

TOMAS SALVADOR, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 146706. July 15, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

At bar is the petition for review on certiorari[1] filed by Tomas Salvador assailing the Decision[2] dated August 9, 2000 and Resolution dated January 9, 2001 of the Court of Appeals in CA-G. R. CR No. 20186.

On the wee hours of June 4, 1994, Aurelio Mandin, Danilo Santos and petitioner Tomas Salvador, then aircraft mechanics employed by the Philippine Air Lines (PAL) and assigned at the Ninoy Aquino International Airport (NAIA) and Manila Domestic Airport, were nabbed by intelligence operatives of the Philippine Air Force (PAF) for possessing thirteen (13) packets containing assorted smuggled watches and jewelries valued at more than half a million pesos.

Consequently, they were charged before the Regional Trial Court (RTC), Branch 117, Pasay City with violation of Section 3601 of the Tariff and Customs Code, docketed as Criminal Case No. 94-5843. The Information reads:

"That on or about the 4[th] day of June 1994 at the NAIA/Domestic Airport vicinity, Pasay City and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and felonious assist in the concealment and unlawful importation of the following items:

198 pieces of means watches

P187,110.00

76 pieces of men's diving watches

8,640.00

32 pieces of ladies watches

11,600.00

1600 grams of assorted jewelry

322,000.00

with a total market value of P537,500.00 FIVE HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED FIFTY PESOS, more or less, Philippine Currency, without authority or permit from proper authorities.

CONTRARY TO LAW."[3]

When arraigned, all the accused, duly assisted by counsel, pleaded not guilty to the charge. Trial on the merits then ensued.

The prosecution established the following facts:

On June 3, 1994, a Special Mission Group from the PAF Special Operations Squadron, headed by Major Gerardo B. Pagcaliuangan and composed of Sgts. Rodolfo A. Teves, Geronimo G. Escarola, Virgilio M. Sindac and Edwin B. Ople, conducted routine surveillance operations at the Manila Domestic Airport to check on reports of alleged drug trafficking and smuggling being facilitated by certain PAL personnel.

Major Pagcaliuangan then ordered Sgts. Teves and Ople to keep close watch on the second airplane parked inside the Domestic Airport terminal. This aircraft is an Airbus 300 with tail number RPC-3001. It arrived at the NAIA at 10:25 in the evening of June 3, 1994 from Hong Kong as Flight No. PR-311. After its passengers disembarked and its cargo unloaded, it was towed by the PAL ground crew and parked at the ramp area of the Domestic Airport terminal.

At around 11:30 that same evening, Sgt. Teves reported over his radio that three (3) persons had boarded the Airbus 300. The team did not move, but continued its surveillance.

At 12:15 a.m. the following day (June 4), Sgt. Teves reported that the three (3) persons who earlier boarded the Airbus 300 had disembarked with their abdominal areas bulging. They then boarded an airplane tow truck with its lights off.

The PAF surveillance team promptly boarded their vehicles and followed the aircraft tow truck. At the Lima Gate of the Domestic Airport, the team blocked and stopped the tow truck. Sgt. Teves then got off, identified himself and asked the four (4) persons on board to alight. They were later identified as Tomas Salvador, petitioner, Aurelio Mandin, Danilo Santos and Napoleon Clamor, the driver of the tow truck.

Sgt. Teves approached Aurelio Mandin. He noticed that Mandin's uniform was partly open, showing a girdle. While Sgt. Teves was reaching for the girdle, a package wrapped in brown packaging tape fell. Suspecting that the package contained smuggled items, Sgt. Teves yelled to his teammates, "Positive!" Thereupon, the rest of the team surrounded petitioner and his two co-accused who surrendered without a fight. The team searched their bodies and found that the three were wearing girdles beneath their uniforms, all containing packets wrapped in packaging tape. Mandin yielded five (5) packets, while petitioner and Santos had four (4) each. The team confiscated the packets and brought all the accused to the PAFSECOM Office.

At around 8:00 o'clock the following morning, Emilen Balatbat, an examiner of the Bureau of Customs, arrived at the PAFSECOM Office. She opened one of the packets and on seeing that it contained dutiable goods, she proceeded to weigh the thirteen (13) packets seized from the accused. She then prepared an inventory of the items seized and listed the weight of the packets.[4] Thereafter, she brought the seized packets to the In-Board Section, Bureau of Customs, Airport Office where their contents were identified and appraised. The Bureau of Customs found 248 pieces of assorted watches and fourteen karat (14K) gold jewelries valued as follows:

QTY.
UNIT
DESCRIPTION
APPRAISED VALUE

10

pcs.

Half-bangles with Charms Tricolors 122.8 gms.

6

pcs.

Bracelet with Charms Tricolors 52.4 gms.

8

pcs.

Bracelet (Tricolor) 64.2 gms.

5

pcs.

Bangles (3 pcs./set) Tricolor 155.3 gms.

Baby's Bangles with charm 18.2 gms.

L-Bangles with charm 68.5 gms.

L-Bangles 112.3 gms.

L-Creolla Earrings 901.56 gms.

TOTAL GRAMS 1,495 x P200.00/gm. +P 299,052.00

Assorted Watches

204

pcs.

Citizen M watches with black dial with gold metal bracelet (-1) x \$25 \$2,600.00

24

pcs.

Seiko 5 Ladies watches with blue dial with white metal bracelet (-1) x \$25 600.00

16

pcs.

Seiko Divers Watch Mens- Black dial with rubberized bracelet (-1) x \$50 800.00

4

pcs.

Seiko 5 Ladies watches with yellow dial with gold metal bracelet (1) x \$25 100.00

4

pcs.

Citizen L-watches with white dial (4) x \$20 80.00

62

pcs.

Seiko 5 Men's watches with yellow dial with gold metal bracelet (1) x \$25 1,550.00

34

pcs.

Seiko 5 Men's watches with black dial with gold metal bracelet (1) x \$25 850.00

248

pcs.

\$6,580.00

The Investigating State Prosecutor conducted an inquest and thereafter recommended that petitioner and his co-accused be charged with violating Section 3601 of the Tariff and Customs Code. Accordingly, the Information,

mentioned earlier, was filed with the RTC.

After the prosecution rested its case, the accused filed a Joint Demurrer to Evidence.

In an Order dated October 12, 1995, the trial court denied the demurrer and directed the accused to present their evidence.

All the accused denied committing the offense charged, claiming they were framed-up by the military.

Danilo Santos testified that on the night of June 3, 1994, he was assigned to the Airbus 300 with tail No. RPC-3001, joining three junior mechanics who were then working on said aircraft. He was conducting a visual check of the plane when a tow truck arrived on its way to Nichols Airfield. He told one of the junior mechanics that he would take a break and be back in an hour. He then boarded the tow truck. When it was near the Lima Gate, a jeep with four (4) men in civilian attire aboard approached him. The four pointed their firearms at him and, after searching him for drugs, he was frisked but nothing was found. He was nonetheless brought by the men to the PAFSECOM Office, then to Villamor Airbase Hospital for a medical examination and alcohol test. Thereafter, he was brought back to the PAFSECOM Office. There, another military man arrived and brought out a box containing packets. Then he and his companions were told to put on their mechanic's uniforms and to wear girdles. The packets were placed on their bodies, after which they were photographed. He further testified that he was asked to sign a certain paper but was not allowed to read it thoroughly. During the investigation, he was not apprised of his rights nor assisted by a counsel.

Petitioner Tomas Salvador likewise denied any knowledge of the questioned items seized from him. He testified that during the incident in question, he only boarded the tow truck to take a break at the PAL canteen. He saw a box on the tow truck but was not aware of its contents. After his arrest, he was made to sign a document under duress.

Aurelio Mandin also denied committing the offense charged. He declared that after his arrest, he was made to sign a document by the PAF personnel, the contents of which he was not able to read. He signed it because he was struck with a .45 caliber handgun by one of the military men and threatened him with summary execution if he would not do so. He was not informed of his rights nor given the services of counsel during the investigation.

After hearing, the trial court rendered its Decision convicting all the accused of the offense charged, thus:

"WHEREFORE, in view of the foregoing, the Court finds the accused Aurelio Mandin y Liston, Danilo Santos y Antonio and Tomas Salvador y Magno GUILTY beyond reasonable doubt for violation of Section 3601 of the Tariff and Customs Code of the Philippines (TCCP). There being no aggravating or mitigating circumstance and applying the Indeterminate Sentence Law, the court sentences each of the accused to an indeterminate term of EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as minimum, to TEN (10) YEARS of prision mayor, as maximum, and to pay a fine of EIGHT THOUSAND PESOS (P8,000.00), without subsidiary imprisonment in case of insolvency, and to pay the costs. The court also orders the forfeiture of the confiscated articles in favor of the Government.

SO ORDERED."[5]

All the accused then seasonably interposed an appeal to the Court of Appeals, docketed as CA-G.R. CR No. 20186.

On August 9, 2000, the Appellate Court promulgated its Decision affirming the trial court's Decision, thus:

"We cannot see any justification for the setting aside of the contested Decision.

THE FOREGOING CONSIDERED, the appealed Decision is hereby AFFIRMED.

SO ORDERED."[6]

They filed a motion for reconsideration but was denied in a Resolution dated January 9, 2001.[7]

Only Tomas Salvador opted to elevate his case to this Court by way of the instant petition for review on certiorari. He submits for our consideration the following assignments of error:

"I

THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED IN THE INFORMATION LIKE UNLAWFUL IMPORTATION, POSSESSION OF UNLAWFULLY IMPORTED ARTICLES AND CONSPIRACY IN THE COMMISSION OF THE SAME, WERE NEVER PROVEN BEYOND REASONABLE DOUBT.

II

THERE WAS NO PROBABLE CAUSE FOR THE ARREST AND SEARCH OF THE PERSONS OF THE ACCUSED.

III

THE ACCEPTANCE BY THE TRIAL COURT AND THE AFFIRMANCE BY THE APPELLATE COURT OF THE TESTIMONIES OF PROSECUTION WITNESSES, AS WELL AS ALL ITS DOCUMENTARY EXHIBITS, DESPITE THE FACT THAT THE SAME WERE APPARENTLY OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED WERE UNLAWFUL.

IV

THE DENIAL BY THE TRIAL COURT AND THE CONCURRENCE BY THE APPELLATE COURT OF THE DEMURRER TO EVIDENCE WERE ALSO WITHOUT LEGAL BASIS."[8]

The above assignments of error boil down to these issues: (1) whether the seized items are admissible in evidence; and (2) whether the prosecution has proved the guilt of petitioner beyond reasonable doubt.

On the first issue, petitioner contends that the warrantless search and seizure conducted by the PAF operatives is illegal. Citing *People v. Burgos*,[9] he maintains that at the time he and his co-accused were stopped by the PAF law enforcers, they were unaware that a crime was being committed. Accordingly, the law enforcers were actually engaged in a fishing expedition in violation of his Constitutional right against unlawful search and seizure. Thus, the seized items should not have been admitted in evidence against him.

The Office of the Solicitor General (OSG) counters that under the factual circumstances of the case at bar, there was sufficient probable cause for the PAF surveillance team to stop and search petitioner and his companions. They boarded the parked Air Bus 300 PAL plane at the time when there were no other PAL personnel working therein. They stayed inside the plane for sometime and surprisingly, came out with bulging waists. They then stopped and looked around and made apparent signals. All these acts were sufficient to engender a reasonable suspicion that petitioner and his colleagues were up to something illegal. Moreover, the search and seizure was conducted in connection with the enforcement of customs law when the petitioner and his co-accused were riding a motor vehicle. In addition, the search was conducted at the vicinity of Lima Gate of the Manila Domestic Airport which, like every gate in the airport perimeter, has a checkpoint. Finally, the petitioner and his companions agreed to the search after one of them was caught with a suspicious-looking packet. Under these circumstances, the search and seizure is legal and the seized items are admissible in evidence.

We agree with the OSG.

As a rule, the Bill of Rights prohibits intrusions by the law enforcers to a person's body, personal effects or

residence, unless the same are conducted pursuant to a valid search warrant issued in compliance with the procedure mandated by the Constitution and the Rules of Court. Thus, Sections 2 and 3(2), Article 3 of the 1987 Constitution provide:

"SEC. 2. 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 or 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.

SEC. 3.

x x x

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

x x x."

The above Constitutional provisions do not prohibit searches and seizures, but only such as are unreasonable. Our jurisprudence provides for privileged areas where searches and seizures may lawfully be effected sans a search warrant. These recognized exceptions include: (1) search of moving vehicles; (2) search in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop-and-frisk situations; and (6) search incidental to a lawful arrest.[10]

Here, it should be noted that during the incident in question, the special mission of the PAF operatives was to conduct a surveillance operation to verify reports of drug trafficking and smuggling by certain PAL personnel in the vicinity of the airport. In other words, the search made by the PAF team on petitioner and his co-accused was in the nature of a customs search. As such, the team properly effected the search and seizure without a search warrant since it exercised police authority under the customs law.[11]

In *Papa vs. Mago*[12] involving a customs search, we held that law enforcers who are tasked to effect the enforcement of the customs and tariff laws are authorized to search and seize, without a search warrant, any article, cargo or other movable property when there is reasonable cause to suspect that the said items have been introduced into the Philippines in violation of the tariff and customs law. They may likewise conduct a warrantless search of any vehicle or person suspected of holding or conveying the said articles, as in the case at bar.

In short, *Mago* clearly recognizes the power of the State to foil any fraudulent schemes resorted to by importers who evade payment of customs duties. The Government's policy to combat the serious malady of smuggling cannot be reduced to futility and impotence on the ground that dutiable articles on which the duty has not been paid are entitled to the same Constitutional protection as an individual's private papers and effects. Here, we see no reason not to apply this State policy which we have continued to affirm.[13]

Moreover, we recall that at the time of the search, petitioner and his co-accused were on board a moving PAL aircraft tow truck. As stated earlier, the search of a moving vehicle is recognized in this jurisdiction as a valid exception to the requirement for a search warrant. Such exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted in a mobile ship, aircraft or other motor vehicle since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought.[14] Verily, we rule that the Court of Appeals committed no reversible error in holding that the articles involved in the instant

controversy were validly seized by the authorities even without a search warrant, hence, admissible in evidence against petitioner and his co-accused.

On the second issue, petitioner faults the Court of Appeals for readily sustaining the trial court's finding that the witnesses for the prosecution were credible, notwithstanding that their testimonies contain glaring inconsistencies which tend to detract from their veracity. Petitioner submits that these inconsistencies create serious doubt which should have been resolved in his favor.

We are not persuaded.

After a careful examination of the purported inconsistencies mentioned by petitioner, we find that they do not relate with the elements of the offense charged. Rather, they tend to focus on minor and insignificant matters as for instance: which PAF operative was in possession of the hand-held radio; how the girdles (garters) were removed; and what time the aircraft in question arrived.

It bears stressing that these inconsistencies detract from the fact that all members of the special PAF team who conducted the search positively identified the petitioner and his co-accused as the same persons who boarded the PAL plane; stayed therein for a significant length of time; disembarked in a manner which stirred suspicion from the team; and with unusually bulging uniforms, rode an aircraft tow truck towards Lima Gate where they were caught in flagrante delicto.

As a rule, inconsistencies in the testimonies of witnesses which refer to trivial and insignificant details do not destroy their credibility.[15] Moreover, minor inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase suspicion that the testimonies have been rehearsed, thereby negating any misgivings that the same were perjured.[16]

Section 3601 of the Tariff and Customs Code provides in part:

"SEC. 3601. Unlawful Importation.—Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article contrary to law, or shall receive, conceal, buy, seal or in any manner facilitate the importation, concealment or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling...

x x x

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section."

Smuggling is thus committed by any person who (1) fraudulently imports or brings into the Philippines or assists in importing or bringing into the Philippines any article, contrary to law, or (2) receives, conceals, buys, sells or in any manner facilitates the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law.[17] Importation commences when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit for withdrawal has been issued, or where the articles are duty-free, once the articles have left the jurisdiction of the customs.[18]

In the instant case, the prosecution established by positive, strong, and convincing evidence that petitioner and his co-accused were caught red-handed by a team from the PAF Special Operations Squadron, while in the possession of highly dutiable articles inside the premises of the airport. The contraband items were taken by petitioner and his co-accused from a PAL plane which arrived from Hong Kong on the night of June 3, 1994.

Petitioner and his colleagues then attempted to bring out these items in the cover of darkness by concealing them inside their uniforms. When confronted by the PAF team, they were unable to satisfactorily explain why the questioned articles were in their possession. They could not present any document to prove lawful importation. Thus, their conviction must necessarily be upheld. Clearly, the Court of Appeals committed no reversible error in affirming the trial court's Decision convicting petitioner and his co-accused.

WHEREFORE, the petition is DENIED. The appealed Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 20186 are AFFIRMED IN ALL RESPECTS. Costs against the petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Bernardo Ll. Salas (retired) and concurred in by Associate Justice Presbitero J. Velasco, Jr. (now Court Administrator) and Associate Justice Edgardo P. Cruz; Rollo at 176-192.

[3] Id. at 96.

[4] Exh. "A" for the prosecution. The packets as labeled and weighed by Balatbat were as follows: Package # 1 - 1.8 kilos, # 2 - 2 kilos, # 3 - 2.1 kilos, # 4 - 1.9 kilos, # 5- 1.4 kilos, # 6 - 1.3 kilos, # 7 - 1.7 kilos, # 8 - 2.3 kilos, # 9-2.3 kilos, # 10 - 1.8 kilos, # 11 - 1.25 kilos, # 12 - 1. 15 kilos, and # 13-0.45 kilo.

[5] Rollo at 131-132.

[6] Id. at 191.

[7] Id. at 194.

[8] Id. at 41-42.

[9] G.R. No. 69955, September 4, 1986, 144 SCRA 1.

[10] People vs. Canton, G.R. No. 148825, December 27, 2002, 394 SCRA 478, 485, citing People vs. Chua Ho San, 308 SCRA 432 (1999); People vs. Figueroa, 335 SCRA 249 (2000); People vs. Fernandez, 372 SCRA 608 (2001).

[11] People vs. CFI of Rizal, Br. IX, No. L-41686, November 17, 1980, 101 SCRA 86.

[12] G.R. No. 27360, February 28, 1968, 22 SCRA 857.

[13] See Viduya vs. Berdiago, G.R. No. 29218, October 29, 1976, 73 SCRA 553; People vs. CFI of Rizal, Br. IX, G.R. No. 41686, November 17, 1980, 101 SCRA 86.

[14] People vs. CFI of Rizal, Br. IX, supra, citing Carroll vs. United States, 267 US 131 (1924).

[15] People vs. Mationg, G.R. No. 137989, March 27, 2001, 355 SCRA 458, 472, citing People vs. Castor, 215 SCRA 410 (1992); People vs. Lase, 219 SCRA 589 (1993); People vs. Jumamoy, 221 SCRA 333 (1993).

[16] People vs. Garcia, G.R. Nos. 133489 & 143970, January 15, 2002, 373 SCRA 134, citing People vs. Salimbago, 314 SCRA 282 (1999); People vs. Ramos, 309 SCRA 643 (1999).

[17] Rodriguez vs. Court of Appeals, G.R. No. 115218, September 18, 1995, 248 SCRA 288.

[18] Llamado vs. Commissioner of Customs, G.R. No. 28809, May 16, 1983, 122 SCRA 118.

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