

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELLY SARAP Y ARCANGELES AND ROGER AMAR Y MATEO, ACCUSED.
MELLY SARAP Y ARCANGELES, ACCUSED-APPELLANT.**

G.R. No. 132165. March 26, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Kalibo, Aklan, Branch 7, finding accused-appellant Melly Sarap y Arcangeles guilty beyond reasonable doubt of violation of Section 4 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, as amended, and sentencing her to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency.

The Information charged accused-appellant of sale of prohibited drugs, committed as follows:

That on or about the 4[th] day of March, 1996, in the afternoon, in Barangay Poblacion, Municipality of Banga, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other, without authority of law, did then and there wilfully, unlawfully and feloniously sell, deliver, distribute and transport prohibited drugs consisting of nine hundred (900) grams of Marijuana leaves, otherwise known as “Indian Hemp” to the intended buyers Joysie R. Duran, Jonalyn R. Duran and Pepe Casabuena, who were apprehended two (2) days ago by the police authorities, said prohibited drugs were confiscated from the possession and control of the accused.[2]

Upon arraignment on March 25, 1996, accused-appellant pleaded not guilty.[3] Trial on the merits thereafter ensued.

The prosecution presented six (6) witnesses. Their testimonies can be synthesized into the following narration of events:

Armed with a search warrant,[4] SPO4 Gelacio R. Guarino, Chief of Police of Banga, Aklan together with PO2 Jhanny Navida, raided the house of Conrado Ricaforte at Rizal Street, Poblacion, Banga, Aklan on March 2, 1996, relative to the reported sale of marijuana by its occupants, Jonalyn Duran, Joysie Duran and Pepe Casabuena. The three were apprehended for illegal possession of marijuana and were detained at the Banga Police Station.[5] In the course of their investigation, the police learned that a certain Melly from Capiz and one Roger were the suppliers of marijuana and that they will be back on March 4, 1996.

On March 4, 1996, Janet Iguiz,[6] caretaker of the house of Conrado Ricaforte informed Guarino that there were two strangers looking for the Duran sisters.

Accordingly, Guarino and Navida recorded the report in the police blotter[7] and proceeded to the house of Conrado Ricaforte, which is more or less three hundred meters away from the police station. When they arrived there, Guarino saw a woman, who turned out to be accused-appellant Melly Sarap, walking in the alley near the house. Accused-appellant saw Guarino and Navida in police uniform and immediately threw away her black

canvass bag, which her companion Roger Amar picked up. Guarino blocked Sarap's path and grabbed from her the green plastic bag she was holding. Upon inspection, the plastic bag was found to contain two blocks of marijuana fruiting tops.[8]

In the meantime, Navida pursued Amar and arrested him.[9]

The marijuana confiscated from Sarap was brought to the Iloilo Headquarters for laboratory examination.[10] The chemical analysis conducted by forensic chemist Angela Baldevieso revealed that the substance was indeed marijuana or "Indian hemp" and weighed approximately 900 grams as per Physical Science Report No. D-01296.[11] Consequently, the above-quoted information was filed against Sarap and Amar.

Accused-appellant, on the other hand, denied the accusation against her. She narrated that she delivered dried fish to her sister, Susanne Ricablanca, after which she went to the comfort room of the dress shop fronting Banga Public Market to relieve herself. On her way to the dress shop, she met Amar and entrusted to him her black bag. Thereafter, a woman approached and told her that there were policemen waiting for her outside. The policemen forced her to board a jeep and brought her to the office of Chief of Police Guarino at the municipal hall. Guarino poked a gun at her and pulled her hair. He also asked her to remove her pants and shirt. A certain PO3 Pedro Jerry Icaay asked her to remove her bra and when she refused, he pulled her bra because he was looking for marijuana on accused-appellant's person. Sarap asserted that the policemen did not get any marijuana from her.

Accused-appellant's testimony was corroborated by her co-accused Roger Amar, her sister Susanne Ricablanca and Leandro Braca, a pedicab driver.

On October 2, 1997, the trial court rendered the appealed decision. The dispositive portion of which states:

WHEREFORE, under the foregoing premises, accused Roger Amar is hereby ACQUITTED. The Court finds accused Melly Sarap GUILTY beyond reasonable doubt of Violation of Article II, Section 4 of Republic Act 6425, as amended and hereby sentences her to suffer the penalty of reclusion perpetua and to a fine of P500,000.00 without subsidiary imprisonment in case of insolvency. Considering that accused Melly Sarap is a detention prisoner, she shall be credited of her sentence with the full time during which she has undergone preventive imprisonment having agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The two (2) blocks of dried marijuana fruiting tops are hereby confiscated in favor of the government. The Court orders the immediate release of Roger Amar from detention unless there are other lawful reasons for his continued confinement.

SO ORDERED.[12]

Hence, this appeal with the accused-appellant raising the following assignment of errors:

- THAT THE TRIAL COURT ERRED IN NOT HOLDING THE WARRANTLESS SEARCH AND ARREST ILLEGAL;
- THAT THE TRIAL COURT ERRED IN NOT CONSIDERING FAVORABLY THE DEFENSE OF ALIBI AS A GROUND FOR THE ACQUITTAL OF THE HEREIN ACCUSED-APPELLANT INSPITE OF THE WEAKNESS OF THE PROSECUTION EVIDENCE WHICH IS INSUFFICIENT TO OVERCOME THE PRESUMPTION OF INNOCENCE IN HER FAVOR;
- THAT THE TRIAL COURT ERRED IN NOT APPRECIATING AS A GROUND FOR THE ACQUITTAL OF THE ACCUSED-APPELLANT, HER DEFENSE THAT THE TRANSPARENT PLASTIC BAGS WAS NOT POSSESSED NOR OWNED BY HER, DESPITE POSITIVE AND CONVINCING PROOF ADJ[U]CED IN SUPPORT THEREOF;

- THAT THE TRIAL COURT ERRED IN NOT ACQUITTING THE HEREIN ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT.[13]

A search may be conducted by law enforcers only on the strength of a warrant validly issued by a judge as provided in Article III, Section 2 of the Constitution.[14] Articles which are the product of unreasonable searches and seizures are inadmissible as evidence, pursuant to Article III, Section 3 (2) of the Constitution.[15] Warrantless searches and seizures may be made without a warrant in the following instances: (1) search incident to a lawful arrest, (2) search of a moving motor vehicle, (3) search in violation of custom laws, (4) seizure of the evidence in plain view, (5) when the accused himself waives his right against unreasonable searches and seizures,[16] (6) stop and frisk[17] and (7) exigent and emergency circumstances.[18] These instances, however do not dispense with the requisite of probable cause before a warrantless search and seizure can be lawfully conducted. In warrantless search cases, probable cause must only be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed.[19]

In convicting accused-appellant, the trial court held that: (1) the police officers are presumed to have regularly performed their duties, in the absence of proof of ill or improper motive on their part to falsely impute a serious crime against Sarap; and (2) the positive testimonies of the prosecution witnesses have more weight compared to Sarap's negative testimony. It also relied heavily on the testimonies of Chief of Police Guarino that in view of the urgency of the case, they proceeded immediately to the house of Conrado Ricaforte to pursue Sarap and Amar. It concluded that the warrantless arrest was lawful considering that Sarap had committed or was actually committing a crime when arrested. It ruled that the search incident to the said arrest is sanctioned under the Rules[20] and evidence obtained therefrom is admissible.

We are not convinced. The Banga Police Officers were admittedly not armed with a warrant of arrest. Rule 113, Section 5 of the Rules of Criminal Procedure states:

Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person: (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 in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it. xxx

In the instant case, Sarap cannot be said to be committing a crime. Neither was she about to commit one nor had she just committed a crime. She was merely walking in the alley near the house of Conrado Ricaforte. It was only when Janet Iguiz led Sarap downstairs and identified her as Melly that she was singled out as the suspect. Guarino would not have apprehended Sarap were it not for Janet Iguiz's identification. Moreover, the evidence on record clearly illustrated that it was only after Janet Iguiz pointed to Sarap as Melly that Guarino suspected that the bag she was holding contained marijuana.

The Banga Police could have secured a search warrant when Jonalyn Duran disclosed during the investigation that a certain Melly of Capiz and one Roger would be back on March 4, 1996. The persons intended to be searched had been particularized and the thing to be seized specified. The time was also sufficiently ascertained to be March 4, 1996, although it was uncertain whether Melly would arrive. "Melly" turned out to be accused-appellant[21] and the thing to be seized was marijuana. The above particulars would have provided sufficient grounds to secure a search warrant, instead, the police only acted when the caretaker of the house of Conrado Ricaforte informed them that there were strangers looking for Jonalyn and Joysie Duran. Hence, they cannot now dispense with the requirement of a search warrant on the basis of urgency in effecting it, considering that they had twenty-four hours to do so. The apprehending officers had prior knowledge of Sarap's alleged activities. Verily, there was no excuse for the Banga Police not to secure a search warrant.

Hence, the Banga Police could not effect a warrantless search and seizure since there was no probable cause and Sarap was not lawfully arrested. The law requires that the search must be incidental to a lawful arrest in order that the search itself may likewise be considered legal.

It is true that we adhere to the time honored-doctrine that the trial court's assessment of credibility of witnesses and their testimonies is accorded great weight and may even be deemed conclusive and binding on the appellate court.[22] In innumerable instances, however, we interfered with the judgment of the trial court when there appeared facts or circumstances of weight and influence which the trial court may have overlooked and, if taken into consideration, could have a significant effect on the outcome of the case.[23]

Contrary to the finding of the trial court, the instant case did not come within the purview of the plain view doctrine. In order for the doctrine to apply, the following conditions must be present: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent; and (d) "plain view" justified mere seizure of evidence without further search.[24]

In the absence of probable cause to effect a valid warrantless arrest, the search of Sarap's bag was also not justified as seizure of evidence in plain view under the fourth exception. The marijuana fruiting tops contained in the green plastic bag carried by Sarap were not clearly visible. Chief of Police Guarino, testified, thus:

Q

So that when you saw Melly Sarap, she was just doing nothing in the alley?

A

She was walking, about to approach me.

Q

So that, when you saw her approaching you, you grabbed her bag?

A

Yes, sir.

Q

Why did you do that?

A

Because I suspected that transparent plastic bag has a marijuana.

Q

You were not certain that the woman you were able to apprehend was Melly Sarap?

A

I did not know that it was she.

Q

And you are not certain that the content of the bag was marijuana?

A

I suspected that there was marijuana and shabu inside the bag, I found out that there was tawas and other personal belongings.

Q

So your answer to my question is 'no'. You are not certain?

A

I am not certain.[25]

The above testimony negates the conclusion of the trial court that the marijuana fruiting tops were inadvertently discovered. More importantly, the marijuana fruiting tops were also not apparent and in plain view as shown by the fact that Chief of Police Guarino still had to grab Sarap's bag to ascertain its contents.

Without the illegally seized prohibited drug, the appellant's conviction cannot stand. There is simply no sufficient evidence to convict her. That the search disclosed marijuana fruiting tops 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 for being a fruit of a poisonous tree.

All told, the guilt of the accused-appellant was not proven beyond reasonable doubt measured by the required moral certainty of conviction. The evidence presented by the prosecution was not enough to overcome the presumption of innocence as constitutionally ordained. Indeed, it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[26] Moreover, as Justice Holmes declared: "I think it is a less evil that some criminals should escape than that the government should play an ignoble part."[27]

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court of Kalibo, Aklan, Branch 7, finding accused-appellant Melly Sarap y Arcangeles guilty beyond reasonable doubt of the crime of violation of Section 4 of Republic Act No. 6425, is REVERSED and SET ASIDE. Accused-appellant Melly Sarap y Arcangeles is ACQUITTED of the crime charged on the ground of reasonable doubt. The Superintendent of the Correctional Institution for Women is directed to cause the immediate release of accused-appellant unless lawfully held for another cause, and to inform this Court of the date of her release, or the ground for her continued confinement, within ten days from notice.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio and Azcuna, JJ., concur.

[1] Penned by Judge Pepito T. Ta-ay.

[2] Rollo, p. 9.

[3] Records, p. 16.

[4] Exhibit "G", Folder of Exhibits, p. 36.

[5] TSN, May 13, 1996, pp. 4-7.

[6] Sometimes spelled "Janette Iguiz" in the transcript of stenographic notes.

- [7] Exhibit “K”, Folder of Exhibits, p. 70.
- [8] TSN, May 13, 1996, pp. 8-9.
- [9] Ibid., pp. 10-11.
- [10] Id., p. 13.
- [11] TSN, July 10, 1996, p. 16, see also Exhibit “F”, Folder of Exhibits, p. 21.
- [12] Rollo, p. 33.
- [13] Rollo, pp. 53-54.
- [14] *People v. Ramos*, G.R. Nos. 101804-07, 25 May 1993, 222 SCRA 557.
- [15] See *Stonehill v. Diokno*, 126 Phil. 738 (1967).
- [16] *People v. Doria*, 361 Phil. 595 (1999).
- [17] *People v. Solayao*, 330 Phil. 811 (1996).
- [18] *People v. De Gracia*, G.R. Nos. 102009-10, 6 July 1994, 233 SCRA 716.
- [19] *People v. Aruta*, 351 Phil. 868 (1998).
- [20] Rule 126 of the Rules of Court, Section 12.
- [21] *Supra*.
- [22] *People v. Mendoza*, 361 Phil. 44 (1999).
- [23] *People v. Manggasin*, 365 Phil 683, (1999); *People Tahop*, G.R. No. 125330, 29 September 1999, 315 SCRA 465, citing *People v. Mengote*, 364 Phil. 874 (1999) and *People v. Eribal*, 364 Phil. 829 (1999).
- [24] Id.
- [25] TSN, May 13, 1996, pp. 30-31.
- [26] *People v. Tajada*, G.R. No. 147200, 17 December 2002, citing *People v. Capili*, G.R. No. 130588, 8 June 2000, 333 SCRA 355, 366.
- [27] *People v. Aminnudin*, G.R. No. L-748690, 6 July 1988, 163 SCRA 402, 411.

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