

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANITA CLAUDIO Y BAGTANG, ACCUSED-APPELLANT.

G.R. No. 72564. April 15, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Olongapo City, Branch 73 finding the accused Anita Claudio y Bagtang guilty beyond reasonable doubt of violating Sec. 4, Rep. Act No. 6425 (Dangerous Drugs Act of 1972 as amended) and sentencing her to serve the penalty of reclusion perpetua, to pay a fine of P20,000.00, and to pay the costs.

The information filed against the accused alleged:

"That on or about the 21st day of July 1981, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without being lawfully authorized, did then and there wilfully, unlawfully and knowingly transport 1.1 kilos of Marijuana dried leaves, which are prohibited drugs for the purpose of selling the same from Baguio City to Olongapo City." (Rollo, p. 13)

The lower court established her guilt beyond reasonable doubt on the basis of the prosecution's evidence as follows:

"To prove the guilt of the accused, the prosecution offered the following documentary and testimonial evidence as follows: Exhibit "A" - Letter request for Examination of suspected marijuana dried leaves weighing approximately 1.1 kilos dated July 25, 1981; "B" - plastic container; "B-1" - marijuana contained in the plastic container; "B-1-a" - another plastic container; "C" - Chemistry Report No. D-668-81; "C-1" - Findings: Positive for marijuana; "D", "D-1", "D-2" and "D-3"; "E" and "E-1" - photographs of accused with Pat. Daniel Obiña and Paulino Tiongco showing the marijuana, "F" - Victory Liner Ticket No. 84977; "G" - Sworn Statement of Pat. Daniel Obiña, "H" - Request for Field Test on suspected marijuana from accused by P/Lt. Antonio V. Galindo; "H-1" - date of receipt of the request; "L" - Certificate of Field Test dated July 22, 1981; "B-2" and "B-2-a" - additional Wrapping paper; and the testimonies of witnesses of the prosecution, Theresa Ann Bugayong; Pat. Daniel Obiña, Cpl. Paulino Tiongco, Cpl. Ernesto Abello and Sgt. Leoncio Bagang.

"Theresa Ann Bugayong- 22 years old, single, Forensic Chemist and a resident of 1150 Sampaloc, Metro Manila, testified that she received a request from the Task Force Bagong Buhay, Olongapo City, dated July 25, 1981, on specimen of marijuana submitted for examination. The specimen consisted of 900 grams of suspected dried marijuana flowering tops wrapped in a newspaper placed in a plastic bag with a marking "MB Store" (Exh. "B").

"The examination conducted by her proved to be positive for marijuana. After her examination, she prepared Chemistry Report No. D-668-81 dated July 29, 1981 (Exhs. "C" and "C-1"). She conducted three examinations; microscopic examination, the duguenoi levine test and thirdly, the confirmatory examination of thin layer chromatographic test. The said specimen was submitted to them by OIC Danilo Santiago, a

representative of the CANU, Olongapo City.

"The second witness for the prosecution was Daniel Obiña, 37 years old, married, policeman and residing at 34 Corpuz St., East Tapinac, Olongapo City. Obiña testified that he has been a member of the INP, since 1970 up to the present. He was assigned in June, 1972 at the Investigation Division as operative. His job then was among other things to follow up reports in their office, recover stolen items and apprehend suspects. On July 21, 1981, he was on Detached Service with the ANTI-NARCOTICS Unit; and that on that date, he came from Baguio City and arrived in Olongapo City at about 1:30 o'clock in the afternoon having left Baguio at about 8:30 o'clock in the morning. He took the Victory Liner in going back to Olongapo City. His family lives in Baguio City. On board the Victory Liner, he was seated on the second seat at the back. While he was thus seated, suspect Anita Claudio boarded the same bus and took the seat in front of him after putting a bag which she was carrying at the back of the seat of Obiña. The bag placed by suspect behind his seat was a woven buri bag made of plastic containing some vegetables. The act of the accused putting her bag behind Pat. Obiña's seat aroused his suspicion and made him felt (sic) nervous. With the feeling that there was something unusual, he had the urge to search the woven plastic bag. But it was only at San Fernando, Pampanga when he was able to go to the bag. He inserted one of his fingers in a plastic bag located at the bottom of the woven bag and smelt marijuana. The plastic woven bag appearing to contain camote tops on the top has a big bundle of plastic of marijuana at the bottom. He could recognize the smell of marijuana because he was assigned at that time at the ANTI-NARCOTICS Unit. He did not, however, do anything after he discovered that there was marijuana inside the plastic bag of the accused until they reached Olongapo City and the accused alighted from the bus in front of the Caltex Gasoline Station in Sta. Rita. Right after the accused alighted from the bus, policeman Obiña intercepted her and showed her his ID identifying himself as a policeman and told her he will search her bag because of the suspicion that she was carrying marijuana inside said bag. In reply, accused told him, "Please go with me, let us settle this at home." However, the witness did not heed her plea and instead handcuffed her right hand and with her, boarded a tricycle right away and brought the suspect to the police headquarters with her bag appearing to contain vegetables.

"At the police headquarters Investigation Section, the bag was searched in the presence of Investigator Cpl. Tiongco, Pat. Obiña, the accused and Sgt. Leoncio Bagang. Inside the plastic bag was found a big bundle of plastic containing marijuana weighing about one kilo. Witness stated that he could detect marijuana even before the application of chemicals because of his one year and a half assignment with the CANU. After the marijuana was taken from the bag of the accused, photographs were taken of the accused and the marijuana confiscated from her possession with Pat. Obiña and that of Investigator Tiongco, accused and himself identified photographs shown to him in open Court, (Exhs. "D", "D-1", "D-2" and "D-3). Witness was likewise shown a plastic bag of marijuana contained in a plastic container (Exhs. "B", "B-1" and "b-1-a") and identified it as the one confiscated from the accused and pointed to his initials on the newspaper wrapping which also shows the date and time, although the wrapper at the time he testified appeared to be soiled already. The marijuana was allegedly still fresh when confiscated.

"To prove further that the accused transported the confiscated marijuana from Baguio City to Olongapo City, witness identified Victory Liner Ticket No. 684977 which was confiscated from the accused and for identification purposes, the witness presented the body number of the bus he wrote at the back of the ticket which is "309" (Exhs. "F" and "F-1"). Regarding himself, he did not pay his fare from Baguio City because as a policeman, he used his badge and a free ride.

"On cross-examination, witness stated that he went to Baguio City on July 15, 1981 and underwent treatment of his heart while he was there. He was given a furlough for medical treatment. He stayed in Baguio City for about five days and returned to Olongapo City on July 21, 1981. Prior to July 21, 1981, witness never knew the accused, and the first time he saw her was in Baguio when she boarded the same Victory Liner he took. When the accused who was bringing with her a woven plastic bag placed the bag right behind his seat instead of placing it in front of her or beside her seat. Witness Obiña became suspicious and his suspicion was confirmed

when they reached San Fernando, Pampanga, after he checked the buri bag. The bus stopped at said town to load some gasoline. Witness inserted one of his fingers inside the buri bag and thereafter smelt marijuana. He confirmed his testimony on direct that when witness confronted accused he was invited to go with her in order to settle the matter to which he refused. Accused further testified that from the time the accused placed her bag behind his seat from Baguio City, he felt so nervous and had to take his medicine at the Tarlac Station. It was only after having taken his medicine that his apprehension was contained and thus was able to insert his right hand inside the buri bag in San Fernando, Pampanga. His fingers reached the very bottom of the bag. He identified his sworn statement regarding this incident given on July 21, 1981 which is Exhibit "G". Witness likewise identified accused Anita Claudio in open court.

"Paulino Tiongco, 52 years old, married and resident of 31 Canada St., East Bajac Bajac, Olongapo City, testified that as a policeman on the afternoon of July 21, 1981, he was inside the Investigation Division of the Police Station, Olongapo City. As Duty Investigator, between 1:45 and 2:00 o'clock in the afternoon of the same day, Pat. Daniel Obiña arrived at the Police Station with a woman and identified her in the courtroom as Anita Claudio. Pat. Obiña reported to him that he apprehended Anita Claudio inside the Victory Liner bus for possession of marijuana dried leaves. The marijuana leaves were contained in a buri bag with some vegetables such as camote tops, bananas and some other vegetables. The marijuana was placed in a plastic wrapper with the name National Book Store colored black and white. Witness identified the wrapper (Exh. "B-2"). The bag contained the markings of Pat. Obiña which are his initials, (Exhs. "B-2-a"), and numbers 210781 representing the date which was placed by Pat. Obiña after Cpl. Tiongco examined the suspected marijuana.

"After examining and seeing the marijuana together with the vegetables, he interviewed apprehending officer Obiña and reduced his statements in writing. Cpl. Tiongco identified the sworn statement of Obiña (Exh. "G"). He also interviewed accused Anita Claudio who was all the while inside the Investigation room seated on a chair. After appraising her of her constitutional rights, he asked the accused whether she was willing to give her written statements to which the accused refused. Hence, no statements were taken of her. However, pictures were taken inside the investigation room. Exhs. "D" and "E", series which were already previously identified by Pat. Obiña. Witness identified the persons appearing in the pictures as that of Pat. Obiña and the accused and also of himself. Thereafter, the marijuana contained in the plastic bag were turned over to Lt. Galindo and Anita Claudio was detained.

"Ernesto Abello, 41 years old, married and residing at No. 29 Alba Street, East Tapinac, Olongapo City, testified he was since March 1972 a policeman and was stationed at Police Station 21, Olongapo City, Metrodiscom. However, in 1981, he was already assigned to the CANU-General Anti-NARCOTICS Unit. On July 22, 1981, he reported for work at the CANU and received from Lt. Galindo more than a kilo of suspected marijuana dried leaves. As requested by Lt. Galindo, he conducted a field test on this marijuana which he received from Lt. Galindo, as evidenced by a request signed by him dated July 22, 1981 (Exh. "H").

"In connection with the field test conducted by him on the specimen, he prepared a Certificate of Field Test dated July 22, 1981 (Exhs. "I"). The Certificate of Field Test indicated the presence of tetra-hydrocannabinol (THC), an active substance that can only be found in marijuana, a prohibited drug. Cpl. Abello identified a plastic bag of marijuana received from Lt. Galindo which he later gave to CIC Danilo Santiago, the Evidence Custodian, for the latter to bring the specimen to the PC Crime Laboratory.

"The last witness for the prosecution was Leoncio Bagang, 40 years old, married, residing at No. 27 Jones St., East Tapinac, Olongapo City, a policeman of Olongapo City, assigned with Police Station "21". He has been a policeman since 1966 up to the present. In July, 1981, he was then assigned at the Patrol Division and his duty was to patrol the city proper from Magsaysay Drive up to east Bajac Bajac.

"He narrated that on July 21, 1981, between the hours of 1:00 and 2:00 o'clock in the afternoon, he was at the Caltex Gasoline Station, East Bajac Bajac, Olongapo City along Rizal Avenue. He was then on duty patrol using a motorcycle. While he was at the said place, he saw Pat. Obiña alighted from the Victory Liner bus

ordering somebody to alight from the same bus. When he heard Pat. Obiña, he approached him and asked him what was happening. Pat. Obiña told him he apprehended a certain woman possessing dried marijuana. The woman was still then inside the bus. Pat. Obiña then brought the woman to the police department who was bringing with her a buri bag. They boarded a tricycle, the woman riding inside the tricycle while Pat. Obiña sat behind the driver. He then followed in his motorcycle the said tricycle to police station. He went inside the Investigation Section of the Police Station and he was there when Pat. Obiña reported to Cpl. Tiongco his apprehension of the woman possessing marijuana. He saw the marijuana for the first time inside the Investigation Section placed in a buri bag covered with newspaper. He witnessed the taking out of the marijuana from inside the bag by Pat. Obiña in the presence of Cpl. Tiongco and the woman or the accused in this case, and himself. Policeman Bagang identified the accused in open Court. When asked about the nature of the marijuana when it was brought out from the bag, he said that the marijuana was dried but not well dried. Aside from the marijuana inside the buri bag, there were vegetables and bananas. Witness identified in open Court, the marijuana he saw found in the buri bag of the accused. His means of identification was the signature of Pat. Obiña, (Exh. "B-1"). He likewise identified a newspaper wrapping which was already torn.

"While in the Investigation Division, witness Bagang heard the accused's answer to Cpl. Tiongco's questions that she was going to deliver the marijuana to Sta. Rita. He, however, did not linger long at the investigation Division. After he saw the marijuana and heard the answer of the accused to Cpl. Tiongco's question the place of delivery of the marijuana, he left the police station. Witness likewise identified an initial DO-21-07-81 already marked as Exhibit "B-2". DO which is an initial, and not a signature, stands for Daniel Obiña. After the testimony of Leoncio Bagang, the prosecution rested its case." (Rollo, pp. 42-47)

Accused Claudio raised the following assignment of errors in this appeal:

I

"CONVICTION UNDER SECTION 4, ART. II OF R.A. 6425 IS IMPROPER IF ONE OR SOME OF THE ELEMENTS OF THE OFFENSE IS OR ARE ABSENT.

II

"CONVICTION CAN NOT BE HAD UNDER SECTION 4, ART. II OF R.A. 6425 IF THE ALLEGED BUYMAN WAS NOT PRESENTED TO TESTIFY.

III

"APPELLANT'S CONVICTION FOR DELIVERY (SEC. 4 ART II, OF R.A. 6424) IS WRONG BECAUSE SOME MATERIAL FACTS WERE OVERLOOKED AND NOT CONSIDERED IN FAVOR OF APPELLANT. (Rollo, p. 91)

The accused alleges that she is only liable, at the most, for possession under Sec. 8, Art. II of Rep. Act. No. 6425 and not for violating Sec. 4 of the same Act.

The latter section, Sec. 4 provides:

"SEC. 4. Sale, Administration, Delivery Distribution and Transportation of Prohibited Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand 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. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed."

Claudio contends that there was no delivery as there was no recipient of the prohibited drugs. Therefore, she may not be convicted under Sec. 4 of Rep. Act. No. 6425.

The contention is without merit. A closer perusal of the subject provision shows that it is not only delivery which is penalized but also the sale, administration, distribution and transportation of prohibited drugs. Claudio was caught transporting 1.1 kilos of marijuana, thus the lower court did not err in finding her guilty of violating Sec. 4.

The accused also alleges that before the completion of delivery, the intention of the possessor is unknown.

This allegation is also unavailing. It is undisputed that Claudio had in her possession 1.1 kilos of marijuana. This is a considerable quantity. As held in the case of *People v. Toledo*, (140 SCRA 259, 267) "the possession of such considerable quantity as three plastic bags of marijuana leaves and seeds coupled with the fact that he is not a user of prohibited drugs cannot indicate anything except the intention of the accused to sell, distribute and deliver said marijuana."

The accused next contends the warrantless search, seizure and apprehension as unlawful.

The applicable provisions on this issue are found in the 1985 Rules on Criminal Procedure.

Rule 113, Sec. 5(a) of the said Rules provides:

"xxx 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 xxx xxx

Meanwhile, its Rule 126, Sec. 12 provides:

"Section 12. Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant. (12a)"

Appellant Claudio was caught transporting prohibited drugs. Pat. Daniel Obiña did not need a warrant to arrest Claudio as the latter was caught in flagrante delicto. The warrantless search being an incident to a lawful arrest is in itself lawful. (*Nolasco v. Pano*, 147 SCRA 509). Therefore, there was no infirmity in the seizure of the 1.1 kilos of marijuana.

The accused takes inconsistent positions in her appellant's brief. At first, she does not deny having had with her marijuana at the time of her arrest. Instead, she claims that she should just be guilty of possession. In a complete turnabout, in the latter portion of said brief, she claims that the evidence against her were mere fabrications and the marijuana allegedly found in her possession was only planted.

We have carefully examined the records of the case and we find no ground to alter the trial court's findings and appreciation of the evidence presented.

Credence is accorded to the prosecution's evidence, more so as it consisted mainly of testimonies of policemen. Law enforcers are presumed to have regularly performed their duty in the absence of proof to the contrary (*People v. De Jesus*, 145 SCRA 521). We also find no reason from the records why the prosecution witnesses should fabricate their testimonies and implicate appellant in such a serious crime (See *People v. Bautista*, 147 SCRA 500).

The accused testified that she was not on that bus that came from Baguio City but rather she was in Olongapo City all that time. She alleged that she was arrested by Pat. Obiña for no reason at all.

In the case at bar, alibi does not deserve much credit as it was established only by the accused herself (*People v.*

De la Cruz, 148 SCRA 582).

Moreover, it is a well-established rule that alibi cannot prevail over positive testimony (People v. De La Cruz, *supra*).

WHEREFORE, the judgment appealed from is AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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