

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LITA AYANGAO Y BATONG-OG, APPELLANT.

*G.R. No. 142356. April 14, 2004*

Ponente: CORONA, J.

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### CORONA, J.:

This is an appeal from the February 29, 2000 decision[1] of the Regional Trial Court, Branch 59, Angeles City in Criminal Case no. 99-1261 convicting the appellant of violating Section 4, Article 2 of RA 7659, as amended, also known as the Dangerous Drugs Act.

Appellant Lita Ayangao was charged with transporting 14.75 kilograms of marijuana in an information[2] that read:

That on or about the 13th day of August, 1999, in the Municipality of Mabalacat, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LITA AYANGAO y BATONG-OG, without any authority of law, did then and there wilfully, unlawfully and feloniously dispatch in transit or transport fifteen (15) bricks of dried marijuana leaves with the actual total weight of FOURTEEN KILOGRAMS AND SEVENTY FIVE HUNDREDTHS (14.75) of kilogram, a prohibited drug.

The appellant, through counsel, filed a motion to quash on the ground that the facts charged did not constitute an offense. This was denied by the trial court. Upon arraignment, the appellant pleaded not guilty.[3] Thereafter, trial ensued.

The prosecution presented three witnesses: PO3 Nestor Galvez, PO3 Bienvenido Sagum and Chief Forensic Chemist Daisy Panganiban-Babor. The prosecution's version[4] of the facts, as aptly summarized by the trial court, was:

Two weeks before August 13, 1999, PO3 Bienvenido Sagum and PO3 Nestor A. Galvez, members of the Criminal Detection and Intelligence Group based at Diamond Subdivision, Balibago, Angeles City, received information from one of their informants that a certain woman from Mountain Province delivers dried marijuana leaves for sale at Sapang Biabas, Mabalacat, Pampanga to some drug pushers. Said information was also relayed by the informant to C/Insp. Rhodel O. Sermonia who instructed the two operatives to conduct surveillance operation against their target female who was described by their informant as about 50 years old, 5 feet in height, straight long hair and coming from Kalinga province.

At around 5:00 o'clock in the morning of August 13, 1999, their informant went to their headquarters and informed them that their suspect is due to arrive at Sapang Biabas, Mabalacat. PO3 Sagum and PO3 Galvez, together with the informant, immediately went to Sapang Biabas and parked their car near the entrance of the road going to Sapang Biabas. While they were in their car, the informer pointed to them a woman bearing the same description given by the former. The woman alighted from the tricycle and subsequently loaded two sacks with camote fruits on top. The two officers proceeded to the place where the woman was and noticed marijuana dried leaves protruding through a hole of one of the sacks. Sagum and Galvez introduced themselves as police officers and requested the woman to put out the contents of the said sacks. The sacks yielded sweet

potatoes mixed with 15 brick-like substance wrapped in brown paper and masking tape. A brick, which was damaged on the side and in plain view of the officers revealed dried marijuana leaves. The woman who was arrested identified herself as accused Lita Ayangao y Batong-Og of Lacnog, Agbanawag Tabuk, Kalinga Province. Ayangao and the suspected dried marijuana leaves were brought to the police officer's headquarter at Diamond Subdivision, Angeles City. The evidence confiscated from the accused were sent to the PNP Crime Laboratory at Camp Olivas where it was examined by Chief Forensic Chemist Daisy P. Babor. The Initial Laboratory Report issued indicated that the specimens from the 15 bricks of suspected dried marijuana leaves weighing 14.75 kilograms were found to be positive for marijuana.

The defense, through the testimonies of the appellant and Reynaldo Nunag, purok chairman of Sitio Makabakle, presented a different version, again summarized by the trial court:[5]

Accused Lita Ayangao denied the charge made against her and alleged that she has nothing to do with the marijuana allegedly found in her possession. She went to Sapang Biabas "Marimar," Camachile, Mabalacat, Pampanga from Tabuk, Kalinga Province on August 13, 1999 only upon the request of a certain Magda Dumpao. Allegedly, Magda bought a house in Mawaque, Mabalacat and learned that it was being sold again. Magda then requested her (accused) to talk to Jaime Alarcon who acted as Magda's agent in buying the house. It was Magda who instructed her on how to go to the house of Jaime Alarcon. She arrived at the house of Alarcon at around 3:00 o'clock in the morning and was welcomed inside by Gloria and Jocelyn Alarcon, Jaime's wife and daughter-in-law. As Jaime was not around, she asked the Alarcon's permission if she can have a nap. Gloria and Jocelyn allowed her to sleep on the sofa and while she was resting, at around 6:00 o'clock in the morning, somebody knocked at the door. Gloria opened it and two men, who identified themselves as CIS agents, told Gloria that they were looking for somebody who came from Baguio City. One of the men went to where she was then lying and asked Gloria who she was. Gloria answered that she came from Tabuk. The police officers asked her (accused) to go with them as they wanted to talk to her. When she refused, the policemen forced her out of the house and boarded her to their car. While she was inside the car, she saw a sack and a carton box. The police brought her to their headquarters at Diamond Subd., Angeles City. She was made to sit in a chair and in her view, the sack was opened and its contents were placed in (sic) a table. She then heard from the policemen that the contents of the sack were marijuana and accused her of owning it.

Reynaldo Nunag, purok chairman of Sitio Makabakle, Marimar, Biabas, Mabalacat, Pampanga, testified that, as tricycle driver whose terminal is near the house of Jaime Alarcon, he did not see any unusual incident that happened in said vicinity in the morning of August 13, 1999. He also did not see how the accused was arrested and did not see the policemen's car.

The trial court found the prosecution's version to be credible, reasoning that appellant's defense of frame-up was not supported by evidence and thus could not prevail over the testimonies of the prosecution witnesses. The law enforcer's testimonies carried the presumption of regularity in the performance of official duties. The dispositive portion of the decision read:

WHEREFORE, premises considered, accused Lita Ayangao y Batong-og is found GUILTY beyond reasonable doubt of violating Section 4 of Article II of R.A. 6425 as amended by R.A. 7659 by transporting fourteen kilograms and seventy five hundredths (14.75) of a kilogram of marijuana, a prohibited drug, without authority. Said accused is hereby sentenced to suffer the penalty of reclusion perpetua. Accused Lita Ayangao-Batong-og (sic) is further ordered to pay a fine of five hundred thousand (P500,000.00) pesos.

SO ORDERED. [6]

The following assignments of error are raised in this appeal:[7]

I.

THE LOWER COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE EXISTING SERIOUS INCONSISTENCIES AND INCREDIBILITY THEREBY CREATING DOUBT REGARDING THEIR TRUTHFULNESS AND CREDIBILITY.

II.

THE TRIAL COURT ERRED IN NOT CONSIDERING FAVORABLY THE DEFENSE OF ALIBI AS A GROUND FOR ACQUITTAL OF THE DEFENDANT-APPELLANT IN SPITE OF THE WEAKNESS OF THE PROSECUTION EVIDENCE WHICH IS INSUFFICIENT TO OVERCOME THE PRESUMPTION OF INNOCENCE IN HER FAVOR.

III.

THE TRIAL COURT ERRED IN NOT ACQUITTING HEREIN DEFENDANT-APPELLANT ON GROUND OF REASONABLE DOUBT.

IV.

THE LOWER COURT ERRED IN FAILING TO HOLD THAT THE APPREHENDING OFFICERS VIOLATED DEFENDANT-APPELLANT'S MIRANDA RIGHTS.

After a thorough review of the records, this Court finds that the prosecution was able to discharge its burden of proving the appellant's guilt beyond reasonable doubt. The decision of the trial court was supported by the evidence on record.

Regarding the credibility of witnesses, this Court has ruled time and again that this is a matter best assessed by the trial court judge since he has the opportunity to observe the witnesses' demeanor and deportment on the stand.[8] Besides, in this case, the inconsistencies criticized by the appellant were minor ones involving negligible details which did not negate the truth of the witnesses' testimonies nor detract from their credibility.[9]

Appellant also assigns as error the illegality of her arrest because she was not read her Miranda rights. (This is in addition to her argument that the 15 bricks of marijuana were inadmissible since the warrantless search was invalid, not having been made pursuant to a lawful arrest.) This contention is without merit since this Court has repeatedly ruled that, by entering a plea upon arraignment and by actively participating in the trial, an accused is deemed to have waived any objection to his arrest and warrantless search.[10] Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived.[11] Here, in submitting herself to the jurisdiction of the trial court when she entered a plea of not guilty and participated in the trial, the appellant waived any irregularity that may have attended her arrest.[12]

Assuming, however, that there was no such waiver, pursuant to *People vs. Barros*,[13] reiterated in *People vs. Aruta*,[14] the waiver of the non-admissibility of the "fruits" of an invalid warrantless arrest and warrantless search and seizure is not to be casually presumed for the constitutional guarantee against unreasonable searches and seizures to retain vitality. The Court finds that the arrest was lawful as appellant was actually committing a crime when she was arrested — transporting marijuana, an act prohibited by law. Since a lawful arrest was made, the resulting warrantless search on appellant was also valid as the legitimate warrantless arrest authorized the arresting police officers to validly search and seize from the offender (1) any dangerous weapons and (2) the things which may be used as proof of the commission of the offense.[15]

In the present case, the warrantless arrest was lawful because it fell under Rule 113, Section 5(a) of the Revised Rules of Criminal Procedure. This section provides that a peace officer may arrest a person even without a

warrant when, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense. However, the police officer should be spurred by probable cause in making the arrest. Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[16] The determination of probable cause must be resolved according to the facts of each case. In this case, the arresting officers had probable cause to make the arrest in view of the tip they received from their informant. This Court has already ruled that tipped information is sufficient probable cause to effect a warrantless search.[17] Although the apprehending officers received the tip two weeks prior to the arrest, they could not be faulted for not applying for a search warrant inasmuch as the exact date of appellant's arrival was not known by the informant. Apprehending officer PO3 Sagum testified[18] as follows:

Q

So what were the information given you by your informer?

A

Ang kausap po nila iyong hepe namin[g] si Maj. Rhodel Sermonia tapos po sinabi lang po sa amin ni Maj. Sermonia ang sinabi ng informant.

Q

So you did not hear the report of the informant?

A

Yes, sir.

Q

What was the information given by your superior?

A

He told us that somebody will be delivering marijuana at Sapang Bayabas and the informer knew the person.

Q

Give us the complete report?

A

Sinabi po ng hepe namin na sinabi ng informant na merong babaeng magdedeliver ng marijuana sa Sapang Bayabas at babalik daw po siya kung kailan magdedeliver.

Q

On the date in question August 13 at around 6:00 o'clock in the morning you were in your office?

A

We were already at Sapang Bayabas, sir.

Q

Which is which now?

A

Nasa Sapang Bayabas na po, sir.

Q

Before going to Sapang Bayabas where did you come from?

A

We were in the office, sir.

Q

What time were you in the office?

A

That is where we were sleeping.

Q

You were sleeping there?

A

Yes, sir, we are stay-in.

Q

And then what happened?

A

Our informant came, sir.

Q

What time?

A

5:00 o'clock, sir.

Q

What was the purpose of the informant?

A

Sinabi po niya sa amin na darating na raw po iyong ano.

Q

I thought that your superior already informed you that the suspect or the accused will be arriving at 6:00 o'clock the first time?

A

Sabi po sa amin noong magpunta iyong informer sa office namin August 13 darating daw po iyong babae.

Q

It was on August 13 when he said that?

A

Yes, sir.

Q

Who was he talking with then?

A

Iyong Chief po namin tapos kinausap ko rin po siya.

Q

What time was that?

A

Before 5:00, sir.

Q

So they were talking before 5:00 with your Chief?

A

Yes, sir.

Q

Where were you?

A

I was outside, sir.

Q

So you were not listening to them?

A

No, sir.

Q

So you do not know what they have talked about?

A

Yes, sir.

Q

And then what were the instruction given by your superior?

A

He said we will proceed to Sapang Bayabas because there is a lady going there bringing marijuana.

Q

Did you ask the identity of the woman?

A

Yes, sir.

Q

What did he say?

A

About 50 years of age, 5 feet and with straight long hair?

Q

How about the name, was the name given to you?

A

No, sir, he just said she came from Kalinga.

Q

Aside from that, was the quantity of the drugs given to you that was to be brought?

A

No, sir.

Q

So you just learned that the woman will be arriving at Sapang Bayabas at 6:00 o'clock?

A

I do not know the time she is arriving.

Q

He did not tell you?

A

He does not know, sir.

Q

The informant did not tell you?

A

Yes, sir, he just said she will be coming in Sapang Bayabas.

Q

You did not ask for the time?

A

He does not know, sir.

Q

What about the particular place where the woman will deliver the drugs?

A

Hindi niya po alam basta doon sa entrance daw po ng Sapang Bayabas doon na po kami mag-istambay.  
(Emphasis and Italics supplied).

Although there was testimony by PO3 Galvez that the informant told them the exact date of arrival, the trial court gave more weight to the testimony of PO3 Sagum that stated otherwise, as evidenced by his finding that the informant arrived at the police station at 5:00 A.M. on August 13, 1999 and informed them that the appellant was arriving at 6:00 A.M.[19] The judgment call of the trial court on which of these two conflicting testimonies to believe should prevail because it involved the assessment of the credibility of witnesses.[20] Thus, without proof that some facts or circumstances of weight or substance having a bearing on the result of the case have been overlooked, misunderstood or misapplied, this Court will not overturn such finding as the judge was in a better position to observe the demeanor of the two witnesses.[21]

In those cases where this Court invalidated a warrantless search on the ground that the officers could have applied for a search warrant, the concerned officers received the tip either days prior to the arrival or in the afternoon of a working day. In *People vs. Aminudin*,[22] this Court found that the officers received the tip two days prior to the actual date of arrival of accused Aminudin. In *People vs. Encinadak*,[23] the police officers were tipped off at 4:00 P.M. on May 20, 1992 that accused Encinada would arrive at 7:00 A.M. the next day. Thus, the officers had time to obtain search warrants inasmuch as Administrative Circulars 13 and 19 of the Supreme Court allowed the application for search warrants even after office hours. In *People vs. Aruta*,[24] the police officers received the information on December 13, 1988 that accused Aruta would arrive on a Victory Liner Bus at 6:30 P.M. on December 14, 1999, giving them a day to obtain a warrant.

In the present case, the informant arrived at the police station at 5:00 A.M. on August 13, 1999 and informed the officers that the appellant would be arriving at 6:00 A.M. (just an hour later) that day. The circumstances clearly called for an immediate response from the officers. In *People vs. Valdez*,[25] this Court upheld the validity of the warrantless arrest and corresponding search of accused Valdez as the officer made the arrest on the strength of a similar on-the-spot tip. In the case at bar, though all other pertinent details were known by the officers except the date, they could not have applied for a search warrant since the validity of a warrant was only for 10 days.[26] Considering that the officers did not know when the appellant was going to arrive, prudence made them act the way they did.

The appellant also faults the trial court for failing to give weight to her defense of alibi. Appellant's alibi could not prevail over the overwhelming evidence presented by the prosecution. Alibi as a defense is inherently weak[27] and for it to serve as basis for an acquittal, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility to be at the scene of the crime.[28] The appellant failed to meet these two requirements. Jaime Alarcon's house where appellant claimed to be sleeping at the time of her arrest, was only 10 meters from the tricycle terminal where she was arrested by the officers.[29] Thus, the trial court was correct in ruling that the alibi of appellant was not enough to acquit her of the charges.

With the effectivity of RA 7659, Section 4 of RA 6425, provides the penalty of reclusion perpetua to death and a fine ranging from P500,000 to P10,000,000 if the marijuana involved weighs 750 grams or more. Since the

penalty is composed of two indivisible penalties, the rules for applying the penalties in Article 63 of the Revised Penal Code are applicable, pursuant to the ruling in *People vs. Simon*[30] wherein the Court recognized the suppletory application of the rules on penalties in the Revised Penal Code and the Indeterminate Sentence Law to the Dangerous Drugs Act after its amendment by RA 7659. Thus, as the appellant was found to be transporting 14.75 kilograms of marijuana, the trial court was correct in imposing the lesser penalty of reclusion perpetua since there was no aggravating or mitigating circumstance, and in not applying the Indeterminate Sentence Law which is not applicable when indivisible penalties are imposed.

WHEREFORE, the judgment of the Regional Trial Court, Branch 59, of Angeles City, finding the appellant guilty of transporting a prohibited drug and sentencing her to reclusion perpetua and to pay the fine of P500,000, is hereby AFFIRMED.

**SO ORDERED.**

Vitug, (Chairman), Sandoval-Gutierrez, and Carpio Morales, JJ., concur.

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[1] Penned by Judge Eliezer R. de los Santos.

[2] Records, p. 2.

[3] Records, p. 40.

[4] Records, p. 139-140.

[5] Records, p. 141-142.

[6] Records, p. 145.

[7] Rollo, p. 45-46.

[8] *People vs. Sullano*, 331 SCRA 649 [2000]; *People vs. Encinada*, 280 SCRA 72, 82 [1997].

[9] *Madrid vs. Court of Appeals*, 332 SCRA 570 [2000].

[10] *People vs. Mandraga*, 344 SCRA 628 [2000].

[11] *People vs. Tidula*, 292 SCRA 596 [1998].

[12] *People vs. Lagarto*, 326 SCRA 693 [2000].

**[13] 231 SCRA 557 [1994].**

**[14] 288 SCRA 626 [1998].**

[15] Section 13, Rule 126, Revised Rules of Criminal Procedure [2000].

[16] *People vs. Valdez*, 304 SCRA 140 [1999].

[17] *Supra*, citing *People vs. Aruta*; *People vs. Montilla*, 285 SCRA 703 [1998].

[18] TSN, January 19, 2000, p. 14-17.

[19] Records, p. 139.

[20] *People vs. Encinada*, 280 SCRA 72 [1997].

[21] *People vs. Mendoza*, 327 SCRA 695 [2000]; *People vs. Albao*, 287 SCRA 129 [1998].

**[22] 163 SCRA 402 [1988].**

**[23] 280 SCRA 72 [1997].**

[24] *Supra* note 8.

[25] *Supra* note 16.

[26] Section 10 Rule 126, Revised Rules on Criminal Procedure.

[27] *People vs. Milliam*, 324 SCRA 155 [2000].

[28] *People vs. Suelto*, 325 SCRA 41 [2000].

[29] TSN, January 19, 2000, p. 14.

**[30] 234 SCRA 555 [1994].**

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