

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELSIE BAGISTA Y BANGCO, ACCUSED-APPELLANT.

G.R. No. 86218. September 18, 1992

Ponente: NOCON, J.

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NOCON, J.:

Appeal by accused-appellant Elsie Bagista from the decision dated September 26, 1988 of the Regional Trial Court of La Trinidad, Benguet, Branch 10, finding her guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P20,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The facts of the case are as follows: On July 4, 1988, at around 8:00 o'clock in the morning, the Narcotics Command (NARCOM) Detachment Office located at the Arix Building, Bokawkan Road, Baguio City, received information from one of its regular informants that a certain woman, 23 years of age, with naturally curly hair, and with a height of 5'2" or 5'3", would be transporting marijuana from up north.[1] Acting upon this piece of information, Sgt. Oscar Parajas testified that he, Sgt. Godofredo Fider and a civilian NARCOM agent proceeded to Km. 16, Acop, Tublay, Benguet. Upon arriving at said location at around 11:00 o'clock that same morning, they established a checkpoint and flagged down all vehicles, both private and public, coming from the north to check if any of these vehicles were carrying marijuana leaves on board.[2]

After about 4 1/2 hours, the NARCOM agents stopped a Dangwa Tranco bus with Plate No. AVD 938 and body number 428, which came from Lepanto, Benguet. Sgts. Parajas and Fider boarded the bus and thereupon Sgt. Parajas announced to the passengers that they were NARCOM agents and that they were going to search their baggages. Sgt. Parajas then proceeded to the rear of the bus while Sgt. Fider began inspecting the bags in the front.[3]

While at the back, Sgt. Parajas noticed a woman with curly hair seated at the right side (as one is facing the driver) of the last seat of the bus, with a travelling bag with black and orange stripes[4] on her lap. Sgt. Parajas inspected the bag and discovered three (3) bundles of marijuana leaves covered by assorted clothing. The bag and the contents thereof were confiscated and the woman arrested; she was later brought to the NARCOM office in Baguio City where she was booked and investigated. The woman was then identified as accused-appellant.[5] The confiscated bundles were subjected to laboratory examination, and found positive for marijuana.[6]

Accused-appellant's defense rests solely on denial. She claimed that she was engaged in the buying and selling of vegetables, particularly cabbages. On the day in question, she boarded the Dangwa Tranco bus at Abatan, Benguet, bringing with her ten (10) sacks of cabbages which she intended to sell to a certain Maria Opino in Baguio City. While inside the bus, she approached the conductor for her ticket to cover the fare for her sacks of cabbages, but was told by the latter that he would attend to her later.

When the bus reached Tublay, Benguet, it was stopped by the NARCOM agents who boarded the same and began inspecting the baggages of the passengers. Accused-appellant claimed that the bag containing the marijuana was

taken from the luggage carrier above the passenger seats. When nobody admitted owning the bag, the NARCOM agent approached her, took the shoulder bag on her lap, and asked her to come with them for investigation as she fits the description of the would-be transporter of the marijuana given by the NARCOM informer. She denied having anything to do with the marijuana found on the bus.

To corroborate her story, accused-appellant presented the conductor of the Dangwa Tranco bus, Nestor Yangkin. He testified that when the NARCOM agents boarded the bus at Tublay, Benguet, one of them got a bag from the luggage carrier, opened it, and smelled the contents. The agent then asked the passengers who among them owned the bag; when nobody answered, he walked to the back of the bus, all the time looking at the faces of the passengers. When the agent approached accused-appellant, who was seated at the rear of the bus, the former talked to her, then escorted her out of the bus.[7]

During Yangkin's cross-examination, it came out that the 10 sacks of vegetables that were loaded at Abatan were brought by a man who told him that the fare for the sacks will be paid upon arrival at the Dangwa Station in Baguio City but that the owner of the sacks would be riding in the bus. And yet, Yangkin did not seek out the alleged owner of the sacks. The witness also testified that none of the passengers approached him and offered to pay for the fare of the sacks,[8] contrary to accused-appellant's testimony.

In convicting accused-appellant, the trial court found the testimony of Sgt. Parajas credible. Said the court a quo:

"... The testimony of Sgt. Oscar Parajas was direct and straightforward as he gave all the requisite details of the entrapment operation they conducted based on an information provided by a coordinating individual. His testimony reveals that the bag containing the marijuana leaves was found on the lap of the accused. There is nothing in the record to suggest that Sgt. Parajas was moved by any motive than simply the carrying out of his official mission or duty. Where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit (People vs. Francia, L--69253, September 30, 1987, 154 SCRA 495)."[9]

The trial court brushed aside the defense's observation that there were discrepancies between the testimony of Sgt. Parajas and the evidence presented, such as the color of the bag allegedly taken from accused-appellant and the kind of marijuana taken from the bag, as immaterial. Similarly brushed aside was the defense's contention that the evidence against accused-appellant, such as the Receipt of Property Seized[10] and her signature thereon,[11] and the Booking Sheet and Arrest Report[12] and her signature thereon,[13] were inadmissible due to the absence of counsel, since these were not confessions or extra-judicial statements.

Finally, the trial court did not give credence to the testimonies of accused-appellant and her witness Nestor Yangkin, in view of the testimony of Sgt. Parajas that he took the bag containing the marijuana from accused-appellant's lap. Moreover, the court a quo observed that there was a discrepancy between the testimonies of accused-appellant and Yangkin on the matter of the 10 sacks of cabbage, which led the court to conclude that the former was in the act of transporting marijuana at the time of her arrest.

Accused-appellant filed a motion for reconsideration, alleging that the marijuana leaves found in the bag taken from her was inadmissible in evidence as it was the product of a warrantless search, which motion was denied by the trial court for lack of merit on November 22, 1988.

Aggrieved, accused-appellant filed the instant appeal, alleging that the court a quo erred (1) in not finding the warrantless search conducted by the NARCOM agents as illegal and unconstitutional, and (2) in admitting the illegally obtained evidences and convicting her on the basis of said evidences.

Accused-appellant is in error.

The general rule regarding searches and seizures can be stated in this manner: no person shall be subjected to a search of his person, personal effects or belongings, or his residence except by virtue of a search warrant or on the occasion of a lawful arrest.[14] The basis for the rule can be found in Article III, Section 2 of the 1987 Constitution, which states:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose, shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

Article III, Section 3 (2) further ordains that any evidence obtained in violation of the aforementioned right shall, among others, "be inadmissible for any purpose in any proceeding."

The constitutional proscription against warrantless searches and seizures admits of certain exceptions. Aside from a search incident to a lawful arrest, a warrantless search had been upheld in cases of a moving vehicle,[15] and the seizure of evidence in plain view.[16]

With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.[17]

This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[18]

The NARCOM officers in the case at bar had probable cause to stop and search all vehicles coming from the north at Acop, Tublay, Benguet in view of the confidential information they received from their regular informant that a woman having the same appearance as that of accused-appellant would be bringing marijuana from up north. They likewise have probable cause to search accused-appellant's belongings since she fits the description given by the NARCOM informant.

Since there was a valid warrantless search by the NARCOM agents, any evidence obtained during the course of said search is admissible against accused-appellant.

At any rate, no objection was raised by the accused-appellant in the court below on the inadmissibility of the evidence against her on the ground that the same was obtained in a warrantless search. This amounts to a waiver of the objection on the legality of the search and the admissibility of the evidence obtained therefrom.[19] Amid a waiver, the court is duty bound to admit the evidence.[20]

Reviewing the evidence, We find the same sufficient to prove accused-appellant's guilt beyond reasonable doubt.

The prosecution had shown, primarily through the positive testimony of Sgt. Parajas, that the bag containing the dried marijuana leaves was taken from accused-appellant's possession.

She denies this fact and contends that the bag in question was actually taken from the luggage carrier above the passenger seats and not from her. Indisputably, We have two opposing versions of what actually happened at the checkpoint in Km. 16, Acop, Tublay, Benguet, resulting in the accused-appellant's apprehension, that of the prosecution and that of the defense. In situations like this, the matter of assigning values to the testimony of

witnesses is best performed by the trial courts because, unlike appellate courts, they can weigh such testimony in the light of the demeanor, conduct and attitude of the witnesses at the trial.[21] The exception is when the trial court has overlooked certain facts of substance and value that, if considered, might affect the result,[22] which We do not find in the instant case.

Moreover, accused-appellant's defense was weakened by the fact that her witness Nestor Yangkin contradicted her on the matter of the 10 sacks of vegetables appellant claims to have brought with her at the time of her arrest. Appellant claims she loaded the sacks of vegetables on the bus and tried to pay for its fare, but that conductor Yangkin, put her off. Yangkin claims otherwise: the sacks of vegetables were loaded by a man who told him that the fare for the sacks will be paid upon arrival in Baguio City, and that no one on the bus offered to pay for the same.

In weighing contrary declarations and statements, greater weight must generally be given to the positive testimonies of the prosecution witnesses than the denials of the accused-appellant.[23]

Given the discrepancy on this point, the trial court correctly disregarded the corroborative testimony of Nestor Yangkin. The matter of the ownership of the 10 sacks of vegetables is material since appellant's reason for being on the bus was to deliver these sacks to Baguio City. If the sacks of vegetables are not hers, then the only conclusion that can be drawn is that she was on her way to Baguio City to sell the marijuana found in her possession.

As to the alleged discrepancies in the prosecution's case, such as the color of the stripes of the bag which contained the marijuana and whether the items seized from accused-appellant were marijuana leaves or marijuana fruit tops, these are minor in character and do not detract from the prosecution's case since it was shown by the Receipt of Property Seized,[24] which was signed by accused-appellant, that these were the very items taken from her at the time of her arrest.

WHEREFORE, finding no error in the decision appealed from, the same is hereby **AFFIRMED** in toto. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Melo, JJ., concur.
Padilla, J., see dissenting opinion.

[1] Testimony of Sgt. Oscar Parajas, T.S.N., August 3, 1988, pp. 3-6.

[2] *Id.*, pp. 6-9.

[3] *Id.*, pp. 10-11, 15.

[4] Exhibit "D".

[5] T.S.N., August 3, 1988, pp. 15-18.

[6] Exhibit "E".

[7] T.S.N., September 13, 1988, pp. 25-29.

[8] *Id.*, pp. 34-37.

[9] Decision, pp. 3-4.

[10] Exhibit "G".

[11] Exhibit "G-1".

[12] Exhibit "B".

[13] Exhibit "B-1".

[14] See the dissent of then Justice (now Chief Justice) Andres R. Narvasa in *People vs. Malmstedt*, 198 SCRA 401, 413.

[15] See *Carroll vs. U.S.*, 267 U.S. 132, 153 (1925).

[16] Dissent of the Chief Justice Narvasa, *supra* note 14, 198 SCRA 401, 414.

[17] *Carrol vs. U.S.*, *supra*.

[18] *Valmonte vs. de Villa*, 185 SCRA 665, at 670, citing *Dyke v. Taylor*, 361 U.S. 216, 20 L Ed 538, 88 S Ct 1472.

[19] *Dimaisip vs. Court of Appeals, et al.*, 193 SCRA 373, 382. (1991).

[20] *Id.*

[21] *People vs. Catalino*, 22 SCRA 1091, 1098.

[22] *People vs. Cabling*, 74 SCRA 285.

[23] *People vs. Barbano*, 76 Phil 702.

[24] Exhibit "G".

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DISSENTING OPINION

PADILLA, J.:

Although there is a similarity in the factual circumstances of the case at bar with those of the *Malmstedt* case (GR No. 91107, 19 June 1991, 198 SCRA 101) where the Court upheld the validity of the warrantless search, however, in the present case, I am of the view that the information alone received by the NARCOM agents, without other suspicious circumstances surrounding the accused, did not give rise to a probable cause justifying the warrantless search made on the bag of the accused.

In the *Malmstedt* case, it will be recalled that no extensive search was immediately made of the personal effects of the accused. It was only after the NARCOM agents noticed a bulge on the waist of the accused (causing them to suspect that he was carrying a gun) and only after he failed or refused to present his passport when required to do so, that a warrantless search was made of the personal effects of the accused. In other words, the information received by the NARCOM agents that a certain Caucasian travelling from Sagada to Baguio City was carrying prohibited drugs together with the suspicious failure or refusal of the accused to present his passport, supplied the probable cause that reasonably led the NARCOM agents to believe that the said accused was then and there committing a crime. Thus -

“Warrantless search of the personal effects of an accused has been declared by this Court as valid, because of

existence of probable cause, where the smell of marijuana emanated from a plastic bag owned by the accused, or where the accused was acting suspiciously, and attempted to flee.”

XXXX XXXX XXXX

“The receipt of information by NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession, plus the suspicious failure of the accused to produce his passport, taken together as a whole, led the NARCOM officers to reasonably believe that the accused was trying to hide something illegal from the authorities. From these circumstances arose a probable cause which justified the warrantless search that was made on the personal effects of the accused. In other words, the acts of the NARCOM officers in requiring the accused to open his pouch bag and in opening one of the wrapped objects found inside said bag (which was discovered to contain hashish) as well as the two (2) travelling bags containing two (2) teddy bears with hashish stuffed inside them, were prompted by accused’s own attempt to hide his identity by refusing to present his passport, and by the information received by the NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession. To deprive the NARCOM agents of the ability and facility to act accordingly, including, to search even without warrant, in the light of such circumstances, would be to sanction impotence and ineffectiveness in law enforcement, to the detriment of society.” (198 SCRA 401)

In the case at bar, the NARCOM agents searched the bag of the accused on the basis alone of an information they received that a woman, 23 years of age with naturally curly hair, and 5’2” or 5’3” in height would be transporting marijuana. The extensive search was indiscriminately made on all the baggages of all passengers of the bus where the accused was riding, whether male or female, and whether or not their physical appearance answered the description of the suspect as described in the alleged information. If there really was such an information, as claimed by the NARCOM agents, it is a perplexing thought why they had to search the baggages of ALL passengers, not only the bags of those who appeared to answer the description of the woman suspected of carrying marijuana.

Moreover, the accused was not at all acting suspiciously when the NARCOM agents searched her bag, where they allegedly found the marijuana.

From the circumstances of the case at bar, it would seem that the NARCOM agents were only fishing for evidence when they searched the baggages of all the passengers, including that of the accused. They had no probable cause to reasonably believe that the accused was the woman carrying marijuana alluded to in the information they allegedly received. Thus, the warrantless search made on the personal effects of herein accused on the basis of mere information, without more, is to my mind bereft of probable cause and therefore, null and void. It follows that the marijuana seized in the course of such warrantless search was inadmissible in evidence.

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