

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUIS TAMPIS AND DAISY NAPILIW TAMPIS, APPELLANTS.

G.R. No. 148725. July 31, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Appellants Luis Tampis and Daisy Napiliw Tampis were charged with violation of Article II, Section 4 of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act, as amended, before the Regional Trial Court of Bontoc, Mountain Province, Branch 35, in Criminal Case No. 1198. The information against them alleged:

That in the morning thereof on August 7, 1997 at Sabangan, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and feloniously transport and dispatch in transit from Bontoc, Mountain Province to Baguio City, via the Red Eagle Bus with Plate No. 2008, dried marijuana leaves, buds and stems weighing approximately seven kilograms and four grams (7.4 kilograms) contained in a brown bag with full knowledge that said marijuana is a prohibited drug or from which prohibited drug may be manufactured.

CONTRARY TO LAW.[1]

Upon arraignment, both appellants, assisted by their counsel, pleaded not guilty to the charge.[2] Trial on the merits ensued.

On August 5, 1997, PO1 Fidel Fagcayang of the Intelligence Task Force, Mountain Province Police, received a report from an asset that marijuana was about to be sold at Sitio Bugnay, Tinglayan, Kalinga. At 4:00 in the afternoon of the same day, he proceeded to the said place to meet his asset, who thereafter pointed to the house where the transaction was to take place. PO1 Fagcayang conducted surveillance of the house. As the day ended with negative results, he decided to spend the night in his asset's house just across the road.[3]

The next day, PO1 Fagcayang resumed the stake-out. In the afternoon, he saw a pregnant woman and a thin man, who later turned out to be appellants Daisy Tampis and Luis Tampis, enter the house. PO1 Fagcayang walked towards the house, peeked through the door and saw the two appellants and an old woman packing suspected marijuana leaves into a brown bag[4] with the markings "Tak Tak Tak Ajinomoto" inscribed on its side. He monitored them until the following morning, August 7, 1997, when they came out of the house.[5] He saw appellant Luis Tampis carrying the brown bag marked with the markings "Tak Tak Tak Ajinomoto". At 7:00 in the morning, appellants boarded a Ford Fiera bound for Bontoc. PO1 Fagcayang waited for the next ride, which came ten to fifteen minutes later. Worried that he might not catch up with appellants, he alighted at Tocucan and called up his superior, PO1 Alfred Awichen, at the Provincial Headquarters.[6] He informed the latter that a pregnant woman and a thin man were transporting marijuana leaves from Bontoc.[7]

Acting on the report, PO1 Awichen organized a team to check on the buses leaving Bontoc. At the rotunda, one of his men, Bonifacio Banged, spotted a pregnant woman and her companion on board a Red Eagle Bus.[8] While

PO1 Fagcayang reported the events to PO1 Awichen, the bus departed. PO1 Awichen immediately radioed the Sabangan Police Station to monitor the Red Eagle Bus with body number 2008.[9]

PO3 Joselito Passol of the Investigation Section of Sabangan Police Station received the radio message. Immediately, he and two other policemen proceeded to the national road and waited for the arrival of the described bus. Twenty minutes later, the bus arrived. The policemen flagged it down and informed the driver and the conductor that certain passengers were allegedly carrying marijuana. They searched the bus and found a brown bag marked with "Tak Tak Tak Ajinomoto" under the seat on the left-hand side of the driver, right in front of appellant Daisy Tapis.[10] They asked the passengers who owned the bag and, when nobody answered, they opened it and found seven bricks of suspected marijuana leaves[11] packed with masking tape[12] and assorted clothing.[13] They seized the said articles and invited appellants to the municipal hall for questioning. Moments later, members of the Narcotics Command (NARCOM) arrived and took custody of appellants and the confiscated articles.[14]

The seven bricks of suspected marijuana leaves were submitted to the Philippine National Police Crime Laboratory at Camp Dangwa for examination. Forensic Chemist Joyda Fagto Ayak confirmed that the said items were indeed marijuana, a prohibited drug, packed in brick form wrapped in newspaper and brown packing tape, and weighed 7,015.50 grams.[15]

Appellants denied ownership of the brown bag and its alleged contents. They narrated a different version of the incident.

Sometime in May 1996, appellants, who are common-law husband and wife, went home to Hapao, Hungduan, Ifugao Province and worked in the farm of Daisy's father. They eventually engaged in the business of rice-selling. On the last week of July 1997, appellants had a fight with Marissa Sumedca, a rice dealer from Tabuk, Kalinga, after the latter did not deliver the correct number of cavans and did not issue a receipt for the transaction. On August 5, 1997, the eight-month pregnant Daisy went to Tabuk, Kalinga but failed to find Marissa, so she proceeded to see her cousin, Jose Banngawan, in Bontoc, Mountain Province to borrow money for medical check-up and her forthcoming delivery. On August 6, 1997 at 8:30 in the morning, she left Tabuk on board a Ford Fiera bound for Bontoc, Mountain Province. At 2:00 in the afternoon, the vehicle broke down at Tinglayan, Kalinga. Subsequently, at 5:00 in the afternoon, she saw an Elf truck coming from Tabuk with her husband on board.[16]

Meanwhile, Luis Tampis testified that on August 6, 1997, he followed his wife to Tabuk but was informed that she proceeded to Bontoc, Mountain Province. He boarded an Elf truck going to Besao, Mountain Province. When he reached Tinglayan, he saw his wife Daisy. He alighted from the Elf truck and asked her to ride with them. However, the truck was already overloaded, so they decided to remain in Tinglayan.[17]

The following morning, appellants left Tinglayan and arrived at Bontoc at 9:00 in the morning. They boarded the Red Eagle Bus bound for Baguio. At Sabangan, the bus stopped at a checkpoint. The police officers searched the bus and found a brown bag with marijuana leaves inside.[18]

The defense also presented Aaron Fakat, the driver of the Ford Fiera, who testified that he picked up a pregnant woman and a man, who was carrying a blue travelling bag and black backpack, at Tinglayan. At Bontoc, Mountain Province, the two alighted and boarded the Red Eagle Bus.[19] Likewise, the conductor of the Red Eagle Bus, Jefferson Tafaleng, testified that he helped Daisy carry a blue travelling bag on board the bus.[20]

On December 14, 2000, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered and having found the accused Luis Tampis and Daisy Tampis GUILTY

beyond reasonable doubt as principals of having violated SECTION 4, R.A. No. 6425, as amended, they are hereby SENTENCED to suffer the penalty of reclusion perpetua and a fine of five hundred thousand pesos (P500,000.00) pursuant to Section 15 of the aforecited R.A. No. 6425, as amended, which shall carry with it the confiscation and forfeiture in favor of the government of all the proceeds of the crime and those which are not of lawful commerce is hereby ordered to be turned over to the board to be destroyed or for proper disposal without delay and accused to pay the cost of the suit.

SO ORDERED.[21]

Hence, the instant appeal, raising the following errors:

- THE TRIAL COURT ERRED IN FINDING THE ARREST LEGAL.
- THE TRIAL COURT ERRED IN ADMITTING THE OBJECT EVIDENCE DESPITE THEIR BEING OBTAINED AS A RESULT OF AN ILLEGAL SEARCH AND SEIZURE.
- THE TRIAL COURT ERRED IN CONVICTING BOTH ACCUSED BASED ON A DEFECTIVE INFORMATION.[22]

Appellants contend that the warrantless arrest and search made by the police officers was unlawful for lack of probable cause. The arrest was effected based on a radio message that "a pregnant woman accompanied by a man" was transporting marijuana, without any other description or identifying features of the appellants. They further contend that the prohibited articles were the fruits of an illegal search and seizure and are, therefore, inadmissible in evidence.

Appellants' contentions are devoid of merit.

Rule 113, Section 5 of the Rules on Criminal Procedure provides:

SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a 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; xxx.

As can be gleaned from the records of the case, PO1 Fagcayang received information from his asset that a sale of marijuana was about to take place at Sitio, Bugnay, Tinglayan; that he conducted a surveillance on the intended place and saw both appellants packing the suspected marijuana leaves into a brown bag with the markings "Tak Tak Tak Ajinomoto" inscribed on its side; that appellants had physical possession of the subject brown bag from the time they left the house at Sitio Bugnay, Tinglayan, Kalinga until they boarded a Ford Fiera; that both appellants rode the Red Eagle Bus with body number 2008 bound for Baguio; that when the policemen conducted a search of the same bus at Sabangan, they found a pregnant woman with the same brown bag located in front of her under the driver's seat;[23] that upon inspection, the bag was found to contain suspected marijuana leaves which when examined yielded positive for marijuana; that when appellant Daisy was invited by the police, appellant Luis went with her to the municipal hall.

The information given to the policemen at the Sabang Police Station, who eventually apprehended the appellants, provided them sufficient ground to believe that a crime has been committed or is being committed and justified the arrest of the appellants without a warrant. To reiterate, PO1 Fagcayang alighted at Tocuan and called the policemen stationed at the Provincial Headquarters to inform them that a pregnant woman with a brown bag and a thin man were transporting suspected marijuana leaves from Bontoc. In response, PO1 Awichen organized a team to check on the buses leaving Bontoc. One of them spotted a pregnant woman on board the Red Eagle Bus with

body number 2008, which, however, left before further inspection and/or apprehension could be made. Immediately thereafter, the policemen requested the Sabangan Police Station to monitor the bus which carried appellants. Even if the message, as regards the identities of the appellants, was merely relayed through a radio, there was a clear description of them to enable the policemen to identify appellants. Under these circumstances, the policemen had reasonable grounds to believe that appellants were dealing or transporting prohibited drugs. It has been held that tipped information is sufficient to provide probable cause to effect a warrantless search and seizure.[24]

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; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.[25]

More importantly, a warrantless arrest is not a jurisdictional defect.[26] Any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment. Having failed to move for the quashing of the information against them before their arraignment, appellants are now estopped from questioning the legality of their arrest.[27] Any irregularity was cured upon their voluntary submission to the trial court's jurisdiction.[28]

Inasmuch as the arrest was lawful, appellants may be searched for anything which may have been used or constitute proof in the commission of an offense without a search warrant.[29] Furthermore, 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 a probable cause. 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.[30]

We cannot discern any improper motive, and no such motive was ever imputed to them by appellants, as to why the police would fabricate evidence and falsely implicate them in such a serious offense. From all the attendant circumstances, it appears that these police officers were simply carrying out their mission to curb drug abuse. The absence of evidence as to the improper motive actuating the principal witnesses for the prosecution strongly sustains the conclusion that none existed, and consequently their testimony is worthy of full faith and credit.[31] Moreover, the prosecution witnesses who are all law enforcers are presumed to have regularly performed their duties in the absence of proof to the contrary.[32]

The assessment of the credibility of witness and their testimony is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand; and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[33]

Appellants argue that the information failed to allege conspiracy and thus violated their constitutional right to be informed of the nature and cause of the accusation against them.

The argument lacks merit.

The rule is that conspiracy must be alleged, not merely inferred, in the information. Absence of a particular statement in the accusatory portion of the charge sheet concerning any definitive act constituting conspiracy renders the indictment insufficient to hold one accused liable for the individual acts of his co-accused. Thus, each of them would be held accountable only for their respective participation in the commission of the offense.[34]

In the case at bar, while it is true that conspiracy was not alleged in the information, the individual acts of the appellants constituted the offense of delivery and transportation of prohibited drugs. Both of them packed the marijuana leaves into a brown bag. They also left the house together carrying the said brown bag. Finally, they both boarded a Ford Fiera and a Red Eagle Bus with the same brown bag, which was later found to contain marijuana. Hence, even in the absence of an allegation of conspiracy in the information, appellants are still culpable for the crime charged inasmuch as their individual participation satisfied the elements thereof.

Article II, Section 4 of The Dangerous Drugs Act, as amended by Republic Act No. 7659, states:

SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. -- The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as broker in any of such transactions.

x x x.

Under Section 20 of the said Act, the above-prescribed penalty shall be imposed if the marijuana involved weighs 750 grams or more. Since the quantity of marijuana involved in this case weighed 7,015.50 grams, the trial court correctly sentenced appellants to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.[35]

WHEREFORE, in view of the foregoing, the appealed decision of the Regional Trial Court of Bontoc, Mountain Province, Branch 35, in Criminal Case No. 1198, finding appellants Luis Tampis and Daisy Napiliw Tampis guilty beyond reasonable doubt of violation of Article II, Section 4 of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act, as amended by Republic Act No. 7659, and sentencing them to suffer the penalty of reclusion perpetua and to pay a fine of Five Hundred Thousand Pesos (P500,000.00), is **AFFIRMED** in toto. The marijuana leaves seized from appellants are confiscated and forfeited in favor of the Government and shall be properly disposed of without delay.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Records, p. 1.

[2] *Id.*, p. 41.

[3] TSN, February 17, 1998, pp. 1-4.

[4] Exhibit "B".

[5] *Id.*, pp. 5-8.

[6] *Id.*, pp. 8-10.

[7] TSN, February 18, 1998, p. 19.

- [8] TSN, July 21, 1998, pp. 7-8.
- [9] Id., pp. 3 and 8.
- [10] TSN, February 18, 1998, pp. 23-25.
- [11] Exhibits "H", "H-1 to H-6".
- [12] Id., p. 27.
- [13] Exhibit "H-7" and "I".
- [14] Id., p. 28, Exhibit "C".
- [15] Chemistry Report No. D-042-97; Exhibit "F"; TSN, July 21, 1998, pp. 13-17.
- [16] TSN, November 5, 1999, pp. 42-48.
- [17] TSN, August 17, 2000, pp. 85-89.
- [18] TSN, February 10, 2000, pp. 63-65; July 19, 2000, p. 6.
- [19] TSN, February 25, 1998, p. 6.
- [20] TSN, July 1, 1998, p. 13.
- [21] Records, pp. 325, 340; penned by Judge Manuel Bragado.
- [22] Rollo, p. 56.
- [23] TSN, February 18, 1998, p. 25.
- [24] *People v. Aruta*, 351 Phil. 868 [1998].
- [25] *People v. Valdez*, 363 Phil. 481 [1999].
- [26] *People v. del Rosario*, 365 Phil. 292 [1999].
- [27] *People v. del Mundo*, G.R. No. 138929, 2 October 2001, 366 SCRA 471.
- [28] *People v. de Guzman*, G.R. Nos. 117952-53, 14 February 2001, 351 SCRA 573.
- [29] Revised Rules of Criminal Procedure, Rule 126, Sec. 13.
- [30] *Supra*.
- [31] *People v. Barita*, G.R. No. 123541, 8 February 2000, 325 SCRA 22.
- [32] *People v. Libnao, et al.*, G.R. No. 136860, 20 January 2003.
- [33] *People v. Esperida*, G.R. Nos. 139637-38, 22 January 2003.
- [34] *Garcia v. Court of Appeals*, G.R. No. 124036, 23 October 2001.
- [35] *People v. Valdez*, 363 Phil. 481 [1999].

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