

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELIDA DEQUINA Y DIMAPANAN, JOSELITO JUNDOC Y JAPITANA & NORA JINGABO Y CRUZ, ACCUSED-APPELLANTS.

G.R. No. 177570. January 19, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Accused-appellants Nelida D. Dequina (Dequina), Joselito J. Jundoc (Jundoc), and Nora C. Jingabo (Jingabo) were charged before the Regional Trial Court (RTC) of Manila, Branch 27, with Violations of Section 4, in relation to Section 21, paragraphs (e-l), (f), (m), and (o) of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659. The accusatory portion of the Amended Information reads:

That on or about September 29, 1999, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, not being authorized by law to sell, deliver, transport or give away to another any prohibited drug, did and there willfully, unlawfully and knowingly sell, or offer for sale, deliver or transport marijuana dried flowering tops with total weight of thirty two thousand nine hundred ninety five (32,995) grams which is a prohibited drug.[1]

The case was docketed as Criminal Case No. 99-177383. Upon arraignment, all accused-appellants entered a plea of not guilty.[2]

The prosecution presented four witnesses: Police Officer (PO) 3 Wilfredo Masanggue (Masanggue), Senior Police Officer (SPO) 1 Anthony Blanco (Blanco), PO3 Eduardo Pama (Pama), and Forensic Chemist George de Lara (De Lara). The RTC summarized the testimonies of the prosecution witnesses as follows:

Police Officer III Wilfredo Masanggue testified that at about 6:00 a.m., of September 29, 1999, he and SPO1 Anthony Blanco were instructed by their superior, Chief Inspector Romulo Sapitula to proceed at the corner of Juan Luna and Raxabago Sts., Tondo, Manila, where, according to the report given by the informant, three persons - a male and two female[s] would be coming from Baguio City to deliver unknown quantity of marijuana. In no time, they arrived at the designated place and parked their mobile patrol car along Juan Luna Street, facing the northern direction just near the corner of Raxabago Street.

At around 9:00 a.m., they noticed a taxi cab coming from Yuseco St. heading towards the direction of the pier. At a certain point along Raxabago Street, about a hundred meters away from the position of their patrol car the taxi stopped. From it emerged three passengers - a man and two women - each one of them carrying a black travelling bag. As the trio fitted the descriptions given to them by Inspector Sapitula, they intently watched and monitored their movements.

About one or two minutes later, as the trio started walking towards the western portion of Raxabago St., they drove and trailed them. As the patrol car got closer behind them, [Dequina] noticed its presence. She started walking in a more hurried pace ("parang walkathon") as if she wanted to run away ("parang patakbo"). SPO1 Blanco alighted from the car and chased [Dequina] while PO3 Masanggue, who was behind the wheels also

alighted and restrained [Jundoc] and [Jingabo]. While thus trying to get away, [Dequina] dropped the bag she was carrying. As a result, the zipper of the bag gave way. Bundles of dried leaves wrapped in transparent plastic bags came into view. Suspecting the stuffs to be marijuana, they further inspected the other two bags in the possession of [Jingabo] and [Jundoc] and found out that they had the same contents. They boarded the three accused, along with their bags in their patrol car and proceeded to the hospital for physical examination before bringing them to their headquarters. While in transit, [Dequina] pleaded to them to allow her to make a call but they did not heed the request as the car was still in motion.

At the western Police District Headquarters at United Nations Avenue, they turned over the three accused together with the bags to PO3 Eduardo Pama, a police investigator of the district Anti-Narcotics Unit for investigation. During the investigation, it was discovered that each of the three black travelling bags confiscated from the three accused contained eleven bricks of marijuana. In connection with the incident, he and SPO1 Blanco executed the Joint Affidavit of Apprehension dated September 30, 1999 (Exhs. "A" and submarkings).

SPO1 Anthony Blanco testified that in the early morning of September 29, 1999, together with PO3 Wilfredo Masangue, he was dispatched by their superior to the corner of Juan Luna and Raxabago Sts., Tondo, Manila, where it was reported that shipment of marijuana would take place. They were further informed that the drug couriers were composed of a man and two women and that each of them were carrying a travelling bag.

After they arrived at the designated area, they parked their vehicle along Juan Luna near Raxabago Street. Then they waited. Suddenly, they noticed the arrival of a taxicab from where three persons - a man and two women - alighted. Each of them was carrying a bag. The trio fitted the descriptions given to them. As the suspects walked away, they drove and trailed them. As they got close behind them, accused Nelida Dequina noticed the presence of the mobile car. She dropped the black bag she was carrying and the same was unzipped. The contents thereof consisting of dried marijuana leaves wrapped in transparent plastic bags came into view. They arrested the three suspects later identified as the accused herein and boarded them into their car. While on board the vehicle, [Dequina] and [Jundoc] confessed that the contents of the other two bags confiscated from them were also marijuana.

At the WPD Headquarters, United Nations Avenue, Manila, the three accused were turned over to the Office of the District Anti-Narcotics Unit where they were investigated by PO3 Wilfredo Pama. It was there where the other two bags confiscated from [Jingabo] and [Jundoc] were re-opened and confirmed to contain marijuana.

In the course of his cross-examination, SPO1 Blanco admitted that the three of them - Inspector Sapitula, PO3 Masangue and himself, along with the three accused, were photographed, at what appeared to be a "sari-sari" store as their background. The same appeared in the clipping of "Tonight" September 20, 1999 issue.

PO3 Eduardo Pama, an investigator from the District Anti-Narcotics Unit of the WPD was the one who investigated the case. He placed the corresponding markings on the packs of marijuana confiscated from the three accused after the same were turned over to him by SPO1 Blanco and PO3 Masangue. He marked the bag recovered from [Dequina] "NDD" and the contents thereof "NDD-1" to "NDD-11". He marked the bag taken from [Jundoc] "JJJ" and the contents thereof "JJJ-1" to "JJJ-11". Finally, he marked the bag recovered from [Jingabo] "NCJ" and the contents thereof "NCJ-1" to "NCJ-11". In connection with his investigation, he prepared the Booking Sheet and Arrest Reports of the three accused (Exhs. "F", "G" and "H") as well as the Referral Letter to the City Prosecutor's Office (Exh. "I"). Afterwards, he brought the three bags of suspected marijuana together with the letter-request to the National Bureau of Investigation [(NBI)] Chemistry Division, for the laboratory examinations. The same were received thereat on September 29, 1999 at 10:12 in the evening. The following day, September 30, 1999, at 10:38 p.m., certifications, corresponding to each and every set of items recovered from the three accused were released to PO3 Pama.

George De Lara, Forensic Chemist, Forensic Chemistry Division, NBI, Manila testified that he conducted the laboratory examinations of the subject specimens based on the letter-request from DANU Police

Superintendent Miguel de Mayo Laurel (Exh. "B" and submarkings). From the black bag (Exh. "K") allegedly recovered from [Dequina], he counted a total of eleven bricks of dried leaves suspected to be marijuana which had a total weight of 10,915.0 grams. The results of the chemical, microscopic and chromatographic examinations he conducted show that the said specimens were positive for the presence of chemical found only in marijuana.

With regard to the bag allegedly confiscated from [Jundoc] (Exh. "O"), witness counted eleven bricks of dried leaves believed to be marijuana. The specimens had a total weight of 11,010.0 grams. When subjected to be same type of laboratory examinations, the specimens yielded positive result for marijuana, a prohibited drug.

Anent the bag (Exh. "R") with masking tape having the mark "DDM-99-110" allegedly recovered from [Jingabo], witness also found eleven bricks of dried flowering tops suspected to be marijuana which when weighed yielded a total weight of 11,070.0 grams. The results of similar types of examinations conducted confirmed the specimens to be marijuana.

He prepared separate certifications for the results of the examinations he conducted on the specimens contained in three separate bags allegedly confiscated from accused Dequina, Jundoc and Jingabo (Exhs. "C", "D" and "E", respectively). He also prepared NBI Forensic Chemistry Division Report No. DDM-99-108 dated October 1, 1999 (Exh. "L" and submarkings).[3]

For the defense, only the accused-appellants took the witness stand. The RTC recapitulated the testimonies of the accused-appellants, thus:

Accused Nelida Dequina testified that she became an orphan at a tender age. With the help of her aunt, she was able to pursue her studies. She was a consistent scholar from elementary until college. While in the third year of her Accountancy course, she encountered severe financial difficulties. She stopped schooling and worked instead. Soon, she had a relationship with a man with whom she begot a child. The relationship did not last. Not long after, she had a relationship with another man. This time she begot her second child named Samantha.

In May 1999, while the Kilusang Mayo Uno (KMU) members were having a parade in Iloilo City, she met a certain Salvacion Peñaredondo, a member of the group. She calls her Sally. Sally convinced her to join the movement. Since she used to watch similar group activities while in college, she manifested her desire to join the movement by nodding her head. From then on, Sally frequently visited her at home. For a living, she was engaged in selling ready-to-wear dresses, frozen meat and relief goods which Sally supplied to her.

On September 27, 1999, Sally told her that the movement had decided to send her to a mission which would determine if she was really qualified to join the group. She was advised to bring along two friends, preferably a woman and a gay. As at time Sally saw them in her company, she chose Nora Jingabo and Joselito Jundoc to be her companions. Sally did not elaborate the real nature of such mission. She did not press to know more about the venture either. Before they parted that day, Sally instructed her to fetch her two friends and meet her (Sally) early in the morning of the following day, September 28, 1999 near the entrance of the Gaisano Mall, the largest department store in Iloilo. She dropped by the public market and told Nora and Joselito about the plan to meet Sally the following morning.

As agreed upon, they met Sally at the designated place and time. Sally secretly told her that the three of them would be going to Manila for a still undisclosed mission. She was briefed that the three of them will temporarily stay in the house of her [Dequina] relative in Manila. She was further instructed that they will go to the Philippine Rabbit Terminal in Avenida where they will be met by members of their group who will also monitor their movements. Afterwards, they will proceed to Dau, Mabalacat, Pampanga where they will pick-up some bags. Thereat, somebody will meet and give them instructions. From Dau, they will return to Manila. They will alight at the first ShoeMart Department Store which they will see along the way. A waiting tricycle would bring them to a store where they could buy carton boxes for their bags. Finally, a taxicab will fetch and bring them all the way to the pier.

[Dequina] received P3,000.00 from Sally for their expenses and plane tickets for the three of them from Sally. However, she noticed that instead of their true names, the tickets were in the names of other persons. Her plane ticket was in the name of Sarah Ganje. That of [Jundoc] and [Jingabo] were in the names of Rowenal Palma and Mary Grace Papa, respectively. Nervous, she thought of backing out at the last minute but Sally assured her that she had nothing to worry about. Sally culminated by saying that something will happen to her child if ever she backed out from the plan.

Because of the threat, [Dequina] went on with the plan. Enroute to the Iloilo airport, [Jundoc] and [Jingabo] expressed their anxieties about the venture but she calmed them down and assured them that she will take care of everything.

From the Manila Domestic Airport, they proceeded to her aunt's place at Pitogo St., Guadalupe, Makati City where they rested after taking their meal. At around 2:00 p.m., her aunt woke her up and told her that the two vehicles - an owner-type jeepney and a passenger jeepney with unfamiliar faces on board were lurking in their vicinity for quite sometime.

At around 5:00 p.m., they left the place on board a taxi to the Philippine Rabbit Terminal at Avenida, Rizal. While waiting for their schedule, two men approached and handed to her bus tickets. The same men nosed out to them the vehicle where they were supposed to board. She was further reminded by the men that members of the movement will also be on board.

They arrived in Dau, Mabalacat, Pampanga at about 12:30 a.m. of September 29, 1999. While they were having their snacks, a couple went near and instructed them to cross the road and take the bags from the three men whom they saw for the first time. The couple also handed over to them bus tickets. They were instructed to board vehicles bound for Pasay and alight at the first Shoemart (SM) Department Store that they will see along the way. They took the bags from the three men without even bothering to know the contents thereof. However, she noticed that the bags were very heavy.

As they boarded the Pasay bound bus, the conductor took the bags from them and loaded the same in compartment section of the vehicle. With the assistance of the bus conductor, they alighted at SM North Edsa. They transferred to a waiting tricycle, as per instruction given by Sally. The tricycle dropped them at a "sari-sari" store where they bought carton boxes where they placed two of the three bags. From there, the driver lead them to a waiting taxi where they loaded all their baggages. She and Nora occupied the back seat while Joselito sat beside the driver. She instructed the driver to take them to the pier for Iloilo bound ships.

As they entered the pier premises, a mobile patrol car came from nowhere and blocked their path. Two police officers emerged and ordered them to alight. Then, upon the policemen's order, the driver opened the taxi's trunk where the three bags were loaded. The police officers forcibly opened one of the three bags where they saw something wrapped in jute bags and plastic bags. It was learned that the contents of the bags were marijuana.

They were all herded into the mobile car. While on board the mobile car, the police officers asked them if they had money. When the policemen learned that they did not have money, they were brought to a "sari-sari" store where a police officer named Sapitula was waiting. Sapitula asked them questions. At one point, Sapitula slapped her. They were made to line up and Sapitula summoned some press reporters who photographed them

They were brought to the Ospital ng Maynila. While being examined, she confided to a nurse that she was manhandled by Sapitula. They were brought to the office of the District Anti-Narcotics Unit where corresponding charges were filed against them.

She insisted that the incident took place near the pier and not at the corner of Raxabago and Juan Luna Sts., Tondo, Manila. Were it not for the threat that something will happen to her daughter, she could not followed (sic) the orders of Sally.

The combined testimony of accused Nora Jingabo and Joselito Jundoc established the following facts.

On September 27, 1999, while [Jundoc] and [Jingabo] were tending to their fish stall in Iloilo Public Market, [Dequina], their friend, came and invited them to meet her, for a still undisclosed reason, at the ground floor of the Gaisano Mall, early in the morning of the following day, September 28, 1999. As agreed upon, they met at the designated place and time. Not long thereafter, Sally joined them. They knew Sally to be [Dequina's] supplier of RTW's and other merchandise. For a while, [Dequina] and Sally excused themselves and proceeded to the first floor of the mall where they talked privately. Soon after Sally left, [Jingabo] and [Jundoc] asked [Dequina] what they talked about. Instead of answering, [Dequina] asked if they are willing to go with her to Manila in order to get something. While a little bit surprised, [Jingabo] and [Jundoc] readily agreed as they had never been in the city before. [Dequina] handed to them their plane tickets. They were told that the same were given by Sally. However, they noticed that the plane tickets were not in their names but in the names of other persons. When they called the attention of [Dequina] about it, the latter simply replied "Anyway that is free". [Jingabo] noticed anxiety got the better of Nelida at that time. Nevertheless, the three of them enplaned for Manila at around 7:45 a.m. of September 28, 1999.

From the Ninoy Aquino Domestic Airport, they proceeded to the house of [Dequina's] aunt in Guadalupe, Makati City. In the afternoon, their host noticed the presence of unfamiliar vehicles. Some of these vehicles were even parked right in front of the house. Unmindful about it, they left Guadalupe at around 6:00 p.m. and proceeded to a Philippine Rabbit Bus Terminal. Thereat, two male persons approached [Dequina] and handed to her bus tickets. They were pointed to the particular vehicle where they were to board.

They reached Dau, Mabalacat, Pampanga between 12:30 and 1:00 a.m. of September 29, 1999. While they were having their snacks, a couple approached [Dequina] and they had a talk. Thereafter, the couple motioned them to three male persons, each carrying a bag, at the opposite side of the road. Upon [Dequina's] instruction, they took the bags from the three men. Then, they waited for their ride back to Manila.

As they boarded the bus, the conductor loaded their bags inside the compartment. They alighted at SM EDSA at around 6:00 a.m. of September 29, 1999. They boarded a waiting tricycle. When they reached a certain store, the trike driver bought carton boxes where they loaded two of the three bags. Thereafter, the tricycle driver pointed [Dequina] to a waiting taxi where they boarded along with their baggages.

As they entered the pier premises, a police officer on board a mobile patrol car ordered them to stop. They were ordered to alight and the police officers ordered the driver to open the taxi's compartment. One of the police officers took a knife from his pocket and slashed one of the bags. Then, the policemen told them that what they had in their bags were marijuana. The police officers ordered them to board the mobile car while the bags were loaded inside the compartment of the same car.

They were brought to a "sari-sari" store where a certain Chief Sapitula, whom they later knew to be the police officers' superior, was waiting. Sapitula interrogated [Dequina] and at one point, he slapped her. Sapitula summoned press people who took their photographs. Thereafter, they were brought to the "Hospital ng Bayan" and finally, to the police precinct where they were charged accordingly.[4]

The parties dispensed with the testimony of Prose M. Arreola, a representative of Air Philippines, since they were willing to stipulate on the existence of the passenger manifest, on which appeared the accused-appellants' assumed names, as well as the accused-appellants' plane tickets for the flight from Iloilo to Manila on September 28, 1999 at 7:00 a.m.

The RTC, in a Decision dated October 30, 2000, found the accused-appellants guilty as charged. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the judgment is hereby rendered finding accused NELIDA DEQUINA y DIMAPANAN, JOSELITO JUNDOC y JAPITANA and NORA JINGABO y CRUZ guilty beyond reasonable

doubt of the crime of Illegal transport marijuana and sentencing each of them to suffer the penalty of reclusion perpetua. Each of them is ordered to pay a fine of P500,000.00.[5]

The accused-appellants filed a Motion for Reconsideration of the foregoing decision, but the RTC denied the same in its Order dated December 27, 2000.

Accused-appellants then filed a notice of appeal on January 25, 2001. Thus, the records of Criminal Case No. 99-177383 were forwarded to this Court. Pursuant to our decision in *People v. Mateo*,[6] however, we referred the case to the Court of Appeals,[7] where it was docketed as CA-G.R. CR.-H.C. No. 01431.

Accused-appellants made the following assignment of errors in their brief:

I

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT FOR ILLEGAL TRANSPORT OF MARIJUANA.

II

THE COURT A QUO GRAVELY ERRED IN ADMITTING IN EVIDENCE THE SEIZED ITEMS FROM THE ACCUSED-APPELLANTS DESPITE THE FACT THAT THEY WERE SEIZED IN VIOLATION OF THEIR CONSTITUTIONAL RIGHTS AGAINST ILLEGAL SEARCH AND SEIZURE.[8]

In its Decision[9] dated August 16, 2006, the appellate court affirmed accused-appellants' conviction. It decreed:

WHEREFORE, the instant appeal is DENIED, the Decision of the Regional Trial Court, Branch 27, in Manila, in Criminal Case No. 99-177393, finding accused-appellants NELIDA DEQUINA y DIMAPANAN, JOSELITO JUNDOC y JAPITANA and NORA JINGABO y CRUZ guilty beyond reasonable doubt of illegally transporting 32[,995 grams of marijuana is hereby AFFIRMED.[10]

Hence, accused-appellants appealed to this Court.

In our Resolution dated July 4, 2007, we required the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice. Both parties manifested that they no longer intend to file any supplemental brief considering that they have already raised all the issues and arguments in their original briefs.

We find no merit in the present appeal.

The accused-appellants were charged with and convicted of the offense of illegal transport of marijuana, defined and penalized under Section 4 of the Dangerous Drugs Act of 1972, as amended, which provides:

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 a broker in any of such transactions.

Accused-appellants assail their conviction, asserting that their arrests were illegal. They were not doing anything illegal that would have justified their warrantless arrest, much less a warrantless search of their persons and belongings. A search made without a warrant cannot be justified as an incident of arrest unless the arrest itself was lawful. Accused-appellants insist that the description of the persons who were transporting marijuana relayed by the Chief of Police to the apprehending officers, PO3 Masanggue and SPO1 Blanco, was so general that it could not be sufficient ground for the apprehension of accused-appellants.

The People counters that accused-appellants' arrests were lawful as they were then actually committing a crime.

Since accused-appellants were lawfully arrested, the resulting warrantless search of their persons and belongings was also valid. In addition, accused-appellants did not refute that they were indeed transporting prohibited drugs when they were arrested and, instead, alleged as defenses that Dequina acted under the impulse of uncontrollable fear, and Jundoc and Jingabo were merely accommodating a trusted childhood friend.

After a thorough review of the records, we find that the judgment of the RTC, as affirmed by the Court of Appeals, was supported by the evidence on record. The People was able to discharge the burden of proving the accused-appellants' guilt beyond reasonable doubt.

Well-settled is the rule that the findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by the appellate court. Since credibility is a matter that is peculiarly within the province of the trial judge, who had the first hand opportunity to watch and observe the demeanor and behavior of witnesses both for the prosecution and the defense at the time of their testimony,[11] we have no reason to disregard the findings of the lower court, as affirmed by the Court of Appeals.

In this case, Chief Inspector Sapitula, in the early morning of September 29, 1999, received a tip that a huge amount of marijuana would be transported from Baguio City to the Manila pier, which will then be loaded on vessels bound for Iloilo. Acting on the information he received, Chief Inspector Sapitula dispatched PO3 Masanggue and SPO1 Blanco to the corner of Raxabago and Juan Luna Streets, where they were supposed to watch out for two females and one male. PO3 Masanggue and SPO1 Blanco posted their mobile patrol car near said corner. From where they were at, PO3 Masanggue and SPO1 Blanco spotted three persons, two females and one male - who turned out to be accused-appellants - alighting from a taxi at the corner of Raxabago and Juan Luna Streets, each carrying a traveling bag. PO3 Masanggue and SPO1 Blanco then followed accused-appellants until one of them, Dequina, dropped her traveling bag. The traveling bag fell open and inside, PO3 Masanggue and SPO1 Blanco saw dried leaves in transparent plastic bags. It was only then that the two police officers apprehended accused-appellants and their persons and belongings searched.

As PO3 Masanggue testified:

Q

Now, on September 29, 1999 at around 6:00 o'clock in the morning will you please tell us where you were?

A

I reported to Headquarters Office for INSS briefing and information.

Q

And while you were there can you recall if there is any unusual incident that happened?

x x x x

WITNESS:

Yes, your Honor.

PUB. PROS. TAN, JR.:

After the formation what happen?

x x x x

WITNESS

After our formation we are informed by our chief that he received a telephone call and receive an information that three persons will be arriving and will deliver marijuana.

Q

And what else if any did your chief tell you?

A

And we were dispatched by our chief to the place where the marijuana will be dropped at corner Juan Luna and Raxabago.

Q

And did you indeed go there?

A

Yes, sir.

Q

What district is that, Mr. Witness?

A

District II of Manila.

Q

And, then what transpired when you went there?

A

We saw three persons alighting from a taxi and each of them carrying a black bag.

Q

And what did you do?

A

When we saw that the three persons who alighted from the taxi match with the description of the persons we are looking for we approach them.

Q

And what happen when you approach them?

A

When we were about to approach them one of them by the name of [Dequina] tried to run away.

x x x x

Q

And then what did you do if any when she try to run away?

A

We chase her and told her to stop running and she drop the bag she was carrying.

Q

You state that we, who else are you referring to?

A

SPO1 Anthony Blanco.

Q

Now, when she drop the bag from her shoulder what did you do if any?

A

When the bag fell the zipper open and we saw dry leaves wrapped in a transparent plastic bag from the inside.

Q

And then what did you do if any?

A

Because I was convinced that the person is the one match the person we are looking for and as our SOP we brought them to the Ospital ng Maynila for medical examination.

Q

You stated you brought them or she only you brought her?

A

No, sir. I'm referring to the three accused in this case.

x x x x

Q

And why did you bring the other two persons when you said that it was only [Dequina] who dropped the bag?

A

Because they were together who alighted from the taxi.

x x x x

Q

And what transpired in your office?

A

We brought them to our chief and also the bag which contained the dried leaves suspected to be marijuana and the bag was later turn over to the Anti Narcotic Unit.

x x x x

Q

So you mean to say that there were three (3) bags that were recover by you from the three accused?

A

Yes, sir.

Q

And, so in your office you stated that you turn over the said three (3) bags to whom, Mr. Witness?

A

To the investigator of DANU.

Q

What is DANU?

A

District Anti Narcotics Unit.

Q

And do you know what they do with the bag if you know to the bag?

A

They counted the contains of all the bag sir and found out that each bag contain eleven (11) blocks of suspected marijuana.[12]

The positive and categorical testimony of PO3 Masanggue, corroborated by SPO1 Blanco, deserves weight and credence in light of the presumption of regularity accorded to the performance of their official duties as police officers, and the lack of motive on their part to falsely testify against accused-appellants.

To discredit PO3 Masanggue and SPO1 Blanco, accused-appellants claimed that they were blocked by the police officers at the pier and not at the corner of Juan Luna and Raxabago Streets; and that PO3 Masanggue and SPO1 Blanco did not mention in their testimonies passing by a sari-sari store to meet up with Chief Inspector Sapitula and presenting accused-appellants to the media. These details, however, are immaterial, not really departing significantly from the police officers' version of the events surrounding accused-appellants' arrest and search, which yielded the marijuana they were transporting. At any rate, certain parts of the testimonies of PO3 Masanggue and SPO1 Blanco were corroborated by the accused-appellants themselves (i.e., that the police officers, prior to bringing accused-appellants to the police headquarters, first brought accused-appellants to the Ospital ng Maynila for medical examination), PO3 Pama (i.e., that each of the three traveling bags turned over to him by PO3 Masanggue and SPO1 Blanco contained 11 bricks of marijuana), and NBI Forensic Chemist De Lara (i.e., that the dried leaves marked and turned over to him by PO3 Pama tested positive for marijuana).

There is no question that the warrantless arrest of accused-appellants and the warrantless seizure of the marijuana were valid and legal.

Settled is the rule that no arrest, search or seizure can be made without a valid warrant issued by a competent judicial authority. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.[13] It further decrees that any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding.[14]

Nevertheless, the constitutional proscription against warrantless searches and seizures admits of certain legal and

judicial exceptions, as follows: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[15]

On the other hand, Section 5, Rule 113 of the Rules of Court provides that a lawful arrest without a warrant may be made by a peace officer or a private person under the following circumstances:

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 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

"Transport" as used under the Dangerous Drugs Act is defined to mean "to carry or convey from one place to another." [16] The evidence in this case shows that at the time of their arrest, accused-appellants were caught in flagrante carrying/transporting dried marijuana leaves in their traveling bags. PO3 Masangue and SPO1 Blanco need not even open Dequina's traveling bag to determine its content because when the latter noticed the police officers' presence, she walked briskly away and in her hurry, accidentally dropped her traveling bag, causing the zipper to open and exposed the dried marijuana bricks therein. Since a crime was then actually being committed by the accused-appellants, their warrantless arrest was legally justified, and the following warrantless search of their traveling bags was allowable as incidental to their lawful arrest.

Besides, accused-appellants did not raise any protest when they, together with their bags containing marijuana, were brought to the police station for investigation and subsequent prosecution. In *People v. Fernandez*, [17] we ruled that:

When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof. x x x. The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly. [18]

In order to exonerate herself from criminal liability, Dequina contends that she transported the marijuana under the compulsion of an irresistible fear. Jundoc and Jingabo, on the other hand, claim that they went along to accommodate Dequina, a trusted childhood friend.

We are unconvinced.

A person who acts under the compulsion of an irresistible force, like one who acts under the impulse of an uncontrollable fear of equal or greater injury, is exempt from criminal liability because he does not act with freedom. *Actus me invito factus non est meus actus*. An act done by me against my will is not my act. The force contemplated must be so formidable as to reduce the actor to a mere instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of

future injury is not enough. The compulsion must be of such a character as to leave no opportunity for the accused for escape or self-defense in equal combat.[19] Here, Dequina's version of events that culminated with her and Jundoc and Jingabo's arrests on September 29, 1999 is implausible. Equally far-fetched is Jundoc and Jingabo's assertion of blind trust in Dequina and total ignorance of the transportation of marijuana. We agree with the Court of Appeals when it observed that:

While [Dequina] wants us to believe that she acted under compulsion and that a certain Sally called all the shots, she nevertheless admitted that their accommodations when they reached Manila was with her aunt in Guadalupe. On cross examination, she said that it was she who told Sally that they were going to stay with her aunt. More importantly, the alleged threat on her daughter was unclear. At one point in her testimony, she claimed that her daughter was to be under the custody of Sally while she was away. However, during the trial her lawyer manifested that her daughter was in fact in Manila and in the court room attending the hearing. Moreover, accused-appellants themselves picture a very precise and elaborate scheme in the transport of the huge shipment of marijuana. With this, it is simply contrary to human experience that the people behind the shipment would entrust the same to an unknowing and uncertain person such as [Dequina] and her two stooges, unless they themselves were in on it. Furthermore, the scheme or transport of the marijuana shipment was so exact that [Jundoc] and [Jingabo] only had enough time to rest in the house of [Dequina's] aunt in Guadalupe - from the time they arrived in Manila in the morning to the time they had to go to provincial bus station in the afternoon, negating their purported desire to see Manila. Clearly, the defense' story is riddled with holes.[20]

Conspiracy can be inferred from and proven by acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. Although the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy, it need not be proven by direct evidence. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated.[21] Thus, as found by the RTC, conspiracy by and among accused-appellants was present in this case, as it may be inferred from the following acts of accused-appellants:

This was shown when by their account, the three accused left Iloilo together, stayed in Manila for a while, left for Dau, Mabalacat, Pampanga and returned to Manila thereafter. They were together when the apprehending police officers pounced on them near the pier premises on their way back to Iloilo, each of them carrying a travelling bag which contained marijuana. x x x.[22]

With the enactment and effectivity of Republic Act No. 7659,[23] the penalty imposable upon violators of Section 4 of the Dangerous Drugs Act of 1972, as amended, is reclusion perpetua to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) if the marijuana involved weighs 750 grams or more. The quantity of marijuana involved in this case weighs 32,995 grams, hence, the applicable penalty is reclusion perpetua to death. Since the imposable penalty is composed of two indivisible penalties, the rules for the application of indivisible penalties under Article 63[24] of the Revised Penal Code should be applied. As there is neither mitigating nor aggravating circumstance in the commission of the crime, the RTC correctly imposed the lesser penalty of reclusion perpetua. Finally, considering that the penalty imposed is the indivisible penalty of reclusion perpetua, the Indeterminate Sentence Law could not be applied.[25]

WHEREFORE, the instant appeal is DENIED. The Decision dated August 16, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01431, which affirmed the Decision dated October 30, 2000 of the Regional Trial Court of Manila, Branch 27, in Criminal Case No. 99-177383, finding accused-appellants guilty of the crime of illegal transport of marijuana and sentencing them to reclusion perpetua, and to pay a fine of P500,000.00 each, is hereby AFFIRMED. Costs against accused-appellants.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

- [1] Records, p. 19.
- [2] Id. at 31.
- [3] Id. at 155-158.
- [4] Id. at 158-164.
- [5] Id. at 167-168.
- [6] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [7] CA rollo, p. 114.
- [8] Id. at 84.
- [9] Rollo, pp. 3-13; penned by Associate Justice Rosmari D. Carandang with Associate Justices Renato C. Dacudao and Monina Arevalo-Zenarosa, concurring.
- [10] Id. at 12.
- [11] *People v. Tangliben*, G.R. No. 63630, April 6, 1990, 184 SCRA 220, 227.
- [12] TSN, January 26, 2000, pp. 4-10, 14-15.
- [13] 1987 Constitution, Article III, Section 2.
- [14] 1987 Constitution, Article III, Section 3(2).
- [15] *People v. Gonzales*, 417 Phil. 342, 357 (2001).
- [16] *People v. Del Mundo*, 418 Phil. 740, 754 (2001).
- [17] G.R. No. 113474, December 13, 1994, 239 SCRA 174.
- [18] Id. at 184.
- [19] *People v. Del Rosario*, 365 Phil. 292, 299-300 (1999).
- [20] Rollo, pp. 9-10.
- [21] *People v. Licayan*, 415 Phil. 459, 475 (2001).
- [22] Records, p. 167.
- [23] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for other Purposes
- [24] Art. 63. Rules for the application of indivisible penalties. -

x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x

[25] *People v. Valdez*, 363 Phil. 481, 494 (1999).

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