

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. TOKOHISA KIMURA AND AKIRA KIZAKI, RESPONDENTS.

G.R. No. 130805. April 27, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Appellants Tomohisa Kimura and Akira Kizaki seek reversal of the decision[2] dated June 27, 1997 in Criminal Case No. 94-5606, rendered by the Regional Trial Court (Branch 66), Makati City, finding them guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425, as amended by R.A. No. 7659, otherwise known as the Dangerous Drugs Act of 1972, and sentencing each of them to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.

The Information dated August 8, 1994 against the accused alleges:

The undersigned State Prosecutor of the Department of Justice accuses TOMOHISA KIMURA and AKIRA KIZAKI of violation of Section 4, Article II of Republic Act 6425, as amended by R.A. 7659, otherwise known as the Dangerous Drugs Act of 1972, committed as follows:

That on or about June 27, 1994 in Makati, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously transport and deliver without lawful authority approximately 40,768 grams of Indian hemp (marijuana), a prohibited drug, in violation of the aforecited law.

CONTRARY TO LAW. [3]

Upon arraignment on October 10, 1994, the two accused, through counsel, entered their separate pleas of Not Guilty to the crime charged;[4] whereupon, the trial of the case ensued.

The testimonies of the following prosecution witnesses, to wit: SPO4 Juan Baldovino, Jr.,[5] SPO1 Rolando Cabato,[6] SPO1 Edmundo Badua, Chief Inspector Nilo Anso, PO3 Alfredo Cadoy, SPO1 Manuel Delfin and Forensic Chemist, Police Inspector Sonia Ludovico, sought to establish the following facts:

In the morning of June 27, 1994, Maj. Anso, head of Delta Group, Narcotics Command (NARCOM) I, North Metro District Command, Camp Karingal, Quezon City, received information from a confidential informant that a certain Koichi Kishi and Rey Plantilla were engaged in the selling of illegal drugs at the Cash and Carry Supermarket, Makati City.[7] Acting on said information, Maj. Anso organized a team composed of SPO4 Baldovino, Jr., SPO1 Cabato and PO3 Cadoy to conduct surveillance of the area.[8] A buy-bust operation was launched and PO3 Cadoy was designated to act as poseur-buyer and they prepared the buy-bust money consisting of one P500.00 bill and five pieces of P100.00 bill.[9]

At around 3:00 in the afternoon of the same day, the team together with the informant arrived at the Cash and Carry Supermarket and conducted surveillance of the area.[10] Later, the informant was able to contact the targets who told him that they will be arriving at 8:00 in the evening at the parking area of the Cash and Carry

Supermarket.[11] At around 8:00 in the evening, Koichi and Rey arrived and were met by PO3 Cadoy and the informant.[12] PO3 Cadoy gave the marked money worth P1,000.00 to Rey and Koichi who then handed him the “shabu”. PO3 Cadoy scratched his head as a pre-arranged signal of the consummation of the sale.[13] The operatives were about five meters from the suspects.[14] While the team was approaching, PO3 Cadoy held Koichi by the hand while Rey scampered away to the direction of the South Superhighway.[15] The team brought Koichi to a safe area within the Cash and Carry Supermarket and interrogated him. They learned from Koichi that his friends/suppliers will arrive the same evening to fetch him.[16] Several minutes later, a white Nissan Sentra car driven by appellant Kimura with his co-appellant Kizaki seating at the passenger seat arrived at the parking area. Koichi pointed to them as the ones who will fetch him. Appellants remained inside the car for about ten to fifteen minutes.[17] Then, a certain Boy driving a stainless jeep, without a plate number, arrived and parked the jeep two to three parking spaces away from the Sentra car.[18] Boy approached the Sentra car and after a few minutes, appellants got out of their car. Appellant Kizaki went to the stainless jeep and sat at the passenger seat. Boy and appellant Kimura went to the rear of the Sentra car and opened its trunk.[19] Appellant Kimura got a package wrapped in a newspaper and gave it to Boy who walked back to his jeep.[20] While Maj. Anso and SPO4 Baldovino, Jr. were approaching to check what was inside the wrapped newspaper, appellant Kimura ran but was apprehended while Boy was able to board his jeep and together with appellant Kizaki who was seated at the passenger seat sped off towards South Superhighway.[21] The police operatives then inspected the contents of the trunk and found packages of marijuana.[22] They brought Koichi and appellant Kimura to the headquarters and turned over the seized marijuana to the investigator who made markings thereon.[23] Maj. Anso reported the escape of appellant Kizaki to their investigation section.[24]

The seized packages which were contained in 3 sacks were brought to the PNP Crime Laboratory on June 29, 1994.[25] Forensic Chemist Sonia Sahagun-Ludovico testified that the contents of the sacks weighed 40,768 grams and were positive to the test of marijuana.[26]

On June 29, 1994, appellant Kizaki while having dinner with his friends at the Nippon Ichi Restaurant located at Mabini, Malate, Manila[27] was arrested by another NARCOM group led by Maj. Jose F. Dayco.[28]

Appellants’ defense is denial and alibi. In support thereof, both appellants were called to the witness stand.

Appellant Kimura’s testimony is as follows: In the afternoon of June 27, 1994, Kimura was in the house of his co-appellant Kizaki at Dian Street, Makati City, together with Koichi Kishi, Luis Carlos and a certain “Sally” and “Boy”. [29] In the evening of the said date, Kimura borrowed the car of Kizaki in order to get his (Kimura’s) television from his house located in Evangelista Street, near the Cash and Carry Supermarket, and bring the same to a repair shop.[30] On their way to Kimura’s house, Koichi requested Kimura to pass by Cash and Carry Supermarket because Koichi needed to meet a certain “Rey” who was borrowing money from him. Upon reaching Cash and Carry, Kimura parked the car about twenty meters from its entrance, then Koichi and Carlos alighted from the car and Koichi handed something to Rey.[31] Shortly thereafter, Koichi and Carlos were grabbed by two men from behind. Then four men approached the car and one guy ordered him to sit at the back and together with Koichi and Carlos, they were all brought to Camp Karingal allegedly for violating Sec. 4 of Republic Act No. 6425.[32] Kimura was asked questions about the address and business of Kizaki. Kimura denied that there was marijuana in the car on the night of June 27, 1994 but claims that he saw marijuana placed at the car trunk the following day at Camp Karingal. Kizaki was not with him at Cash and Carry on the night of June 27, 1994. There was no stainless jeep near the car on the same night. Carlos was released and was not charged because Kimura’s girlfriend, Sally, served as Carlos’ guarantor.

On the other hand, appellant Kizaki testified that on the date that the alleged crime was committed, he was in the company of his friends, Mr. and Mrs. Takeyama, his co-appellant Kimura, and his driver Boy and maid Joan at

his house in Dian Street, Makati City;[33] that appellant Kimura borrowed his car on the night of June 27, 1994 to pick up Kimura's broken TV and bring it to the repair shop.[34]

Appellant Kizaki's alibi was corroborated by Rosario Quintia, his former housemaid, and his friend, Akiyoshi Takeyama, who both testified that they were at Kizaki's house on the night of June 27, 1994 from 7:00 to 10:00 in the evening and never saw Kizaki leave the house.[35]

Appellant Kizaki was arrested on June 29, 1994, two days after the Cash and Carry incident, in the Nippon Ichi Restaurant located at Mabini, Manila. He was having dinner with Lt. Col. Rodolfo Tan, Masami Y. Nishino, Anita Takeyama and Akiyoshi Takeyama. These witnesses executed a joint affidavit[36] and testified that while they were about to leave the restaurant, a man got near Kizaki and asked for his passport whom they thought was from the Immigration. Later, they learned that Kizaki was brought to Camp Karingal.[37]

On June 27, 1997, the trial court rendered the herein assailed judgment, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Akira Kizaki and Tomohisa Kimura GUILTY beyond reasonable doubt for violation of Section 4 of Republic Act 6425, as amended by Republic Act 7659, and the Court hereby sentences them to suffer, taking into consideration the absence of mitigating or aggravating circumstances, the amount of marijuana seized from the accused which weigh 40,768 grams, the penalty of RECLUSION PERPETUA and to pay a fine of P500,000.00 each.

The Bureau of Immigration and Deportation is hereby ordered to deport Akira Kizaki and Tomohisa Kimura without further proceedings after the service of their sentence.

Let the marijuana, the subject matter of this case be immediately forwarded to the Dangerous Drugs Board for proper disposition.

SO ORDERED.[38]

In convicting appellants, the trial court made the following findings:

The settled jurisprudence is that alibi is inherently a weak defense. Like the defense of alibi, denial by the accused of the offense charged against him is also inherently a weak defense. It is also the settled jurisprudence that the defense of alibi and denial cannot prosper over the positive identification of the accused by the prosecution witnesses. For alibi to prosper, the accused must show that it was impossible for him to have been at the scene of the commission of the crime at the time of its commission.

Akira testified that on the evening of June 27, 1994, he was in his house located at Dian Street corner Ampil Street, Makati City, Metro Manila, which is a walking distance to Cash and Carry Supermarket, the scene of the offense. It was not therefore impossible for accused Akira Kizaki to have been present at the scene of the crime at the time of its commission.

Accused Kimura testified that on the evening of June 27, 1994, he was with his co-accused Kizaki at the Cash and Carry Supermarket but for another purpose, i.e., to meet Rey Plantilla who was borrowing money from him. In fine accused Kimura merely denied the offense charged against him, which is weak defense.

Both accused, Kizaki and Kimura, were positively identified by prosecution witnesses SPO4 Baldomino, SPO1 Cabatu, Maj. Anso and PO3 Cadoy as the persons whom they arrested for drug trafficking in a buy-bust operation at the Cash and Carry Supermarket on June 27, 1994.

Finally, although the evidence show that there is a doubt in the illegality of the arrest of accused Kimura by Major Dayco, the jurisprudence is that "the illegality of warrantless arrest cannot deprive the state of its right to convict the guilty when all the facts on record point to their culpability.[39]

Hence, this appeal before us. Appellants assert the following:

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING ACCUSED-APPELLANTS' DEFENSE.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANTS HAD BEEN PROVEN BEYOND REASONABLE DOUBT.

Appellants claim that although the defense of alibi and denial are weak, it is still the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt to support a judgment of conviction; that the trial court mainly relied on the weakness of the defense rather than on the strength of the evidence for the prosecution. They argue that appellant Kizaki's claim that he was not at the Cash and Carry Supermarket on the night of June 27, 1994 was corroborated by three independent witnesses including appellant Kimura who testified that he was not with appellant Kizaki at Cash and Carry Supermarket on the said night.

Appellants further question how the trial court could have been certain that the marijuana presented in court are the same articles confiscated from the appellants when the arresting officers did not place identifying marks on the confiscated items.

Appellant Kizaki further contends that he was arrested two days after the alleged buy-bust operation without a valid warrant of arrest. He points out that although the trial court expressed doubts as to the legality of his arrest, it nevertheless convicted him of the crime charged, which is in violation of the Constitution. Kizaki argues that he could not have been caught in flagrante delicto to justify the warrantless arrest when he was arrested two days after the alleged Cash and Carry incident while he was only having dinner with his friends at a restaurant.

In the appellee's brief, the Solicitor General prays that the decision of the trial court finding appellants guilty as charged be affirmed. He argues that appellants were positively identified by four prosecution witnesses, all police officers, as among the three persons engaged in the transportation and delivery of about 40,768 grams of marijuana on June 27, 1994 at the Cash and Carry Supermarket; that the police operatives were able to seize the marijuana from the Sentra car they were using to transport the marijuana; that the marijuana introduced and offered at the trial were positively identified by the arresting officers as those seized from the car of the appellants; that the contention of appellant Kizaki that his warrantless arrest two days after the alleged incident, was unlawful, is legally inconsequential in this case considering that his conviction was not based on his arrest on June 29, 1994 but on his having participated in the transport and delivery of marijuana on June 27, 1994; that appellant Kizaki never questioned the validity of the warrantless arrest of his co-appellant Kimura on June 27, 1994, either before the trial court or before this Court; thus, any challenge against the search and seizure of the marijuana based on constitutional ground is deemed waived insofar as appellant Kizaki is concerned.

We will first resolve the issue on the alleged warrantless arrest of appellant Kizaki.

Appellant Kizaki assails the legality of his warrantless arrest. Indeed, SPO1 Delfin, one of those who arrested appellant Kizaki at the Nippon Ichi restaurant, admitted that they did not have a warrant of arrest when his group arrested Kizaki on the night of June 29, 1994. Rule 113, Section 5 of the Revised Rules of Criminal Procedure provides that a peace officer or a private person may, without a warrant, arrest a person only 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 or 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.

The alleged crime happened on June 27, 1994 and appellant Kizaki was arrested on June 29, 1994 or two days after the subject incident. At the time appellant Kizaki was arrested, he was at a restaurant having dinner with a group of friends, thus, he was not committing or attempting to commit a crime. Neither was he an escaped prisoner whose arrest could be effected even without a warrant. It bears stressing that none of the arresting officers of appellant Kizaki was present on the night of June 27 where appellant Kizaki allegedly sold and transported marijuana and escaped, thus the arresting officers had no personal knowledge of facts or circumstances that appellant Kizaki committed the crime. None of the exceptions enumerated above was present to justify appellant Kizaki's warrantless arrest.

However, notwithstanding the unjustified warrantless arrest of appellant Kizaki, the records show that he did not raise such question before he pleaded to the offense charged.[40] Neither did he move to quash the information on that ground before the trial court.[41] He thus waived objection to the illegality of his arrest.[42] Moreover, appellant Kizaki's application for bail[43] which was denied by the trial court likewise constitutes a waiver of his right to question whatever irregularities and defects which attended his arrest.[44]

Nevertheless, we find the other claims of appellants meritorious.

In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime of violation of the Dangerous Drugs Act.[45]

In *People vs. Casimiro*,[46] we acquitted appellant for failure of the prosecution to establish the identity of the prohibited drug which constitutes the *corpus delicti* and held:

In *People vs. Mapa*, the accused-appellant was granted an acquittal after the prosecution failed to clarify whether the specimen submitted to the NBI for laboratory examination was the same one allegedly taken from the accused. In *People vs. Dismuke*, this Court ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. In *People vs. Laxa*, the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the accused-appellant. One policeman admitted that he marked the seized items only after seeing them for the first time in the police headquarters. It was held:

This deviation from the standard procedure in the anti-narcotics operations produces doubts as to the origins of the marijuana. Were the allegedly confiscated from the scene of the crime the same ones which the investigator marked in the police headquarters? This question gives rise to surmises and speculations, and cannot prove beyond reasonable doubt the guilt of accused-appellant.

In this case, the prosecution failed to prove the crucial first link in the chain of custody. The prosecution witnesses PO2 Supa, SPO2 Madlon and PO3 Piggangay admitted they did not write their initials on the brick of marijuana immediately after allegedly seizing from accused-appellant outside the grocery store but only did

so in their headquarters. The narcotics field test, which initially identified the seized item as marijuana, was likewise not conducted at the scene of the crime, but only at the narcotics office. There is thus reasonable doubt as to whether the item allegedly seized from accused-appellant is the same brick of marijuana marked by the policemen in their headquarters and given by them to the crime laboratory for examination.

After examining the evidence for the prosecution, and tested in the light of the *Casimiro* case, we find that the prosecution failed to establish the identity of the marijuana allegedly seized from appellants Kimura and Kizaki. Extant in the records were the admissions made by the police operatives of their failure to place any markings on the seized marijuana immediately after they had allegedly apprehended appellants, thus failing to prove that the marijuana presented in court was the very same marijuana seized from appellants. Maj. Anso, head of the police operatives, testified on cross-examination as follows:

ATTY. BALICUD:

With respect to the packages which you identified yesterday, before you showed that to your investigation section, did you make any markings thereat?

WITNESS:

None, sir.

ATTY. BALICUD:

Did any of your men place any markings at least to identify that that is the drugs confiscated by you at the Cash and Carry?

WITNESS:

What I know your honor, is that the investigation section is the one who will mark the evidence.

...

COURT:

You mean to say when you have already surrender(sic) the shabu(sic) to the investigation section that was the time when the investigator mark them?

WITNESS:

It is already their duty to mark them, your honor.

...

ATTY. BALICUD:

And did you see if any of those men in the investigation section did the corresponding markings?

WITNESS:

I did not already see sir.[47]

The testimony of Maj. Anso was confirmed by SPO4 Baldovino, Jr. when the latter testified on cross-examination as follows:

ATTY. SENSON:

Q.

When the packages contained in Exhibits “B”, “C” and “D” were recovered at the car, did you not make any markings on them, is that correct?

WITNESS:

A.

That is true, sir.[48]

SPO4 Baldovino, Jr. further clarified on his re-direct examination why no markings were made, thus:

FISCAL MANABAT:

Q.

Why is it that no markings were made on these marijuana packages?

...

WITNESS:

We did not put markings there because after we confiscated those packages, there was a press conference conducted and after that we submitted it to PCCL or Philippine Crime Laboratory, sir.[49]

The failure to establish the chain of custody of the evidence is further shown by the testimony of SPO1 Badua, the person assigned to bring the alleged seized marijuana to the PNP Crime Laboratory. His testimony is as follows:

PROS. MANABAT:

Do you recall your activities on that day, June 29, 1994?

WITNESS:

I was ordered to bring the marijuana to the Crime Laboratory.

PROS. MANABAT:

Who ordered you to bring the marijuana to the Crime Laboratory?

WITNESS:

Superintendent Eduardo Cariño, sir.

PROS. MANABAT:

Where did this marijuana come from, if you know?

WITNESS:

In our office confiscated from Japanese nationals.

PROS. MANABAT:

Do you know the name of the Japanese nationals you are referring to?

WITNESS;

I do not know, sir.

PROS. MANABAT:

Can you describe this marijuana which you said you were required to bring to the PNP Crime Laboratory?

WITNESS:

They are contained in sacks, sir.

COURT:

How many sacks?

WITNESS:

Three (3), sir.

PROS. MANABAT:

What kind of sacks were these, can you recall?

WITNESS:

Rice sacks.

...

PROS. MANABAT:

Now, if you see this marijuana you said you were required to bring to the PNP Crime Laboratory which you described as being contained in three (3) sacks, will you be able to identify these three (3) sacks of marijuana.

WITNESS:

Yes, sir.

PROS. MANABAT:

Now, I am showing to you SPO1 Badua, there are three (3) sacks (sic) here already deposited in Court, please examine these three (3) sacks carefully and tell us the relation of these three sacks to that marijuana contained in sacks which you said you were required to bring to PNP Crime Laboratory.

WITNESS:

These are the three sacks I brought.

PROS. MANABAT:

...

Now, you said that this marijuana was contained in three sacks, three rice sacks, will you please examine the sacks and tell us if these are the same sacks which you brought to the PNP Crime Laboratory?

WITNESS:

Yes, sir, these are the same sacks I brought.

COURT:

What made you so sure that these are the same sacks that you brought from your office to the Crime Laboratory?

WITNESS:

Because of the markings A, B, C.

COURT:

Who affixed those markings?

WITNESS:

The investigator, sir.

COURT:

Did you see the investigator affixed those markings?

WITNESS:

Yes, sir.

COURT:

Who was the investigator?

WITNESS:

SPO1 Delfin, sir.

PROS. MANABAT:

Now, what proof do you have that you actually brought these three sacks of marijuana which you identified to the PNP Crime Laboratory?

WITNESS:

There is a request for laboratory examination.

PROS. MANABAT:

Who prepared this request for laboratory examination of the marijuana?

WITNESS:

SPO1 Delfin.[50]

And on cross-examination as follows:

ATTY. BALICUD:

Now, were you present when this request for laboratory examination was prepared?

WITNESS:

Yes, sir.

ATTY. BALICUD:

Who specifically typed the request?

WITNESS:

SPO1 Delfin, sir.

ATTY. BALICUD:

And this was made on June 28, 1994?

WITNESS:

Yes, sir.

...

ATTY. BALICUD:

And then about what time on June 28 was it prepared?

WITNESS:

Morning, sir.

ATTY. BALICUD:

But then this request was received already by the Crime Laboratory on June 29, 1994, where were the three sacks deposited from June 28 up to the time you picked it up on June 29 to be brought to the Crime Laboratory?

WITNESS:

It was deposited inside our supply room.

ATTY. BALICUD:

Why did you not deposit or deliver it immediately to the Crime Laboratory?

WITNESS:

We were still preparing the necessary papers.

ATTY. BALICUD:

What papers were still being prepared?

WITNESS:

Request for laboratory, medical, drug dependency.

...

ATTY. BALICUD:

Now, when the request for laboratory examination was made, did you already see the contents inside the sack?

WITNESS:

Yes, sir.

ATTY. BALICUD:

Why did you open the sacks?

WITNESS:

Yes, sir.

ATTY. BALICUD:

Who opened the sacks?

WITNESS:

The investigator.

ATTY. BALICUD:

So that they were placed in three sacks?

WITNESS:

Yes, sir.

ATTY. BALICUD:

And you opened each and every sack?

WITNESS:

Yes, sir.

ATTY. BALICUD:

You brought the same to the Crime Laboratory?

WITNESS:

Yes, sir.

ATTY. BALICUD:

Were there markings in the 3 sacks when the same were brought to the PNP Crime Laboratory?

WITNESS:

Yes, sir. A, B, C.

ATTY. BALICUD:

So that one sack is marked A, the other sack is B and the other is marked C.

WITNESS:

Yes, sir.

ATTY. BALICUD:

How about the contents of these three sacks, were they also marked when you brought the same to the PNP Crime Laboratory?

WITNESS:

Yes, sir, but it was marked at the Crime Laboratory already.

ATTY. BALICUD:

So, it is clear that when the alleged marijuana was brought to the PNP Crime Laboratory, there was no marking yet?

WITNESS:

Yes, sir. [51]

While SPO1 Badua's testimony showed that it was investigator SPO1 Delfin who made the markings A, B, C on the three sacks containing the marijuana which he brought to the laboratory, nowhere in his testimony did he say that such markings were made on the night the appellants were arrested, i.e., on June 27, 1994. Investigator Delfin did not initial said markings nor did he testify affirming his markings.

Moreover, although the three sacks of alleged marijuana were marked as A, B, C, the contents of these three sacks however had no markings when they were kept inside the supply room on June 28 since as Badua intimated, the contents of these three sacks were only marked when he brought the same to the PNP Crime Laboratory on June 29, 1994.

The records of the case do not show that the police operatives complied with the procedure in the custody of seized prohibited and regulated drugs as embodied in the Dangerous Drugs Board Regulation No. 3 Series of 1979 amending Board Regulation No. 7 Series of 1974,[52] i.e., any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. In this case, there was no inventory made in the crime scene despite the fact that Maj. Anso testified that he saw eighteen packages neatly wrapped in a newspaper but the inventory was made already in the headquarters. SPO1 Badua testified that the marijuana confiscated from appellant Kimura was contained in three sacks.

Consequently, the failure of the NARCOM operatives to place markings on the alleged seized marijuana coupled with their failure to observe the procedure in the seizure and taking custody of said drug seriously bring to question the existence of the seized prohibited drug. It is not positively and convincingly clear that what was submitted for laboratory examination and presented in court was actually recovered from the appellants.

Evidently, the prosecution has not proven the indispensable element of corpus delicti of the crime which failure produces a grievous doubt as to the guilt of the appellants. In criminal cases, proof beyond reasonable doubt is required to establish the guilt of the accused. Similarly, in establishing the corpus delicti, that unwavering exactitude is necessary. Every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.[53]

Although the defense raised by appellants Kimura and Kizaki were denial and alibi, respectively, which are inherently weak, we have repeatedly declared that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[54] The denial of appellant Kimura that he was caught in the Cash and Carry Supermarket delivering marijuana on the night of June 27, 1994 may be weak but the evidence for the prosecution is clearly even weaker. In *People vs. Laxa*,[55] we acquitted the appellant for failure of the prosecution to establish the identity of the prohibited drug which constitutes the corpus delicti, an essential requirement in a drug related case. In the present case, the prosecution also failed to indubitably show the identity of the marijuana which were allegedly seized from appellants.

The alibi of appellant Kizaki that he was in his house on the same night assumes weight and significance considering that the scenario depicted by the prosecution on the alleged escape of appellant Kizaki at the Cash and Carry left much to speculations and surmises. The prosecution tried to show that appellant Kizaki who was on board the stainless jeep was able to escape even if the police operatives were only about five meters away from the jeep[56] which was heading to the entrance of the Cash and Carry along South Superhighway. It is quite difficult for us to accept its veracity considering that despite the short distance of the operatives from the jeep when it started to speed off, the operatives who were all armed with service revolvers[57] chased on foot the

stainless jeep and did not even fire any warning shot to stop the driver and appellant Kizaki nor did they fire a shot at the tire of the jeep to immobilize it. The alibi of Kizaki found corroboration from his friend Akiyoshi Takeyama and appellant Kizaki's former housemaid Rosaria Quintia that he was in his house and never left it on the night of the alleged delivery or transport of marijuana in Cash and Carry Supermarket. In fact, co-appellant Kimura testified that appellant Kizaki was not one of his companions in going to Cash and carry Supermarket on June 27, 1994.[58] Moreover, in the request for laboratory examination dated June 28, 1994, signed by P/CI Jose F. Dayco, Chief, Investigation Section, NMDU, NARCOM, the suspects named therein were only Koichi Kishi and Tomohisa Kimura.[59] Hence, the constitutional presumption of innocence has not been overcome by the prosecution.

In fine, for failure of the prosecution to establish the guilt of both appellants beyond reasonable doubt, they must perforce be exonerated from criminal liability.

WHEREFORE, the decision of the trial court in Criminal Case No. 94-5606 is hereby REVERSED and appellants Tomohisa Kimura and Akira Kizaki, are hereby ACQUITTED on ground of reasonable doubt. They are ordered immediately released from prison, unless they are being detained for some other lawful cause. The Director of Prisons is DIRECTED to inform this Court of the action taken hereon within five (5) days from receipt hereof.

Let the PNP Director be furnished a copy of herein decision for the proper information and guidance of his police operatives. The marijuana is hereby ordered confiscated in favor of the government for its proper disposition under the law.

Costs de officio.

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Spelled Kizaki in the Transcripts of Stenographic Notes (TSN).

[2] Penned by Judge Eriberto U. Rosario, Jr.

[3] Records, p. 1; Rollo, p.10.

[4] Records, p. 77.

[5] Sometimes spelled Baldomino.

[6] Sometimes spelled Cabatu.

[7] TSN (Anso), January 31, 1995, p. 14; TSN (Baldovino, Jr.), December 15, 1994, p. 11; TSN, (Cabato), December 20, 1994, p. 13.

[8] TSN (Anso), January 31, 1995, p. 19; TSN (Baldovino, Jr.), December 15, 1994, p. 12. TSN, (Cabato), December 20, 1994, p. 12.

[9] TSN (Anso), January 31, 1995, p. 21; TSN (Baldovino, Jr.), December 15, 1994, pp. 12-13.

[10] TSN (Anso), January 31, 1995, p. 23-24; TSN (Baldovino, Jr.), December 15, 1994, p. 16; TSN, (Cabato), December 20, 1994, p. 15.

[11] TSN (Anso), January 31, 1995, p. 29; TSN (Baldovino, Jr.), December 15, 1994, p. 19; TSN, (Cabato), December 20, 1994, p. 18.

- [12] TSN (Anso), January 31, 1995, p. 35; TSN (Baldovino, Jr.), December 15, 1994, p. 21; TSN, (Cabato), December 20, 1994, p. 22.
- [13] TSN (Anso), January 31, 1995, p. 36; TSN (Baldovino, Jr.), December 15, 1994 p. 22; TSN, (Cabato), December 20, 1994, p. 25.
- [14] TSN (Baldomino, Jr.), December 15, 1994, p. 22; TSN, (Cabato), December 20, 1994, p. 25.
- [15] TSN (Anso), January 31, 1995, p. 37; TSN (Baldovino, Jr.), December 15, 1994, p. 25; TSN, (Cabato), December 20, 1994, p. 25.
- [16] TSN(Anso), January 31, 1995, p. 43; TSN (Baldovino, Jr.), December 15, 1994, p. 28; TSN, (Cabato), December 20, 1994, p. 27.
- [17] TSN (Anso), January 31, 1995, p. 47; TSN (Baldovino, Jr.), December 15, 1994, p. 33; TSN, (Cabato), December 20, 1994, p. 33.
- [18] TSN (Anso), January 31, 1995, p. 48; TSN (Baldovino, Jr.), December 15, 1994, pp. 32-33; TSN, (Cabato), December 20, 1994, p. 34.
- [19] TSN (Anso), January 31, 1995, p. 51; TSN (Baldovino, Jr.), December 15, 1994, pp. 34-35; TSN, (Cabato), December 20, 1994, pp. 35-36.
- [20] TSN (Anso), January 31, 1995, p. 52; TSN (Baldovino, Jr.), December 15, 1994, p. 35; TSN, (Cabato), December 20, 1994, pp. 17-38.
- [21] TSN (Anso), January 31, 1995, p. 57; TSN (Baldovino, Jr.), December 15, 1994, p. 38; TSN, (Cabato), December 20, 1994, pp. 38-39.
- [22] TSN (Anso), January 31, 1995, p. 58; TSN (Baldovino, Jr.), December 15, 1994, p. 39; TSN, (Cabato), December 20, 1994, pp. 40-41.
- [23] TSN (Anso), January 31, 1995, p. 42; TSN (Baldovino, Jr.), December 15, 1994, p. 78, pp. 90-91.
- [24] TSN (Anso), January 31, 1995, p. 76; TSN(Baldovino, Jr.), December 15, 1994.
- [25] TSN, Edmundo Badua, January 30, 1995, p. 30.
- [26] TSN, June 5, 1995, pp. 29-30; Exhibit I.
- [27] TSN, SPO1 Manuel Delfin, April 19, 1995, p. 12.
- [28] Id., pp. 16-18.
- [29] TSN, November 14, 1995, p. 12.
- [30] Id., p. 16.
- [31] Id., pp. 20-21.
- [32] Id., pp. 23-25.
- [33] TSN, November 11, 1996, pp. 6-7.
- [34] Ibid, p.10.
- [35] TSN, February 22, 1996, pp. 8-11; TSN November 18, 1996, p. 47.

[36] Exhibit "5," Records, p. 13.

[37] TSN (Tan), October 26, 1995, pp. 13-15; TSN (Nishino), November 7, 1995, p. 8; TSN (Anita Takeyama), February 8, 1996, pp. 8-10.

[38] Rollo, p. 36.

[39] Id., pp. 34-36.

[40] Records, p. 167.

[41] People vs. Timon, 281 SCRA 579, 597.

[42] People vs. Lagarto, 326 SCRA 693, 749 citing People vs. Nitcha, 240 SCRA 283.

[43] Records, p. 77. Denied in an Order dated April 25, 1996. p. 194.

[44] People vs. Timon, supra.

[45] People vs. Mendiola, 235 SCRA 116, 120 (1994), citing People vs. Macuto, 176 SCRA 762 (1989), People vs. Vocente, 188 SCRA 100 (1990), People vs. Mariano, 191 SCRA 136.

[46] People vs. Casimiro, 383 SCRA 390, 400 (2002), citing People vs. Mapa, 220 SCRA 670 (1993); People vs. Dismuke, 234 SCRA 51, 61 (1994); People vs. Laxa, 361 SCRA 622, 635 (2001).

[47] TSN, February 1, 1995, pp. 41-43.

[48] TSN, December 15, 1994, p. 78.

[49] Id., pp. 90-91.

[50] TSN, January 30, 1995, pp. 11-17.

[51] Id., pp. 28-34.

[52] Board Regulation No. 3, S 1979 as amended by Board Regulation No. 2, S.1990

Subject: Amendment of Board Regulation No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.

...

SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and or/paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and /or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation. (Board Regulation No. 2, S.1990).

[53] People vs. Mendiola, *supra.*, note 41.

[54] People vs. Sadie, 149 SCRA 240, 243 (1987).

[55] 361 SCRA 622, 634 (2001).

[56] TSN (Anso), February 1, 1995, p. 18; TSN (Cabato) December 20, 1994, p. 71.

[57] TSN (Baldovino, Jr), TSN, December 15, 1994, p. 85; TSN (Cabato) December 20, 1994, p. 63.

[58] TSN, February 15, 1996, p. 16.

[59] Records, p. 27.

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