 102; People vs. Sy, supra.

[24] The total weight of marijuana after re-weighing in open court.

[25] People v. Tee, supra.

[26] People v. Canton, supra; People v. Johnson, supra.

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