

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODELIO C. EXALA, RESTITUTO B. BOCALAN AND JAIME P. FERNANDEZ, ACCUSED, RESTITUTO B. BOCALAN, ACUSED-APPELLANT.

G.R. No. 76005. April 23, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The admissibility of the evidence seized from the accused at a checkpoint after being stopped for routine inspection is put to test in this appeal from the decision[1] of the Regional Trial Court of Cavite City finding inter alia accused-appellant Restituto B. Bocalan guilty beyond reasonable doubt of violating Sec. 4, Art. II, of R.A. 6425, as amended, otherwise known as "The Dangerous Drugs Act of 1972."

On 2 November 1982, at about 8:15 in the evening, a private jeep driven by accused-appellant Restituto B. Bocalan was stopped at a police checkpoint in Cavite City for routine inspection regarding unlicensed firearms and other prohibited items. With Bocalan were his co-accused Jaime P. Fernandez and Rodelio C. Exala. Pfc. Ricardo Galang, a member of the inspection team, went near the jeep and asked the occupants if there were firearms inside. They answered in the negative. Pfc. Galang then proceeded to inspect the vehicle by beaming a flashlight inside. He noticed a black leather bag measuring about one (1) foot wide and two (2) feet long with its sides bulging. He asked what it contained. There was deadening, silence. Nobody answered. Instead, the three (3) accused, Restituto B. Bocalan, Jaime P. Fernandez and Rodelio C. Exala, suddenly became fidgety. Suspicious, Pfc. Galang ordered the bag opened. He found what he excitedly described as "marijuana, marijuana, napakaraming marijuana!" At this juncture, the three (3) remained motionless in their seats and appeared petrified with fear. They were brought to the police station that same night for further investigation.[2]

After laboratory examination, the bag was verified to contain more than two (2) kilos of Indian hemp otherwise known as marijuana.[3]

Thereafter, Rodelio C. Exala, Restituto Bocalan and Jaime P. Fernandez were accordingly charged for violation of Sec. 4, Art. II, of R.A. 6425, as amended.

After trial, Bocalan was held guilty as principal and sentenced to life imprisonment. A fine of P25,000.00 was also imposed.[4] The other two (2) were convicted as accomplices and received lighter penalties. Fernandez appealed to the Court of Appeals. Exala did not.

Bocalan, whose punishment is reviewable only by this Court, is now before Us assailing his conviction; hence, We deal only with him in this appeal.

Appellant Bocalan seeks exculpation by imputing ownership of the bag to Exala alone.[5] Bocalan claims that while on the way to Cavite City, he and Fernandez offered Exala a ride. Exala accepted the offer and requested Bocalan to make a detour to Salitran, Dasmariñas, Cavite, where he was to pick up some clothes. They agreed and Exala got the bag which he kept beside him all the time until their apprehension at the checkpoint.[6]

Bocalan further contends that the trial court erred in admitting the bag as evidence against him since it was obtained through a warrantless search.[7]

The protestations of Bocalan are devoid of merit. We agree with the trial court that the conduct of Bocalan was not only unusual but also contrary to normal human experience.[8] He alleged that he knew Exala only by face and had no personal association with him;[9] yet, on that eventful day of 2 November 1982, he agreed to detour to Salitran which was some fifteen (15) to twenty (20) kilometers out of his way. Thus, his contention that it was Exala who owned the bag containing the marijuana is hardly credible.

On the other hand, Exala declared that it was he who did not know the contents of the bag as it was already in the jeep when he boarded it. Exala asserted that it was either Bocalan or Fernandez who owned the bag. Exala swore that Bocalan and Fernandez offered him P5,000.00, later raised to P10,000.00, to take the blame alone, but he refused.[10]

Proof of ownership is immaterial where the accused is charged with the unlawful transportation of marijuana.[11] Section 4, Art. II, of R.A. 6425, as amended, does not require that one be the owner of the prohibited drug before he can be prosecuted for dispatching in transit or transporting a prohibited drug. The law simply provides thus -

"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."

Nonetheless, there is substantial evidence to prove that Bocalan was directly involved in the unlawful dispatch in transit or transport of marijuana. The evidence of the prosecution, particularly the testimonies of Pfc. Ricardo Galang and Pat. Rosauro de Guzman; belies the defense of Bocalan and establishes beyond cavil that he was caught in flagrante delicto of transporting the prohibited drug; that he was the driver of the jeep owned by his father that carried the stuff; and, that he was in fact the owner of the bag. The trial court noted that Bocalan picked up Fernandez and Exala one after the other to accompany him to the place where the bag of marijuana was taken and to help him bring the marijuana to Cavite City.[12] Regardless of the degree of participation of Fernandez and Exala, Bocalan is correctly punished for his direct involvement in the crime.

Such factual conclusions by the trial court relative to the credibility of witnesses are entitled to great respect and are generally sustained by the appellate court unless some material facts have been overlooked or misconstrued as to affect the result.[13] There is none in this case on appeal.

We turn to the legal question on the admissibility of the marijuana as evidence in the light of Bocalan's contention that it was seized without a valid search warrant. Since the search was conducted prior to the arrest, Bocalan argues that it was not incident to a lawful arrest.

This issue was never raised in the proceedings below. Bocalan never objected to the admissibility of the evidence on the ground that the same was obtained in a warrantless search. Consequently, he is deemed to have waived his objection on the legality of the search and the admissibility of the evidence obtained in the course thereof.[14] In view of such waiver, the court is bound to admit the evidence.[15] But even assuming *arguendo* that there was no waiver, still appellant's contention deserves scant consideration.

There are indeed instances where search and seizure can be effected without necessarily being preceded by an arrest.[16] An illustration would be the "stop-and-search" without a warrant at military or police checkpoints, the

constitutionality of which has already been upheld by this Court.[17] Vehicles are generally allowed to pass through these checkpoints after a routine inspection and answering a few questions. If vehicles are stopped and extensively searched it is because of some probable cause which justifies a reasonable belief of those manning the checkpoints that either the motorist is a law-offender or the contents of the vehicle are or have been instruments in the commission of an offense.[18] However, lest it be misunderstood, this doctrine is not intended to do away with the general rule that no person shall be subjected to search of his person, personal effects and belongings, or his residence except by virtue of a search warrant or on the occasion of a lawful arrest.[19] The case before Us is an incident to or an offshoot of a lawful "stop-and-search" at a military or police checkpoint.

The checkpoint in the instant case was established in line with "Operation Bakal" the main object of which was to search for unlicensed firearms and other prohibited items in the possession of unauthorized persons passing through it.[20] When the jeep carrying the contraband passed through the checkpoint, it was flagged down and the occupants were asked routine questions. In the course thereof, Pfc. Galang noticed a black leather bag the sides of which were bulging. He asked what the contents of the bag were. None of the accused answered. At that moment, the demeanor of the accused changed; they became suspiciously quiet and nervous as if they were concealing something from Pfc. Galang. The accused clearly appeared to be in abject fear of being discovered. Such peculiar apprehensiveness if not restrained reaction of the accused, which did not appear normal, provided the probable cause justifying a more extensive search that led to the opening of the bag and the discovery of the prohibited stuff. Significantly, there was no sign of any protest or objection to the search. The accused remained silent even after their arrest.

Their submissive stance after the discovery of the bag of marijuana, as well as the absence of any protest on their part when arrested, not only casts serious doubt on their professed innocence[21] but also confirms their acquiescence to the search.[22] Clearly then, there was waiver of the right against unreasonable search and seizure.[23] In one case.[24] We held -

"x x x 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 (Cooley, Constitutional Limitations, 8th Ed., Vol. 1, p 361). The right to be secure from unreasonable search and seizure may, like every right, be waived and such waiver may be made either expressly or impliedly" (underscoring supplied).

The arrest of the three (3) accused was lawful because it was made upon the discovery of the prohibited drug in their possession. There was no need for a warrant; the arrest was made while a crime was committed. This is one of the situations envisioned by Sec. 5, par. (a), of Rule 113 of the 1985 Rules on Criminal Procedure, as amended, when a warrantless arrest may be made.[25] The accused were caught in the act of dispatching in transit or transporting marijuana, in violation of Sec. 4, Art. II, of R.A. 6425, as amended.

The alleged contradiction between the sworn statements of Pfc. Galang and Pat. de Guzman was explained in their separate testimonies and, in any event, has been resolved by the trial court as a factual issue. We find, no reason to reverse its finding.

Anent, the argument that the three (3) accused should not have been assigned different levels of liability, suffice it to say that whether a principal, co-principal, or conspirator, accused-appellant would have been meted out the same penalty imposed by the trial court.

WHEREFORE, there being no reversible error in the decision appealed from finding accused-appellant RESTITUTO B. BOCALAN guilty beyond reasonable doubt of the crime charged, the same is AFFIRMED, with costs against him.

SO ORDERED.

Cruz, J., see dissent.

Griño-Aquino, and Quiason, JJ., concur.

[1] Penned by Judge Alejandro C. Silapan; Rollo, pp. 29-42.

[2] Tsn, 1 March 1983, pp. 11-23; Tsn, 11 Jul 1983, pp. 9-24, 40-42, Tsn, 14 September 1983, pp. 5-14; Tsn, 12 August 1985, p. 6.

[3] Exhs. "A" and "G"; Tsn, 25 July 1984, pp. 10-11.

[4] Rollo, p. 32.

[5] Appellant's Brief, pp. 4-6; Rollo, pp. 68-70.

[6] Tsn, 25 July 1984, pp. 53-63; Tsn, 14 January 1984, pp. 17-23, 33.

[7] Appellant's Brief, pp. 8-10, Rollo; pp. 72-74.

[8] RTC Decision, p. 9; Rollo, p. 37.

[9] Ibid., p. 8; *ibid.*, p. 36.

[10] Tsn, 10 August 1985, pp. 2-7, 21.

[11] *People v. Omaweng*, G.R. No. 99050, 2 September 1992.

[12] RTC Decision, p.13; Rollo, p. 41.

[13] *People v. Sarra*, G.R. No. 78530, 6 March 1990, 183 SCRA 34.

[14] *People v. Bagista*, G.R. No. 86218, 18 September 1992, citing *Dimaisip v. Court of Appeals*, G.R. No. 89393, 25 January 1991, 193 SCRA 373.

[15] *Ibid.*

[16] See *Posadas v. Court of Appeals*; G.R. N. 89139, 2 August 1990, 188 SCRA 288.

[17] *Valmonte v. De Villa*, G.R. No. 83988, 29 September 1989, 178 SCRA 211, with Justices Isagani A. Cruz and Abraham F. Sarmiento dissenting.

[18] *Valmonte v. De Villa*, G.R. No. 83988, 24 May 1990, 185 SCRA 665.

[19] See dissent of then Senior Associate Justice (now Chief Justice) Andres R. Narvasa in *People v. Malmstedt*, G.R. No. 91107, 19 June 1991, 198 SCRA 401, 413.

[20] RTC Decision, p. 1; Rollo, p. 29.

[21] *People v. Malonzo*, G.R. No. 91695, 4 August 1992.

[22] Appellant's Brief, p. 3; Rollo, p. 67; Exh. "D", List of Exhibits for Plaintiff.

[23] *People v. Omaweng*, Note 11.

[24] *People v. Malasugui*, 63 Phil. 221 [1936]; see also *People v. Rodriguez*, G.R. No. 95902, 4 February 1992, 205 SCRA 791.

[25] 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 emitting, or is attempting to commit an offense x x x x.

DISSENTING OPINION

CRUZ, J.:

I dissent, for the reasons expressed in my dissenting opinions in *Valmonte v. de Villa*, 185 SCRA 665/178 SCRA 211, and *People v. Malmstedt*, 198 SCRA 401, and the following additional observations.

I am opposed to checkpoints as regular police measures aimed at reducing criminality in general. I do not agree that in the interest of peace and order, any or every vehicle may be stopped at any time by the authorities and searched without warrant on the chance that it may be carrying prohibited articles. That possibility is not the probable cause envisioned in the Bill of Rights.

In the case of the ordinary checkpoint, there is not even any suspicion to justify the search. The search is made as a matter of course, either of all vehicles or at random. There is no showing that a crime is about to be committed, is actually being committed, or has just been committed and the searching officer has personal knowledge that the person being searched or arrested is the culprit.

I will concede that checkpoints may be established at borders of states or at "constructive borders" near the boundary for the purpose of preventing violations of immigration and customs laws. But in the interior of the territory, the requirements of a valid search and seizure must be strictly observed. The only permissible exemption is where a crime like a bank robbery has just been committed or a jailbreak has just occurred, and the authorities have to seal off all possible avenues of escape in the area. In all other cases, I submit that the checkpoint should not be allowed.

I realize that this view would result in the inadmissibility of the seized marijuana as evidence against the petitioner and in his inevitable acquittal. But as I have always maintained, we cannot retroactively validate an illegal search on the justification that, after all, the articles seized are illegal. That is putting the cart before the horse. I would rather see some criminals go unpunished now and then than agree to the Bill of Rights being systematically ignored in the oppressive checkpoint. Respect for the Constitution is more important than securing a conviction based on a violation of the rights of the accused.

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