

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO PASUDAG Y BOKANG @ “BERTING,” ACCUSED-APPELLANT.

G.R. No. 128822. May 04, 2001

Ponente: PARDO, J.

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PARDO, J. :

The case is an appeal from the decision[1] of the Regional Trial Court, Pangasinan, Branch 46, Urdaneta finding accused Alberto Pasudag y Bokang guilty beyond reasonable doubt of illegal cultivation of marijuana[2] and sentencing him to reclusion perpetua and to pay a fine of P500,000.00, without subsidiary penalty and other accessories of the law.

On December 17, 1996, 4[th] Assistant Provincial Prosecutor of Pangasinan Emiliano M. Matro filed with the Regional Trial Court, Pangasinan, Urdaneta an Information[3] charging accused Alberto Pasudag y Bokang with violation of R.A. No. 6425, Sec. 9, reading as follows:

"That on or about September 26, 1995 and prior dates thereto at barangay Artacho, municipality of Sison, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously plant, cultivate, and culture seven (7) hills of marijuana in the land tilled by him and situated beside the house of the accused, without authority or permit to do so.

"Contrary to Sec. 9 of R.A. 6425 as amended."

On February 10, 1997, the trial court arraigned the accused. He pleaded not guilty.[4] Trial ensued.

On September 26, 1995, at around 1:30 in the afternoon, SPO2 Pepito Calip of the PNP Sison, Pangasinan, went to Brgy. Artacho to conduct anti-jueteng operations. He urinated at a bushy bamboo fence behind the public school. About five (5) meters away, he saw a garden of about 70 square meters. There were marijuana plants in between corn plants and camote tops. He inquired from a storekeeper nearby as to who owned the house with the garden. The storeowner told him that Alberto Pasudag owned it.[5]

SPO2 Calip went to the Police Station and reported to Chief of Police Romeo C. Astrero. The latter dispatched a team (composed of SPO2 Calip, SPO3 Fajarito, SPO3 Alcantara and PO3 Rasca) to conduct an investigation. At around 2:30 in that same afternoon, the team arrived at Brgy. Artacho and went straight to the house of accused Pasudag. SPO3 Fajarito looked for accused Pasudag and asked him to bring the team to his backyard garden which was about five (5) meters away.[6]

Upon seeing the marijuana plants, the policemen called for a photographer, who took pictures of accused Pasudag standing beside one of the marijuana plants.[7] They uprooted seven (7) marijuana plants. The team brought accused Pasudag and the marijuana plants to the police station.[8]

At the police station, accused Pasudag admitted, in the presence of Chief of Police Astrero, that he owned the marijuana plants.[9] SPO3 Fajarito prepared a confiscation report[10] which accused Pasudag signed.[11] He kept the six marijuana plants inside the cabinet in the office of the Chief of Police and brought the tallest plant[12] to

the PNP Crime Laboratory for examination.[13]

Major Theresa Ann Bugayong Cid, a forensic chemist at the PNP Crime Laboratory, received the specimen[14]" (brown envelope con-containing leaves taken from Exh. "B").14 on October 11, 1995. She testified that she took some leaves from the marijuana plant because the leaves had the most concentration of tetrahydrocannabinol. As per her Chemistry Report No. D-087-95,[15] the examination was positive for marijuana (tetrahydrocannabinol).[16]

On March 18, 1997, the trial court rendered a decision finding the accused guilty as charged and, taking into consideration his educational attainment (he reached only grade IV), imposed the minimum of the imposable penalty, thus:

"WHEREFORE, JUDGMENT is rendered CONVICTING ALBERTO PASUDAG of the crime charged in the information and he is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay a fine of P500,000.00 without subsidiary penalty and other accessories of the law.

"The 7 fully grown marijuana plants are confiscated in favor of the government.

"The Warden of Urdaneta, Bureau of Jail Management and Penology, is hereby ordered to commit the body of Alberto Pasudag to the National Bilibid Prison immediately upon receipt hereof.

"SO ORDERED.

"Done this 17[th] day of March, 1997, at Urdaneta, Pangasinan.

(Sgd.) MODESTO C. JUANSON

J u d g e"[17]

Hence, this appeal.[18]

In his brief, accused-appellant contended that the trial court erred in finding that the marijuana plant submitted for laboratory examination was one of the seven (7) marijuana plants confiscated from his garden; that the trial court erred in concluding that the confiscation report was not an extrajudicial admission which required the intervention of his counsel; and in convicting him on the basis of inference that he planted, cultivated and cultured the seven (7) plants, owned the same or that he permitted others to cultivate the same.[19]

The Solicitor General contended that accused-appellant admitted before the lower court that the specimen[20] was one of the plants confiscated in his backyard; that appellant was not under custodial investigation when he signed the confiscation report; and that the inferences deduced by the lower court strengthened the conviction of accused-appellant.[21]

We find the appeal meritorious.

As a general rule, the procurement of a search warrant is required before a law enforcer may validly search or seize the person, house, papers or effects of any individual.[22] The Constitution provides that "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, x x x." [23] Any evidence obtained in violation of this provision is inadmissible.[24]

In the case at bar, the police authorities had ample opportunity to secure from the court a search warrant. SPO2 Pepito Calip inquired as to who owned the house.[25] He was acquainted with marijuana plants and immediately recognized that some plants in the backyard of the house were marijuana plants.[26] Time was not of the essence to uproot and confiscate the plants. They were three months old[27] and there was no sufficient reason to believe

that they would be uprooted on that same day.

In *People vs. Valdez*,^[28] the Court ruled that search and seizure conducted without the requisite judicial warrant is illegal and void ab initio. The prosecution's evidence clearly established that the police conducted a search of accused's backyard garden without a warrant; they had sufficient time to obtain a search warrant; they failed to secure one. There was no showing of urgency or necessity for the warrantless search, or the immediate seizure of the marijuana plants.

"Lawmen cannot be allowed to violate the very law they are expected to enforce."^[29] "The Court is not unmindful of the difficulties of law enforcement agencies in suppressing the illegal traffic of dangerous drugs. However, quick solutions of crimes and apprehension of malefactors do not justify a callous disregard of the Bill of Rights."^[30] We need not underscore that the protection against illegal search and seizure is constitutionally mandated and only under specific instances are searches allowed without warrants."^[31] "The mantle of protection extended by the Bill of Rights covers both innocent and guilty alike against any form of high-handedness of law enforcers, regardless of the praiseworthiness of their intentions."^[32]

With the illegal seizure of the marijuana plants subject of this case, the seized plants are inadmissible in evidence against accused-appellant.^[33]

The arrest of accused-appellant was tainted with constitutional infirmity. The testimony of SPO3 Jovencio Fajarito^[34] reveals that appellant was not duly informed of his constitutional rights, thus:

"ATTY. ESTRADA:

Q: In fact, you went to the house of Alberto Pasudag?

A: Yes sir.

Q: And in fact you invited him to the place where marijuana plants were planted?

A: Yes sir.

Q: Then and there, you started asking question from him?

A: Yes sir.

Q: In fact you started asking questions to elucidate from him information of admission regarding the ownership of the plants in question?

A: I only asked who really planted and cultivated the plants sir.

Q: Before you propounded questions to Alberto Pasudag, as according to you, you were already informed that he was the cultivator by some persons whose name until now you do not know?

A: Yes sir.

Q: Did you not inform Alberto Pasudag his constitutional rights?

A: I did not inform him because only when I will took (sic) his statement in the presence of his counsel and to be reduced in writing, sir.

Q: What you want to impress, you will inform only a person of his constitutional rights if you take his statement in writing?

A: Yes sir.

Q: Is that your method?

A: I informed the accused if I have to place his statement into writing, sir.

Q: According to you, you invited Alberto Pasudag to the alleged place where the marijuana were planted, then and there, you asked him who planted the same, and according to you, he said he planted the same?

A: Yes sir.

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Q: According to you, you brought Alberto Pasudag to the Office of the Chief of Police of Sison, Pangasinan?

A: Yes sir.

Q: In fact the Chief of Police was there?

A: Yes sir.

Q: Romeo Astrero was the Senior Inspector?

A: Yes sir.

Q: In other words, SPO2 Calip, Alcantara, Romeo Rasca and Alberto Pasudag were inside the office of the Chief of Police?

A: Yes sir.

Q: And according to you, Alberto Pasudag was interrogated by the Chief of Police?

A: Yes sir.

Q: In fact the Chief of Police was asking Alberto Pasudag in your presence? who planted the marijuana plants and according to you, Alberto Pasudag admitted in your presence that he planted the alleged marijuana plants?

A: Yes sir.

Q: Before Chief Inspector Romeo Astrero interrogated Alberto Pasudag, he did not also inform Alberto Pasudag his constitutional rights, particularly the rights of a person under custodial interrogation?

A: What I know, he just asked Alberto Pasudag the veracity whether or not he planted the said plants.

Q: In other words, your answer is, your Chief of Police did not inform Alberto Pasudag his constitutional rights?

A: No sir." (emphasis supplied)

After the interrogation, SPO3 Fajarito prepared a confiscation report,[35] which was part of the investigation.[36] Accused-appellant signed the confiscation report.[37] In both the interrogation and the signing of the confiscation receipt, no counsel assisted accused-appellant. He was the only civilian present in the Office of the Chief of Police.[38]

We do not agree with the Solicitor General that accused-appellant was not under custodial investigation when he signed the confiscation receipt. It has been held repeatedly that custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission.[39] Obviously, accused-appellant was a suspect from the moment the police team went to his house and ordered the uprooting of the marijuana plants in his backyard garden.

"The implied acquiescence to the search, if there was any, could not have been more than mere passive conformity given under intimidating or coercive circumstances and is thus considered no consent at all within the purview of the constitutional guarantee." [40] Even if the confession or admission were "gospel truth", if it was made without assistance of counsel and without a valid waiver of such assistance, the confession is inadmissible in evidence. [41]

In light of the foregoing, we uphold the constitutional right of accused-appellant to a presumption of innocence. The prosecution failed to establish his guilt beyond reasonable doubt.

WHEREFORE, the decision of the trial court is hereby REVERSED and SET ASIDE. Accused-appellant ALBERTO PASUDAG y BOKANG is ACQUITTED of the crime charged for lack of proof beyond reasonable doubt. The Director of Corrections is hereby directed to forthwith release accused-appellant unless he is held for another case, and to inform the Court of the action taken hereon within ten (10) days from notice.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Judge Modesto C. Juanson, presiding. Crim. Case No. U-9139, promulgated on March 18, 1997, Original Record, pp. 58-71.

[2] Violation of R.A. No. 6425, Sec. 9, as amended, otherwise known as the Dangerous Drugs Act.

[3] Original Record, p. 13.3 charging

[4] Ibid., p. 30.

[5] TSN, February 20, 1997, pp. 2-4.

[6] Ibid., pp. 5-6.

[7] Exhs. "D", "D-1" and "D-2".

[8] TSN, February 20, 1997, pp. 6-9.

[9] Ibid., p. 11.

[10] Exh. "I".

[11] TSN, February 27, 1997, p. 9.

[12] Exh. "B". The six other marijuana plants were marked as Exhs. "H-4" to "H-9".¹²

[13] TSN, February 17, 1997, p. 13.

[14] Exh. "B" (the tallest marijuana plant, as per TSN, February 17, 1997, p. 19 and TSN, February 25, 1997, p. 3) and Exh. "B-2"

[15] Exh. "C".

[16] TSN, February 13, 1997, pp. 5-7.

[17] Decision, p. 14 (Original Record, p. 71).

- [18] Notice of Appeal, Original Record, p. 74, Rollo, p. 39.
- [19] Appellant's Brief, Rollo, pp. 73-83.
- [20] Exh. "B".
- [21] Appellee's Brief, Rollo, pp. 109-115.
- [22] *People v. Sevilla*, G.R. No. 124077, September 5, 2000.
- [23] Article III, Sec. 2, Constitution.
- [24] Article III, Sec. 3, Constitution.
- [25] TSN, February 20, 1997, p. 4.
- [26] *Ibid.*, p. 11.
- [27] TSN, February 17, 1997, pp. 25-26.
- [28] G.R. No. 129296, September 25, 2000.
- [29] *People v. Encinada*, 345 Phil. 301, 321 [1997].
- [30] *Ibid.*, at p. 323.
- [31] *People v. Valdez*, *supra*, Note 28.
- [32] *Ibid.*
- [33] *Ibid.*
- [34] TSN, February 17, 1997, pp. 26-29.
- [35] Exh. "I".
- [36] TSN, February 17, 1997, p. 30.
- [37] TSN, February 27, 1997, p. 9.
- [38] TSN, February 17, 1997, p. 28.
- [39] *People v. Pavillare*, G.R. No. 129970, April 5, 2000, citing *People v. Mara*, 236 SCRA 565, 573 [1994].
- [40] *People v. Encinada*, *supra*, Note 29, at p. 322.
- [41] *People v. Valdez*, *supra*, Note 28.

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