

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS BACCOY ALIAS BANGE, ROBERT BAGNI (AT LARGE), AND MANUEL BACAO (AT LARGE), ACCUSED. CARLOS BACCOY ALIAS BANGE, ACCUSED-A...

G.R. No. 134002. September 12, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Carlos Baccoy alias “Bange”, along with co-accused Robert Bagni and Manuel Bacao, were charged with violation of Section 4 of Republic Act No. 6425 (otherwise known as the Dangerous Drugs Act) as amended, before the Regional Trial Court of Bontoc, Mountain Province, Branch 35, in an information that reads as follows:

That on or about 7:25 o’clock in the morning of September 23, 1994, at sitio Dantay, Alab, Bontoc, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused without any authority and conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously carry and transport nineteen (19) kilos of dried marijuana leaves, stems and buds, a prohibited and dangerous drug, and which they loaded on a Dangwa Tranco Bus which was in transit from Bontoc, Mountain Province to Baguio City for the purpose of selling the same thereat.

CONTRARY TO LAW.[1]

Only accused-appellant Baccoy was arrested and charged, while the two other accused still remain at large. When arraigned, accused-appellant entered a plea of “not guilty”, after which trial on the merits proceeded.

The prosecution presented five (5) witnesses, all members of the police force in Mountain Province. Their testimonies can be synthesized into the following narration of events:

In the early morning of September 23, 1994, Sgt. Pio Kidpo, the Assistant Community Relations Officer posted at the Police headquarters in Bontoc, was instructed by the Provincial Commander to go on a secret mission to Mt. Data, Bauko, Mountain Province. He proceeded to the Dangwa Tranco Bus Station where he met SPO1 George Gacusana. While waiting for the bus, they were informed by another policeman assigned to the intelligence division of the Bontoc Police Force that their office had received a reliable tip that someone will be transporting marijuana from Bontoc to Baguio City, where the prohibited substance will be sold.

Policemen Kidpo and Gacusana took the 7:00 a.m. bus to Baguio City, with Sgt. Kidpo sitting at the rear portion of the bus while SPO1 Gacusana sat four rows behind the driver. At the Dantay, Alab junction, the bus stopped to take on three passengers, one of whom was accused-appellant Baccoy. One of the men immediately boarded while the two others passed three bags through the window to their companion inside the bus. The policemen noticed that the bags were dirty and covered with dried grass. The men sat at the very last row and placed their bags right by their side. About fifteen minutes after boarding, the men signaled to the driver that they wanted to

get off. The bus, however, did not stop moving.

Nevertheless, the men picked up their bags and were preparing to alight when Sgt. Kidpo, his suspicions aroused at the unnatural appearance and behavior of the said persons, approached and instructed them to put down their bags and demanded to see the contents thereof. A commotion then ensued when four passengers, including the two accused, jumped through the windows of the bus, leaving behind their bags in the center aisle. Accused-appellant also attempted to jump through the window but Sgt. Kidpo grabbed him from behind. Accused-appellant was forced to take a seat while the policemen confiscated the bag he was carrying. The bus driver was instructed to proceed to the police station at the Sabangan Municipal Hall.

At the police station, accused-appellant was instructed to open the bags in the presence of some municipal employees and other passengers. The dark colored bag contained clothes while the blue and green bags yielded what smelled like and appeared to be marijuana leaves, stems and buds wrapped in cellophane-like tape and compacted into brick shapes. The policemen then brought accused-appellant and the confiscated bags and the marijuana bricks to the police headquarters in Bontoc. They surrendered custody of accused-appellant and the marijuana to SPO1 Wilbur Agnapan. The latter took the sworn statements of the arresting policemen, examined the contents of the bags, then marked them for evidence purposes. Accused-appellant was detained at the station.

In the meantime, the contents of the bags were forwarded to the crime laboratory at Camp Bado Dangwa in La Trinidad, Benguet. The chemical analysis conducted by forensic chemist Special Police Inspector Alma Margarita Villaseñor revealed that the substance was indeed marijuana leaves, stems and buds packed in brick form, and weighing nineteen (19) kilos. Consequently, the appropriate complaint and information was filed against accused-appellant and his two co-accused.

The defense had an entirely different story to tell. Accused-appellant narrated that on the day before he was arrested, he went to the store of Bruno Makkad at Masua, Basao, Tinglayan, Kalinga to get stuff he needed for his kitchen. While at the store, Bruno introduced him to a foreign couple, a Mr. and Mrs. Evans, who wanted to go sightseeing and needed a guide. They particularly wanted to visit Botbot, Tinglayan, which happened to be accused-appellant's place of residence. He readily agreed and they left Bruno's store at 10:00 in the morning. The Evans couple left their service vehicle at Bruno's house, and they walked the four kilometers to Botbot, with the foreigners taking pictures along the way.

When they got to Botbot, accused-appellant brought the couple to the house of Marcos Baydon to seek lodging accommodations for the night. They agreed to meet early the following morning as the Evans couple wanted to proceed to Sagada, Mountain Province. At 3:00 in the morning of September 23, 1994, accused-appellant and Marcos Baydon accompanied the Evans couple back to Masua to get their vehicle. Accused-appellant rode with the Evans couple to Dantay Junction where he got off to wait for the bus bound for Baguio City, to bring supplies to his children there.

While waiting for the bus, accused-appellant felt the urgent need to defecate, so he rushed to a creek some 45 meters away. He had barely finished when he heard the bus approaching. He hurriedly boarded the bus bringing with him a small black bag containing a change of clothes and a toothbrush. He sat at the back row since the other seats were already occupied.

Not too long thereafter, he heard someone yell: "Wait! wait!", after which he saw two men jump out through the windows of the bus. He strained to catch a glimpse of the men who had just jumped out of the moving bus when he felt someone grab him from behind. The man holding him asked if the men who jumped were his companions, to which he replied in the negative.

Thereafter, accused-appellant was brought to the Sabangan Municipal Hall where the confiscated bags were opened and he was interrogated by the police. He denied possession, much more ownership, of the marijuana bricks found inside two of the bags left by the men who jumped from the bus. Nevertheless, he was detained at the Bontoc Police Station for five days.

Accused-appellant swore that he did not own the two bags containing the marijuana presented by the prosecution. The black bag containing his personal belongings was confiscated by the police, but was not presented in court. He denied ownership of the marijuana.

The defense presented three other witnesses: Marcos Baydon, Bruno Makkad, and Wilbur Agnapan. Marcos Baydon corroborated accused-appellant's testimony that the Evans couple's stayed at his house overnight; that accused-appellant accompanied them to Masua the following morning; and that accused-appellant rode with the Evans couple in their vehicle bound for Sagada. Bruno Makkad also corroborated accused-appellant's testimony that he introduced the Evans couple to him at his store; that they went to Botbot for sightseeing and returned to Masua early the following morning; and that accused-appellant hitched a ride with the Evans couple in the latter's vehicle. Finally, Wilbur Agnapan, a policeman, testified that the reason why there was an alteration in the entry number of the reported incident appearing in the police blotter was because the officer on duty before him made a mistake in the sequence of entries.

After trial, the lower court rendered the following judgment:

WHEREFORE, premises considered, the court finding the accused Carlos Baccoy alias "Bange" guilty beyond reasonable doubt of the crime of violation of Section 4, Republic Act No. 6425, as amended, accused Carlos Baccoy should be and by now ordered SENTENCED to suffer incarceration of reclusion perpetua and to pay the fine of Five Hundred Thousand (P500,000.00) Pesos, Philippine Currency; to pay the cost of this suit; and that the seized marijuana from the accused ordered confiscated and forfeited in favor of the government which shall be turned over to the Board for proper disposal without delay pursuant to Section 20 of Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act. Case against the above-named co-accused Robert Bagni and Manuel Bacao who remained at large ordered ARCHIVED.

SO ORDERED.[2]

Accused-appellant interposed the instant appeal on the following assigned errors:

- 1) THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE LACK OF SUFFICIENT EVIDENCE TO WARRANT CONVICTION BEYOND REASONABLE DOUBT; AND
- 2) THE TRIAL COURT GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ALLEGED CONFISCATED MARIJUANA DESPITE ITS INADMISSIBILITY.

Accused-appellant argues that the warrantless arrest was unlawful and that he was subjected to an illegal search, since the arresting policemen had no probable cause or personal knowledge of facts that would form an actual belief or reasonable grounds of suspicion that a crime had just been committed, is being committed, or about to be committed by him. He further argues that since the arrest was illegal ab initio, the accompanying search was likewise illegal.

We find no error on the part of the trial court in this regard. If, indeed, there was an irregularity attendant to accused-appellant's arrest and search and confiscation of his possessions, he is estopped from assailing the same for failing to raise any objection at the opportune time.[3] We have uniformly held that any objection to a defect or irregularity attending an arrest must be made before he enters his plea, otherwise the objection is deemed

waived.[4] Accordingly, in submitting himself to the jurisdiction of the trial court by entering a plea of “not guilty” and by participating in the trial, any irregularity that may have attended accused-appellant’s arrest was cured.[5] Consequently, any evidence gathered as a result thereof cannot be considered “fruit of a poisonous tree,” and is therefore admissible.[6]

Having resolved said issue, we come now to the more substantial issue of whether or not accused-appellant was wrongly convicted. The prosecution stresses that the evidence incontrovertibly confirms his culpability. The trial court, in fact, gave complete credence to the evidence for the prosecution, relying on the principles that: (1) the positive testimonies of the prosecution witnesses have more weight compared to accused-appellant’s negative testimony; and (2) 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 accused-appellant.

This Court adheres to the time-honored doctrine that the trial court’s assessment of the credibility of witnesses and their testimonies is accorded great weight and may even be deemed conclusive and binding on the appellate court.[7] This doctrine, however, is not without exception. In innumerable instances, the Supreme Court has interfered with the judgment of the trial court when there appears in the record 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.[8] In a situation where the trial court failed to appreciate facts and circumstances that would have altered its conclusion, this Court has not hesitated, it being its incumbent duty to correct such mistakes.[9]

A careful perusal of the record and disquisition of the facts and evidence is warranted in the case at bar. Of paramount consideration in the administration of justice is the constitutional presumption of innocence which requires courts to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused.[10] It is the bounden duty of the courts to put the prosecution’s evidence through rigorous and stringent testing so that no innocent person is made to suffer the unusually severe penalties for drug offenses.[11]

The trial court placed its full confidence in the testimonies of Sgt. Kidpo and SPO1 Gacusana in arriving at the conclusion that accused-appellant was a co-conspirator with the two other co-accused in the transport of marijuana. A thorough examination of the record, however, exposes gaping holes in the testimonies of the policemen, not for what they said in open court, but for what they did not state on the record. Despite Sgt. Kidpo’s statement that accused-appellant is the owner of the contraband, his testimony did not support said allegation.

First, he never categorically said that it was accused-appellant who loaded the bags containing the marijuana. When asked how the three suspicious-looking passengers boarded the bus, Sgt. Kidpo answered: “One of the persons immediately entered the bus while the others passed their baggage through the window of the bus, sir.”[12] He further stated that after passing the bags through the window, the two others outside also boarded the bus. And yet, he could not specify what accused-appellant’s role was.

Apart from stating that the three men boarded the bus at the same place, there was no proof that they were companions, much less co-conspirators. The fact that accused-appellant happened to board at the same place as the other two accused is not sufficient to conclude that they were his companions. The policemen also testified that accused-appellant and the other two accused did not look like the locals of that place, but how can the policemen even claim to know how residents of that place look like? Strange or unfamiliar physical appearance is never an indication of guilt. The policemen’s conclusion that accused-appellant is the owner of the marijuana owing in large part to his unkempt appearance is clearly misplaced and without sufficient basis.

Sgt. Kidpo testified that all three persons, including accused-appellant, took the back seats. This in itself cannot

prove that accused-appellant was allied with the two other accused in their criminal design. It is a fact that the bus was already quite loaded with passengers when it left Bontoc such that only the back seats were available for those boarding on the way to Baguio City. Moreover, being seen together with the other accused is not sufficient proof of conspiracy to commit a crime.[13] The fact that they boarded together and they all sat at the back of the bus does not necessarily imply that they were engaged in a conspiracy to transport the marijuana to Baguio City. Mere presence at the crime scene is not necessarily indicative of criminal conspiracy in the absence of any other proof of concerted criminal purpose.[14] While conspiracy need not be established by direct evidence, the policemen's testimonies taken all together failed to prove a community of criminal design.

Sgt. Kidpo also testified that accused-appellant was attempting to escape when he was apprehended. The policeman stated:

Q: When the bus was traveling, what happened, if any?

A: After about 15 meters, the suspects probably noticed that we were policemen so they stopped the bus saying that they wanted to alight from the bus because their companions were not around.

Q: And did the bus stop?

A: No, sir.

Q: When the bus did not stop, what happened?

A: They were insistent to go out and carried their baggage; they got and carried their bags and tried to go out.

Q: Were they able to go out?

A: Some of them jumped thru the window and the others tried to run away because when they were stopping the bus and wanted to alight, I asked them if we could see first what is inside their bags but after I said some jumped thru the windows.

Q: How many passed thru the windows of the bus?

A: Four of them, sir.

Q: Was the bus still in motion when they passed thru the windows of the bus?

A: Yes, sir.

Q: When the four of them were able to get out what happened next?

A: They left.

Q: And these suspicious people you referred earlier who boarded the bus earlier, were they the ones who jumped out the window?

A: Yes including the two passengers who boarded the bus from Bontoc.[15]

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Q: Where was he when you collared him?

A: Inside the bus, sir.

Q: What was he doing inside the bus when you collared him?

A: He was trying to escape with his companions.

Q: How did you know that he was trying to escape?

A: He was also about to jump thru the window.

Q: When Carlos Baccoy was about to jump thru the window, what did you do?

A: We caught him.[16]

The evidence reflects that there was indeed a commotion when four passengers jumped out of the window of the bus while it was still in motion, the two co-accused among them. It is certainly a strange fact that two other passengers who boarded at Bontoc, unidentified to this day, also jumped. And yet, the police failed to investigate the matter. Instead, they concentrated their efforts on pinning down accused-appellant as the owner of the marijuana just because he happened to board the bus with the two co-accused and because of his unkempt appearance. Accused-appellant, on the other hand, testified that he was alarmed when he noticed that passengers were jumping off the bus. He strained to look out the window to see those who had jumped. The policemen interpreted his action as an attempt to jump out of the window, prompting them to grab him from behind.

The appellant's version is worthy of credence. It is a natural reaction, in fact it is a common Filipino trait, to look and see what the commotion is all about. That this curiosity may put one in harm's way has never been a deterrent for nosey by-standers or spectators. The prosecution described the specific action of accused-appellant that gave rise to the policemen's suspicion that he was trying to jump out, while he "was also about to jump out thru the window." There is no other convincing, if not conclusive, evidence to show that accused-appellant was indeed attempting to jump out through the bus window.

This Court has repeatedly held that where the circumstances proved are capable of two or more inferences, one of which is consistent with the presumption of innocence while the other is compatible with the finding of guilt, the Court must acquit the accused; for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction.[17] Since it could very well be that accused-appellant was merely trying to see what the commotion was all about, and was not attempting to jump out as claimed by the prosecution, there is no basis in finding that accused-appellant participated in the criminal act of transporting the bags containing the marijuana.

More importantly, the prosecution's evidence shows three (3) bags were confiscated, two of which contained the marijuana and the third one containing personal effects. And yet, the prosecution failed to prove that the blue and green bags containing the marijuana were owned or even possessed by accused-appellant when he was apprehended. From the very start of his interrogation, accused-appellant repeatedly stated that he only brought a small dark bag containing his clothes and a toothbrush and that he had no knowledge of the contents of the blue and green bags. True enough, when the bags were opened, the small dark bag yielded the described personal effects.

Sgt. Kidpo testified thus:

Q: You said their bags were left behind. How many bags were left behind?

A: Three, sir.

Q: Will you describe these bags?

A: One green, one blue, and one dark bag.

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Q: When he opened their bags, what did you find?

A: Marijuana.

Q: Which of these bags contained marijuana?

A: Blue and green bags.

Q: How about the dark bag?

A: Their clothings.[18]

Again, there is no conclusive evidence to prove that accused-appellant had anything to do with the two bags containing the marijuana. The policemen could not even say for certain if he ever handled those bags when the same were loaded on the bus and when the co-accused left them on the aisle. In the absence of conclusive proof, ownership or possession of the marijuana cannot be attributed to accused-appellant. He did not even know that the bags contained marijuana, which explains why he did not protest when he was ordered by the policemen to open them. Consequently, he cannot be found guilty of the crime of transporting the said marijuana.

The trial court also put a premium on the presumption of regularity in the performance of official duty by the policemen. However, this Court has never strayed from honoring the constitutionally-protected right of the accused to be presumed innocent over the presumption that regular duty was performed by the arresting officers. In the Pagaura[19] case, we held that:

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. It is, therefore, incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt. The presumption of regularity of performance of official duty cannot, by itself, constitute proof of guilt beyond reasonable doubt.

The presumption of innocence is not a mere procedural tool of the law, it is a constitutional right. Thus, even though the police officers enjoy the presumption of regularity in the performance of their duty, their testimonies are insufficient to induce moral certainty. The prosecution's case against accused-appellant is weak for the evidence does not measure up to the required quantum of proof to convict in criminal cases.[20] There remain matters of circumstance that cannot dispel our doubts of accused-appellant's guilt. We are thus bound by the time-honored principle that in all criminal cases, all doubts should be resolved in favor of the accused for it is better to acquit a guilty man than to unjustly keep in prison one whose guilt has not been proven by the required quantum of evidence.

WHEREFORE, the decision of the Regional Trial Court of Bontoc, Mountain Province, Branch 35, finding accused-appellant Carlos Baccoy guilty beyond reasonable doubt of the crime of violation of Section 4 of Republic Act No. 6425, is REVERSED and SET ASIDE. Accused-appellant is ACQUITTED of the crime charged based on reasonable doubt. He is ordered RELEASED from detention unless he is being held for some other lawful cause.

SO ORDERED.

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

[1] Information, Rollo, p. 6.

[2] Decision dated April 20, 1998, Rollo, pp. 86-87.

[3] *People v. Barrientos*, 285 SCRA 221, 236 (1998).

- [4] *People v. Patalin, Jr.*, 311 SCRA 186, 207 (1999); *People v. Cabiles*, 284 SCRA 199, 210 (1998).
- [5] *People v. Macam*, 238 SCRA 306, 315 (1994).
- [6] *People v. Alolod*, 266 SCRA 154, 165 (1997).
- [7] *People v. Mendoza*, 301 SCRA 66, 79 (1999).
- [8] *People v. Tahop*, 315 SCRA 465, 473-474 (1999).
- [9] *People v. Raganas*, 316 SCRA 457, 467 (1999).
- [10] *People v. Diaz*, 308 SCRA 744, 768 (1999).
- [11] *People v. Doria*, 301 SCRA 668, 698 (1999).
- [12] TSN, February 28, 1995, p. 7.
- [13] *People v. Ferras*, 289 SCRA 94, 107 (1998).
- [14] *People v. Estanislao*, 265 SCRA 810, 818 (1996).
- [15] TSN, February 28, 1995, pp. 9-10.
- [16] TSN, February 28, 1995, p. 11.
- [17] *People v. De los Santos*, 314 SCRA 303, 327 (1999).
- [18] TSN, February 28, 1995, pp. 11-12.
- [19] *Supra*, p. 24.
- [20] *People v. Ferras*, 289 SCRA 94, 106 (1998).

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