

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGPANGA LIBNAO Y KITTEN AND ROSITA NUNGA Y VALENCIA, ACCUSED.

G.R. No. 136860. January 20, 2003

Ponente: PUNO, J.

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PUNO, J.:

Before us is an appeal from the Decision dated November 19, 1998 of the Regional Trial Court, Branch 65, Tarlac City, finding appellant Agpanga Libnao and her co-accused Rosita Nunga guilty of violating Article II, Section 4 of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972.[1] For their conviction, each was sentenced to suffer an imprisonment of reclusion perpetua and to pay a fine of two million pesos.

Appellant and her co-accused were charged under the following Information:

“That on or about October 20, 1996 at around 1:00 o’clock dawn, in the Municipality of Tarlac, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping with one another, without being lawfully authorized, did then and there willfully, unlawfully and feloniously make delivery/transport with intent to sell marijuana leaves wrapped in a transparent plastic weighing approximately eight (8) kilos, which is in violation of Section 4, Article II of RA 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended.

CONTRARY TO LAW.”[2]

During their arraignment, both entered a plea of Not Guilty. Trial on the merits ensued.

It appears from the evidence adduced by the prosecution that in August of 1996, intelligence operatives of the Philippine National Police (PNP) stationed in Tarlac, Tarlac began conducting surveillance operation on suspected drug dealers in the area. They learned from their asset that a certain woman from Tajiri, Tarlac and a companion from Baguio City were transporting illegal drugs once a month in big bulks.

On October 19, 1996, at about 10 o’clock in the evening, Chief Inspector Benjamin Arceo, Tarlac Police Chief, held a briefing in connection with a tip which his office received that the two drug pushers, riding in a tricycle, would be making a delivery that night. An hour later, the Police Alert Team installed a checkpoint in Barangay Salapungan to apprehend the suspects. Witness SPO1 Marlon Gamotea, PO3 Florante Ferrer and SPO3 Roberto Aquino were assigned to man the checkpoint.

At about 1:00 o’clock in the morning of the following day, SPO1 Gamotea and PO3 Ferrer flagged down a passing tricycle. It had two female passengers seated inside, who were later identified as the appellant Agpanga Libnao and her co-accused Rosita Nunga.[3] In front of them was a black bag. Suspicious of the black bag and the two’s uneasy behavior when asked about its ownership and content, the officers invited them to Kabayan Center No.2 located at the same barangay. They brought with them the black bag.

Upon reaching the center, PO3 Ferrer fetched Barangay Captain Roy Pascual to witness the opening of the black bag. In the meantime, the two women and the bag were turned over to the investigator on duty, SPO3 Arthur

Antonio. As soon as the barangay captain arrived, the black bag was opened in the presence of the appellant, her co-accused and personnel of the center. Found inside it were eight bricks of leaves sealed in plastic bags and covered with newspaper. The leaves were suspected to be marijuana.

To determine who owns the bag and its contents, SPO3 Antonio interrogated the two. Rosita Nunga stated that it was owned by the appellant. The latter, in turn, disputed this allegation. Thereafter, they were made to sign a confiscation receipt without the assistance of any counsel, as they were not informed of their right to have one. During the course of the investigation, not even close relatives of theirs were present.

The seized articles were later brought to the PNP Crime Laboratory in San Fernando, Pampanga on October 23, 1996. Forensic Chemist Daisy P. Babu conducted a laboratory examination on them. She concluded that the articles were marijuana leaves weighing eight kilos.[4]

For their part, both accused denied the accusation against them. Rosita Nunga testified that in the evening of October 19, 1996, she went to buy medicine for her ailing child at a pharmacy near the Tarlac Provincial Hospital. The child was suffering from diarrhea, occasioned by abdominal pain. To return to their house, she boarded a tricycle bound for Barangay Tariji, where she resides. Along the way, the tricycle she was riding was flagged down by a policeman at a checkpoint in Barangay Salapungan. She was taken aback when the officer invited her to the Kabayan Center. It was there that she was confronted with the black bag allegedly containing eight bricks of marijuana leaves. She disputed owning the bag and knowing its contents. She also denied sitting beside the appellant in the passenger's seat inside the tricycle, although she admitted noticing a male passenger behind the driver.

Remarkably, appellant did not appear in court and was only represented by her lawyer. The latter marked and submitted in evidence an affidavit executed by one Efren Gannod, a security guard of Philippine Rabbit Bus Lines in Tarlac, Tarlac. The sworn statement declared that at about 0220H on October 20, 1996, SPO2 Antonio arrived at their terminal and arrested a certain woman who boarded their Bus No. 983. The incident was recorded in the company's logbook. Gannod, however, was not presented in court to attest that the woman referred in his affidavit was the appellant.

After trial, the court convicted appellant and her co-accused Rosita Nunga, thus:

“WHEREFORE, finding both accused guilty beyond reasonable doubt of the offense of violation of Article II, Section 4 of RA 6425 in relation to RA 7659, they are hereby sentenced to suffer an imprisonment of reclusion perpetua and to pay a fine of two million pesos.

SO ORDERED.”[5]

Aggrieved by the verdict, appellant interposed the present appeal. In her brief, she assigned the following errors:

- “1. The Honorable Regional Trial Court failed to appreciate the contention of the defense that the right of accused against illegal and unwarranted arrest and search was violated by the police officers who arrested both accused.
2. The Honorable Court failed to appreciate the contention of the defense that the right of the accused to custodial investigation was deliberately violated by the peace officers who apprehended and investigated the accused.
3. The Honorable Court miserably failed to evaluate the material inconsistencies in the testimonies of the prosecution's witnesses which inconsistencies cast doubt and make incredible the contention and version of the prosecution.

4. The Honorable Court gravely abused its discretion when it appreciated and considered the documentary and object evidence of the prosecution not formally offered amounting to ignorance of the law.”[6]

We are not persuaded by these contentions; hence, the appeal must be dismissed.

In arguing that her arrest was unlawful, appellant capitalizes on the absence of a warrant for her arrest. She contends that at the time she was apprehended by the police officers, she was not committing any offense but was merely riding a tricycle. In the same manner, she impugns the search made on her belongings as illegal as it was done without a valid warrant or under circumstances when warrantless search is permissible. Consequently, any evidence obtained therein is inadmissible against her.

These arguments fail to impress. The general rule is that a search may be conducted by law enforcers only on the strength of a search warrant validly issued by a judge as provided in Article III, Section 2 of the 1987 Constitution, thus:

“The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant and warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”[7]

The constitutional guarantee is not a blanket prohibition against all searches and seizures as it operates only against “unreasonable” searches and seizures. Searches and seizures are as a rule unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Thus, the fundamental protection accorded by the search and seizure clause is that between persons and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants and warrants of arrest.[8]

Be that as it may, the requirement that a judicial warrant must be obtained prior to the carrying out of a search and seizure is not absolute. There are certain familiar exceptions to the rule, one of which relates to search of moving vehicles.[9] Warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought.[10] Peace officers in such cases, however, are limited to routine checks where the examination of the vehicle is limited to visual inspection.[11] When a vehicle is stopped and subjected to an extensive search, such would be constitutionally permissible only if the officers made it upon probable cause, i.e., upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains as item, article or object which by law is subject to seizure and destruction.[12]

In earlier decisions, we held that there was probable cause in the following instances: (a) where the distinctive odor of marijuana emanated from the plastic bag carried by the accused;[13] (b) where an informer positively identified the accused who was observed to be acting suspiciously;[14] (c) where the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a quantity of marijuana;[15] (d) where Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so;[16] (f) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy -- one who participated in the drug smuggling activities of the syndicate to which the accused belong -- that said accused were bringing prohibited drugs into the country;[17] (g) where the arresting officers had received a

confidential information that the accused, whose identity as a drug distributor was established in a previous test-buy operation, would be boarding MV Dona Virginia and probably carrying shabu with him;[18] (h) where police officers received an information that the accused, who was carrying a suspicious-looking gray luggage bag, would transport marijuana in a bag to Manila;[19] and (i) where the appearance of the accused and the color of the bag he was carrying fitted the description given by a civilian asset.[20]

The warrantless search in the case at bench is not bereft of a probable cause. The Tarlac Police Intelligence Division had been conducting surveillance operation for three months in the area. The surveillance yielded the information that once a month, appellant and her co-accused Rosita Nunga transport drugs in big bulks. At 10:00 pm of October 19, 1996, the police received a tip that the two will be transporting drugs that night riding a tricycle. Surely, the two were intercepted three hours later, riding a tricycle and carrying a suspicious-looking black bag, which possibly contained the drugs in bulk. When they were asked who owned it and what its content was, both became uneasy. Under these circumstances, the warrantless search and seizure of appellant's bag was not illegal.

It is also clear that at the time she was apprehended, she was committing a criminal offense. She was making a delivery or transporting prohibited drugs in violation of Article II, Section 4 of R.A. No. 6425. Under the Rules of Court, one of the instances a police officer is permitted to carry out a warrantless arrest is when the person to be arrested is caught committing a crime in *flagrante delicto*, thus:

“Section 5. Arrest without Warrant; when lawful. - A peace officer or a private person may, without 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 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 temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x.”[21] (emphasis supplied)

Appellant also takes issue of the fact that she was not assisted by a lawyer when police officers interrogated her. She claimed that she was not duly informed of her right to remain silent and to have competent counsel of her choice. Hence, she argues that the confession or admission obtained therein should be considered inadmissible in evidence against her.

These contentions deserve scant attention. Appellant did not make any confession during her custodial investigation. In determining the guilt of the appellant and her co-accused, the trial court based its decision on the testimonies of prosecution witnesses and on the existence of the confiscated marijuana. We quote the relevant portion of its decision:

“Earlier in the course of the proceedings, the court then presided by Judge Angel Parazo, granted bail to accused Agpanga Libnao, ruling that the confiscation receipt signed by both accused (Exhibit “C”) is inadmissible because they were not assisted by a counsel. Confronted with this same issue, this court finds the postulate to rest on good authority and will therefore reiterate its inadmissibility.

Since the prosecution had not presented any extrajudicial confession extracted from both accused as evidence of their guilt, the court finds it needless to discuss any answer given by both accused as a result of the police

interrogation while in their custody. By force of necessity, therefore, the only issue to be resolved by the court is whether or not, based on the prosecution's evidence, both accused can be convicted.”[22] (emphasis supplied)

Appellant then faults the trial court for appreciating and taking into account the object and documentary evidence of the prosecution despite the latter's failure to formally offer them. Absent any formal offer, she argues that they again must be deemed inadmissible.

The contention is untenable. Evidence not formally offered can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.[23] All the documentary and object evidence in this case were properly identified, presented and marked as exhibits in court, including the bricks of marijuana.[24] Even without their formal offer, therefore, the prosecution can still establish the case because witnesses properly identified those exhibits, and their testimonies are recorded.[25] Furthermore, appellant's counsel had cross-examined the prosecution witnesses who testified on the exhibits.[26]

Appellant also assails the credibility of the testimonies of the prosecution witnesses. She first cites the inconsistency between the testimony of SPO1 Marlon Gamotea, who said that it was SPO2 Antonio who opened the black bag containing the marijuana; and that of SPO2 Antonio, who declared that the bag was already open when he arrived at the Kabayan Center. She then focuses on the police officers' failure to remember the family name of the driver of the tricycle where she allegedly rode, claiming that this is improbable and contrary to human experience.

Again, appellant's arguments lack merit. The alleged inconsistencies she mentions refer only to minor details and not to material points regarding the basic elements of the crime. They are inconsequential that they do not affect the credibility of the witnesses nor detract from the established fact that appellant and her co-accused were transporting marijuana. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence.[27] The identity of the person who opened the bag is clearly immaterial to the guilt of the appellant. Besides, it is to be expected that the testimony of witnesses regarding the same incident may be inconsistent in some aspects because different persons may have different recollections of the same incident.[28]

Likewise, we find nothing improbable in the failure of the police officers to note and remember the name of the tricycle driver for the reason that it was unnecessary for them to do so. It was not shown that the driver was in complicity with the appellant and her co-accused in the commission of the crime.

To be sure, credence was properly accorded to the testimonies of prosecution witnesses, who are law enforcers. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold this presumption.[29] In this case, no evidence has been presented to suggest any improper motive on the part of the police enforcers in arresting the appellant.

Against the credible positive testimonies of the prosecution witnesses, appellant's defense of denial and alibi cannot stand. The defense of denial and alibi has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.[30] It has to be substantiated by clear and convincing evidence.[31] The sole proof presented in the lower court by the appellant to support her claim of denial and alibi was a sworn statement, which was not even affirmed on the witness stand by the affiant. Hence, we reject her defense.

IN VIEW WHEREOF, the instant appeal is DENIED. The decision of the trial court finding appellant guilty beyond reasonable doubt of the offense of violation of Article II, Section 4 of R.A. No. 6425 in relation to R.A.

No. 7659, and sentencing her to an imprisonment of reclusion perpetua and to pay a fine of two million pesos is hereby AFFIRMED.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

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- [1] Criminal Case No. 9384.
- [2] Information, Original Records, p. 1; Rollo, p. 4.
- [3] A male passenger was seated at the back of the tricycle driver.
- [4] Exhibit E.
- [5] Decision, Criminal Case No. 9484, pp. 5-6; Rollo, pp. 21-22.
- [6] Appellant's Brief, p. 5; Rollo, p. 44.
- [7] Art. III, Sec. 2, 1987 Constitution.
- [8] *People v. Aruta*, 288 SCRA 626 (1998).
- [9] The following cases are recognized in our jurisprudence: warrantless search incidental to a lawful arrest; seizure of evidence in "plain view;" consented warrantless search; customs search; stop and frisk; and exigent and emergency circumstances.
- [10] *People v. Barros*, 231 SCRA 557 (1994).
- [11] *Ibid.*
- [12] *People v. Lacerna*, 278 SCRA 561 (1997).
- [13] *People v. Claudio*, 160 SCRA 646 (1988).
- [14] *People v. Tangliben*, 184 SCRA 220 (1990).
- [15] *People v. Maspil, Jr.*, 188 SCRA 751 (1990).
- [16] *People v. Malmsteadt*, 198 SCRA 401 (1991).
- [17] *People v. Lo Ho Wing*, 193 SCRA 122 (1991).
- [18] *People v. Saycon*, 236 SCRA 325 (1994).
- [19] *People v. Balingan*, 241 SCRA 277 (1995).
- [20] *People v. Valdez*, 304 SCRA 140 (1999).
- [21] Rule 113, Section 5, Revised Rules of Criminal Procedure.
- [22] Decision, p.3; Rollo, p. 19.
- [23] *Tabuena v. Court of Appeals*, 196 SCRA 650 (1991).
- [24] Exhibits "D-1" and series, TSN, August 15, 1997; TSN, October 22, 1997, pp. 2-6.
- [25] *People v. Mate*, 103 SCRA 484 (1981).

[26] People v. Napat-a, 179 SCRA 403 (1989).

[27] People v. Inocencio, 229 SCRA 517 (1994).

[28] People v. Sy Bing Yok, 309 SCRA 28 (1999).

[29] People v. Johnson, 348 SCRA 526 (2000).

[30] Ibid.

[31] People v. Balmoria, 287 SCRA 687 (1998).

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