

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MOISES MASPIL, JR. Y WAYWAY AND SALCEDO BAGKING Y ALTAKI, DEFENDANTS-APPELLANTS.

G.R. No. 85177. August 20, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition is an appeal from the decision of the Regional Trial Court of Baguio City, Branch 5, the dispositive portion of which reads:

“WHEREFORE, the Court finds and declares the accused MOISES MASPIL, JR. y WAYWAY and SALCEDO BAGKING y ALTAKI guilty beyond reasonable doubt of the crime of illegal transportation of marijuana as charged and hereby sentences EACH of them to suffer LIFE IMPRISONMENT; to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency; and to pay their proportionate shares in the costs.

“The confiscated marijuana (Exhibits “B”, “B-1” to “B-23”; “C”, “C-1” to “C-16, “D”, “D-1” to “D-20”; “E”, E-1”, to “E-14”; “F”, “F-1”; “G”, “G-1”) are hereby declared forfeited in favor of the Government and upon the finality of this decision, the Branch Clerk of Court is directed to turn over the same to the Dangerous Drugs Board (NBI), through the Chief, PC Crime Laboratory, Regional Unit No. 1, Camp Dangwa, La Trinidad, Benguet, for disposition in accordance with law.” (Rollo, pp. 25-26)

In Criminal Case No. 4263-R, the information filed against the two accused alleged:

“That on or about the 1st day of November, 1986, at Sayangan, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, and without any authority of law, did then and there willfully, unlawfully and knowingly transport and carry in transit from Sinto, Bauko, Mt. Province to Atok, Benguet One Hundred Eleven Kilos and Nine Grams (111.9 kilos), more or less, of dried marijuana leaves which are sources of dangerous and prohibited drugs and from which dangerous and prohibited drugs may be derived and manufactured, in violation of the said law.” (Rollo, p. 11)

The narration of facts by the trial court is as follows:

“According to Jerry Valeroso, Sgt. Amador Ablang and Sgt. Florentino Baillo, all members of the First Narcotics Regional Unit of the Narcotics Command stationed in Baguio City, (See also Exhibit “I”) on October 30, 1986, they established a checkpoint in front of the Municipal Hall at Sayangan, Atok, Benguet, which is along the Halsema Highway, to check on vehicles proceeding to Baguio City because their Commanding Officer, Maj. Basilio Cablayan, had been earlier tipped off by some confidential informers that the herein accused Maspil and Bagking would be transporting a large volume of marijuana to Baguio City. The informers went along with the operatives to Sayangan.

“At about 2:00 o’clock in the early morning of November 1, the operatives intercepted a Sarao type jeep driven by Maspil with Bagking as his companion. Upon inspection, the jeep was found loaded with two (2)

plastic sacks (Exhibits “B” and “D”), one (1) jute sack (Exhibit “C”) and three (3) big round tin cans (Exhibits “E”, “F” and “G”) which, when opened contained several bundles of suspected dried marijuana leaves (Exhibits “B-1”, to “B-23”; “C-1” to “C-16”; “D-1” to “D-20”; “E-1” to “E-14”; “F-1” and “G-1”).

“Maspil and Bagking were arrested and the suspected marijuana leaves were confiscated.

“The confiscated items were later on referred to the PC Crime Laboratory, Regional Unit I, for examination (Exhibit “A”). Forensic Chemist Carlos V. Figuerroa performed the requested examination and determined that the specimen, with an aggregate weight of 115.66 kilos, were positive to the standard tests for marijuana.

“The accused admitted that the marijuana dried leaves were indeed confiscated from the jeep being then driven by Maspil with Bagking as his helper. However, they claimed that the prohibited drugs belonged to two of their passengers who loaded them in the jeep as paying cargo for Baguio City without the accused knowing that they were marijuana.

“The accused declared that on October 31, 1986, at the burned area along Lakandula Street, Baguio City, a certain Mrs. Luisa Mendoza hired the jeep of Maspil to transport her stock of dried fish and canned goods contained in cartons to Abatan, Buguias, Benguet, because her own vehicle broke down. They left Baguio City at about 1:00 o’clock in the afternoon (11:30 in the morning, according to Bagking) with Mrs. Mendoza, her helper and salesgirls on board the jeep with Maspil as driver and Bagking as his own helper. They arrived at Abatan at about 6:00 o’clock in the evening.

“After unloading their cargo, Maspil and Bagking repaired to a restaurant for their dinner before undertaking the trip back to Baguio City. While thus eating, they were approached by two persons, one of whom they would learn later on to be a certain Danny Buteng. Buteng inquired if they were going to Baguio City and upon being given an affirmative answer, he said that he would ride with them and that he has some cargo. Asked what the cargo was, Buteng replied that they were flowers in closed tin cans and sealed sacks for the commemoration of All Souls Day in Baguio City. After Buteng had agreed to Maspil’s condition that he would pay for the space to be occupied by his cargo, Buteng himself and his companion loaded the cargo and fixed them inside Maspil’s jeep.

“Maspil and Bagking left Abatan at about 7:00 o’clock that same evening of October 31. Aside from Buteng and companion they had four other passengers. These four other passengers alighted at Natublung, Buguias, Benguet.

“Upon reaching Sayangan, Atok, Benguet, Maspil stopped at the Marosan Restaurant where they intended to take coffee. Their remaining passengers - Buteng and companion - alighted and went to the restaurant. However, a soldier waved at Maspil to drive to where he was, which Maspil did. The soldier secured Maspil’s permission to inspect their cargo after which he grabbed Maspil on the latter’s left shoulder and asked who owned the cargo. Maspil told the soldier that the cargo belonged to their passengers who went to the restaurant. The soldier called for his companions and they went to look for Maspil’s passengers in the restaurant. Later on, they returned and placed Maspil and Bagking under arrest since their cargo turned out to be marijuana.

“Lawrence Balonglong, alias Banawe, a radio reporter of DZWX Bombo Radio who was invited by Lt. Valeroso to witness the operation, affirmed the unsuccessful pursuit of the alleged two companions of Maspil and Bagking. He recalled that he was awakened from his sleep at the townhall in Sayangan after the arrest of Maspil and Bagking. When he went to the scene, the NARCOM operatives boarded the jeep of Maspil to chase the two companions of Maspil and Bagking. Balonglong climbed on top of the jeep with his camera to join the chase. They proceeded towards the direction of Bontoc but failed to catch anyone. Hence, they returned.

“Thereupon, Maspil and Bagking were taken to the townhall where they were allegedly maltreated to admit ownership of the confiscated marijuana. At about 4:00 o’clock in the afternoon of November 1, the soldiers took them away from Sayangan to be transferred to their station at Baguio City. On their way, particularly at

Km. 32 or 34, they met Mike Maspil, an elder brother of Moises Maspil, and the soldiers called for him and then Lt. Valeroso and his men mauled him on the road.

“Mike testified that between 3:00 and 4:00 o’clock in the afternoon of November 1, he was informed by a neighbor that his brother Moises was detained at the Atok Municipal Jail. So he called for Jose Pos-el and James Longages, his driver and helper, respectively, to go along with him to see Moises. They rode in his jeep. On the way, they met the group of Lt. Valeroso. For no apparent reason, Lt. Valeroso boxed and kicked him several times. Thereafter, Lt. Valeroso placed him under arrest together with his driver and helper. They were all brought to a shoe store on Gen. Luna Road, Baguio City, together with Moises and Bagking. There, Lt. Valeroso got his wallet containing P210.00 and Seiko wrist watch but the receipt (Exhibit “3”) was issued by a certain Miss Pingil, a companion of Valeroso. He was released after nine days. He then went to Lt. Valeroso to claim his wallet, money and watch but he was told that they were with Miss Pingil. However, when he went to Miss Pingil, the latter said that the items were with Lt. Valeroso. He sought the assistance of then Tourism Deputy Minister Honorato Aquino who assigned a lawyer to assist him. The lawyer advised him to file a case against Lt. Valeroso but because of the intervening congressional elections, the matter has never been pursued.” (Rollo, p. 21-24)

The appellants raise the following assignment of errors in their appeal, to wit:

I

THAT THE TRIAL COURT ERRED IN NOT FINDING THAT THE ALLEGED MARIJUANA AS CHARGED IN THE INFORMATION IS DIFFERENT FROM THAT PRESENTED FOR LABORATORY EXAMINATION.

II

THAT THE TRIAL COURT ERRED IN FINDING THAT THERE WERE ONLY TWO OCCUPANTS, THE APPELLANTS, IN THE VEHICLE WHERE THE ALLEGED MARIJUANA WAS CONFISCATED.

III

THAT THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED KNEW THAT THE CARGO THEY WERE TRANSPORTING WAS MARIJUANA.

IV

THAT THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE ALLEGED CONFISCATED MARIJUANA.

V

THAT THE TRIAL COURT ERRED IN SHIFTING FROM THE PROSECUTION THE BURDEN OF PROVING THE COMMISSION OF THE OFFENSE CHARGED TO THE APPELLANTS TO PROVE THEIR INNOCENCE.” (Rollo, p. 40)

The main defense of the appellants is their claim that the prohibited drugs belonged to their two passengers who loaded them in the jeep as paying cargo without the appellants knowing that the cargo was marijuana.

In the second and third assignment of errors, the appellants claim that the trial court erred in not appreciating their version of the facts.

The appellants state that the trial court’s reliance on Sgt. Baillo’s testimony that they were the only ones in the

jeep cannot be given credence as Sgt. Baillo's testimony is full of inconsistencies.

The appellants cite Sgt. Baillo's inconsistencies as to the time of the arrest whether morning or afternoon, the time the checkpoint was removed and the persons who were with him at the time of arrest.

It has been ruled that inconsistencies in the testimonies of the prosecution witnesses not on material points is not fatal. Moreover, minor inconsistencies are to be expected but must be disregarded if they do not affect the basic credibility of the evidence as a whole. (People v. Marcos, G.R. No. 83325, May 8, 1990)

The defense even state that there were a lot of policemen (T.S.N., December 1, 1987, p. 22) and it was but natural that there would be confusion on who was there at the time of the arrest.

The trial court gave credence to the positive and categorical statement of Sgt. Baillo that there were only two occupants, and these were the appellants inside the jeepney at the time (T.S.N., June 30, 1987, p. 18). We see no cogent reason to reverse this finding of fact.

There is nothing in the records to suggest that the arrest was motivated by any reason other than the desire of the police officers to accomplish their mission. Courts generally give full faith and credit to police officers when the facts and circumstances surrounding their acts sustain the presumption that they have performed their duties in a regular manner. (Rule 131, Section 5 (m), Rules of Court; People v. Marcos, supra; People v. Yap and Mendoza, G.R. Nos. 87088-89, May 9, 1990)

The appellants put forward the testimony of Lawrence Balonglong which corroborates and affirms their stand that there were, indeed, passengers in the jeepney.

However, a close perusal of said testimony reveals no such corroboration. The pertinent portions of Balonglong's testimony is as follows:

"xxx xxx xxx

Q. Where were you when these two persons were apprehended?

A. I was in the Municipal Hall asleep, sir.

Q. How did you know then that these people were apprehended?

A. It is like this, sir, on the night of October 31, I was then asleep and at around 11:00, I guess, p.m., they awakened me so I went and I saw these two guys being apprehended by the Narcom operative.

Court:

Q. You saw them being apprehended?

A. No, sir... I saw them there.

Q. Already apprehended?

A. Already apprehended.

Atty. Fianza:

Q. And when you saw these persons, what did you do, if any?

A. What I recall is that when I went to the road, where these two guys were apprehended, the operatives boarded the same jeep and I even climbed the jeep.... on top of the jeep holding my camera and tape recorder and we... I don't know... they chased, according to the operatives, they chased two companions of the two

arrested guys.” (T.S.N., May 11, 1988, p. 4)

In their brief, the appellants even admit that “he (Balonglong) did not see the passengers” and it was just his impression that there were other people present. (Appellant’s Brief, p. 7)

The appellants maintain that they did not know what was in the cargo. Their main concern was in going back to Baguio City and they saw no need to question their two passengers on why flowers were being kept in closed cans and sacks. They were apprehended after midnight. They traversed a lonely and reputedly dangerous portion of the mountain highway.

The appellants’ version is not believable. It is inconceivable that the appellants would not even bother to ask the names of the strangers who approached them in a restaurant at night wanting to hire their jeepney, considering that they were familiar with the identity of the passenger, Luisa Mendoza, who hired them to transport her goods to Abatan, Buguias, Benguet.

It is likewise incredible that the appellants did not show the slightest curiosity as to why flowers were being kept in closed tin cans and sealed sacks and cellophane. On the other hand, the appellants had clear knowledge that Luisa Mendoza was transporting cartons containing dried fish and canned goods on the trip out of Baguio. It is contrary to human experience that the appellants would inquire about the name of the passenger and the cargo she was loading on their jeep and not doing the same about another who would transport goods on a midnight trip.

Well-settled is the rule that evidence to be believed, must not only proceed from the mouth of a credible witness but it must be credible itself. No better test has yet been found to measure the value of a witness than its conformity to the knowledge and common experience of mankind. (People v. Maribung, 149 SCRA 292, 297 [1987]; People v. Aldana, GR No. 81817, July 27, 1989; People v. Pascua, GR No. 82303, December 21, 1989).

The appellants further allege that if, indeed they knew about the contents of their cargo, they would have adopted means to prevent detection or to evade arrest.

At the time the appellants were being motioned by the policemen to come nearer the checkpoint, there was no way that the appellants could have evaded the arrest without putting their lives in jeopardy. They decided to just brazen it out with police and insist on their version of the story.

As for the other assigned errors, the appellants in the first assigned error, contend that since there is a discrepancy of 3.76 between the number of kilos stated in the information (111.9 kilos) and in the report (115.66 kilos) of the forensic chemist, it is very likely that the marijuana presented as evidence was not the one confiscated from the appellants or even if they were the same, it could have already been tampered with. The appellants conclude that the marijuana then, cannot be admitted as evidence.

The marijuana examined by the forensic chemist, which was contained in three big round tin cans, two jute sacks (there was really only one jute sack colored light green which was confiscated but since one of the plastic sacks [green] appeared to be tattered, some of its contents were transferred to a white jute sack), (T.S.N., June 23, 1987, p. 5) and two plastic bags colored yellow and green (T.S.N., June 23, 1987, p. 3), was positively identified to be the same as those confiscated from the appellants. This is very clear from the testimony of Lt. Valeroso who stated:

“xxx xxx xxx

Q. When you went down, where were these two suspects, as you said?

A. They were sitted (sic) at the front seat.

Q. Front seat of what?

A. The jeep, sir.

Q. And did you ask or see what was inside the jeep?

A. Yes.

Q. And what were those?

A. It was all suspected marijuana dried leaves contained in three big cans, one sack colored green, two sacks colored yellow and green.” (Underlining supplied, T.S.N., September 16, 1987, p. 4)

Lt. Valeroso further testified that Exhibits “B” (yellow plastic bag), “C” light green jute sack, “D” (green plastic bag), “E” (one big can), “F” (second can), “G” (third can) were, indeed, the same articles which he saw at the back of the jeepney of the appellants. (T.S.N., September 16, 1987, p. 5)

One of the appellants, Moises Maspil, even admitted that the articles identified by Lt. Valeroso in his testimony were indeed, the same articles confiscated from their jeepney at Sayangan, Atok, Benguet. (T.S.N., February 24, 1988, pp. 34-35)

Moreover, the words “more or less” following the weight in kilos of the marijuana in the questioned information declare that the number of kilos stated therein is just an approximation. It can therefore be a little lighter or heavier. The slight discrepancy is not material.

Another ground stated by the appellants for the inadmissibility in evidence of the confiscated marijuana is that the marijuana allegedly seized from them was a product of an unlawful search without a warrant.

In the case of Valmonte v. de Villa, G.R. No. 83988, September 29, 1989, the Court held that:

“xxx xxx xxx

True, the manning of checkpoints by the military is susceptible of abuse by the men in uniform, in the same manner that all governmental power is susceptible of abuse. But at the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints during these abnormal times, when conducted within reasonable limits are part of the price we pay for an orderly society and a peaceful community.”

The search was conducted within reasonable limits. There was information that a sizeable volume of marijuana will be transported to take advantage of the All Saints Day holiday wherein there will be a lot of people going to and from Baguio City (T.S.N., September 16, 1987, p. 6). In fact, during the three day (October 30, 1986 to November 1, 1986) duration of the checkpoint, there were also other drug related arrests made aside from that of the two appellants.

But even without the Valmonte ruling, the search would still be valid. This case involves a search incident to a lawful arrest which is one of the exceptions to the general rule requiring a search warrant. This exception is embodied in Section 12 of Rule 126 of the 1985 Rules on Criminal Procedure which provides:

“SEC. 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.”

and Rule 113, Section 5 (1) which state:

“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.”

This case falls squarely within the exceptions. The appellants were caught in flagrante delicto since they were transporting the prohibited drugs at the time of their arrest. (People v. Tangliben, G.R. No. 63630, April 6, 1990) A crime was actually being committed.

The appellants, however, cite the case of People v. Aminnudin, (163 SCRA 402 [1988]). In said case, the PC officers received information that the accused-appellant, on board a vessel bound for Iloilo City, was carrying marijuana. When the accused-appellant was descending the gangplank, the PC officers detained him and inspected the bag that he was carrying and found marijuana. The Court ruled that since the marijuana was seized illegally, it is inadmissible in evidence.

There are certain facts of the said case which are not present in the case before us. In the Aminnudin case, the records showed that there was sufficient time and adequate information for the PC officers to have obtained a warrant. The officers knew the name of the accused, that the accused was on board M/V Wilcon 9, bound to Iloilo and the exact date of the arrival of the said vessel.

On the other hand, in this case there was no information as to the exact description of the vehicle and no definite time of the arrival. A jeepney cannot be equated with a passenger ship on the high seas. The ruling in the Aminnudin case, is not applicable to the case at bar.

As for the fifth and last assigned error we agree with the Solicitor General that:

“Examination of the testimonies of appellants show that they admit the fact that the confiscated marijuana was taken from their jeep while they were transporting it from Abatan, Buguias, Benguet to Baguio City. This being so, the burden of the prosecution to prove illegal transportation of prohibited drugs punished under Section 4 of RA 6425, as amended, has been satisfactorily discharged. The rule in civil as well as in criminal cases is that each party must prove his own affirmative allegations. The prosecution avers the guilt of the accused who is presumed to be innocent until the contrary is proved. Therefore, the prosecution must prove such guilt by establishing the existence of all the elements of the crime charged. But facts judicially known, presumed, admitted or confessed need not be proved. (Rule 129, Sec. 4, Rules on Evidence) (Appellee’s Brief, p. 26-27)

WHEREFORE, the guilt of the appellants having been proved beyond reasonable doubt, the appealed decision is hereby AFFIRMED.

SO ORDERED.

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

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