

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN MONTILLA Y GATDULA, ACCUSED-APPELLANT.*G.R. No. 123872. January 30, 1998*

Ponente: REGALADO, J.

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Accused-Appellant Ruben Montilla y Gatdula, alias "Joy," was charged on August 22, 1994 for violating Section 4, Article II of the Dangerous Drugs Act of 1972, Republic Act No. 6425, as amended by Republic Act No. 7659, before the Regional Trial Court, Branch 90, of Dasmariñas, Cavite in an information which alleges:

That on or about the 20th day of June 1994, at Barangay Salitran, Municipality of Dasmariñas, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, wilfully, unlawfully and feloniously, administer, transport, and deliver twenty-eight (28) kilos of dried marijuana leaves, which are considered prohibited drugs, in violation of the provisions of R.A. 6425 thereby causing damage and prejudice to the public interest.[1]

The consequent arraignment conducted on September 14, 1994 elicited a plea of not guilty from appellant who was assisted therein by his counsel de parte.[2] Trial was held on scheduled dates thereafter, which culminated in a verdict of guilty in a decision of the trial court dated June 8, 1995 and which imposed the extreme penalty of death on appellant. He was further ordered to pay a fine in the amount of P500,000.00 and to pay the costs of the proceedings.[3]

It appears from the evidence of the prosecution that appellant was apprehended at around 4:00 A.M. of June 20, 1994 near a waiting shed located at Barangay Salitran, Dasmariñas, Cavite by SPO1 Concordio Talingting and SPO1 Armando Clarin, both members of the Cavite Philippine National Police Command based in Dasmariñas. Appellant, according to the two officers, was caught transporting 28 marijuana bricks contained in a traveling bag and a carton box, which marijuana bricks had a total weight of 28 kilos.

These two officers later asserted in court that they were aided by an informer in the arrest of appellant. That informer, according to Talingting and Clarin, had informed them the day before, or on June 19, 1994 at about 2:00 P.M., that a drug courier, whom said informer could recognize, would be arriving somewhere in Barangay Salitran, Dasmariñas from Baguio City with an undetermined amount of marijuana. It was the same informer who pinpointed to the arresting officers the appellant when the latter alighted from a passenger jeepney on the aforesaid day, hour, and place.[4]

Upon the other hand, appellant disavowed ownership of the prohibited drugs. He claimed during the trial that while he indeed came all the way from Baguio City, he traveled to Dasmariñas, Cavite with only some pocket money and without any luggage. His sole purpose in going there was to look up his cousin who had earlier offered a prospective job at a garment factory in said locality, after which he would return to Baguio City. He never got around to doing so as he was accosted by SPO1 Talingting and SPO1 Clarin at Barangay Salitran.

He further averred that when he was interrogated at a house in Dasmariñas, Cavite, he was never informed of his

constitutional rights and was in fact even robbed of the P500.00 which he had with him. Melita Adaci, the cousin, corroborated appellant's testimony about the job offer in the garment factory where she reportedly worked as a supervisor,[5] although, as the trial court observed, she never presented any document to prove her alleged employment.

In the present appellate review, appellant disputes the trial court's finding that he was legally caught in flagrante transporting the prohibited drugs. This Court, after an objective and exhaustive review of the evidence on record, discerns no reversible error in the factual findings of the trial court. It finds unassailable the reliance of the lower court on the positive testimonies of the police officers to whom no ill motives can be attributed, and its rejection of appellant's fragile defense of denial which is evidently self-serving in nature.

1. Firstly, appellant asserts that the court a quo grossly erred in convicting him on the basis of insufficient evidence as no proof was proffered showing that he wilfully, unlawfully, and feloniously administered, transported, and delivered 28 kilos of dried marijuana leaves, since the police officers "testified only on the alleged transporting of Marijuana from Baguio City to Cavite."

Further, the failure of the prosecution to present in court the civilian informant is supposedly corrosive of the People's cause since, aside from impinging upon appellant's fundamental right to confront the witnesses against him, that informant was a vital personality in the operation who would have contradicted the hearsay and conflicting testimonies of the arresting officers on how appellant was collared by them.

The pertinent provision of the penal law here involved, in Section 4 of Article II thereof, as amended, is as follows:

SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

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

Now, the offense ascribed to appellant is a violation of the Dangerous Drugs Act, some of the various modes of commission[6] being the sale, administration, delivery, distribution, and transportation of prohibited drugs as set forth in the epigraph of Section 4, Article II of said law. The text of Section 4 expands and extends its punitive scope to other acts besides those mentioned in its headnote by including these who shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions." Section 4 could thus be violated by the commission of any of the acts specified therein, or a combination thereof, such as selling, administering, delivering, giving away, distributing, dispatching in transit or transporting, and the like.

As already stated, appellant was charged with a violation of Section 4, the transgressive acts alleged therein and attributed to appellant being that he administered, delivered, and transported marijuana. The governing rule with respect to an offense which may be committed in any of the different modes provided by law is that an indictment would suffice if the offense is alleged to have been committed in one, two or more modes specified therein. This is so as allegations in the information of the various ways of committing the offense should be considered as a description of only one offense and the information cannot be dismissed on the ground of multifariousness.[7] In appellant's case, the prosecution adduced evidence clearly establishing that he transported marijuana from Baguio

City to Cavite. By that act alone of transporting the illicit drugs, appellant had already run afoul of that particular section of the statute, hence, appellant's asseverations must fail.

The Court also disagrees with the contention of appellant that the civilian informer should have been produced in court considering that his testimony was "vital" and his presence in court was essential in order to give effect to or recognition of appellant's constitutional right to confront the witnesses arrayed by the State against him. These assertions are, however, much too strained. Far from compromising the primacy of appellant's right to confrontation, the non-presentation of the informer in this instance was justified and cannot be faulted as error.

For one, the testimony of said informer would have been, at best, merely corroborative of the declarations of SPO1 Talingting and SPO1 Clarin before the trial court, which testimonies are not hearsay as both testified upon matters in which they had personally taken part. As such, the testimony of the informer could be dispensed with by the prosecution,[8] more so where what he would have corroborated are the narrations of law enforcers on whose performance of duties regularity is the prevailing legal presumption. Besides, informants are generally not presented in court because of the need to hide their identities and preserve their invaluable services to the police.[9] Moreover, it is up to the prosecution whom to present in court as its witnesses, and not for the defense to dictate that course.[10] Finally, appellant could very well have resorted to the coercive process of subpoena to compel that eyewitness to appear before the court below,[11] but which remedy was not availed of by him.

2. Appellant contends that the marijuana bricks were confiscated in the course of an unlawful warrantless search and seizure. He calls the attention of the Court to the fact that as early as 2:00 P.M. of the preceding day, June 19, 1994, the police authorities had already been apprised by their so-called informer of appellant's impending arrival from Baguio City, hence those law enforcers had the opportunity to procure the requisite warrant. Their misfeasance should therefore invalidate the search for and seizure of the marijuana, as well as the arrest of appellant on the following dawn. Once again, the Court is not persuaded.

Section 2, Article III of the Constitution lays down the general rule that a search and seizure must be carried out through or on the strength of a judicial warrant, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.[12] Evidence secured on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding. This exclusionary rule is not, however, an absolute and rigid proscription. Thus, (1) customs searches;[13] (2) searches of moving vehicles,[14] (3) seizure of evidence in plain view;[15] (4) consented searches;[16] (5) searches incidental to a lawful arrest;[17] and (6) "stop and frisk" measures[18] have been invariably recognized as the traditional exceptions.

In appellant's case, it should be noted that the information relayed by the civilian informant to the law enforcers was that there would be delivery of marijuana at Barangay Salitran by a courier coming from Baguio City in the "early morning" of June 20, 1994. Even assuming that the policemen were not pressed for time, this would be beside the point for, under these circumstances, the information relayed was too sketchy and not detailed enough for the obtention of the corresponding arrest or search warrant. While there is an indication that the informant knew the courier, the records do not reveal that he knew him by name.

While it is not required that the authorities should know the exact name of the subject of the warrant applied for, there is the additional problem that the informant did not know to whom the drugs would be delivered and at which particular part of the barangay there would be such delivery. Neither did this asset know the precise time of the suspect's arrival, or his means of transportation, the container or contrivance wherein the drugs were concealed and whether the same were arriving together with, or were being brought by someone separately from, the courier.

On such bare information, the police authorities could not have properly applied for a warrant, assuming that they could readily have access to a judge or a court that was still open by the time they could make preparations for applying therefor, and on which there is no evidence presented by the defense. In determining the opportunity for obtaining warrants, not only the intervening time is controlling but all the coincident and ambient circumstances should be considered, especially in rural areas. In fact, the police had to form a surveillance team and to lay down a dragnet at the possible entry points to Barangay Salitran at midnight of that day notwithstanding the tip regarding the "early morning" arrival of the courier. Their leader, SPO2 Cali, had to reconnoiter inside and around the barangay as backup, unsure as they were of the time when and the place in Barangay Salitran, where their suspect would show up, and how he would do so.

On the other hand, that they nonetheless believed the informant is not surprising for, as both SPO1 Clarin and SPO1 Talingting recalled, he had proved to be a reliable source in past operations. Moreover, experience shows that although information gathered and passed on by these assets to law enforcers are vague and piecemeal, and not as neatly and completely packaged as one would expect from a professional spymaster, such tip-offs are sometimes successful as it proved to be in the apprehension of appellant. If the courts of justice are to be of understanding assistance to our law enforcement agencies, it is necessary to adopt a realistic appreciation of the physical and tactical problems of the latter, instead of critically viewing them from the placid and clinical environment of judicial chambers.

3. On the defense argument that the warrantless search conducted on appellant invalidates the evidence obtained from him, still the search on his belongings and the consequent confiscation of the illegal drugs as a result thereof was justified as a search incidental to a lawful arrest under Section 5(a), Rule 113 of the Rules of Court. Under that provision, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

A legitimate warrantless arrest, as above contemplated, necessarily cloaks the arresting police officer with authority to validly search and seize from the offender (1) dangerous weapons, and (2) those that may be used as proof of the commission of an offense.[19] On the other hand, the apprehending officer must have been spurred by probable cause in effecting an arrest which could be classified as one in cadence with the instances of permissible arrests set out in Section 5(a).[20] These instances have been applied to arrests carried out on persons caught in flagrante delicto. The conventional view is that probable cause, while largely a relative term the determination of which must be resolved according to the facts of each case, is understood as having reference to such facts and circumstances which could lead a reasonable, discreet, and prudent man to believe and conclude as to the commission of an offense, and that the objects sought in connection with the offense are in the place sought to be searched.[21]

Parenthetically, if we may digress, it is time to observe that the evidentiary measure for the propriety of filing criminal charges and, correlatively, for effecting a warrantless arrest, has been reduced and liberalized. In the past, our statutory rules and jurisprudence required prima facie evidence, which was of a higher degree or quantum,[22] and was even used with dubiety as equivalent to "probable cause." Yet, even in the American jurisdiction from which we derived the term and its concept, probable cause is understood to merely mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of,[23] or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime.[24]

Felicitously, those problems and confusing concepts were clarified and set aright, at least on the issue under discussion, by the 1985 amendment of the Rules of Court which provides in Rule 112 thereof that the quantum of evidence required in preliminary investigation is such evidence as suffices to "engender a well founded belief" as

to the fact of the commission of a crime and the respondent's probable guilt thereof.[25] It has the same meaning as the related phraseology used in other parts of the same Rule, that is, that the investigating fiscal "finds cause to hold the respondent for trial," or where "a probable cause exists." [26] It should, therefore, be in that sense, wherein the right to effect a warrantless arrest should be considered as legally authorized.

In the case at bar, as soon as appellant had alighted from the passenger jeepney the informer at once indicated to the officers that their suspect was at hand by pointing to him from the waiting shed. SPO1 Clarin recounted that the informer told them that the marijuana was likely hidden inside the traveling bag and carton box which appellant was carrying at the time. The officers thus realized that he was their man even if he was simply carrying a seemingly innocent looking pair of luggage for personal effects. Accordingly, they approached appellant, introduced themselves as policemen, and requested him to open and show them the contents of the traveling bag, which appellant voluntarily and readily did. Upon cursory inspection by SPO1 Clarin, the bag yielded the prohibited drugs, so, without bothering to further search the box, they brought appellant and his luggage to their headquarters for questioning.

Appellant insists that the mere fact of seeing a person carrying a traveling bag and a carton box should not elicit the slightest suspicion of the commission of any crime since that is normal. But, precisely, it is in the ordinary nature of things that drugs being illegally transported are necessarily hidden in containers and concealed from view. Thus, the officers could reasonably assume, and not merely on a hollow suspicion since the informant was by their side and had so informed them, that the drugs were in appellant's luggage. It would obviously have been irresponsible, if not downright absurd under the circumstances, to require the constable to adopt a "wait and see" attitude at the risk of eventually losing the quarry.

Here, there were sufficient facts antecedent to the search and seizure that, at the point prior to the search, were already constitutive of probable cause, and which by themselves could properly create in the minds of the officers a well-grounded and reasonable belief that appellant was in the act of violating the law. The search yielded affirmance both of that probable cause and the actuality that appellant was then actually committing a crime by illegally transporting prohibited drugs. With these attendant facts, it is ineluctable that appellant was caught in flagrante delicto, hence his arrest and the search of his belongings without the requisite warrant were both justified.

Furthermore, that appellant also consented to the search is borne out by the evidence. To repeat, when the officers approached appellant and introduced themselves as policemen, they asked him about the contents of his luggage, and after he replied that they contained personal effects, the officers asked him to open the traveling bag. Appellant readily acceded, presumably or in all likelihood resigned to the fact that the law had caught up with his criminal activities. When an individual voluntarily submits to a search or consents to have the same conducted upon his person or premises, he is precluded from later complaining thereof.

After all, the right to be secure from unreasonable search may, like other rights, be waived either expressly or impliedly.[27] Thus, while it has been held that the silence of the accused during a warrantless search should not be taken to mean consent to the search but as a demonstration of that person's regard for the supremacy of the law,[28] the case of herein appellant is evidently different for, here, he spontaneously performed affirmative acts of volition by himself opening the bag without being forced or intimidated to do so, which acts should properly be construed as a clear waiver of his right.[29]

4. Appellant likewise harps on the alleged failure of the prosecution to "legally, properly and adequately establish that the 28 bricks of marijuana allegedly confiscated from (him) were the same marijuana examined by the forensic chemist and presented in court." Indeed, the arresting officers did not identify in court the marijuana

bricks seized from appellant since, in fact they did not have to do so. It should be noted that the prosecution presented in the court below and formally offered in evidence those 28 bricks of marijuana together with the traveling bag and the carton box in which the same were contained. The articles were properly marked as confiscated evidence and proper safeguards were taken to ensure that the marijuana turned over to the chemist for examination, and which subsequently proved positive as such, were the same drugs taken from appellant. The trial court, therefore, correctly admitted them in evidence, satisfied that the articles were indubitably no other than those taken from appellant.

Complementarily, the corpus delicti was firmly established by SPO1 Clarin and SPO1 Talingting who categorically related that when they had ascertained that the contents of the traveling bag of appellant appeared to be marijuana, they forthwith asked him where he had come from, and the latter readily answered "Baguio City," thus confirming the veracity of the report of the informer. No other conclusion can therefore be derived than that appellant had transported the illicit drugs all the way to Cavite from Baguio City. Coupled with the presentation in court of the subject matter of the crime, the marijuana bricks which had tested positive as being indian hemp, the guilt of appellant for transporting the prohibited drugs in violation of the law is beyond doubt.

Appellant questions the interrogation conducted by the police authorities, claiming that he was not allowed to communicate with anybody, and that he was not duly informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. Indeed, appellant has a point. The police authorities here could possibly have violated the provision of Republic Act No. 7438[30] which defines certain rights of persons arrested, detained, or under custodial investigation, as well as the duties of the arresting, detaining, and investigating officers, and providing corresponding penalties for violations thereof.

Assuming the existence of such irregularities, however, the proceedings in the lower court will not necessarily be struck down. Firstly, appellant never admitted or confessed anything during his custodial investigation. Thus, no incriminatory evidence in the nature of a compelled or involuntary confession or admission was elicited from him which would otherwise have been inadmissible in evidence. Secondly and more importantly, the guilt of appellant was clearly established by other evidence adduced by the prosecution, particularly the testimonies of the arresting officers together with the documentary and object evidence which were formally offered and admitted in evidence in the court below.

5. The reversible error of the trial court lies in its imposition of the penalty of death on appellant. As amended by Republic Act No. 7659, Section 20, Article IV of the Dangerous Drugs Act now provides inter alia that the penalty in Section 4 of Article II shall be applied if the dangerous drugs involved is, in the case of indian hemp or marijuana, 750 grams or more. In said Section 4, the transporting of prohibited drugs carries with it the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos. Thus, the law prescribes a penalty composed of two indivisible penalties, reclusion perpetua and death. In the present case, Article 63 of the Revised Penal Code consequently provides the rules to be observed in the application of said penalties.

As found by the trial court, there were neither mitigating nor aggravating circumstances attending appellant's violation of the law, hence the second paragraph of Article 63 must necessarily apply, in which case the lesser penalty of reclusion perpetua is the proper imposable penalty. Contrary to the pronouncement of the court a quo, it was never intended by the legislature that where the quantity of the dangerous drugs involved exceeds those stated in Section 20, the maximum penalty of death shall be imposed. Nowhere in the amendatory law is there a provision from which such a conclusion may be gleaned or deduced. On the contrary, this Court has already concluded that Republic Act No. 7659 did not amend Article 63 of the Revised Penal Code,[31] the rules wherein were observed although the cocaine subject of that case was also in excess of the quantity provided in Section 20.

It is worth mentioning at this juncture that the law itself provides a specific penalty where the violation thereof is in its aggravated form as laid down in the second paragraph of Section 4 whereby, regardless of Section 20 of Article IV, if the victim is a minor, or should a prohibited drug involved in any offense in said section be the proximate cause of the death of a victim thereof, the maximum penalty shall be imposed.[32] While the minority or the death of the victim will increase the liability of the offender, these two facts do not constitute generic aggravating circumstances, as the law simply provides for the imposition of the single indivisible penalty of death if the offense is attended by either of such factual features. In that situation, obviously the rules on the graduation of penalties in Article 63 cannot apply. In herein appellant's case, there was neither a minor victim nor a consequent death of any victim. Hence, the basic rules in Article 63 of the Code govern.

WHEREFORE, the judgment of the Regional Trial Court, Branch 90, of Dasmariñas, Cavite in Criminal Case No. 3401-94 is hereby MODIFIED in the sense that accused-appellant Ruben Montilla y Gatdula shall suffer the penalty of reclusion perpetua. In all other respects, the judgment of the trial court is hereby AFFIRMED, with costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Kapunan, Mendoza, Francisco, and Martinez, JJ, concur.

Melo, and Puno, JJ., join Panganiban J., separate opinion.

Vitug, J., concur but reserve his vote on the discussion on the warrantless search of appellant as his incidental to a lawful arrest.

[1] Original Record, 1; Rollo, 3.

[2] Ibid., 19, 21.

[3] Ibid., 76; per Presiding Judge Dolores L. Español.

[4] TSN, October 10, 1994, 1-14; October 19, 1994, 2-9.

[5] Ibid., February 15, 1995, 4-26; March 2, 1995, 1-4.

[6] The other modes include violations of Sections 3 (Importation of Prohibited Drugs), 5 (Maintenance of a Den, Dive or Resort for Prohibited Drugs Users), 6 (Employees and Visitors of Prohibited Drug Den), 7 (Manufacture of Prohibited Drugs), 8 (Possession or Use of Prohibited Drugs), 9 (Cultivation of Plants which are Sources of Prohibited Drugs), 11 (Unlawful Prescription of Prohibited Drugs), and 12 (Unnecessary Prescription of Prohibited Drugs), all under Article II of the Dangerous Drugs Act. Article III of the Act provides for similar violations in cases involving regulated drugs, namely, Sections 14, 14-A, 15, 15-A, 16, 17, 18, and 19.

[7] Jurado, etcc. vs. Suy Yan, L-30714, April 30, 1971, 38 SCRA 663.

[8] People vs. Trancca, G.R. No. 110357, August 17, 1994, 235 SCRA 435.

[9] People vs. Gireng G.R. No. 97949, February 21, 1995, 241 SCRA 11.

[10] People vs. Nicolas, et al., G.R. No. 110116, February 1, 1995, 241 SCRA 67.

[11] Section 1, Rules of Court.

[12] People vs. Barros, G.R. No. 90640, March 29, 1994, 231 SCRA 557.

[13] Chia, et al. vs. Acting Collector of Customs, et al. L-43810, September 26, 1989, 177 SCRA 755; Papa, etc.,

et al. vs. Mago, et al., L-27360, February 28, 1968, 22 SCRA 857.

[14] Aniag, Jr. vs. Commission on Elections, et al., G.R. No. 104961, October 7, 1994, 237 SCRA 424; Valmonte, et al. vs. De Villa, et al., G.R. No. 83988, May 24, 1990, 185 SCRA 665.

[15] People vs. Leangsiri, G.R. No. 112659, January 24, 1996, 252 SCRA 213; People vs. Figueroa, G.R. No. 97143, October 2, 1995, 248 SCRA 679.

[16] People vs. Fernandez, G.R. No. 113474, December 13, 1994, 239 SCRA 174; People vs. Tabar, et al. G.R. No. 101124, May 17, 1993, 222 SCRA 144.

[17] People vs. Malstedt, G.R. No. 91107, June 19, 1991, 198 SCRA 401.

[18] Terry vs. Ohio, 392 U.S. 1, 88 S Ct. 1868, 20 L. Ed. 2d. 889 (1968), adopted in Posadas vs. Court of Appeals, et al., G.R. no. 89139, August 2, 1990, 188 SCRA 288.

[19] Section 12, Rule 126, Rules of Court.

[20] People vs. Malmstedt, supra, Fn 17; Lo Ho Wing, et al., G.R. No. 88017, January 21, 1991, 193 SCRA 122; People vs. Maspil, Jr., et al., G.R. No. 85177, August 20, 1990, 188 SCRA 751; People vs. Tangliben, G.R. No. 63630, April 6, 1990, 184 SCRA 220; People vs. Claudio, L-72564, April 15, 1988, 160 SCRA 646.

[21] See also People vs. Labarias, G.R. No. 87165, January 25, 1993, 217 SCRA 483; People vs. Tonog, Jr., etc., at al., G.R. No. 94533, February 4, 1992, 205 SCRA 772.

[22] See Salonga vs. Paño, etcc., et al., G.R. No. 59524, February 18, 1985, 134 SCRA 438; Bautista, et al. vs. Sarmiento, etc., at el., L-45137, September 23, 1985, 138 SCRA 592. The term denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain a proposition or establish the facts, as to counterbalance the presumption of innocence and warrant the conviction of the accused.

[23] Owens vs. Gratezel, 148 Md. 689, 132 A. 265.

[24] Brand vs. Hinchman, 68 Mich. 590, 36 N.W. 664, 13 Am. St. Rep. 362.

[25] Section 1, Rule 112.

[26] Section 4, first and fourth paragraphs., id.

[27] People vs. Fernandez, supra, Fn 16; People vs. Ramos, G.R. Nos. 101804-07, May 25, 1993, 222 SCRA 557; People vs. Tabar, et al., supra, Fn. 16; People vs. Exala, et al., G.R. No. 76005, April 23, 1993, 221 SCRA 494.

[28] People vs. Barros, supra, Fn 12.

[29] People vs. Lacerna, G.R. No. 109250, September 5, 1997, and cases therein cited.

[30] Approved on April 27, 1992 and published in the Official Gazette on June 22, 1992, Vol. 88, No. 25, 3880.

[31] People vs. Gatward, et al., G.R. Nos. 118772-73, February 7, 1997.

[32] See Section 24 of the Act, which likewise imposes the maximum penalties provided for in Sections 3, 4(1), 5(1), 6, 7, 8, 9, 11, 12 and 13 of Article II, and Sections 14, 14-A, 15(1), 15-A(1), 16, and 19 of Article III, where those found guilty of any of said offenses are government officials, employees or officers including members of police agencies and the armed forces.

SEPARATE OPINION

PANGANIBAN, J.:

I agree with the respected Mr. Justice Florenz D. Regalado that the imposition of the death penalty by the trial court upon Appellant Montilla was erroneous. For want of any aggravating circumstance attending the commission of the crime, the proper penalty is reclusion perpetua.

However, I beg to disagree with his conclusion that the warrantless search conducted upon the person of appellant was valid for being "a search incidental to a lawful arrest under Section 5(a), Rule 113 of the Rules of Court." Under the cited provision, an arrest may be lawfully effected upon a person caught in flagrante delicto, i.e. in the very act of committing a crime.[1] I do not see how Appellant Montilla who was apprehended while merely alighting from a passenger jeepney carrying a travelling bag and a carton could have been perceived by the police as committing crime at the very moment of his arrest.

Lawful Arrest Must

Precede Warrantless Search

In the very recent en banc case of *Malacat vs. Court of Appeals*,[2] the Court through Mr. Justice Hilario G. Davide, Jr., clearly and unanimously explained the concept of search incidental to lawful arrest, and I quote:

"In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these case, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there be first a lawful arrest before a search can be made - the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence." [3] [Underscoring supplied]

In that case, a police surveillance team, dispatched on reports of a possible bombing in Quiapo, arrested Appellant Malacat after he attempted to flee. He was priorly observed standing with a group of men at the corner of Plaza Miranda and Quezon Boulevard with eyes moving very fast and looking at every approaching person. He was searched, and allegedly recovered from his body was a bomb. The trial court justified his arrest and search on the finding that he was "attempting to commit a crime". But we reversed and ruled that there could have been no valid in flagrante delicto or hot pursuit arrest preceding the search in light of the lack of personal knowledge on the part of the arresting officer or an overt physical act on the part of Malacat indicating that a crime had just been committed, was being committed, or was going to be committed. The warrantless arrest being invalid, the search conducted upon the petitioner could not have been a valid incident to a lawful arrest.

In also ruling out a valid "stop and frisk," the Court remarked that "there was nothing in [Malacat's] behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were 'moving very fast' x x x." There was no ground at all to suspect that Malacat was armed with a deadly weapon.[4]

Neither did this Court find a valid search and arrest under the in flagrante delicto rule in *People v. Mengote*,[5] even though the appellant was accosted by the police because he allegedly appeared suspicious. The lawmen were at that time conducting a surveillance in response to a telephone call from an informer that there were suspicious-looking persons at the particular place. What offense Mengote was suspected of doing could not even be ascertained by the police. We said that "there was nothing to support the arresting officers' suspicion other than Mengote's darting eyes and his hand on his abdomen. By no stretch of the imagination could it have been inferred

from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in their presence." [6] The Court further exhorted:

"It would be a sad day, indeed, if any person could be summarily arrested and searched just because he is holding his abdomen, even if it be possibly because of a stomach-ache, or if a peace officer could clamp handcuffs on any person with a shifty look on suspicion that he may have committed a criminal act or its actually committing or attempting it. This simply cannot be done in a free society. This is not a police state where order is exalted over liberty or, worse, personal malice on the part of the arresting officer may be justified in the name of security." [7]

Personal Knowledge Required In Flagrante Delicto Arrests

Jurisprudence is settled that under in flagrante delicto rule, "the officer arresting a person who has just committed, is committing, or is about to commit an offense must have personal knowledge of that fact. The offense must also be committed in his presence or within his view." [8]

The circumstances of the case at bar is patently wanting in fulfillment of the above standard. For one, the arresting officers had no personal knowledge that Montilla either had just committed or was committing or attempting to commit an offense. Secondly, even if we equate the possession of an intelligence report with personal knowledge of the commission of a crime, still, the alleged felonious act was not performed in the presence or within the view of the arresting officers. The lawmen did not see appellant exhibit any overt act or strange conduct that would reasonably arouse in their minds suspicion that he was embarking on some felonious enterprise. Neither was there any mention at all by the police of any outward indication, such as bulkiness on his body that could have suggested that he was carrying a firearm, or any peculiar smell emanating from his baggage that could have hinted that he was carrying marijuana. In short, there was no valid ground for the warrantless arrest.

"Hot Pursuit" Doctrine Not Applicable

Parenthetically, neither could Appellant Montilla's arrest be justified under the "hot pursuit" rule. In *People vs. Burgos*, [9] we said:

"In arrest without warrant under Section 6(b) [of Rule 113, Rules of Court], however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed. The test of reasonable ground applies only to the identity of the perpetrator."

The instant case is very similar to *People vs. Aminnudin*. [10] Therein, the police arrested Aminnudin and seized the bag he was carrying on account of a "tip they had earlier received from a reliable and regular informer" that the accused-appellant was "arriving in Iloilo by boat with Marijuana." This information was received at least two days earlier, thus "[e]ven expediency could not be invoked to dispense with the obtention of the warrant x x x." In invalidating his arrest, this Court reasoned:

"xxx the 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 (not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him." [11]

Aminnudin's arrest being illegal, so was the warrantless search subsequent thereto, the Court ruled. Hence, the marijuana allegedly seized from him was not admitted as evidence for being a fruit of the poisonous tree.

Another parallel case is *People vs. Encinada*, [12] where the appellant was searched without a warrant while also disembarking from a ship, on the strength of a tip from an informant received by the police the previous afternoon that the appellant would be transporting prohibited drugs, the search yielded a plastic package containing marijuana. Encinada's arrest and search were validated by the trial court under the *in flagrante delicto* rule. In reversing the trial court, this Court stressed that when he disembarked from the ship or while he rode the motorela, Encinada did not manifest any suspicious behavior that would reasonably invite the attention of the police. Under such bare circumstances, no act or fact demonstrating a felonious enterprise could be ascribed to the accused. In short, he was not committing a crime in the presence of the police; neither did the latter have personal knowledge of facts indicating that he just committed an offense. Where the search was illegal, there could be no valid incidental arrest:

"xxx That the search disclosed a prohibited substance in appellant's possession and thus confirmed the police officers' initial information and suspicion, did not cure its patent illegality. An illegal search cannot be undertaken and then an arrest effected on the strength of the evidence yielded by the search." [13]

Raw Intelligence Information

Cannot Justify Warrantless Arrest

The Court further said that raw intelligence information was not a sufficient ground for warrantless arrest. [14] Having known the identity of their suspect the previous day, the law enforcers could have secured a judicial warrant even within such limited period.

Under the circumstances of the instant case, there was sufficient time for the police to have applied for search warrant. The information that appellant would be arriving in the early morning of June 20, 1994 at Barangay Salitran, Dasmariñas, Cavite, was received by the police at 2:00 p.m. of the preceding day. The fact that it was a Sunday did not prevent the police from securing a warrant. Administrative Circulars 13 and 19, s. 1987 allow applications for search warrants even "after office hours, or during Saturdays, Sundays and legal holidays" where there is an urgency and prompt action is needed. Surely, with the attendant circumstances, the arresting officer could have easily justified the urgency of the issuance of a search warrant.

But the majority believes that the law enforcers had no sufficient information upon which the warrant could have been validly issued, simply because the name of the suspect and the exact time and place where he could be found were not known.

I cannot in clear conscience agree with the reasoning of the majority that "[on] such bare information, the police authorities could not have properly applied for a warrant, assuming that they could readily have access to a judge or court x x x," yet ruling that "there were sufficient facts antecedent to the search and seizure that, at the point prior to the search, were already constitutive of probable cause, and which by themselves could properly create in the minds of the officers a well-grounded and reasonable belief that appellant was in the act of violating the law." Be it remembered that appellant was merely alighting from a jeepney carrying a travelling bag and a carton when he was searched and arrested. How can that be "in the act of violating the law?"

Law and jurisprudence in fact require stricter grounds for valid arrests and searches without warrant than for the issuance of warrants therefor. In the former, the arresting person must have actually witnessed the crime being committed or attempted by the person sought to be arrested; or he must have personal knowledge of facts

indicating that the person to be arrested perpetrated the crime that had just occurred. In the latter case, the judge simply determines personally from testimonies of witnesses that there exist reasonable grounds to believe that a crime was committed by the accused.

If, as the majority believes, the police did not have on hand what the law requires for the issuance of a warrant, then much less did they have any justification for a warrantless arrest. In other words, what ground did the police have to arrest Appellant Montilla?

I submit that if the police doubts the exact identity or name of the person to be arrested or the exact place to be searched, with more reason should they seek a judge's independent determination of the existence of probable cause. The police, in such instances, cannot take the law into their own hands, or by themselves conclude that probable cause exists. I must reiterate that the actual discovery of prohibited drugs in the possession of the accused does not cure the illegality of his arrest or search.

To say that "reliable tips" constitute probable cause for a warrantless arrest or search is, in my opinion, a dangerous precedent and places in great jeopardy the doctrines laid down in many decisions made by this Court, in its effort to zealously guard and protect the sacred constitutional right against unreasonable arrests, searches, and seizures. Everyone would be practically at the mercy of so-called informants, reminiscent of the makapilis during the Japanese occupation. Any one whom they point out to a police officer as a possible violator of the law could then be subject to search and possible arrest, placing limitless power upon informants who will no longer be required to affirm under oath their accusations, for they can always delay their giving of tips in order to justify warrantless arrests and searches. Even law enforcers can use this as an oppressive tool to conduct can use this as an oppressive tool to conduct searches without warrants, for they can always claim that they received raw intelligence information only on the day or afternoon before. This would clearly be a circumvention of the legal requisites for validly effecting an arrest or conducting a search and seizure. Indeed, the majority's ruling would open loopholes that would allow unreasonable arrests, searches and seizures.

The majority's reasoning effectively abrogates, through the obiter, doctrinal rules on warrantless arrest and searches. I believe this should not be allowed. We have endlessly castigated law enforcers for their nonchalant violation of the people's constitutional right against unreasonable searches and seizures. We have also invariably admonished them that basic rights should not be lightly disregarded in the name of crime prevention or law enforcement. The Court should never be less vigilant in protecting the rights guaranteed by the fundamental law to all persons, be they innocent or guilty.

Appellant Waived
his Constitutional Right

In any event, notwithstanding the illegality with which the search and arrest of Appellant Montilla was effected, I have to concur with the majority in affirming his conviction, only for the reason that appellant waived his right to object to such irregularity. It appears that he did not protest when the police, after identifying themselves, asked him to open his baggage for inspection. The fact that he voluntarily submitted to the search, without any force or intimidation on the part of the police, signifies his consent thereto. Voluntary consent is a valid waiver of one's right against unreasonable searches.[15]

Furthermore, upon arraignment, Appellant Montilla pleaded not guilty and proceeded to participate in the trial. Established jurisprudence holds that a plea is tantamount to foregoing an objection to the irregularity of one's arrest.[16] The right to question the legality of appellant's arrest may therefore be deemed to have been waived by him.

Summation

In sum, the arrest of Appellant Montilla was not lawful, because it was effected without a judicial warrant. It was not made in accordance with Sec. 5(a) of Rule 113, because there was no evidence that Montilla had just committed an offense, or was committing or attempting one in the presence or within the view of the arresting officers at the time he was apprehended. Neither can his arrest be valid under Sec. 5 (b) of the same rule, since the police officers did not actually know that a crime had in fact been committed, nor did they have personal knowledge of any fact logically pointing to appellant as the perpetrator thereof. Much less could there have been a valid stop and frisk, since appellant did not manifest any dubious act or show any indication that could reasonably invite suspicion of a criminal undertaking.

However, appellant waived his right to object to the illegality of his search and arrest by consenting to the search of his belongings and also by entering his plea during his arraignment. Had he raised a timely objection against the violation of his constitutional right, he would, in my view, deserve no less than an acquittal.

WHEREFORE, I conclude that the warrantless arrest and search of Appellant Montilla was illegal. However, such illegality was effectively waived by him. Hence I vote to AFFIRM his conviction with the modification that shall serve the penalty of reclusion perpetua only.

[1] Moreno, Philippine Law Dictionary, 2nd ed.

[2] G.R. No. 123595, December 12, 1997.

[3] Ibid., p. 13 (Citations omitted)

[4] Ibid., pp. 15-16.

[5] 210 SCRA 174, June 22, 1992, per Cruz, J.

[6] Ibid., p. 180.

[7] Ibid., pp. 181-182.

[8] People vs. Burgos, 144 SCRA 1, 14, September 4, 1986, per Gutierrez Jr., J., citing Sayo vs. Chief of Police, 80 Phil. 859, May 12, 1948. See also People vs. Pablo, 239 SCRA 500, 505, December 28, 1994.

[9] Ibid., p. 15

[10] 163 SCRA 402, July 6, 1988, per Cruz, J.

[11] Ibid., p. 409-410.

[12] G.R. No. 116720, October 2, 1997, per Panganiban, J.

[13] Ibid., p. 24.

[14] Ibid., p. 17.

[15] People vs. Lacerna, G.R. No. 109250, September 5, 1997, citing People vs. Fernandez, 239 SCRA 174, December 13, 1994, Aniag vs. Comelec, 237 SCRA 424, October 7, 1994, and other cases.

[16] People vs. Lopez Jr., 245 SCRA 95, June 16, 1995; People vs. Macam, 238 SCRA 306, November 24, 1994.

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