PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORENTINO DEL MUNDO, ACCUSED-APPELLANT.

G.R. No. 138929. October 02, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a direct appeal of the decision of the Regional Trial Court of Balayan, Batangas, Branch 10, in Criminal Case No. 4139, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Florentino del Mundo GUILTY beyond reasonable doubt of violation of Sec. 4, Art. II of Republic Act No. 6425, as amended, and hereby sentences him to suffer the penalty of reclusion perpetua, to pay a fine of P500,000.00 and the costs.
>
> SO ORDERED.[1]

Accused-appellant Florentino del Mundo y de las Alas (a.k.a. "Boy") was charged with violation of Section 4, Article II of R.A. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, in an Information which reads:

> That on or about the 20[th] day of November, 1997, at about 4:30 o'clock in the afternoon, at Barangay Real, Municipality of Calatagan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there wilfully, unlawfully and feloniously sell, distribute and transport two (2) bricks of marijuana fruiting tops weighing one thousand seven hundred twenty (1,720) grams, the said accused being fully aware that the said marijuana he is selling is a dangerous and a prohibited drug.
>
> Contrary to law.[2]

Accused-appellant del Mundo pleaded "not guilty" when arraigned before the trial court. Trial then ensued.

The prosecution presented three (3) witnesses, namely: PO2 Ramon Ancheta and PO1 Romeo Jonson, both of the Calatagan, Batangas Police Station, and P/Sr. Insp. Mary Jean Geronimo of the PNP Regional Crime Laboratory Office at Camp Vicente Lim, Canlubang, Laguna. The two (2) policemen were part of the arresting team that was dispatched by the Chief of Police of Calatagan in response to information received at around 3:05 o'clock in the afternoon of November 20, 1997, to the effect that accused-appellant was at that very moment selling illegal drugs in Barangay Real, Calatagan.

Considering that accused-appellant was among those listed in their order of battle against illegal drugs, a team of four (4) policemen were immediately instructed to go to the said barangay and to apprehend the suspect. PO2 Ancheta and PO1 Jonson rode tandem on a motorcycle, while PO2 Leonardo Creus and PO2 Arnulfo Umali drove to the place in an owner-type jeep.

Arriving at Barangay Real on or about 4:30 o'clock of that same afternoon, the team saw accused-appellant standing beside a tricycle, conversing with another person whom the policemen could not identify. From a

distance, they observed accused-appellant hand something over to the other person. Upon the policemen's approach, accused-appellant hurriedly boarded his tricycle and sped away while his companion fled on foot into the sugarcane fields. The latter was chased by PO2 Creus and PO2 Umali, but they failed to catch him. Meanwhile, PO2 Ancheta and PO1 Jonson caught up with accused-appellant after a brief chase.

The arresting officers asked accused-appellant to alight from his vehicle, after which PO2 Ancheta subjected him to a body search. Finding no illegal drugs or weapons on accused-appellant's person, the two police officer proceeded to search the tricycle. There they found a package wrapped in newspaper inside a plastic bag. Upon closer inspection, the policemen detected the distinct scent of marijuana. When they opened the package, they found what appeared to be two (2) bricks of marijuana fruiting tops. They arrested accused-appellant and brought him to the police headquarters for investigation.

The package and its contents were sent to the PNP Crime Laboratory for scientific analysis. The forensic chemist, P/Sr. Inspector Mary Jean Geronimo, later testified that the laboratory examination she conducted on the contents of the package revealed that the same was marijuana weighing 1,720 grams. The results of the examination were reflected in Chemistry Report No. D-1892-97.[3]

On the other hand, the defense presented only one (1) witness, accused-appellant himself. He vehemently denied the allegations of the prosecution, and testified that on the afternoon in question, while he was plying the Barangay Lucsuhin, Calatagan route on his tricycle, a man boarded the vehicle carrying a plastic bag, asking to be ferried to Barangay Real. While they were on their way, said passenger told accused-appellant that he wanted to be dropped off at Barangay Sambungan instead. They arrived at the said place and, while the passenger was about to pay his fare, two unidentified men aboard a motorcycle approached with firearms aimed at accused-appellant and the passenger.

Fearing for their lives, accused-appellant drove his tricycle away from the scene while his passenger ran towards the sugarcane field. He was chased by the two (2) policemen, and when they caught up with him, they frisked him and searched his vehicle. They found on the floor of the tricycle a plastic bag which the passenger had left behind in his frantic escape. Accused-appellant denied that he was the owner of the bag and its contents, which upon inspection turned out to be two (2) bricks of marijuana fruiting tops. Nevertheless, he was placed under arrest and incarcerated at the Calatagan Police Station.

After evaluating the evidence presented by the prosecution and the defense, the trial court found that the apprehending policemen positively testified that the marijuana was confiscated from the vehicle owned and driven by accused-appellant; that the police officers did not have any ill-motive that would move them to fabricate such a serious charge against accused-appellant; and that the policemen were presumed to have regularly performed their duties.

Moreover, the trial court noted accused-appellant's hasty, albeit unsuccessful, escape from the approaching policemen thereby failing to elude arrest and his contradictory statements concerning what he and the passenger were doing and talking about immediately prior to his arrest.

Finally, the trial court upheld the validity of the warrantless arrest of accused-appellant and the seizure of the plastic bag containing the marijuana, which was found in the possession of the accused.

Accordingly, the trial court rendered judgment convicting accused-appellant for violation of Section 4, Article II of Republic Act No. 6425, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.

Hence this appeal, assigning to the trial court the following errors:

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I

THE LOWER COURT ERRED IN FINDING THAT THE OWNERSHIP OF THE CONFISCATED MARIJUANA IS NOT IN ISSUE.

II

THE LOWER COURT ERRED IN FINDING THAT THE MERE FACT THAT THE CONFISCATED MARIJUANA WAS FOUND IN HIS TRICYCLE IS ENOUGH TO SUSTAIN HIS CONVICTION.

III

THE LOWER COURT ERRED IN NOT FINDING THAT THE UNIDENTIFIED PASSENGER WAS THE OWNER AND TRANSPORTER OF THE CONFISCATED MARIJUANA.

IV

THE LOWER COURT ERRED IN HOLDING VALID THE WARRANTLESS ARREST OF THE ACCUSED AND WARRANTLESS SEIZURE OF THE CONFISCATED MARIJUANA.

V

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE OFFENSE CHARGED.

Discussing all the above issues jointly, accused-appellant argues that the prosecution failed to prove that he was the owner of the marijuana, or that he was selling, distributing or transporting the same with full knowledge that he was transporting a prohibited drug. The fact that the policemen also chased the unidentified passenger indicated that they themselves were also in doubt as to who was the real owner of the marijuana; and where the ownership of the prohibited drug is doubtful, such doubt must always be resolved in favor of the accused.

Accused-appellant further contends that the search of the vehicle and consequent seizure of the marijuana were illegal since there was neither a warrant of arrest nor a search warrant issued prior to the incident. He argues that without a warrant, his vehicle cannot be searched nor can he be subjected to a body search because "inspection is merely limited to a visual search." When the policemen unwrapped the package and smelled the contents, they went beyond a visual search since it is evident that the marijuana was not immediately visible.

He also stressed that his arrest was illegal because it was prompted in part by his being included in the order of battle drawn up by the police to arrest suspected drug dealers in the area; and yet, no such copy of the order of battle was ever presented by the prosecution.

Finally, accused-appellant emphasizes the prosecution's failure to prove that he was arrested while in the act of selling marijuana when all that the arresting officers testified to was that he was seen conversing with another person who just happened to be a passenger paying his fare at the very instance that the policemen approached them.

The prosecution counters that accused-appellant's arguments are bereft of merit for Section 4, Article II of Republic Act No. 6425, as amended, punishes the sale, administration, delivery, distribution and transportation of prohibited drugs. Since these acts are considered malum prohibitum, ownership of the drugs or prohibited substance is not an essential element of the crime committed. Also, accused-appellant's arrest, though warrantless, was lawful. Accused-appellant's flight upon seeing the approaching policemen gave rise to suspicions that he was indeed committing a crime. Under Rule 113, Section 5(a), the policemen's arrest of the accused-appellant was lawful, since there was reasonable ground to conclude that he either committed, was actually committing, or was about to commit a crime. Consequently, the search of his tricycle and the inspection of the contents of the package

found on the floor of said vehicle was valid as it was incidental to a lawful arrest.

After a careful and thorough review of the facts and issues of this case, we affirm accused-appellant's conviction.

The trial court did not err when it ruled that it was immaterial whether or not accused-appellant was the owner of the marijuana. Proof of ownership of the marijuana is not necessary in the prosecution of illegal drug cases. Accused-appellant's defense that the package containing marijuana actually belonged to the unidentified passenger is much too convenient and trite an alibi to instill belief.[4]

Section 4, Article II of the Dangerous Drugs Act, as amended, makes punishable any of the acts specified therein, such as selling, administering, delivering, giving away, distributing, dispatching in transit or transporting, and the like.[5] Thus, when an accused is charged with illegal possession or transportation of prohibited drugs, the ownership thereof is immaterial.[6] Consequently, proof of ownership of the confiscated marijuana is not necessary; it is sufficient that such prohibited substance was found in accused-appellant's tricycle at the time he was apprehended.[7]

Accused-appellant's bare denial is an intrinsically weak defense. It is negative and self-serving evidence which has no weight in law.[8] His lone testimony was not substantiated by clear and convincing evidence and hence, it cannot prevail over the positive testimony of the prosecution witnesses and the physical evidence that supports the judgment of conviction.[9] Just as accused-appellant's bare denial has negligible probative value, his uncorroborated assertion that the unidentified passenger was the owner and transporter of the marijuana cannot constitute a valid defense. Apart from his solitary testimony, there is nothing by way of credible evidence that the courts can rely on to even consider his defense.

Accused-appellant denies knowledge that the package supposedly left behind by the passenger contained marijuana. Nevertheless, lack of knowledge cannot constitute a valid defense, for lack of criminal intent and good faith are not exempting circumstances where the crime charged is malum prohibitum.[10] Thus, this Court has uniformly held that the uncorroborated claim of an accused of lack of knowledge that he had a prohibited drug in his possession is insufficient.[11] To warrant his acquittal, accused-appellant must show that his act of transporting the package containing marijuana in his tricycle was done without intent to possess a prohibited drug.[12] Despite his protestations to the contrary, his reaction to the arrival of the policemen belied his claim of innocence.

Uncorroborated as his testimony was, whatever credibility that may be appreciated in his favor was dispelled by accused-appellant's own actuations. If indeed he did not know that the package in his tricycle contained marijuana, he would not have attempted to flee from the approaching policemen. His story that the policemen had their guns drawn and he fled out of fear is too hackneyed an excuse and is contrary to human experience. An innocent person caught in a like situation would more likely stay and profess his innocence rather than further endanger his life by fleeing.

In the parallel case of People v. Baludda,[13] this Court held:

> x x x Indeed, the tale of appellant, too trite and hackneyed to be believed, does not suffice to overcome the prima facie evidence of appellant's awareness of his possession of prohibited drugs. Worse still for appellant is the undeniable fact that he and his companions, except Maximo Baludda, fled towards different directions after the police authorities announced their presence. If appellant had nothing to do with the transporting of subject prohibited drugs, or if he really had no knowledge that the sack he carried contained marijuana, there would have been no cause for him to flee. If he had to run at all, it would have been more consistent with his protestation of innocence if he ran towards, and not away from, the police officers. Obviously, what appellant did removed any shred of doubt over his guilt; exemplifying the biblical adage: "The wicked flee when no man

pursueth; but the righteous are as bold as a lion." (Underscoring ours)

It is obvious that his escape attempt was precipitated by his knowledge that the package contained marijuana. That he and his passenger were caught in the middle of a transaction or deal is clearly manifested by their spontaneous attempt to flee when they saw the policemen approaching. Jurisprudence has repeatedly declared that flight is an indication of guilt.[14] The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."[15]

In the recent case of People v. Tang Wai Lan,[16] citing the ruling in People v. Burton,[17] this Court pointed out that "an explanation, standing by itself, which is too trite and hackneyed to be accepted at its face value, since it is obviously contrary to human experience is insufficient to overcome the prima facie evidence that accused had knowledge of his possession of prohibited drugs."

Be that as it may, accused-appellant posits that, at the very least, his testimony should have raised reasonable doubt in the mind of the court. However, bare denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt.[18] Besides, absolute certainty of guilt is not required for a conviction. Moral certainty as to the presence of the elements constituting the offense is sufficient as long as the identity of the offender is established.[19]

Accused-appellant cannot feign ignorance of the fact that the package he was transporting contained marijuana. That it was found in his tricycle is prima facie evidence of knowledge or animus possidendi and it is enough to convict in the absence of a satisfactory explanation.[20] In the case at bar, the constitutional presumption of innocence will not apply as long as there is some logical connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. Accordingly, the onus of evidence to prove absence of animus possidendi is thus shifted to the possessor of the dangerous drugs.[21]

In the instant case, the evidence on record established beyond any doubt that accused-appellant was in possession of the package containing the marijuana. It was found inside the vehicle he owned and was driving at the time he was apprehended. In fact, he sought to evade arrest by driving his vehicle away from the scene with the package on board. His possession thereof gives rise to the disputable presumption under Section 3(j), Rule 131 of the Rules of Court, that he is the owner of the package and its contents. His bare, unpersuasive and uncorroborated disavowal - that the package belonged to his unidentified passenger - is a mere denial which by itself is insufficient to overcome this presumption.[22] It is well-established that this defense, in the absence of convincing evidence, is invariably viewed with disfavor by the courts for it can be easily concocted. In fact, it is the most common defense tactic employed in most cases involving illegal drugs.[23]

The evidence shows that accused-appellant was apprehended in the act of delivering or transporting illegal drugs. "Transport" as used under the Dangerous Drugs Act is defined to mean: "to carry or convey from one place to another."[24] When accused-appellant used his vehicle to convey the package containing marijuana to an unknown destination, his act was part of the process of transporting the said prohibited substance.[25] Inherent in the crime of transporting the prohibited drug is the use of a motor vehicle. The very act of transporting a prohibited drug, like in the instant case, is a malum prohibitum since it is punished as an offense under a special law. The mere commission of the act constitutes the offense and is sufficient to validly charge and convict an individual committing the act, regardless of criminal intent.[26] Since the appellant was caught transporting marijuana, the crime being mala prohibita, accused-appellant's intent, motive, or knowledge thereof need not be shown.[27]

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There is no reason to doubt the credibility of the policemen's testimonies, and after scrutinizing the records on hand, this Court finds no ground to disregard the findings of the lower court giving credence to the prosecution's evidence. It is a well-settled rule that the trial court has the distinct advantage to observe closely the deportment and demeanor of witnesses on the stand as well as their manner of testifying. The trial judge has the unparalleled opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record.[28] Unless it is clear that the trial court discarded or omitted certain facts of significance that may alter the outcome of the case, the trial court's findings deserve the respect and approbation of the appellate court.[29] Accused-appellant, however, failed to present justifiable grounds to show that the trial court misconstrued or overlooked any evidence of substance that would necessitate the reversal of the trial court's judgment.[30]

Finally, there is no question that the warrantless arrest of accused-appellant and the warrantless seizure of the marijuana was valid and legal. Accused-appellant was caught attempting to flee from the pursuing policemen who were ordered to go to the specific place where accused-appellant was suspected to be dealing drugs. As it happened, they found him in the act of either selling, delivering or transporting marijuana. Accused- appellant's attempt to escape was indicative of his guilt, and bolstered the policemen's suspicion that he had either committed, was actually committing, or was attempting to commit an offense when they found him talking to an unidentified person beside his tricycle. Under the given circumstances, the warrantless arrest of accused-appellant was valid since the policemen had reasonable grounds to believe that he was dealing or transporting prohibited drugs, having been so informed by a reliable police informer and acting upon orders of their superior officer. This reasonable belief was indelibly confirmed when both accused-appellant and the unidentified person fled at the sight of the policemen approaching, and ultimately upon the discovery and seizure of the marijuana in a package inside his tricycle.[31]

Even assuming that accused-appellant's warrantless arrest overstepped the bounds of legality, the same is not a jurisdictional defect.[32] It is a well-entrenched rule that any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment.[33] Having failed to move for the quashing of the Information against him before his arraignment, accused-appellant is estopped from questioning the legality of his arrest.[34] In fact, he never raised the issue of his warrantless arrest before the trial court prior to or during the proceedings thereat. It is a bit too late to do so in this appeal.

Consequently, any evidence gathered and presented by the prosecution as a result of the valid warrantless arrest cannot be considered "fruit of a poisonous tree," but were admissible and competent to prove accused-appellant's guilt.[35] Accused-appellant's argument that inspection of the immediate premises must be limited to a visual search finds no application in this case. The search of a moving vehicle is one of the doctrinally accepted exceptions to the constitutional mandate that no search or seizure shall be made except by virtue of a warrant issued by a judge after personally determining the existence of probable cause.[36] The warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant because the vehicle carrying the prohibited drugs can be quickly moved out of the area or jurisdiction in which the warrant must be sought.[37] Therefore, the warrantless search of accused-appellant's tricycle, which he used in transporting the marijuana, and by which he attempted to escape, was valid.

The policemen did not even have to open the package to determine its contents. The scent of the marijuana, as testified to by witness PO3 Ramon Ancheta, was evident although it was wrapped in newspaper and placed in a plastic bag.[38] It is of judicial notice that marijuana has a distinct, sweet and unmistakable aroma very different from that of ordinary tobacco.[39] Having detected the scent of marijuana, the policemen had legal authority, as well as the legal duty, to open the package and examine the contents if indeed it was marijuana. There is thus no

merit in accused-appellant's argument that the physical evidence presented by the prosecution was obtained through an illegal warrantless search. Besides, there is no showing that accused-appellant objected to the search of his vehicle and the opening of the package. Drugs discovered as a result of a consented search are admissible in evidence.[40]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Balayan, Batangas, Branch 10, in Criminal Case No. 4139, finding accused Florentino del Mundo y de las Alas guilty beyond reasonable doubt for violation of Section 4, Article II of R.A. 6425 (Dangerous Drugs Act) as amended, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00, is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Pardo, JJ., concur.
Kapunan, J., on official leave.

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[1] RTC Decision dated January 28, 1999; Rollo, p. 19.

[2] Records, pp. 1-2.

[3] Exhs. "B", "B-1" to "B-3"; Records, p. 10.

[4] People v. Tang Wai Lan, 276 SCRA 24, 34 (1997).

[5] People v. Mantilla, 285 SCRA 703, 714-715 (1998).

[6] People v. Jones, 278 SCRA 345, 352 (1997).

[7] People v. Encinada, 280 SCRA 72, 84 (1997).

[8] People v. Capillo, 319 SCRA 223, 237 (1999); People v. Tumaru, 319 SCRA 515, 528 (1999).

[9] People v. Mahinay, 304 SCRA 767, 777 (1999); People v. Acala, 307 SCRA 330, 347 (1999).

[10] People v. Sy Bing Yok, 309 SCRA 28, 38 (1999).

[11] People v. Esparas, 292 SCRA 332, 343 (1998); People v. Burton, 268 SCRA 531, 551 (1997).

[12] People v. Baludda, 318 SCRA 503, 511-512 (1999).

[13] Supra, at 512.

[14] People v. Janairo, 311 SCRA 58, 74 (1999); People v. Cahindo, 266 SCRA 554, 559 (1997).

[15] People v. Solis, 291 SCRA 529, 540 (1998).

[16] Supra, at 35.

[17] Supra, at 552.

[18] People v. Mantung, 310 SCRA 819, 830 (1999).

[19] People v. Mijano, 311 SCRA 81, 86 (1999). People v. Santiago, 391 SCRA 644, 652 (1999).

[20] U.S. v. Bandoc, 23 Phil. 14, 15 (1912).

[21] Dizon-Pamintuan v. People, 234 SCRA 63, 74 (1993).

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[22] People v. Burton, supra., p. 27.

[23] People v. Solon, 244 SCRA 554, 560 (1995); People v. Angeles, 218 SCRA 352, 361 (1993).

[24] People v. Jones, 278 SCRA 345, 355 (1997).

[25] People v. Leangsiri, 252 SCRA 213, 227-228 (1996).

[26] People v. Correa, 285 SCRA 679, 699-670 (1998).

[27] People v. Tang Wai Lan, supra., p. 35; People v. Go Shiu Ling, 251 SCRA 379, 388-389 (1995).

[28] People v. Accion, 312 SCRA 250, 261 (1999).

[29] People v. Tan, 315 SCRA 375, 383 (1999); People v. Tahop, 315 SCRA 465, 473-474 (1999).

[30] People v. Lacerna, 278 SCRA 561, 582 (1997).

[31] People v. Lising, 275 SCRA 804, 811 (1997).

[32] People v. Del Rosario, 305 SCRA 740, 760-761 (1999).

[33] People v. Patalin, Jr., 311 SCRA 186, 207 (1999); Cadua v. Court of Appeals, 312 SCRA 703, 722 (1999).

[34] People v. Khor, 307 SCRA 295, 326 (1999).

[35] People v. Alolod, 266 SCRA 154, 165 (1997).

[36] Asuncion v. Court of Appeals, 302 SCRA 490, 498 (1999); People v. Valdez, 304 SCRA 140, 147 (1998).

[37] Asuncion v. Court of Appeals, Ibid.

[38] TSN, March 5, 1998, pp. 20-21.

[39] Garcia v. Court of Appeals, 254 SCRA 542, 550 (1996).

[40] People v. Cuizon, 256 SCRA 325, 352 (1996).

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