

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO ALUNDAY, ACCUSED-APPELLANT.

G.R. No. 181546. September 03, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01164 dated 9 October 2007 which affirmed the Decision of the Regional Trial Court (RTC) of Bontoc, Mountain Province, Branch 35, in Criminal Case No. 1528, finding accused-appellant Ricardo Alunday guilty of violation of Section 9, Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act of 1972."

On 7 August 2000, two informations were filed against accused-appellant before the RTC of Bontoc, Mountain Province, for violating the provisions of Section 9 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972,[2] and Section 1 of Presidential Decree No. 1866.

In Criminal Case No. 1528, accused-appellant was charged with violation of Section 9 of Republic Act No. 6425, committed in the following manner:

That on or about August 3, 2000, in the morning thereof at a marijuana plantation with an area of TEN (10) hectares, more or less, and which form part of the public domain at Mount Churyon, Betwagan, Sadanga, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, and with intent to plant and cultivate, did then and there willfully, unlawfully and feloniously plant, cultivate and culture marijuana fruiting tops weighing more than 750 grams, with an estimated value of TEN MILLION (P10,000,000.00) Pesos, Philippine Currency, knowing fully well that the same is a prohibited drug or from which a dangerous drug maybe manufactured or derived.[3]

On the other hand, in Criminal Case No. 1529, accused-appellant was additionally charged with violation of Section 1 of Presidential Decree No. 1866,[4] committed as follows:

That on or about August 3, 2000, in the morning thereof at a marijuana plantation situated at Mount Churyon, Betwagan, Sadanga, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, without any license or permit thereof, did then and there willfully, unlawfully and feloniously have in his possession an M16 Rifle, a high powered firearm, bearing Serial No. 108639, with engraved marks of "COREY BOKZ" on the left side of the gun butt and six (6) letter "x" on the handgrip which he carried outside his residence without any written authority or permit previously acquired from the authorities to carry or transport the same.[5]

On 22 November 2000, accused-appellant assisted by a counsel de oficio pleaded not guilty[6] to both charges. Thereafter, a joint trial ensued.

During the trial, the prosecution presented the following witnesses: (a) Senior Police Officer (SPO) 1 George Saipen; (b) SPO1 Felix Angitag; (c) Police Officer (PO) 2 Joseph Aspilan; (d) Police Senior Inspector Andrew Cayad, Chief, Intelligence Section, Police Provincial Office, Mountain Province; (e) PO2 Roland Ateo-an; (f)

Edward Sacgaca, Philippine Information Agency; (g) SPO1 Celestino Victor Matias; and (h) Emilia Gracia Montes, Forensic Analyst, Philippine National Police (PNP), Crime Laboratory, Camp MBAdo Dangwa, La Trinidad, Benguet.

The defense, on the other hand, presented accused-appellant Ricardo Alunday, Wayto Alunday and Linda Dalasnac, aunt and daughter respectively, of accused-appellant.

The prosecution's version of the case is as follows:

Sometime in May 2000, the Intelligence Section of the Police Provincial Office of Mountain Province received a report from a confidential informant of an existing marijuana plantation within the vicinity of Mount Churyon, Sadanga, Mountain Province. Acting on the confidential information, Chief of the Intelligence Section of Mountain Province, Police Senior Inspector Andrew Cayad (Cayad), engaged the services of another confidential informant to validate said report. After a series of validations, the confidential informant confirmed the existence of the subject plantation.[7]

Cayad reported the matter to the Provincial Director, who immediately directed Cayad to lead a 70-men police contingent to make an operation plan. A joint operation from the whole Mountain Province Police Force was formed.[8] The police operation was termed Operation Banana.

On 2 August 2000, a contingent composed of policemen from Bauko, Sabangan, Tadian, Sadanga, Provincial Headquarters and Bontoc Municipal Headquarters proceeded to Mount Churyon. Edward Sacgaca of the Philippine Information Agency (PIA) was invited to videotape the operation.[9] The team left Bontoc for Betwagan, Sadanga, in the afternoon of 2 August 2000.[10] They reached Betwagan at about 6 o'clock in the afternoon and slept there up to midnight. Thereafter, they proceeded to Mount Churyon where they arrived at around 6 o'clock in the morning of the following day or on 3 August 2000.[11] A group of policemen, one of whom was SPO1 George Saipen (Saipen) of the Bontoc PNP, was dispatched to scout the area ahead of the others, while the rest stayed behind as back-up security. At a distance of 30 meters, Saipen, together with the members of his group, saw Ricardo Alunday (Alunday) herein accused-appellant, cutting and gathering marijuana plants. SPO1 Saipen and others approached Alunday and introduced themselves as members of the PNP.[12] SPO1 Saipen, together with the other policemen, brought said accused-appellant to a nearby hut.

Inside the hut, the operatives saw an old woman, an M16 rifle and some dried marijuana leaves. The other members of the raiding team uprooted and thereafter burned the marijuana plants, while the team from the Provincial Headquarters got some samples of the marijuana plants and brought the same to their headquarters. The samples were turned over by Police Superintendent Rodolfo Anagaran to the PNP Crime Laboratory for examination. Emilia Gracia Montes, Forensic Analyst, PNP Crime Laboratory, Camp MBAdo Dangwa, La Trinidad, Benguet, received 17 pieces of fully grown suspected marijuana plants for laboratory examination and analyses. She tested the subject specimens and found all to be positive for marijuana.[13]

Accused-appellant presented a disparate narration of the incident.

He vehemently denied the accusations. He maintained that on 2 August 2000, he went to Mount Churyon to haul the lumber that he had cut and left by the river. He spent the night at the hut of an old woman named Ligka Baydon.

At around 6:00 o'clock in the morning of the following day or on 3 August 2000, he went out of the hut to search for squash to cook for breakfast. A group of policemen suddenly came. Two of them approached him and asked if he owned the marijuana plants growing around the premises and the land on which these were planted. He answered in the negative and further stated that he did not even know how a marijuana plant looked like. The

policemen then proceeded to uproot and burn the supposed marijuana plants. Subsequently, the policemen took him with them to the PNP Headquarters in Bontoc despite his refusal to go with them.

Wayto Alunday and Linda Dalasnac, the aunt and daughter of Ricardo Alunday, respectively, corroborated the latter's testimony that he was indeed at Mount Churyon on 3 August 2000 to get some lumber.[14]

After trial, the court a quo found accused-appellant guilty in Crim. Case No. 1528 but was acquitted in Crim. Case No. 1529. The dispositive portion of the trial court's Decision, dated 8 May 2003 reads:

WHEREFORE, a Joint Judgment is hereby rendered-

- Sentencing Ricardo Alunday alias "Kayad" in Criminal Case 1528, to suffer the penalty of reclusion perpetua and to pay a fine of Five Hundred Thousand Pesos-the land involved in the commission of the offense not having been shown to be part of the public domain; and
- Acquitting the above-named accused in Criminal Case 1529 on reasonable doubt.[15]

From the decision of conviction, accused-appellant filed a Notice of Appeal.[16]

On 11 November 2004, accused-appellant filed an appellant's brief[17] before the Supreme Court. On 4 March 2005, the Office of the Solicitor General filed the People's Brief.[18]

Since the penalty imposed by the trial court was reclusion perpetua, the case was remanded to the Court of Appeals for appropriate action and disposition pursuant to our ruling in *People v. Mateo*. [19]

On 9 October 2007, the Court of Appeals affirmed the findings and conclusion of the RTC, the fallo of which reads:

WHEREFORE, the assailed Decision dated 8 May 2003 of the Regional Trial Court, First Judicial Region, Branch 35, Bontoc, Mountain Province is hereby AFFIRMED.[20]

Accused-appellant filed a Notice of Appeal[21] on 5 November 2007. Thus, the Court of Appeals forwarded the records of the case to us for further review.

In our Resolution[22] dated 19 March 2008, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. People[23] opted not to file a supplemental brief on the ground that it had exhaustively argued all the relevant issues in its brief, and the filing of a supplemental brief would only entail a repetition of the arguments already discussed therein. Accused-appellant submitted his supplemental brief on 12 June 2008.

In the beginning, accused-appellant raised a lone error, thus:

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[24]

Later, in his supplemental brief dated 11 June 2008, he added another alleged error, thus:

THE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE ITS INADMISSIBILITY FOR BEING THE RESULT OF AN UNLAWFUL ARREST.[25]

As regards the guilt of accused-appellant, we find the expostulations of the Court of Appeals worth reiterating:

It is jurisprudential that factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings. The

evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination.

We have carefully scrutinized the record and found no cogent reason to depart from this rule.

x x x x

Indeed, in the case at bench, the prosecution was able to establish the following with conviction:

(1)

On 3 August 2000, a police contingent raided a marijuana plantation located in Mount Churyon, Sadanga, Mountain Province.

(2)

In the course thereof, appellant was seen cutting and gathering marijuana plants from the premises.

(3)

There were no other plants except marijuana which were growing in the said area.

(4)

There was a hut apparently used by appellant and an old woman as a camp or temporary dwelling which existed alone within the area of the subject plantation.

(5)

The samples taken from the said plantation were all found to be positive for marijuana.

On the face of these positive testimonies of the prosecution witnesses, appellant's bare denials must necessarily fail. Moreover, it is interesting to note that appellant never mentioned his aunt, Wayto Alunday, in his testimony. In fact, she contradicted appellant's testimony when she said that he ate and slept in her hut. This only bolsters the conclusion that Wayto Alunday was not present when appellant was captured by the police.[26]

Needless to state, the defense of denial cannot prevail over the positive identification of the accused.[27]

Contrarily, we find accused-appellant's posturings tenuous. Again, we cannot deviate from the Court of Appeals' valid observation:

Aside from appellant's preposterous claim that he was looking for squash in the subject area where only marijuana plants were planted, he did not advance any explanation for his presence thereat. Besides, prosecution witness Saipen categorically stated that he caught appellant red-handed harvesting marijuana plants. Thus, We find it facetious that appellant did not even know what a marijuana plant looked like.

Appellant asserts that the plantation in question was maintained by the Cordillera People's Liberation Army which witness Cayad confirmed likewise. Thus, appellant theorizes that he could not have been the perpetrator of the crime charged.

We find appellant's assertion specious. A perusal of Section 9, Art. II of R.A. No. 6425 shows that a violation exists when a person shall cultivate, plant or culture on any medium Indian hemp, opium poppy (*papaver somniferum*) or any other plant which may hereafter be classified as dangerous drug. Indeed, ownership of the land where the marijuana seedlings are planted, cultivated and cultured is not a requisite of the offense.[28]

Accused-appellant further assails his conviction for being improper and illegal asserting that the court a quo never acquired jurisdiction over his person because he was arrested without a warrant and that his warrantless arrest was not done under any of the circumstances enumerated in Section 5, Rule 113 of the 1985 Rules of Court. He insists that the arresting officers had three months within which to secure a warrant from the time they received the information about an existing marijuana plantation in Mount Churyon, Sadanga, in May 2000, until they effected accused-appellant's arrest on 3 August 2000. Also, accused maintains that the arresting officers' failure to secure a warrant can never be justified by the urgency of the situation.

Accused-appellant's claim of irregularity in his arrest is, at the most, limp.

Section 5, Rule 113 of the Rules of Court 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;

(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.

Section 5(a) provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit, an offense. Section 5(a) refers to arrest in flagrante delicto.[29] In flagrante delicto means caught in the act of committing a crime. This rule, which warrants the arrest of a person without warrant, requires that the person arrested has just committed a crime, or is committing it, or is about to commit an offense, in the presence or within view of the arresting officer.[30]

It must be recalled that the Intelligence Section of the Provincial Office of the Mountain Province received the information sometime in May 2000, and accused-appellant was arrested by SPO1 Saipen during the police raid at the plantation at Mount Churyon, Sadanga, only on 3 August 2000. This is so because the arrest was effected only after a series of validations[31] conducted by the team to verify or confirm the report that indeed a marijuana plantation existed at the area and after an operation plan was formed. As admitted by the accused in his supplemental brief, the information about the existing marijuana plantation was finally confirmed only on 2 August 2000.[32] On 3 August 2000, the arresting team of SPO1 Saipen proceeded to the marijuana plantation. SPO1 Saipen saw accused-appellant personally cutting and gathering marijuana plants. Thus, accused-appellant's arrest on 3 August 2000 was legal, because he was caught in flagrante delicto; that is, the persons arrested were committing a crime in the presence of the arresting officers.[33]

In *People v. Sucro*[34] we held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant on the basis of Section 5, par. (a), Rule 113 of the Rules of Court as the offense is deemed committed in his presence or within his view. In essence, Section 5, par. (a), Rule 113, requires that the accused be caught in flagrante delicto or caught in the act of committing a crime.

SPO1 George Saipen testified on direct examination, thus:

Q.

When you reached that Mount Churyon at about 6:00 o'clock in the morning of August 3, 2000, what did you see there Mr. Witness, if any?

A.

We were able to see a man cutting plants which we came to know as marijuana plants.

Q.

You said we, who were you companions when you saw a man cutting marijuana?

A.

The Bontoc Operatives.

Q.

All of you?

A.

Yes, sir.

Q.

You mentioned a while back about marijuana plantation, will you describe to us why you say that [it] is a marijuana plantation?

A.

That is marijuana plantation because I think, more or less four (4) hectares were planted with marijuana plants.

Q.

And how tall were these marijuana plants in that marijuana plantation Mr. Witness?

A.

Some are fully grown around 4 to 5 feet while some are still young about 2 feet while some are still seedling.

Q.

And you said that you saw a man gathering marijuana plants, how far were you when you saw this man? Could you give us an estimate?

From this witness stand up to there.

COURT:

You stipulate counsel.

PROS. DOMINGUEZ:

About 30 meters, Your Honor.

PROS. DOMINGUEZ:

And how was the terrain of that Mount Churyon, is it flat?

A.

Where the plantation is located it is somewhat slope and a little bit flat.

Q.

You mean rolling hills?

A.

Yes, sir.

Q.

What did you do when you saw a man cutting or gathering marijuana plants?

A.

Upon seeing that man cutting marijuana plants, I cautioned my companions at my back telling them that there is a man down cutting marijuana which prompted them to move; that others proceeded to the camp while me and my one companion went to the man and cautioned him not to make unnecessary movements.[35]

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[36] We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment.[37] And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court.[38] We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

Herein, accused-appellant went into arraignment and entered a plea of not guilty. Thereafter, he actively participated in his trial. He raised the additional issue of irregularity of his arrest only during his appeal to this Court. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of the court by his counsel-assisted plea during his arraignment; by his actively participating in the trial and by not raising the objection before his arraignment.

It is much too late in the day to complain about the warrantless arrest after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him.[39]

Accused-appellant was not even denied due process by virtue of his alleged illegal arrest, because of his voluntary submission to the jurisdiction of the trial court, as manifested by the voluntary and counsel-assisted plea he entered during arraignment and by his active participation in the trial thereafter.[40]

In challenging the existence of a legitimate buy-bust operation, appellant casts questionable, if not improper, motive on the part of the police officers. Unfortunately for appellant, jurisprudence instructs us that in cases involving illegal drugs, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[41] Where there is nothing to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that they were not so moved and their testimony, therefore, is entitled to full faith and credit.[42] In this case, the records are bereft of any indication which even remotely suggests ill motive on the part of the police officers. The following observations of the trial court are, indeed, appropriate, thus:

Absent as it is in the record indications of personal interest or improper motive on their part to testify against

the accused, the witnesses for the prosecution being government law enforcers and/or officials, actually present during the incident in question in the performance of their duties, are trustworthy sources. And the recollections in open court of such witnesses of the events that transpired on the occasion, given in clear and direct manner, corroborating and complimenting each other on material points, and highly probable in the natural order of things, are easy to believe and thus accorded full credence.

In contrast, the accused himself, his aunt, and his daughter who testified in behalf of the former are obviously biased and unreliable witnesses on account of self-interest and blood kinship. Situated as they are, their inclination to be truthful is highly suspect. And quite aside from being self-serving and dubious, their testimonies are inconsistent, and manifestly concocted or improbable to be seriously considered.[43]

All told, the cultivation of marijuana fruiting tops by accused-appellant having been established beyond reasonable doubt, we are constrained to uphold appellant's conviction. The penalty imposed by the RTC, as affirmed by the Court of Appeals, being in accord with law, is likewise affirmed.

WHEREFORE, premises considered, the Decision dated 9 October 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01164, affirming in toto the Decision of the Regional Trial Court, First Judicial Region, Branch 35, Bontoc, Mountain Province, in Criminal Case No. 1528, is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr., concurring. Rollo, pp. 2-14.

[2] SEC. 9. Cultivation of Plants which are Sources 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 shall plant, cultivate or culture on any medium Indian hemp, opium poppy (*papaver somniferum*) or any other plant which is or may hereafter be classified as dangerous drug or from which any dangerous drug may be manufactured or derived.

The land or portions thereof, and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated to the State, unless the owner thereof can prove that he did not know of such cultivation or culture despite the exercise of due diligence on his part.

If the land involved is part of the public domain, the maximum of the penalties herein provided shall be imposed upon the offender.

[3] Records, Vol. I, p. 1.

[4] SEC. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.- The penalty of prison correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition; Provided, That no other crime was committed.

[5] Records, Vol. II, p. 1.

- [6] Records, Vol. I, p. 27; Vol. II, p. 28.
- [7] TSN, 6 March 2001, pp. 4-5, 17.
- [8] Id. at 5.
- [9] Id. at 8, 15.
- [10] TSN, 18 January 2000, p. 5.
- [11] Id. at 6.
- [12] Id. at 7-8.
- [13] TSN, 22 August 2001, p. 6.
- [14] TSN, 19 September 2002, p. 5; TSN, 11 December 2002, p. 4.
- [15] Records, Vol. I, p. 234.
- [16] Id. at 236.
- [17] CA rollo, pp. 55-67.
- [18] Id. at 81-95.
- [19] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [20] Rollo, p. 11.
- [21] Id. at 12.
- [22] Id. at 18.
- [23] Id. at 16.
- [24] CA rollo, p. 57.
- [25] Rollo, p. 22.
- [26] Id. at 7-9.
- [27] *Zanoria v. Court of Appeals*, 347 Phil. 538, 546 (1997).
- [28] Rollo, p. 10.
- [29] *People v. Doria*, 361 Phil. 595, 627 (1999).
- [30] *People v. Burgos*, 228 Phil. 1, 15 (1986); *People v. Pablo*, G.R. No. 105326, 28 December 1994, 239 SCRA 500, 505.
- [31] TSN, 6 March 2001, p. 17.
- [32] Rollo, p. 33.
- [33] *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 207-208.
- [34] G.R. No. 93239, 18 March 1991, 195 SCRA 388.
- [35] TSN, 18 January 2001, pp. 6-8.

[36] *People v. Tidula*, 354 Phil. 609, 624 (1998); *People v. Montilla*, 349 Phil. 640, 661 (1998); *People v. Cabiles*, G.R. No. 112035, 16 January 1998, 284 SCRA 199, 210; *People v. Mahusay*, 346 Phil. 762, 769 (1997); *People v. Rivera*, 315 Phil. 454, 465 (1995); *People v. Lopez, Jr.*, 315 Phil. 59, 71-72 (1995).

[37] *People v. Hernandez*, 347 Phil. 56, 74-75 (1997).

[38] *People v. Nazareno*, 329 Phil. 16, 22 (1996).

[39] *People v. Emoy*, 395 Phil. 371, 384 (2000).

[40] *People v. Navarro*, 357 Phil. 1010, 1032-1033 (1998).

[41] *People v. Bongalon*, 425 Phil. 96, 114 (2002).

[42] *People v. Pacis*, 434 Phil. 148, 159 (2002).

[43] *Records*, Vol. I, p. 232.

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