

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSA ARUTA Y MENGUIN, ACCUSED-APPELLANT.

G.R. No. 120915. April 03, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

With the pervasive proliferation of illegal drugs and its pernicious effects on our society, our law enforcers tend at times to overreach themselves in apprehending drug offenders to the extent of failing to observe well-entrenched constitutional guarantees against illegal searches and arrests. Consequently, drug offenders manage to evade the clutches of the law on mere technicalities.

Accused-appellant Rosa Aruta y Menguin was arrested and charged with violating Section 4, Article II of Republic Act No. 6425 or the Dangerous Drugs Act. The information reads:

“That on or about the fourteenth (14th) day of December, 1988, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there wilfully, unlawfully and knowingly engage in transporting approximately eight (8) kilos and five hundred (500) grams of dried marijuana packed in plastic bag marked ‘Cash Katutak’ placed in a travelling bag, which are prohibited drugs.”

Upon arraignment, she pleaded “not guilty.” After trial on the merits, the Regional Trial Court of Olongapo City convicted and sentenced her to suffer the penalty of life imprisonment and to pay a fine of twenty thousand (P20,000.00) pesos.[1]

The prosecution substantially relied on the testimonies of P/Lt. Ernesto Abello, Officer-in-Charge of the Narcotics Command (NARCOM) of Olongapo City and P/Lt. Jose Domingo. Based on their testimonies, the court a quo found the following:

On December 13, 1988, P/Lt. Abello was tipped off by his informant, known only as Benjie, that a certain “Aling Rosa” would be arriving from Baguio City the following day, December 14, 1988, with a large volume of marijuana. Acting on said tip, P/Lt. Abello assembled a team composed of P/Lt. Jose Domingo, Sgt. Angel Sudiactal, Sgt. Oscar Imperial, Sgt. Danilo Santiago and Sgt. Efren Quirubin.

Said team proceeded to West Bajac-Bajac, Olongapo City at around 4:00 in the afternoon of December 14, 1988 and deployed themselves near the Philippine National Bank (PNB) building along Rizal Avenue and the Caltex gasoline station. Dividing themselves into two groups, one group, made up of P/Lt. Abello, P/Lt. Domingo and the informant posted themselves near the PNB building while the other group waited near the Caltex gasoline station.

While thus positioned, a Victory Liner Bus with body number 474 and the letters BGO printed on its front and back bumpers stopped in front of the PNB building at around 6:30 in the evening of the same day from where two females and a male got off. It was at this stage that the informant pointed out to the team “Aling Rosa” who was then carrying a travelling bag.

Having ascertained that accused-appellant was “Aling Rosa,” the team approached her and introduced themselves as NARCOM agents. When P/Lt. Abello asked “Aling Rosa” about the contents of her bag, the latter handed it to the former.

Upon inspection, the bag was found to contain dried marijuana leaves packed in a plastic bag marked “Cash Katutak.” The team confiscated the bag together with the Victory Liner bus ticket to which Lt. Domingo affixed his signature. Accused-appellant was then brought to the NARCOM office for investigation where a Receipt of Property Seized was prepared for the confiscated marijuana leaves.

Upon examination of the seized marijuana specimen at the PC/INP Crime Laboratory, Camp Olivas, Pampanga, P/Maj. Marlene Salangad, a Forensic Chemist, prepared a Technical Report stating that said specimen yielded positive results for marijuana, a prohibited drug.

After the presentation of the testimonies of the arresting officers and of the above technical report, the prosecution rested its case.

Instead of presenting its evidence, the defense filed a “Demurrer to Evidence” alleging the illegality of the search and seizure of the items thereby violating accused-appellant’s constitutional right against unreasonable search and seizure as well as their inadmissibility in evidence.

The said “Demurrer to Evidence” was, however, denied without the trial court ruling on the alleged illegality of the search and seizure and the inadmissibility in evidence of the items seized to avoid pre-judgment. Instead, the trial court continued to hear the case.

In view of said denial, accused-appellant testified on her behalf. As expected, her version of the incident differed from that of the prosecution. She claimed that immediately prior to her arrest, she had just come from Choice Theater where she watched the movie “Balweg.” While about to cross the road, an old woman asked her help in carrying a shoulder bag. In the middle of the road, Lt. Abello and Lt. Domingo arrested her and asked her to go with them to the NARCOM Office.

During investigation at said office, she disclaimed any knowledge as to the identity of the woman and averred that the old woman was nowhere to be found after she was arrested. Moreover, she added that no search warrant was shown to her by the arresting officers.

After the prosecution made a formal offer of evidence, the defense filed a “Comment and/or Objection to Prosecution’s Formal Offer of Evidence” contesting the admissibility of the items seized as they were allegedly a product of an unreasonable search and seizure.

Not convinced with her version of the incident, the Regional Trial Court of Olongapo City convicted accused-appellant of transporting eight (8) kilos and five hundred (500) grams of marijuana from Baguio City to Olongapo City in violation of Section 4, Article 11 of R.A. No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972 and sentenced her to life imprisonment and to pay a fine of twenty thousand (P20,000.00) pesos without subsidiary imprisonment in case of insolvency.[2]

In this appeal, accused-appellant submits the following:

1. The trial court erred in holding that the NARCOM agents could not apply for a warrant for the search of a bus or a passenger who boarded a bus because one of the requirements for applying a search warrant is that the place to be searched must be specifically designated and described.
2. The trial court erred in holding or assuming that if a search warrant was applied for by the NARCOM agents, still no court would issue a search warrant for the reason that the same would be considered a general search warrant which may be quashed.

3. The trial court erred in not finding that the warrantless search resulting to the arrest of accused-appellant violated the latter's constitutional rights.
4. The trial court erred in not holding that although the defense of denial is weak yet the evidence of the prosecution is even weaker.

These submissions are impressed with merit.

In *People v. Ramos*,^[3] this Court held that a search may be conducted by law enforcers only on the strength of a search warrant validly issued by a judge as provided in Article III, Section 2 of the Constitution which provides:

“Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”

This constitutional guarantee is not a blanket prohibition against all searches and seizures as it operates only against “unreasonable” searches and seizures. The plain import of the language of the Constitution, which in one sentence prohibits unreasonable searches and seizures and at the same time prescribes the requisites for a valid warrant, is that searches and seizures are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Thus, the fundamental protection accorded by the search and seizure clause is that between person and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants or warrants of arrest.^[4]

Further, articles which are the product of unreasonable searches and seizures are inadmissible as evidence pursuant to the doctrine pronounced in *Stonehill v. Diokno*.^[5] This exclusionary rule was later enshrined in Article III, Section 3(2) of the Constitution, thus:

“Section 3(2). Any evidence obtained in violation of this or the preceding section shall be inadmissible in evidence for any purpose in any proceeding.”

From the foregoing, it can be said that the State cannot simply intrude indiscriminately into the houses, papers, effects, and most importantly, on the person of an individual. The constitutional provision guaranteed an impenetrable shield against unreasonable searches and seizures. As such, it protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint.^[6]

Therewithal, the right of a person to be secured against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. A statute, rule or situation which allows exceptions to the requirement of a warrant of arrest or search warrant must perforce be strictly construed and their application limited only to cases specifically provided or allowed by law. To do otherwise is an infringement upon personal liberty and would set back a right so basic and deserving of full protection and vindication yet often violated.^[7]

The following cases are specifically provided or allowed by law:

1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court^[8] and by prevailing jurisprudence;
2. Seizure of evidence in “plain view,” the elements of which are:

(a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

(b) the evidence was inadvertently discovered by the police who had the right to be where they are;

(c) the evidence must be immediately apparent, and

(d) “plain view” justified mere seizure of evidence without further search;

3. Search of a moving vehicle. Highly regulated by the government, the vehicle’s inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;

4. Consented warrantless search;

5. Customs search;[9]

6. Stop and Frisk;[10] and

7. Exigent and Emergency Circumstances.[11]

The above exceptions, however, should not become unbridled licenses for law enforcement officers to trample upon the constitutionally guaranteed and more fundamental right of persons against unreasonable search and seizures. The essential requisite of probable cause must still be satisfied before a warrantless search and seizure can be lawfully conducted.

Although probable cause eludes exact and concrete definition, it generally signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged. It likewise refers to the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.[12]

It ought to be emphasized that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our rules of evidence of which his knowledge is technically nil. Rather, he relies on the calculus of common sense which all reasonable men have in abundance. The same quantum of evidence is required in determining probable cause relative to search. Before a search warrant can be issued, it must be shown by substantial evidence that the items sought are in fact seizable by virtue of being connected with criminal activity, and that the items will be found in the place to be searched.[13]

In searches and seizures effected without a warrant, it is necessary for probable cause to be present. Absent any probable cause, the article(s) seized could not be admitted and used as evidence against the person arrested. Probable cause, in these cases, must only be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed.

In our jurisprudence, there are instances where information has become a sufficient probable cause to effect a warrantless search and seizure.

In *People v. Tangliben*,^[14] acting on information supplied by informers, police officers conducted a surveillance at the Victory Liner Terminal compound in San Fernando, Pampanga against persons who may commit misdemeanors and also on those who may be engaging in the traffic of dangerous drugs. At 9:30 in the evening, the policemen noticed a person carrying a red travelling bag who was acting suspiciously. They confronted him and requested him to open his bag but he refused. He acceded later on when the policemen identified themselves. Inside the bag were marijuana leaves wrapped in a plastic wrapper. The police officers only knew of the activities of Tangliben on the night of his arrest.

In instant case, the apprehending officers already had prior knowledge from their informant regarding Aruta's alleged activities. In Tangliben policemen were confronted with an on-the-spot tip. Moreover, the policemen knew that the Victory Liner compound is being used by drug traffickers as their "business address". More significantly, Tangliben was acting suspiciously. His actuations and surrounding circumstances led the policemen to reasonably suspect that Tangliben is committing a crime. In instant case, there is no single indication that Aruta was acting suspiciously.

In *People v. Malmstedt*,^[15] the Narcom agents received reports that vehicles coming from Sagada were transporting marijuana. They likewise received information that a Caucasian coming from Sagada had prohibited drugs on his person. There was no reasonable time to obtain a search warrant, especially since the identity of the suspect could not be readily ascertained. His actuations also aroused the suspicion of the officers conducting the operation. The Court held that in light of such circumstances, to deprive the agents of the ability and facility to act promptly, including a search without a warrant, would be to sanction impotence and ineffectiveness in law enforcement, to the detriment of society.

Note, however, the glaring differences of *Malmstedt* to the instant case. In present case, the police officers had reasonable time within which to secure a search warrant. Second, Aruta's identity was priorly ascertained. Third, Aruta was not acting suspiciously. Fourth, *Malmstedt* was searched aboard a moving vehicle, a legally accepted exception to the warrant requirement. Aruta, on the other hand, was searched while about to cross a street.

In *People v. Bagista*,^[16] the NARCOM officers had probable cause to stop and search all vehicles coming from the north to Acop, Tublay, Benguet in view of the confidential information they received from their regular informant that a woman having the same appearance as that of accused-appellant would be bringing marijuana from up north. They likewise had probable cause to search accused-appellant's belongings since she fitted the description given by the NARCOM informant. Since there was a valid warrantless search by the NARCOM agents, any evidence obtained in the course of said search is admissible against accused-appellant. Again, this case differs from Aruta as this involves a search of a moving vehicle plus the fact that the police officers erected a checkpoint. Both are exceptions to the requirements of a search warrant.

In *Manalili v. Court of Appeals and People*,^[17] the policemen conducted a surveillance in an area of the Kalookan Cemetery based on information that drug addicts were roaming therein. Upon reaching the place, they chanced upon a man in front of the cemetery who appeared to be "high" on drugs. He was observed to have reddish eyes and to be walking in a swaying manner. Moreover, he appeared to be trying to avoid the policemen. When approached and asked what he was holding in his hands, he tried to resist. When he showed his wallet, it contained marijuana. The Court held that the policemen had sufficient reason to accost accused-appellant to determine if he was actually "high" on drugs due to his suspicious actuations, coupled with the fact that based on information, this area was a haven for drug addicts.

In all the abovementioned cases, there was information received which became the bases for conducting the warrantless search. Furthermore, additional factors and circumstances were present which, when taken together with the information, constituted probable causes which justified the warrantless searches and seizures in each of the cases.

In the instant case, the determination of the absence or existence of probable cause necessitates a reexamination of the facts. The following have been established: (1) In the morning of December 13, 1988, the law enforcement officers received information from an informant named "Benjie" that a certain "Aling Rosa" would be leaving for Baguio City on December 14, 1988 and would be back in the afternoon of the same day carrying with her a large volume of marijuana; (2) At 6:30 in the evening of December 14, 1988, accused-appellant alighted from a Victory Liner Bus carrying a travelling bag even as the informant pointed her out to the law enforcement officers; (3) The

law enforcement officers approached her and introduced themselves as NARCOM agents; (4) When asked by Lt. Abello about the contents of her travelling bag, she gave the same to him; (5) When they opened the same, they found dried marijuana leaves; (6) Accused-appellant was then brought to the NARCOM office for investigation.

This case is similar to *People v. Aminnudin* where the police received information two days before the arrival of Aminnudin that the latter would be arriving from Iloilo on board the M/V Wilcon 9. His name was known, the vehicle was identified and the date of arrival was certain. From the information they had received, the police could have persuaded a judge that there was probable cause, indeed, to justify the issuance of a warrant. Instead of securing a warrant first, they proceeded to apprehend Aminnudin. When the case was brought before this Court, the arrest was held to be illegal; hence any item seized from Aminnudin could not be used against him.

Another recent case is *People v. Encinada* where the police likewise received confidential information the day before at 4:00 in the afternoon from their informant that Encinada would be bringing in marijuana from Cebu City on board M/V Sweet Pearl at 7:00 in the morning of the following day. This intelligence information regarding the culprit's identity, the particular crime he allegedly committed and his exact whereabouts could have been a basis of probable cause for the lawmen to secure a warrant. This Court held that in accordance with Administrative Circular No. 13 and Circular No. 19, series of 1987, the lawmen could have applied for a warrant even after court hours. The failure or neglect to secure one cannot serve as an excuse for violating Encinada's constitutional right.

In the instant case, the NARCOM agents were admittedly not armed with a warrant of arrest. To legitimize the warrantless search and seizure of accused-appellant's bag, accused-appellant must have been validly arrested under Section 5 of Rule 113 which provides inter alia:

“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;

xxx xxx xxx.”

Accused-appellant Aruta cannot be said to be committing a crime. Neither was she about to commit one nor had she just committed a crime. Accused-appellant was merely crossing the street and was not acting in any manner that would engender a reasonable ground for the NARCOM agents to suspect and conclude that she was committing a crime. It was only when the informant pointed to accused-appellant and identified her to the agents as the carrier of the marijuana that she was singled out as the suspect. The NARCOM agents would not have apprehended accused-appellant were it not for the furtive finger of the informant because, as clearly illustrated by the evidence on record, there was no reason whatsoever for them to suspect that accused-appellant was committing a crime, except for the pointing finger of the informant. This the Court could neither sanction nor tolerate as it is a clear violation of the constitutional guarantee against unreasonable search and seizure. Neither was there any semblance of any compliance with the rigid requirements of probable cause and warrantless arrests.

Consequently, there was no legal basis for the NARCOM agents to effect a warrantless search of accused-appellant's bag, there being no probable cause and the accused-appellant not having been lawfully arrested. Stated otherwise, the arrest being incipiently illegal, it logically follows that the subsequent search was similarly illegal, it being not incidental to a lawful arrest. The constitutional guarantee against unreasonable search and seizure must perforce operate in favor of accused-appellant. As such, the articles seized could not be used as evidence against accused-appellant for these are “fruits of a poisoned tree” and, therefore, must be rejected, pursuant to Article III, Sec. 3(2) of the Constitution.

Emphasis is to be laid on the fact that the law requires that the search be incidental to a lawful arrest, in order that the search itself may likewise be considered legal. Therefore, it is beyond cavil that a lawful arrest must precede the search of a person and his belongings. Where a search is first undertaken, and an arrest effected based on evidence produced by the search, both such search and arrest would be unlawful, for being contrary to law.[18]

As previously discussed, the case in point is *People v. Aminnudin*[19] where, this Court observed that:

“x x x accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension. It was the furtive finger that triggered his arrest. The identification by the informer was the probable cause as determined by the officers (and not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him.”

In the absence of probable cause to effect a valid and legal warrantless arrest, the search and seizure of accused-appellant's bag would also not be justified as seizure of evidence in “plain view” under the second exception. The marijuana was obviously not immediately apparent as shown by the fact that the NARCOM agents still had to request accused-appellant to open the bag to ascertain its contents.

Neither would the search and seizure of accused-appellant's bag be justified as a search of a moving vehicle. There was no moving vehicle to speak of in the instant case as accused-appellant was apprehended several minutes after alighting from the Victory Liner bus. In fact, she was accosted in the middle of the street and not while inside the vehicle.

People v. Solayao,[20] applied the stop and frisk principle which has been adopted in *Posadas v. Court of Appeals*. [21] In said case, Solayao attempted to flee when he and his companions were accosted by government agents. In the instant case, there was no observable manifestation that could have aroused the suspicion of the NARCOM agents as to cause them to “stop and frisk” accused-appellant. To reiterate, accused-appellant was merely crossing the street when apprehended. Unlike in the abovementioned cases, accused-appellant never attempted to flee from the NARCOM agents when the latter identified themselves as such. Clearly, this is another indication of the paucity of probable cause that would sufficiently provoke a suspicion that accused-appellant was committing a crime.

The warrantless search and seizure could not likewise be categorized under exigent and emergency circumstances, as applied in *People v. De Gracia*. [22] In said case, there were intelligence reports that the building was being used as headquarters by the RAM during a coup d'état. A surveillance team was fired at by a group of armed men coming out of the building and the occupants of said building refused to open the door despite repeated requests. There were large quantities of explosives and ammunitions inside the building. Nearby courts were closed and general chaos and disorder prevailed. The existing circumstances sufficiently showed that a crime was being committed. In short, there was probable cause to effect a warrantless search of the building. The same could not be said in the instant case.

The only other exception that could possibly legitimize the warrantless search and seizure would be consent given by the accused-appellant to the warrantless search as to amount to a waiver of her constitutional right. The Solicitor General argues that accused-appellant voluntarily submitted herself to search and inspection citing *People v. Malasugui*[23] where this Court ruled:

“When one voluntarily submits to a search or consents to have it made on his person or premises, he is precluded from complaining later thereof. (Cooley, Constitutional Limitations, 8th ed., [V]ol. I, p. 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.”

In support of said argument, the Solicitor General cited the testimony of Lt. Abello, thus:

“Q When this informant by the name of alias Benjie pointed to Aling Rosa, what happened after that?

A We followed her and introduced ourselves as NARCOM agents and confronted her with our informant and asked her what she was carrying and if we can see the bag she was carrying.

Q What was her reaction?

A She gave her bag to me.

Q So what happened after she gave the bag to you?

A I opened it and found out plastic bags of marijuana inside.”[24]

This Court cannot agree with the Solicitor General’s contention for the *Malasugui* case is inapplicable to the instant case. In said case, there was probable cause for the warrantless arrest thereby making the warrantless search effected immediately thereafter equally lawful.[25] On the contrary, the most essential element of probable cause, as expounded above in detail, is wanting in the instant case making the warrantless arrest unjustified and illegal. Accordingly, the search which accompanied the warrantless arrest was likewise unjustified and illegal. Thus, all the articles seized from the accused-appellant could not be used as evidence against her.

Aside from the inapplicability of the abovesited case, the act of herein accused-appellant in handing over her bag to the NARCOM agents could not be construed as voluntary submission or an implied acquiescence to the unreasonable search. The instant case is similar to *People v. Encinada*,[26] where this Court held:

“[T]he Republic’s counsel avers that appellant voluntarily handed the chairs containing the package of marijuana to the arresting officer and thus effectively waived his right against the warrantless search. This he gleaned from *Bolonia*’s testimony.

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

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

Q: Are you referring to the two plastic chairs?

A: Yes, sir.

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

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

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

Thus, accused-appellant's lack of objection to the search is not tantamount to a waiver of her constitutional rights or a voluntary submission to the warrantless search. As this Court held in *People v. Barros*:^[27]

“x x x [T]he accused is not to be presumed to have waived the unlawful search conducted on the occasion of his warrantless arrest “simply because he failed to object”-

“x x x. To constitute a waiver, it must appear first that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such right; and lastly, that said person had an actual intention to relinquish the right (*Pasion Vda. de Garcia v. Locsin*, 65 Phil. 698). The fact that the accused failed to object to the entry into his house does not amount to a permission to make a search therein (*Magoncia v. Palacio*, 80 Phil. 770). As pointed out by Justice Laurel in the case of *Pasion Vda. de Garcia v. Locsin* (supra):

‘xxx xxx xxx

x x x As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.’ (Citation omitted).

We apply the rule that: ‘courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights.’”^[28] (Emphasis supplied)

To repeat, to constitute a waiver, there should be an actual intention to relinquish the right. As clearly illustrated in *People v. Omaweng*,^[29] where prosecution witness Joseph Layong testified thus:

“PROSECUTOR AYOCHOK:

Q - When you and David Fomocod saw the travelling bag, what did you do?

A - When we saw that travelling bag, we asked the driver if we could see the contents.

Q - And what did or what was the reply of the driver, if there was any?

A - He said ‘you can see the contents but those are only clothings (sic).’

Q - When he said that, what did you do?

A - We asked him if we could open and see it.

Q - When you said that, what did he tell you?

A - He said ‘you can see it.’

Q - And when he said ‘you can see and open it,’ what did you do?

A - When I went inside and opened the bag, I saw that it was not clothings (sic) that was contained in the bag.

Q - And when you saw that it was not clothings (sic), what did you do?

A - When I saw that the contents were not clothes, I took some of the contents and showed it to my companion Fomocod and when Fomocod smelled it, he said it was marijuana.”(Emphasis supplied)

In the above-mentioned case, accused was not subjected to any search which may be stigmatized as a violation of his Constitutional right against unreasonable searches and seizures. If one had been made, this Court would be the first to condemn it “as the protection of the citizen and the maintenance of his constitutional rights is one of the

highest duties and privileges of the Court.” He willingly gave prior consent to the search and voluntarily agreed to have it conducted on his vehicle and traveling bag, which is not the case with Aruta.

In an attempt to further justify the warrantless search, the Solicitor General next argues that the police officers would have encountered difficulty in securing a search warrant as it could be secured only if accused-appellant’s name was known, the vehicle identified and the date of its arrival certain, as in the Aminnudin case where the arresting officers had forty-eight hours within which to act.

This argument is untenable.

Article IV, Section 3 of the Constitution provides:

“x x x [N]o search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.” (Italics supplied)

Search warrants to be valid must particularly describe the place to be searched and the persons or things to be seized. The purpose of this rule is to limit the things to be seized to those and only those, particularly described in the warrant so as to leave the officers of the law with no discretion regarding what articles they shall seize to the end that unreasonable searches and seizures may not be made.[30]

Had the NARCOM agents only applied for a search warrant, they could have secured one without too much difficulty, contrary to the assertions of the Solicitor General. The person intended to be searched has been particularized and the thing to be seized specified. The time was also sufficiently ascertained to be in the afternoon of December 14, 1988. “Aling Rosa” turned out to be accused-appellant and the thing to be seized was marijuana. The vehicle was identified to be a Victory Liner bus. In fact, the NARCOM agents purposely positioned themselves near the spot where Victory Liner buses normally unload their passengers. Assuming that the NARCOM agents failed to particularize the vehicle, this would not in any way hinder them from securing a search warrant. The above particulars would have already sufficed. In any case, this Court has held that the police should particularly describe the place to be searched and the person or things to be seized, wherever and whenever it is feasible.[31] (Emphasis supplied)

While it may be argued that by entering a plea during arraignment and by actively participating in the trial, accused-appellant may be deemed to have waived objections to the illegality of the warrantless search and to the inadmissibility of the evidence obtained thereby, the same may not apply in the instant case for the following reasons:

1. The waiver would only apply to objections pertaining to the illegality of the arrest as her plea of “not guilty” and participation in the trial are indications of her voluntary submission to the court’s jurisdiction.[32] The plea and active participation in the trial would not cure the illegality of the search and transform the inadmissible evidence into objects of proof. The waiver simply does not extend this far.
2. Granting that evidence obtained through a warrantless search becomes admissible upon failure to object thereto during the trial of the case, records show that accused-appellant filed a Demurrer to Evidence and objected and opposed the prosecution’s Formal Offer of Evidence.

It is apropos to quote the case of *People v. Barros*,[33] which stated:

“It might be supposed that the non-admissibility of evidence secured through an invalid warrantless arrest or a warrantless search and seizure may be waived by an accused person. The a priori argument is that the invalidity of an unjustified warrantless arrest, or an arrest effected with a defective warrant of arrest may be

waived by applying for and posting of bail for provisional liberty, so as to estop an accused from questioning the legality or constitutionality of his detention or the failure to accord him a preliminary investigation. We do not believe, however, that waiver of the latter necessarily constitutes, or carries with it, waiver of the former--an argument that the Solicitor General appears to be making impliedly. Waiver of the non-admissibility of the "fruits" of an invalid warrantless arrest and of a warrantless search and seizure is not casually to be presumed, if the constitutional right against unlawful searches and seizures is to retain its vitality for the protection of our people. In the case at bar, defense counsel had expressly objected on constitutional grounds to the admission of the carton box and the four (4) kilos of marijuana when these were formally offered in evidence by the prosecution. We consider that appellant's objection to the admission of such evidence was made clearly and seasonably and that, under the circumstances, no intent to waive his rights under the premises can be reasonably inferred from his conduct before or during the trial."(Emphasis supplied)

In fine, there was really no excuse for the NARCOM agents not to procure a search warrant considering that they had more than twenty-four hours to do so. Obviously, this is again an instance of seizure of the "fruit of the poisonous tree," hence illegal and inadmissible subsequently in evidence.

The exclusion of such evidence is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizure. The non-exclusionary rule is contrary to the letter and spirit of the prohibition against unreasonable searches and seizures.[34]

While conceding that the officer making the unlawful search and seizure may be held criminally and civilly liable, the Stonehill case observed that most jurisdictions have realized that the exclusionary rule is "the only practical means of enforcing the constitutional injunction" against abuse. This approach is based on the justification made by Judge Learned Hand that "only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will the wrong be repressed." [35]

Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary to the public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[36]

Those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price to pay for the loss of liberty. As Justice Holmes declared: "I think it is less evil that some criminals escape than that the government should play an ignoble part." It is simply not allowed in free society to violate a law to enforce another, especially if the law violated is the Constitution itself.[37]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 73, Olongapo City, is hereby REVERSED and SET ASIDE. For lack of evidence to establish her guilt beyond reasonable doubt, accused-appellant ROSA ARUTA Y MENGUIN is hereby ACQUITTED and ordered RELEASED from confinement unless she is being held for some other legal grounds. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.

[1] Decision penned by Judge Alicia L. Santos.

[2] Decision, Rollo, p. 49.

[3] 222 SCRA 557 [1993].

[4] Bernas, The Constitution of the Republic of the Philippines, A Commentary, 1987, First ed., pp. 85-86.

[5] 20 SCRA 383 [1967].

[6] Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., pp. 147-148.

[7] People v. Argawanon, 215 SCRA 652 [1992].

[8] “Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.”

[9] Padilla v. CA and People, G.R. No. 121917, March 12, 1997.

[10] People v. Solayao, 262 SCRA 255 [1996].

[11] People v. De Gracia, 233 SCRA 716 [1994].

[12] People v. Encinada, G.R. No. 116720, October 2, 1997.

[13] Webb v. De Leon, 247 SCRA 652 [1995].

[14] 184 SCRA 220 [1990].

[15] 198 SCRA 401 [1991].

[16] 214 SCRA 63 [1992].

[17] G.R. No. 113447, October 9, 1997.

[18] People v. Cuizon, 256 SCRA 325 [1996].

[19] 163 SCRA 402 [1988].

[20] 262 SCRA 255 [1996].

[21] 188 SCRA 288 [1990].

[22] 233 SCRA 716 [1994].

[23] 63 Phil. 221 [1936].

[24] TSN, June 14, 1989, p. 6.

[25] Supra.

[26] G.R. No. 116720, October 2, 1997.

[27] 231 SCRA 557 [1994].

[28] Supra, citing Johnson v. Zerbst, 304 U.S. 458.

[29] 213 SCRA 462 [1992].

[30] Herrera, Oscar, A Handbook on Arrest, Search and Seizure and Custodial Investigation, 1994 ed., p. 60.

[31] People v. Veloso, 48 Phil. 169 [1925].

[32] People v. De Guzman, 224 SCRA 93 [1993], People v. De Guia, 227 SCRA 614 [1993], People v. De Guzman, 231 SCRA 737 [1994], People v. Correa, G.R. No. 119246, January 30, 1998.

[33] Supra.

[34] Stonehill v. Diokno, 20 SCRA 383 [1967].

[35] Cruz, I. A., Constitutional Law, 1991 ed., p. 148.

[36] Pamaran, The 1985 Rules on Criminal Procedure, Annotated, 1995 ed., p. 526 citing Rodriguez v. Villamiel, 65 Phil. 230 and Alvarez v. CFI of Tayabas, 64 Phil. 33.

[37] People v. Aminnudin, supra.

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