

JOSE MARIA M. ASUNCION, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 125959. February 01, 1999

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Petitioner seeks reconsideration of the resolution of the Honorable Court dated February 10, 1997, which denied his Petition for Review on Certiorari for his failure to sufficiently show that respondent Court of Appeals had committed a reversible error in rendering the questioned judgment.

The said petition seeks a review of the decision of the Court of Appeals in C.A. - GR CR. No. 16308, entitled "People of the Philippines v. Jose Maria M. Asuncion", which affirmed the judgment of the Regional Trial Court of Malabon, Branch 170, finding the petitioner Jose Maria M. Asuncion guilty beyond reasonable doubt for possession of regulated drugs punishable under Section 16, Article III of Republic Act No. 6425, otherwise known as the "Dangerous Drugs Act".

The facts of the case, as found by the trial court, and adopted by the appellate court, are as follows:

"Accused Jose Maria Asuncion y Marfori, also known as Binggoy and/or Vic Vargas, is charged with violation of Section 16, Article III of Republic Act 6425 in an Information which reads:

"That on or about the 6[th] day of December 1993, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and feloniously have in his possession, custody, and control one (1) small plastic packet marked #1 A.S.A. 12-6-93 (g. wt-0.1216 gram) containing Methamphetamine Hydrochloride and another small plastic packet marked #2 A.S.A. 12-6-93 (G. wt-0.0594 gram) containing Methamphetamine Hydrochloride which substances when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as 'Shabu'."

Upon arraignment, the accused pleaded not guilty.

Evidence for the prosecution shows that on December 6, 1993, in compliance with the order of the Malabon Municipal Mayor to intensify campaign against illegal drugs particularly at Barangay Tañong, the Chief of the Malabon Police Anti-Narcotics Unit ordered his men to conduct patrol on the area with specific instruction to look for a certain vehicle with a certain plate number and watch out for a certain drug pusher named Vic Vargas. Pursuant thereto, SPO1 Advincula, PO3 Parcon, PO3 Pilapil and a police aide were dispatched at around 11:45 in the evening. The team proceeded to Barangay Tañong where they were joined by their confidential informant and the latter informed them that a gray Nissan car is always parked therein for the purpose of selling shabu. While patrolling along Leoño Street, the confidential informant pointed the gray Nissan car to the policemen and told them that the occupant thereof has shabu in his possession. The policemen immediately flagged down the said car along First Street and approached the driver, who turned out to be herein accused Jose Maria Asuncion y Marfori, a movie actor using the screen name Vic Vargas and who is also known as Binggoy. Advincula then asked the accused if they can inspect the vehicle. As the accused acceded thereto, Advincula conducted a search on the

vehicle and he found a plastic packet containing white substance suspected to be methamphetamine hydrochloride (Exhibit D-1) beneath the driver's seat. The accused told the policemen that he just borrowed the said car and he is not the owner thereof. The accused was thereafter taken at the police headquarters for the purpose of taking his identification. However, when he was frisked by Advincula at the headquarters, the latter groped something protruding from his underwear, which when voluntarily taken out by the accused turned out to be a plastic packet containing white substance suspected to be methamphetamine hydrochloride (Exhibit D). A press conference was conducted the following day presided by Northern Police District Director Pureza during which the accused admitted that the methamphetamine hydrochloride were for his personal use in his shooting.

Advincula further testified that prior to this incident, they already had an encounter with the accused but the latter was able to evade them, and that they did not secure a search warrant for the reason that the accused uses different vehicles and they cannot get his exact identity and residence.

The suspected methamphetamine hydrochloride confiscated from the accused (Exhibits D and D-1) were transmitted to the NBI Forensic Chemistry Division (Exhibit A), and upon examination yielded positive results for methamphetamine hydrochloride, a regulated drug (Exhibits B and C).

On the other hand, the accused denied the charges against him. He testified that on December 6, 1993, between 8:00 and 9:00 o'clock in the evening, he was abducted at gun point in front of the house where his son lives by men who turned out to be members of the Malabon Police Anti-Narcotics Unit; that he was told to board at the back seat by the policemen who took over the wheels; that he acceded to be brought at the Pagamutang Bayan ng Malabon for drug test but only his blood pressure was checked in the said hospital; that he was thereafter brought at the Office of the Malabon Police Anti-Narcotics Unit; and that he is not aware of what happened at 11:45 in the evening as he was then sleeping at the said office."^[1]

On June 14, 1994, a decision was rendered by the trial court finding the petitioner guilty beyond reasonable doubt of the offense charged. The dispositive portion of the said decision states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Jose Maria Asuncion y Marfori guilty beyond reasonable doubt of Violation of Section 16, Article III, Republic Act 6425 and considering the quantity of the Methamphetamine Hydrochloride involved in this case, hereby sentences him to suffer an indeterminate penalty of one (1) year eight (8) months and twenty (20) days as minimum, to three (3) years six (6) months and twenty (20) days, as maximum, and to pay a fine of P3,000.00. Cost de officio.

"The Methamphetamine Hydrochloride, subject matter of this case, is forfeited in favor of the government, and the Branch Clerk of Court is directed to turn over the same to the Dangerous Drugs Board for proper disposition, upon the finality of this decision.

"SO ORDERED."^[2]

On June 29, 1994, a Notice of Appeal was filed and the records of the case were transmitted by the trial court to the Court of Appeals. On April 30, 1996 a decision was rendered by the appellate court, the dispositive portion of which states:

"WHEREFORE, premises considered, the appealed decision (Dated June 14, 1994) of the Regional Trial Court (Branch 170) in Malabon, Metro Manila in Criminal Case No. 14254-MN is hereby MODIFIES as to the penalty imposed but AFFIRMED in all other respects. Thus, the accused-appellant is hereby sentenced to suffer an indeterminate prison term of SIX (6) Months of arresto mayor in its maximum period as minimum to FOUR (4) Years and TWO (2) Months of prision correctional in its medium period as maximum (People v. Simon, 234 SCRA 555; People v. Nicolas, 241 SCRA 67; People v. Judrito Adava y Balasbas (G.R. No. 102522, [June 5, 1994]; People v. Sixto Morico (G.R. No. 92660, July 14, 1995)) and the fine of THREE

THOUSAND PESOS (P3,000.00) imposed on the accused (appellant) is hereby deleted in accordance with the Supreme Court's ruling in *People v. Judrito Adava y Balasbas*, supra) and *People v. Sixto Morico*, (supra).

"No pronouncement as to costs.

"SO ORDERED." [3]

On August 6, 1996, the Court of Appeals denied the motion for reconsideration filed by petitioner.[4] Thus, a petition for review on certiorari was filed before this Court, with petitioner arguing that the Court of Appeals erred:[5]

I.

IN AFFIRMING THE TRIAL COURT'S RULING THAT THE TIME OF COMMISSION IS NOT MATERIAL IN PROVING THE OFFENSE CHARGED.

II.

IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT THE PROBABLE CAUSE REQUIRED TO EFFECT A WARRANTLESS ARREST AND SEARCH EXIST UNDER THE CIRCUMSTANCES AS NARRATED BY THE PROSECUTION'S WITNESSES.

III.

IN AFFIRMING THE RULING OF THE TRIAL COURT THAT THE DEFENSE EVIDENCE ARE MERE DENIALS WHICH CANNOT OVERRIDE THE POSITIVE ASSERTIONS OF THE PROSECUTION'S WITNESSES.

On February 10, 1997, the First Division of this Court issued a resolution denying the petition for review on certiorari "for failure of the petitioner to sufficiently show that the respondent court had committed any reversible error in rendering the questioned judgment." [6]

A motion for reconsideration of this resolution was filed on March 17, 1997. In this pleading, petitioner sought the reconsideration of the said dismissal on "grave constitutional considerations", arguing that the warrantless search was illegal. The 'shabu' recovered, being illegally obtained, was inadmissible as evidence. Petitioner also argued that the raising of constitutional issues necessitated a re-examination of the issues presented.[7]

Hence, this Court is called upon to resolve the constitutional issues raised by the petitioner in his motion for reconsideration.

After a careful examination, this Court finds no cogent reason to overturn the decision of the appellate court.

Well-entrenched in this country is the rule that no arrest, search and seizure can be made without a valid warrant issued by competent judicial authority. So sacred is this right that no less than the fundamental law of the land[8] ordains it.

However, the rule that search and seizure must be supported by a valid warrant is not absolute. The search of a moving vehicle is one of the doctrinally accepted exceptions to the Constitutional mandate that no search or seizure shall be made except by virtue of a warrant issued by a judge after personally determining the existence of probable cause.[9] The prevalent circumstances of the case undoubtedly bear out the fact that the search in question was made as regards a moving vehicle - petitioner's vehicle was "flagged down" by the apprehending officers upon identification. Therefore, the police authorities were justified in searching the petitioner's automobile without a warrant since the situation demanded immediate action.

This Court, in the case of *People v. Lo Ho Wing*, [10] elucidated on the rationale for the exemption of searches of

moving vehicles from the coverage of the requirement of search warrants, to wit:

"... the rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge - a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. We might add that a warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

The apprehending officers even sought the permission of petitioner to search the car, to which the latter agreed. As such, since the shabu was discovered by virtue of a valid warrantless search and the petitioner himself freely gave his consent to said search, the prohibited drugs found as a result were admissible in evidence.[11]

Appellant had vigorously argued for the application of the rule enunciated in the case of *People v. Idel Aminnudin y Ahni*,^[12] wherein it was held that warrantless arrests could not be justified unless the accused was caught in flagrante delicto or a crime was about to be committed or had just been committed. It was also held in that case that evidence of probable cause should be determined by judge and not by law enforcement agents. Corollarily, any search could not be considered as an incident to a lawful arrest if there was no warrant of arrest and the arrest did not come under the exceptions allowed by Rule 113 of the Rules of Court.^[13]

In ruling for defendant-appellant Aminnudin, the Court justified its stand in this manner:

"In the case at bar, there was no warrant of arrest or search warrant issued by a judge after personal determination by him of the existence of probable cause. Contrary to the averments of the government, the accused-appellant was not caught in flagrante nor was a crime about to be committed or had just been committed to justify the warrantless arrest allowed under Rule 113 of the Rules of Court. Even expediency could not be invoked to dispense with the obtention of the warrant as in the case of *Roldan v. Arca*, for example. Here it was held that vessels and aircrafts are subject to warrantless searches and seizures for violation of the customs law because these vehicles may be quickly moved out of the locality or jurisdiction before the warrant can be secured.

"The present case presented no such urgency. From the conflicting declarations of the PC witnesses, it is clear that they had at least two days within which they could have obtained a warrant to arrest and search Aminnudin who was coming to Iloilo on the M/V Wilcon 9. His name was known. The vehicle was identified. The date of its arrival was certain. And from the information they had received, they could have persuaded a judge that there was probable cause, indeed, to justify the issuance of a warrant. Yet they did nothing. No effort was made to comply with the law. The Bill of Rights was ignored altogether because the PC lieutenant who was the head of the arresting team, had determined on his own authority that a 'search warrant was not necessary.'

"In the many cases where this Court has sustained the warrantless arrest of violators of the Dangerous Drugs Act, it has always been shown that they were caught red-handed, as a result of what are popularly called 'buy-bust' operations of the narcotics agents. Rule 113 was clearly applicable because at the precise time of arrest the accused was in the act of selling the prohibited drug.

"In the case at bar, 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 (and not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him." [14]

From the foregoing, it could be seen that the case under review presented different factual circumstances which would not call for the application of the ruling in the Aminnudin case.

First of all, even though the police authorities already identified the petitioner as an alleged shabu dealer and confirmed the area where he allegedly was plying his illegal trade, they were uncertain as to the time he would show up in the vicinity. Secondly, they were uncertain as to the type of vehicle petitioner would be in, taking into account reports that petitioner used different cars in going to and from the area. Finally, there was probable cause as the same police officers had a previous encounter with the petitioner, who was then able to evade arrest. [15] As the Solicitor General argued:

"... With this knowledge and experience, the narcotic operatives had reasonable ground to believe that the gray Nissan car referred to by their confidential informant was one of the vehicles being used by their subject so that when the same was pointed to them by their confidential informant, with the information that the occupant thereof was carrying shabu, the operatives had to act quickly. Otherwise, they would again lose their subject whom they reasonably believed to be committing a crime at that instance. There would be no more time for them to secure a search warrant." [16]

Thus, when the police officers suddenly sighted petitioner's gray Nissan Sentra, they obviously no longer had the time to apply for a search warrant. The dictates of urgency necessitated the flagging down of the vehicle.

Time and again, it has been held that the findings of the lower court respecting the credibility of witnesses are accorded great weight and respect since it had the opportunity to observe the demeanor of the witnesses as they testified before the court. [17] In this case, this Court finds no cogent reason to deviate from this time-honored precept.

Taken as a whole, the evidence for the prosecution, particularly the positive testimonies of the apprehending police officers, SPO1 Antonio Advincula, PO3 Enriquito Parcon and PO3 Rolando Pilapil, more than met the quantum of proof needed to find the petitioner guilty beyond reasonable doubt. The appellate court was correct in giving scant consideration of the petitioner's defense, which consisted of mere denials of the incidents narrated by the prosecution witnesses. Like all other cases involving the possession of prohibited drugs, it was argued by the petitioner that he had been "framed-up". But then, in drug related cases, for this defense to prosper, the evidence must be clear and convincing. [18]

Unfortunately for petitioner, his defense was anchored only on a single document - a medical certificate signed by a Dr. Aster Sagun, Jr. of the Pagamutang Bayan ng Malabon. [19] Said document, according to the defense, proved that petitioner was indeed forcibly abducted by the police, brought to the said hospital at around 9:00 o'clock in the evening and afterwards was brought to the police station, where he slept until the alleged time of his "arrest". To the mind of this Court, petitioner placed too much reliance on said document, which did not even give an inch towards proving their allegations. The medical certificate could not possibly prove anything more than the fact that petitioner had his blood pressure checked at said hospital at said time. To claim that it proved something more would be to venture into speculation and guesswork.

One final note. Considering the fact that less than one (1) gram of methamphetamine hydrochloride or "shabu" was found in the possession of petitioner, this Court agrees with the penalty imposed by the appellate court as this in line with previous decisions on the matter. [20]

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Kapunan, and Pardo, JJ., concur.

[1] Decision, pp. 1-3, Records, Crim. Case No. 14254-MN, pp. 138-140

[2] Decision, pp. 5-6, Supra.

[3] Decision, p. 16, Annex "C", Rollo, p. 53.

[4] Annex "E", Rollo, p. 64

[5] Petition, pp. 5-6, Rollo, pp. 7-8.

[6] See Rollo, p. 88

[7] Rollo, pp. 94-127.

[8] Section 2. Article III of the 1987 Constitution states:

SEC. 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 thing to be seized.

[9] Mustang Lumber, Inc. v. Court of Appeals, et al., G.R. No. 104988, June 18, 1996; (257 SCRA 430) People of the Philippines v. Lo Ho Wing, et al., G.R. No. 88017, January 21, 1991 (193 SCRA 122).

[10] See Previous Note

[11] People v. Antolin Cuizon, et. al. G.R. No. 109287, April 18, 1996 (256 SCRA 325)

[12] 163 SCRA 401 G.R. No. L-74869, July 6, 1998.

[13] Ibid.

[14] Supra.

[15] Comment, pp. 2-3, Rollo, pp. 136-137

[16] Ibid.

[17] People v. Lua, 256 SCRA 539.

[18] Ibid.

[19] Exhibit "1"

[20] People v. Piasidad, 262 SCRA 752; De Leon v. Court of Appeals, 262 SCRA 690; People v. Manalo, 245 SCRA 492, Danao v. Court of Appeals 243 SCRA 494.

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