PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERLINDA GONZALES Y EVANGELISTA, ACCUSED-APPELLANT.

G.R. No. 121877. September 12, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated March 8, 1995, of the Regional Trial Court of Iloilo City, Branch 39, in Criminal Case No. 42441, which convicted appellant Erlinda Gonzales y Evangelista of violating Section 4, Article II[2] of the Dangerous Drugs Act (R.A. No. 6425) and sentenced her to life imprisonment.

In an information dated December 23, 1993, the Provincial Prosecutor of Iloilo charged appellant with illegal transport of marijuana leaves and fruiting tops, allegedly committed as follows:

> That on or about August 30, 1993, in the Municipality of Dueñas, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, without any lawful purpose or justifiable motive, did then and there willfully, unlawfully and feloniously transport, deliver and/or distribute ten (10) kilos of marijuana leaves and fruiting tops (compressed in bricks) without being authorized by law to transport, deliver and/or distribute the same.
>
> CONTRARY TO LAW.[3]

On January 31, 1994, appellant was arraigned and with assistance of counsel pleaded not guilty to the charge. Trial on the merits ensued.

The prosecution presented two witnesses, namely, PO1 Reggie Pedroso and Angela Baldevieso, forensic chemist of the PNP. In addition, the prosecution presented the following object and documentary evidence: (1) ten bundles of dried marijuana leaves or fruiting tops, weighing 9.560 kilograms;[4] (2) Physical Sciences Report No. D-087-93 issued by Angela Baldevieso, PNP forensic chemist;[5] and (3) black traveling bag.[6] On the other hand, the defense presented appellant herself and Isaac Lamera, the trisikad driver.

PO1 Reggie Pedroso narrated that in the evening of August 29, 1993, the Chief of Police of Dueñas, Iloilo and other policemen on duty including himself, received information that a woman with long hair, wearing maong pants and jacket, and Ray Ban sunglasses would be transporting marijuana along the national highway. According to the tipped information, the woman would bring a black traveling bag and would ride a trisikad. Based on this information, the Chief of Police, that same evening, instructed his men to conduct mobile patrol at 5:00 A.M. in the morning of August 30, 1993, in the poblacion of Dueñas and along the national highway. Three teams were formed. One was assigned to cover the public market. Another was dispatched to Barangay Tinocuan. The third team, composed of PO1 Pedroso, PO3 Queque, and SPO2 Baculina, was assigned to the national highway in Barangay Poblacion A.

According to PO1 Pedroso, his team of policemen started patrolling at around 5:00 A.M. of August 30, 1993. They made the rounds on board a mobile car. At about 6:45 A.M., they passed by a woman who fitted the

informer's description. She was standing along the national highway holding a black traveling bag in a trisikad. The law enforcers were one meter away from her when they spotted her. They alighted from their car and asked her who owns the traveling bag. The woman denied ownership of the bag. When PO1 Pedroso inquired from the trisikad driver, later identified as Isaac Lamera, about the ownership of the bag, the latter pointed to the woman as the owner of the said bag. The policemen then requested the woman to open the bag but she refused. When asked regarding the contents of the bag, Lamera answered he does not know. Believing that the bag contained marijuana per tipped information, the policemen brought appellant, Lamera and the bag to the police station. There, the Chief of Police forcibly opened the locked black bag as the woman alleged that the key to the lock was with her three companions who were at the public market. Inside the bag, they found wrapped in newspaper ten (10) bricks of dried marijuana leaves. Later on, the woman was asked about her personal circumstances. She identified herself as Erlinda Gonzales, herein appellant. Afterwards, she was detained.[7]

On August 31, 1993, the bricks were brought to the Police Crime Laboratory in Camp Delgado, Iloilo City for chemistry analysis. Angela Baldevieso, a forensic chemist of the PNP, who later testified for the prosecution, confirmed in her physical evidence report (Exh. D) that the bricks of dried leaves (Exh. B to C-7, inclusive) were marijuana, weighing 9.560 kilograms.[8] Subsequently, a complaint for violation of Section 4 of R.A. 6425 was filed against appellant.

Appellant denied her involvement in the drug transport. She claimed that at about 6:30 A.M. on August 30, 1993, she was standing along the national highway, having just come from a friend's house in Tacas, Dueñas. Just then, three policemen stepped out of a patrol car and asked her if she had a key to a black traveling bag they spotted in a trisikad which is about three arms length away from her. When she said "No", PO1 Pedroso invited her to the municipal hall where she was questioned. She said she never boarded the trisikad. Although she confirmed that there was a black bag in the trisikad, she denied ownership of said bag. She stated that the bag was closed and padlocked. She insisted that the black bag presented in court (Exh. E) was not the same black traveling bag taken from the trisikad.[9]

Lamera, the trisikad driver, testified that at about 6:30 A.M. on August 30, 1993, he was driving his vehicle with a male passenger when the latter suddenly told him to stop, saying he had forgotten something. His passenger told him to wait for him at the national highway, leaving a bag on top of his trisikad. When he arrived at the highway, he saw appellant and parked some three arms length away from her. He then left his trisikad to answer a call of nature. As he did, a police car stopped and three PNP members got off. They accosted him and asked who owned the bag. He replied that it belonged to his male passenger. When asked if appellant owned the bag, he answered "No." Lamera averred that appellant was not holding the handle of the bag when the policemen arrived. Nor was she wearing Ray Ban sunglasses. He claimed that he only learned about the contents of the bag when they were inside the police station. When a black traveling bag was shown him during the trial, Lamera stated that it was not the black traveling bag that was left in his trisikad. According to him, the bag presented in court was taller than the bag his male passenger left in his trisikad. He said the bag seized by the police was made of sackcloth, it had a zipper and wheels at the bottom.[10]

The court found for the prosecution, disbelieved the defense, and convicted appellant, thus:

> WHEREFORE, premises considered, the accused Erlinda Gonzales y Evangelista alias Linda Gonzales, is hereby found guilty beyond reasonable doubt of Violation of Sec. 4, Art. II of R.A. 6425 as amended, and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 and the costs.
>
> The nine kilos and 560 grams of compressed bricks of dried marijuana leaves and fruiting tops are ordered confiscated and forfeited in favor of the government and must be turned over to the Board through the National Bureau of Investigation, for proper disposition, pursuant to Sec. 20 of R.A. 6425, as amended.

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> The accused, who is detained, is credited with the number of days she spent under detention if she is qualified, otherwise, she shall be credited only with four-fifths (4/5) of her preventive imprisonment.
>
> SO ORDERED.[11]

Hence, this appeal, imputing the following errors to the trial court:

> I
>
> THAT THE HONORABLE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT WAS CAUGHT IN THE ACT OF TRANSPORTING NINE (9) KILOS AND 560 GRAMS OF DRIED MARIJUANA LEAVES AND FRUITING TOPS (COMPRESSED IN BRICKS) WHICH WERE PLACED IN A BLACK TRAVELLING BAG.
>
> II
>
> THE HONORABLE COURT ERRED IN NOT HOLDING THAT THE ARREST OF THE ACCUSED-APPELLANT WAS ILLEGAL AND THEREFORE THE MARIJUANA BRICKS ALLEGEDLY TAKEN FROM THE TRISIKAD IS INADMISSIBLE IN EVIDENCE AS AGAINST HER.
>
> III
>
> THE HONORABLE LOWER COURT ERRED IN HOLDING THAT THE POLICE OFFICER WHEN THEY ARRESTED THE ACCUSED-APPELLANT WERE REGULARLY PERFORMING THEIR DUTIES.
>
> IV
>
> THE HONORABLE LOWER COURT ERRED IN NOT RECEIVING THE TESTIMONY OF THE ACCUSED-APPELLANT AND HER WITNESSES.
>
> V
>
> THE HONORABLE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED.[12]

In sum, the pertinent issues for our resolution are: (1) Were the testimonies of prosecution witnesses credible and sufficient to prove appellant's guilt beyond reasonable doubt? (2) Was appellant's warrantless arrest legal, thereby making the bricks of marijuana leaves allegedly seized from her admissible in evidence?

On the first issue, appellant states that she was not transporting marijuana in a black traveling bag aboard the trisikad. She denies being a passenger of the trisikad, or owning the black traveling bag containing marijuana. She claims she was not holding the bag's handle when the police accosted her. She asserts that it is unusual for her to hold on to something containing contraband in the presence of police officers. She argues that the prosecution simply alleged that she was holding the handle of the bag in order to justify an illegal arrest and to escape a charge of arbitrary detention. Next, appellant assails the credibility of PO1 Pedroso. She argues that the trial court erred in giving credence to his testimony on mere presumption that PO1 Pedroso had regularly performed his duty. Finally, appellant faults the lower court for not believing the testimony of Lamera, the trisikad driver. She insists that Lamera had no reason to lie as they do not know each other.

At the outset we note that, contrary to appellant's fourth assignment of error, she and her witness, Lamera, were heard and their testimonies recorded by the trial court. Unfortunately for appellant, their version was not believed by said court.

In essence, appellant now challenges the trial court's assessment of the testimonies of prosecution and defense witnesses. When credibility is in issue, this Court generally defers to the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their manner

and deportment during the trial.[13] Its findings on the credibility of witnesses will be sustained by appellate courts unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[14] In this case, it appears plain to us that appellant failed to point to any fact or circumstance overlooked or ignored by the trial court to cast doubt on the credibility of the prosecution witnesses sufficiently.

Appellant's defense is bare denial. As held time and again, mere denial unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserves no weight in law and cannot be given greater evidentiary value over convincing, straightforward and probable testimonies on affirmative matters.[15] Mere denial and allegations of frame-up have been invariably viewed by the courts with disfavor for these defenses are easily concocted. They are common and standard defenses in prosecutions involving violation of the dangerous drugs law.[16]

Moreover, it appears far-fetched that the police and the prosecution would claim that appellant was holding the handle of the bag merely to justify her arrest and avoid a charge of arbitrary detention. PO1 Pedroso categorically declared that appellant was holding the black traveling bag in the trisikad. He was just one meter from appellant when he alighted from the patrol car and accosted the appellant who had in her possession, according to the eyewitness, the black traveling bag.

As pointed out by the Solicitor General, the positive testimony of the apprehending policeman outweighs appellant's negative testimony. Additionally, appellant presented no evidence to rebut the presumption that PO1 Pedroso had performed his task in a regular manner. We are thus constrained to agree with the trial court's finding that the police testimony here is worthy of credence.

In contrast, it plainly appears that defense witness Lamera flip-flopped in his testimony. On record, Lamera has two sworn statements. In the first affidavit dated August 30, 1993 executed before PO3 Gildo Pelopero, Lamera claimed that he was hired by four persons to deliver a black bag at the national highway, one of whom rode his trisikad while the other three followed. Upon reaching the national highway, policemen intercepted them and brought them to the municipal building.[17]

In his affidavit dated September 1, 1993, executed before Judge Inocentes de Ocampo, Lamera stated that on the day of the incident, four persons flagged down his trisikad. However, only one of them, a woman, who turned out to be appellant, got in his trisikad and rode to the national highway where she was apprehended by the PNP.[18]

But during the trial Lamera testified differently, varying his testimony from his earlier sworn statements. This time, he declared that the black bag in question belongs to a male passenger. His testimony on the witness stand on September 27, 1994, reads:

> Q-
>
> About what time was that?
>
> A-
>
> 6:30.
>
> Q-
>
> And you said that man whom you claim, you did not know loaded a black travelling bag on your trisikad?
>
> A-
>
> Yes, sir.

x x x

Q-

Now, when the man that man whom you said you did not know hailed you and loaded to the trisikad a black bag, did you not ask the man what is inside the black travelling bag?

A-

No, sir.

Q-

Neither that man tell you what is inside or what is the contents of that black travelling bag?

A-

No, sir.

Q-

What was when that man put the travelling bag on your trisikad did not that man say anything to you?

A-

He asked me if I am going to the highway and I answered yes.

Q-

And when you said yes, what else did that man say if he said anything else?

A-

He said wait a minute I will alight here in the intersection because I forgot something.

x x x

Q-

Now, when he said or after he said wait a minute I will alight here, what did the man do?

A-

He went back and then he told me to go first to the highway and wait for him.

Q-

Went back to where?

A-

From the place where he rode.

x x x

Q-

Did that man tell you a particular or given place to the highway where you will wait for him?

A-

Yes, sir.

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Q-

The man told you that you have to bring that travelling bag at that place where there was a woman waiting?

A-

No, sir.

Q-

Did not the man tell you to bring the travelling bag to that particular part of the highway where the accused was waiting?

A-

No, sir.

Q-

And you brought the black travelling bag at the very place where the accused was there also?

A-

It was only a coincidence that the accused was there.

Q-

And that woman or the accused was at that time wearing a maong jacket?

A-

No, sir. She was wearing a black jacket.

Q-

It is not a dark maong?

A-

No, sir.

Q-

She had a rayban or goggles at that time?

A-

None, sir.

Q-

She had a long hair at the time?

A-

Yes, sir.

Q-

She was also wearing maong pants?

A-

Yes, sir.

Q-

Now, while driving your trisikad with that black travelling bag did you not try to feel it just for curiosity sake to know what is inside?

A-

None, sir.

Q-

Because that man whom you said you did not know return for no reason at all, did you not suspect that the travelling bag is containing a marijuana or any contrabands goods?

A-

None, sir.

Q-

And according to you, it was there at the highway that policemen arrived and confronted the accused about the travelling bag?

A-

Yes, sir.

Q-

You were also confronted by the police officer about the travelling bag?

A-

Yes, sir.

Q-

And the two of you were brought to the municipal hall of Dueñas, Iloilo?

A-

Yes, sir.[19] [Emphasis ours.]

The foregoing testimony of Lamera on the witness stand materially contradicts his sworn statements dated August 30, 1993 and September 1, 1993. A witness who makes two sworn statements which are contradictory to his testimony in court impeaches his own credibility.[20] Hence, in our view, the trial court committed no error in discounting Lamera's statements by giving them no evidentiary value. Moreover, appellant failed to present other and more credible witnesses to support or corroborate her own as well as Lamera's testimony.

On the second issue, appellant contends that her arrest was illegal, hence, the marijuana bricks are inadmissible in evidence. But after a careful consideration of the testimony of witnesses and the arguments adduced by the parties, we find that appellant's contention is bereft of merit.

Basic is the rule that no arrest, search or seizure can be made without a valid warrant issued by a competent judicial authority. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.[21] Any evidence obtained in violation of said right shall

be inadmissible for any purpose in any proceeding.[22]

Nevertheless, the constitutional proscription against warrantless searches and seizures admits of certain legal and judicial exceptions, as follows: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[23]

Moreover, a lawful arrest without a warrant may be made by a peace officer or a private person under the following circumstances:

> a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.[24]

In this case, the trial court found and held that appellant was caught in flagrante carrying marijuana leaves and fruiting tops at the time of her arrest. A crime was actually being committed by the appellant; thus, her arrest and the search of her black traveling bag fall squarely under paragraph (a) of the aforecited provisions of the Rules allowing a warrantless search incident to lawful arrest. On this score, we are in agreement with the trial court. While it is true that the apprehending officers were not armed with a search warrant when the search was conducted over the personal effects of appellant, nevertheless under the circumstances of the case, there was sufficient probable cause for said police officers to believe that appellant was then and there committing a crime.

Probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.[25] The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.[26]

In People vs. Valdez,[27] we had occasion to recall several instances where tipped information, as in this case, has become a sufficient probable cause to effect a warrantless search and seizure. There, a policeman was tipped off by a civilian "asset" that a thin Ilocano person with a green bag was about to transport marijuana from Banaue, Ifugao. Said information was received by the policeman the very same morning he was waiting for a ride in Banaue to report for work in Lagawe, the capital town of Ifugao province. Thus, faced with such on-the-spot information, the law enforcer had to respond quickly to the call of duty. Obviously, there was not enough time to secure a search warrant considering the time involved in the process. In fact, in view of the urgency of the case, the policeman together with the civilian "asset" proceeded immediately to Hingyon, Ifugao, to pursue the drug trafficker. In Hingyon, he flagged down buses bound for Baguio City and Manila, and looked for the person described by the informer. The target of the pursuit was just the "thin Ilocano person with a green bag" and no

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other. And so, when the policeman inspected the bus bound for Manila, he just singled out the passenger with the green bag. Evidently, there was definite information of the identity of the person engaged in transporting prohibited drugs at a particular time and place. The law enforcer already had an inkling of the identity of the person he was looking for. As a matter of fact, no search at all was conducted on the baggage of other passengers.

In the case at bar, the police officers were tipped off only on the evening of August 29, 1993. The contraband was to be transported early in the morning of the following day. Certainly, the law enforcers had no time to secure the needed warrants. The only recourse left to the police was to arrest the courier in flagrante. Note that the law enforcers had a definite target for their arrest, that is, a woman with long hair, wearing maong pants and jacket and Ray Ban sunglasses, carrying a black traveling bag. There was a description about the identity of the person engaged in transporting prohibited drugs at a particular time and place. The law enforcers already had an inkling of the personal circumstances of the person they were looking for. Accordingly, when the police officers saw the woman who fitted the tipped description given earlier and who was later identified as the appellant, standing near a trisikad, along the national highway holding the handle of a black traveling bag on a trisikad, they had probable cause to apprehend appellant. In our view, appellant's arrest was legal and the search of her bag conducted by the police was not illegal. Consequently, the marijuana bricks seized from appellant during the search is admissible in evidence against her since they were taken incidental to a lawful arrest.

A final word on the penalty. With the passage of R.A. No. 7659, the penalty for violation of Section 4 of the Dangerous Drugs Law is reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00 if the marijuana involved weighs 750 grams or more. Here, the marijuana involved weighs more than 9 kilograms. However, R.A. No. 7659 took effect only on December 31, 1993, while the offense herein was committed earlier on August 30, 1993. Thus, the law at the time of the commission of the offense, R.A. 6425, applies. R.A. No. 7659 cannot be made to apply retroactively, for it obviously is not favorable to the accused-appellant.

However, we find that the trial court sentenced appellant to "life imprisonment." This is error, for here the applicable penalty is reclusion perpetua. Life imprisonment and reclusion perpetua are distinct penalties.[28] The penalty of reclusion perpetua entails an imprisonment of at least 30 years, after which the convict becomes eligible for pardon. It carries with it accessory penalties. Life imprisonment does not have a fixed duration and does not carry with it accessory penalties.[29] Under Section 4, Article II of R.A. 6425, the applicable statute, the prescribed penalty for the transport of prohibited drugs is reclusion perpetua to death, not life imprisonment. Absent qualifying circumstances, the penalty imposable in the present case is only reclusion perpetua.

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 39, in Criminal Case No. 42441, finding appellant ERLINDA GONZALES Y EVANGELISTA, guilty beyond reasonable doubt of illegal transport of marijuana is AFFIRMED, with the MODIFICATION that appellant is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the fine of Twenty Thousand Pesos (P20,000.00) and the costs.

SO ORDERED.

Bellosillo, (Chairman), Buena, and De Leon, Jr., JJ., concur.
Mendoza, J., in the result.

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[1] Rollo, pp. 15-33.

[2] SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another,

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distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

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

[3] Rollo, p. 15.

[4] Exhibits B and C, RTC Records, p. 103.

[5] Exhibit D, RTC Records, p. 106.

[6] Exhibit E, RTC Records, p. 104.

[7] TSN, July 11, 1994, pp. 4-18.

[8] TSN, March 29, 1994, pp. 4-7.

[9] TSN, November 22, 1994, pp. 4-11.

[10] TSN, August 23, 1994, pp. 3-23.

[11] Id. at 33.

[12] Id. at 89, 97, 102 and 103.

[13] People v. Andaya 306 SCRA 202, 214 (1999).

[14] People vs. Bragas 315 SCRA 216, 222 (1999).

[15] People vs. De Vera, 275 SCRA 87, 93 (1997).

[16] People v. Sy Bing Yok 309 SCRA 28, 38 (1999).

[17] Records, p. 13.

[18] Id. at 16.

[19] TSN, September 27, 1994, pp. 6-15.

[20] People v. Artiaga, 274 SCRA 685, 691 (1997).

[21] 1987 Constitution, Article III, Section 2.

[22] 1987 Constitution, Article III, Section 3 (2).

[23] People vs. Aruta, 288 SCRA 626, 637-638 (1998).

[24] Section 5, Rule 113, Revised Rules of Criminal Procedure, as amended, December 1, 2000.

[25] People vs. Encinada, 280 SCRA 72, 85-86 (1997).

[26] People vs. Malmstedt, 198 SCRA 401, 408 (1991).

[27] 304 SCRA 140 (1999).

[28] People v. Jimenez, 302 SCRA 607, 621 (1999); People v. Calvo, Jr., 269 SCRA 676, 688 (1997).

[29] Zanoria v. Court of Appeals, 283 SCRA 258, 267 (1997).

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