

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO ZASPA AND JULIUS GALVAN, ACCUSED-APPELLANTS.

*G.R. No. 136396. September 21, 2000*

Ponente: VITUG, J.

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### VITUG, J.:

Elevated and certified by the Court of Appeals to this Court for review is the decision, dated 08 January 1996, of the Regional Trial Court of Mati, Davao Oriental, Branch 5, penned by Judge Ricardo M. Berba. The case, docketed Criminal Case No. 2621 before the trial court, has charged Rolando Zaspas, a.k.a. "Tata," and Julius Galvan with violation of Section 8 of Republic Act No. 6425, otherwise also known as the Dangerous Drugs Act of 1972, as amended.

The case originated from an Information, dated 13 October 1994, which read:

"That on or about April 29, 1994, in the Municipality of Tarragona, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to use did then and there wilfully, unlawfully, feloniously own and possess five point six (5.6) kilos of marijuana dried leaves with stalks, a prohibited dangerous drugs, without proper license or permit from the authorities." [1]

Upon arraignment, both accused pled "not guilty" to the charge.

Culled from the findings of the trial judge, as well as the decision of the Court of Appeals,[2] promulgated on 09 November 1998 and penned by Associate Justice Delilah Vidallon-Magtolis, the facts could be gathered, thusly:

At about two o'clock in the morning of 29 April 1994, Chief of Police Rosauo Francisco of Tarragona, Davao Oriental, received a tip from a police informer that Rolando Zaspas and a companion were bringing dried marijuana leaves bound for Mati, somewhere at Crossing Banhawana, Tarragona, Davao Oriental. The police chief promptly organized and dispatched to the area a team composed of SPO2 Honorio Carasca (the team leader), PO1 Letecio Rafael and SPO1 Cesar Travelegio. The group immediately proceeded to Crossing Banhawana, arriving thereat at about five o'clock in the morning. There, the team saw Zaspas and his companion standing by the side of the road with a big black "loalde" bag in front of them. Just as SPO2 Carasca and PO1 Rafael, who were both in uniform, proceeded to approach the two men, Zaspas tried to flee. He was intercepted by the policemen. Zaspas claimed that the contents of the bag did not belong to them. When the bag was opened, Zaspas told the policemen that the dried marijuana leaves were owned by one Bito Mangandan. Zaspas and his companion, who turned out to be Julius Galvan, were arrested and brought to the Tarragona police station for investigation. Samples of the leaves taken from the bag were sent to the PNP Crime Laboratory in Ecoland, Davao City, where the specimen were tested and confirmed to be marijuana leaves. Chemistry Report No. 035-94, submitted by Police Senior Inspector Noem; Austero, a forensic expert, contained the following findings:

"Qualitative examination conducted on the above-mentioned specimen gave positive result to the tests for marijuana, a prohibited drug." [3]

Zaspa, taking the witness stand in his defense, testified that sometime in January 1994 he was hired by Maturino Masanguid to cut an Antipolo round timber for the amount of P5,000.00. He was paid P3,500.00 and was about to get the balance of P1,500.00 on 29 April 1994 when the incident transpired. He stated that he was walking towards Barrio Sambarangay when an armed man in civilian outfit pointed a gun at him and proceeded to examine the brown bag he was holding. He was thereafter dragged to the side of the road and questioned whether a black bag also belonged to him. He denied either ownership or possession of the bag. He was brought to the police station in Tarragona with another man whom he later learned to be Julius Galvan. At the police station, a certain Francisco slapped him and made him and Galvan crawl on the floor. The man also tried to smash the face of Galvan. He was detained in Tarragona Municipal jail from 29 April until he was brought, on 02 May 1994, to the PC Barracks at Menzi, Mati, Davao Oriental.

Galvan corroborated the testimony of Zaspa. He asserted that on 12 April 1994, he was contracted by Algin Divinagracia to spray their mango trees in Banhawan. The first spray was made on 15 April; he returned to Mati on the same day. The second spray was made on 28 April but, unable to finish the work that day, he stayed overnight with Divinagracia. At about four o'clock in the morning, he was on his way to Banhawan crossing when he was stopped by a man holding a gun. He was brought to a place where some police officers were questioning a man about the ownership of a black bag. The two were brought to the police station where they were investigated and detained until they were brought the following day to the P.C. Barracks at Mati.

After trial, the court a quo found the two accused guilty of the crime with which they were charged; the trial court held:

"WHEREFORE, the Court finds the accused Rolando Zaspa alias 'Tata' and Julius Galvan both GUILTY beyond reasonable doubt of violation of Section 8 in relation to Section 20 of the Republic Act 6425, as amended by R.A. 7659, and hereby imposes upon each of them the penalty of RECLUSION PERPETUA and to pay a fine of P500,000.00, with the accessory penalties provided by law, and to pay the costs of the proceedings.

"The marijuana leaves subject hereof (Exhs. 'D,' 'D-1' and 'D-2') are hereby ordered turned over to the Dangerous Drugs Board, thru the National Bureau of Investigation (NBI), for disposition in accordance with law.

"SO ORDERED."[4]

Zaspa and Galvan appealed their conviction, albeit the penalty imposed, to the Court of Appeals for review. The appellate court upheld the conviction; it said:

"Regarding the first issue, the appellee asseverates that there is entirely no merit in appellants' claim that they were not in possession of marijuana when the police authorities apprehended them at Banhawan Crossing. The testimonial evidence submitted by the prosecution clearly pointed out that the two appellants were standing by the side of the road, with the black bag containing the prohibited marijuana just 1/2 foot away. The absence of any other person within the vicinity indicates that the contraband belonged to the appellants and to no one else. Now, the appellants could not sufficiently explain the presence of the bag in their possession. Neither could they explain why the police would 'plant' the same as evidence. Likewise, they did not substantiate the alleged 'maltreatment' suffered in the hands of the law enforcers. Moreover, no improper motive was attributed to the police as to why they would testify falsely against the appellants -- if such was the fact.

"With respect to the alleged unlawful and warrantless arrest, the People manifests that Section 5, Rule 113 of the Revised Rules of Court authorizes an arrest without a warrant when the person to be arrested has committed a crime, is actually committing or about to commit a crime in the presence of the police officers. As the appellants were found to be in possession of the prohibited drug at the time of their arrest, the same is

admissible as evidence.

"We agree with the appellee. Well-settled is the rule that peace officers may pursue and arrest without a warrant any person under circumstances reasonably tending to show that such person has committed or is about to commit any crime or breach of the peace (*People vs. Bautista*, 227 SCRA 152). In the case at bench, the facts and circumstances leading to the arrest of the accused at dawn of April 29, 1994 would show that the arresting officers have proper and justifiable reasons to arrest the two (2) suspects. First, they received a confidential information from a police informer that a certain Rolando Zaspas with a companion were bringing dried marijuana leaves bound for Mati. Second, when the police arrived at the crime scene, the two (2) suspects were suspiciously at the side of the road with a big black bag in front of them. Third, there were no other people in sight and it is therefore safe to conclude that the bag containing the contraband belonged to no one else but the suspects. Lastly, when the police officers were approaching, the appellant Zaspas attempted to escape.

"A warrantless arrest and seizure was valid where it was done by the police team dispatched to look for persons responsible for the crime (*People vs. Acol*, 232 SCRA 406). In any case, in accordance with settled jurisprudence, any objection, defect or irregularity attending an arrest must be made before the accused enters his plea (*Padilla vs. Court of Appeals*, 269 SCRA 402). Thus, any irregularity attendant to the arrest of the accused was cured when they voluntarily submitted to the jurisdiction of the trial court by entering a plea of not guilty and by participating in the trial (*People vs. De Guzman*, 224 SCRA 93).

"As to the seized marijuana, the same is admissible in evidence, for trite is the jurisprudence that the search of the appellant's person and the seizure of the marijuana in his possession were valid because they were incident to a lawful warrantless arrest (*People vs. Gerente*, 219 SCRA 756). As the appellant Zaspas opened the black bag containing the prohibited drug, then it is a consented search. Settled is the rule that drugs discovered as a result of a consented search is admissible in evidence (*People vs. Cuizon*, 256 SCRA 325).

"In the case at bench, it is clear that the appellants were really in possession of the seized marijuana. Prosecution witness SPO2 Honorio Carasca's testimony that the black bag containing the contraband was just 1/2 foot from in front of the appellants (TSN, 4/25/95, p. 10), apart from the fact that there were no other people in the vicinity, would clearly show that the two (2) appellants were the possessors of the prohibited item. The appellants' respective defenses denying the ownership and possession of the marijuana cannot topple the evidence proffered by the prosecution. In the first place, denial, like an alibi, is a weak defense which becomes even weaker in the face of positive identification of the accused by prosecution witnesses (*People vs. Ompad*, 233 SCRA 62). Second, the appellants failed to present any receipts proving that on different occasions, they were at the crime scene merely by chance. It must be noted that the appellant Zaspas failed to present any evidence to show that he collected the sum of P3,500.00, or that he was to collect the balance of P1,500.00 from the witness, Mr. Maturino Masanguid. In the same manner, the appellant Galvan failed to present the receipts for the medicine he purportedly bought for the spraying of the mango trees (TSN, 7/19/95, p. 22). Third, if the appellants were really maltreated in order to confess to the crime charged, then why is it that they failed to submit to a medical examination or treatment? (TSN, 6/8/95, p. 48 and TSN, 7/19/95, p. 36). Why is it that the appellants filed a case before the Ombudsman and the Commission on Human Rights only after almost a year from the time of the incident (Exhibit '1' and '2')? In any case, there is nothing on record which indicates that the police operatives were actuated by improper motive against the appellants. Credence can be given to the narration of the incident by the prosecution witnesses, who as police officers are presumed to have performed their duties in a regular manner in the absence of proof to the contrary (*People vs. Bautista*, 227 SCRA 152). Lastly, as the seized items were positive for marijuana, then, the corpus delicti of the crime had been fully proved with certainty and conclusiveness (*People vs. Simon*, 234 SCRA 555).

"In sum, the guilt of the accused-appellants has been established by proof beyond reasonable doubt; hence, the affirmance of the appealed judgment is in order. However, considering that the applicable penalty is reclusion perpetua, the second paragraph of Section 13, Rule 124 of the Rules of Court shall apply.

"WHEREFORE, the judgment appealed from is AFFIRMED in toto. Let this case be CERTIFIED and ELEVATED to the Honorable Supreme Court for review.

"SO ORDERED." [5]

Although the appeal from the decision of the trial court imposing reclusion perpetua should have been directly appealed to this Court, considering the penalty involved, the Court has decided to ignore this breach of technicality and to nevertheless consider the appeal and evaluate the case.

The testimony given by the witnesses for the prosecution and that of the defense are diametrically opposed to each other on almost every point. In resolving such a conflict, so dealing as it does on the credibility of the witnesses, the Court relies heavily on findings of the trial court being in the best position, certainly more than the appellate court, in making that judgment. Thus, often repeated, is the standing rule that absent any showing that the trial judge has overlooked, misunderstood or misappreciated any evidence that could otherwise alter the result of the case, the Court would adhere to the assessment made by the trial court on the question. Parenthetically, the Court of Appeals has basically done likewise in finding no reason to alter the conclusion of the trial judge.

In almost every case involving a buy-bust operation, the accused would put up the defense of frame-up. The Court views such a claim with disfavor for, like alibi, the frame-up theory can easily be concocted.[6] In the instant case, the police informer has particularly mentioned the name of Rolando Zaspas as being one of those who would be bringing the bag containing the marijuana,[7] thus paving the way for the authorities to conduct their operation. When Zaspas, indeed, has made an attempt to run away upon seeing the police officers, he inadvertently has also confirmed the information given to the police. It bears to repeat that absent any convincing proof of an intent on the part of police authorities to falsely impute a serious crime against an accused, the presumption of regularity in the performance of official duty will ordinarily have to prevail.[8]

On the validity of the warrantless arrest, along with the corresponding search and seizure, suffice it to say that any objection regarding the regularity of an arrest must be made before the accused enters his plea;[9] otherwise, the defect shall be deemed cured by the voluntary submission by the accused to the jurisdiction of the trial court.[10]

No significant value could be given to the allegations of accused-appellants that they were maltreated. Zaspas only decided to file charges against the apprehending police officers after almost a year following the incident. For his part, Galvan chose to remain silent. Neither one of the two accused-appellants submitted himself to medical examination. The attendant circumstances scarcely augur well to support the asseveration of maltreatment allegedly suffered by accused-appellants from the police authorities.

WHEREFORE, the decision of the trial court is AFFIRMED in toto. Costs against accused-appellants.

**SO ORDERED.**

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Records, p. 1.

[2] With Associate Justices Artemon D. Luna and Rodrigo V. Cosico, concurring.

[3] Exh. C, Folder of Exhibits, p. 2.

[4] Records, p. 146.

[5] Court of Appeals Decision, pp. 5-7.

[6] Espano vs. Court of Appeals, 288 SCRA 558.

[7] TSN, SPO2 Honorio Carasca, 27 April 1995, page 18.

[8] People vs. Lachanes, 270 SCRA 193.

[9] People vs. Cabiles, 284 SCRA 199.

[10] People vs. Barrientos, 285 SCRA 221.

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