

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LO HO WING ALIAS PETER LO, LIM CHENG HUAT ALIAS ANTONIO LIM AND REYNALDO TIA Y SANTIAGO, DEFENDANTS. LO HO WING ALIAS PETE...

G.R. No. 88017. January 21, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This case involves the unlawful transport of metamphetamine, a regulated drug under Republic Act No. 6425, as amended. One of its derivatives is metamphetamine hydrochloride, notoriously known in street parlance as "shabu" or "poor man's cocaine."

Appellant Peter Lo, together with co-accused Lim Cheng Huat alias Antonio Lim and Reynaldo Tia, were charged with a violation of Section 15, Article III of the aforementioned statute, otherwise known as the Dangerous Drugs Act of 1972, before Branch 14 of the Regional Trial Court of Pasay City. Only appellant and co-accused Lim Cheng Huat were convicted. They were sentenced to suffer life imprisonment, to pay a fine of P25,000.00 each, and to pay the costs. Their co-accused Reynaldo Tia was discharged as a state witness. The pertinent portion of the information reads as follows:

"That on or about the 6th day of October, 1987, in Pasay City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without authority of law, did then and there willfully, unlawfully and feloniously deliver, dispatch or transport 56 teabags of Metamphetamine, a regulated drug.

"Contrary to law."[1]

The antecedent facts of the case as found by the trial court are as follows:

In July 1987, the Special Operations Group, a unit of the Criminal Investigation Service (CIS) of the Philippine Constabulary (PC), received a tip from one of its informers about an organized group engaged in the importation of illegal drugs, smuggling of contraband goods, and gunrunning. After an evaluation of the information thus received, a project codenamed "OPLAN SHARON 887" was created in order to bust the suspected syndicate.

As part of the operations, the recruitment of confidential men and "deep penetration agents" was carried out to infiltrate the crime syndicate. One of those recruited was the discharged accused, Reynaldo Tia (hereinafter referred to as Tia).

Tia was introduced to his co-accused Lim Cheng Huat (hereinafter referred to as Lim) by another confidential agent named George on August 3, 1987. Lim expressed a desire to hire a male traveling companion for his business trips abroad. Tia offered his services and was hired.

Lim and Tia met anew on several occasions to make arrangements for a trip to China. In the course of those

meetings, Tia was introduced to Peter Lo (hereinafter referred to as appellant), whom Tia found out to be the person he was to accompany to China in lieu of Lim.

As a "deep penetration agent," Tia regularly submitted reports of his undercover activities on the suspected criminal syndicate. Meanwhile, the officer-in-charge of OPLAN SHARON 887, Captain Luisito Palmera, filed with his superiors the reports submitted to him, and officially informed the Dangerous Drugs Board of Tia's activities.

On October 4, 1987, appellant and Tia left for Hongkong on board a Philippine Airlines flight. Before they departed, Tia was able to telephone Captain Palmera to inform him of their expected date of return to the Philippines as declared in his round-trip plane ticket - October 6, 1987 at two o'clock in the afternoon.

The day after they arrived in Hongkong, Tia and appellant boarded a train bound for Guangzhou, in the People's Republic of China. Upon arriving there, they checked in at a hotel, and rested for a few hours. The pair thereafter went to a local store where appellant purchased six (6) tin cans of tea. Tia saw the paper tea bags when the cans were opened for examination during the purchase. Afterwards, they returned to the hotel. Appellant kept the cans of tea in his hotel room. That evening, Tia went to appellant's room to talk to him. Upon entering, he saw two other men with appellant. One was fixing the tea bags, while the other was burning a substance on a piece of aluminum foil using a cigarette lighter. Appellant joined the second man and sniffed the smoke emitted by the burning substance. Tia asked the latter what they would be bringing back to the Philippines. He was informed that their cargo consisted of Chinese drugs. Tia stayed in the room for about twenty minutes before going back to his room to sleep.

The next day, October 6, 1987, the two returned to Manila via a China Airlines flight. Appellant had with him his red traveling bag with wheels. Before departing from Guangzhou however, customs examiners inspected their luggage. The tin cans of tea were brought out from the traveling bag of appellant. The contents of the cans were not closely examined, and appellant was cleared along with Tia.

The plane landed at the Ninoy Aquino International Airport (NAIA), then named Manila International Airport, on schedule. Lim met the newly-arrived pair at the arrival area. Lim talked to appellant, while Tia, upon being instructed, looked after their luggage. After Lim and appellant finished their conversation, the latter hailed a taxicab. Appellant and Tia boarded the taxicab after putting their luggage inside the back compartment of the vehicle. Lim followed in another taxi cab.

Meanwhile, a team composed of six operatives headed by Captain Palmera was formed to act on the tip given by Tia. On the expected date of arrival, the team proceeded to the NAIA. Captain Palmera notified the Narcotics Command (NARCOM) Detachment at the airport for coordination. After a briefing, the operatives were ordered to take strategic positions around the arrival area. Two operatives stationed just outside the arrival area were the first ones to spot the suspects emerging therefrom. Word was passed on to the other members of the team that the suspects were in sight. Appellant was pulling along his red traveling bag while Tia was carrying a shoulder bag. The operatives also spotted Lim meeting their quarry.

Upon seeing appellant and Tia leave the airport, the operatives who first spotted them followed them. Along Imelda Avenue, the car of the operatives overtook the taxicab ridden by appellant and Tia and cut into its path forcing the taxi driver to stop his vehicle. Meanwhile, the other taxicab carrying Lim sped away in an attempt to escape. The operatives disembarked from their car, approached the taxicab, and asked the driver to open the baggage compartment. Three pieces of luggage were retrieved from the back compartment of the vehicle. The operatives requested from the suspects permission to search their luggage. A tin can of tea was taken out of the red traveling bag owned by appellant. Sgt. Roberto Cayabyab, one of the operatives, pried the lid open, pulled out

a paper tea bag from the can and pressed it in the middle to feel its contents. Some crystalline white powder resembling crushed alum came out of the bag. The sergeant then opened the tea bag and examined its contents more closely. Suspecting the crystalline powder to be a dangerous drug, he had the three traveling bags opened for inspection. From the red traveling bag, a total of six (6) tin cans were found, including the one previously opened. Nothing else of consequence was recovered from the other bags. Tia and appellant were taken to the CIS Headquarters in Quezon City for questioning.

Meanwhile, the second taxicab was eventually overtaken by two other operatives on Retiro Street, Quezon City. Lim was likewise apprehended and brought to the CIS Headquarters for interrogation.

During the investigation of the case, the six tin cans recovered from the traveling bag of appellant were opened and examined. They contained a total of fifty-six (56) paper tea bags with white crystalline powder inside instead of tea leaves.

The tea bag opened by Sgt. Cayabyab during the search and seizure was sent to the PC-INP Crime Laboratory for preliminary examination. Tests conducted on a sample of the crystalline powder inside the tea bag yielded a positive result that the specimen submitted was metamphetamine. Samples from each of the fifty-six (56) tea bags were similarly tested. The tests were also positive for metamphetamine. Hence, the three suspects were indicted.

In rendering a judgment of conviction, the trial court gave full credence to the testimonies of the government anti-narcotics operatives, to whom the said court applied the well-settled presumption of regularity in the performance of official duties.

Appellant now assigns three errors alleged to have been committed by the trial court, namely:

"I.

THE TRIAL COURT ERRED IN NOT DECLARING THE SEARCH AND SEIZURE ON THE ACCUSED AS ILLEGAL.

"II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF DELIVERING, DISPATCHING OR TRANSPORTING METAMPHETAMINE, A REGULATED DRUG.

"III.

THE TRIAL COURT ERRED IN DISCHARGING REYNALDO TIA TO TESTIFY FOR THE PROSECUTION."

We affirm.

Anent the first assignment of error, appellant contends that the warrantless search and seizure made against the accused is illegal for being violative of Section 2, Article III of the Constitution. He reasons that the PC-CIS officers concerned could very well have procured a search warrant since they had been informed of the date and time of arrival of the accused at the NAIA well ahead of time, specifically two (2) days in advance. The fact that the search and seizure in question were made on a moving vehicle, appellant argues, does not automatically make the warrantless search herein fall within the coverage of the well-known exception to the rule of the necessity of a valid warrant to effect a search because, as aforementioned, the anti-narcotics agents had both time and opportunity to secure a search warrant.

The contentions are without merit. As correctly averred by appellee, that search and seizure must be supported by a valid warrant is not an absolute rule. There are at least three (3) well-recognized exceptions thereto. As set forth

in the case of *Manipon, Jr. vs. Sandiganbayan*,^[3] these are: [1] a search incidental to an arrest, [2] a search of a moving vehicle, and [3] seizure of evidence in plain view (emphasis supplied). The circumstances of the case clearly show that the search in question was made as regards a moving vehicle. Therefore, a valid warrant was not necessary to effect the search on appellant and his co-accused.

In this connection, We cite with approval the averment of the Solicitor General, as contained in the appellee's brief, that the rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge - a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity.^[4] We might add that a warrantless search of a moving vehicle is justified on the ground that "it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."^[5]

In the instant case, it was firmly established from the factual findings of the trial court that the authorities had reasonable ground to believe that appellant would attempt to bring in contraband and transport it within the country. The belief was based on intelligence reports gathered from surveillance activities on the suspected syndicate, of which appellant was touted to be a member. Aside from this, they were also certain as to the expected date and time of arrival of the accused from China. But such knowledge was clearly insufficient to enable them to fulfill the requirements for the issuance of a search warrant. Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.

The second assignment of error is likewise lacking in merit. Appellant was charged and convicted under Section 15, Article III of Republic Act No. 6425, as amended, which reads:

"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, dispose, deliver, transport or distribute any regulated drug (emphasis supplied)."

The information charged the accused of delivering, transporting or dispatching fifty-six (56) tea bags containing metamphetamine, a regulated drug. The conjunction "or" was used, thereby implying that the accused were being charged of the three specified acts in the alternative. Appellant argues that he cannot be convicted of "delivery" because the term connotes a source and a recipient, the latter being absent under the facts of the case. It is also argued that "dispatching" cannot apply either since appellant never sent off or disposed of drugs. As for "transporting," appellant contends that he cannot also be held liable therefor because the act of transporting necessarily requires a point of destination, which again is non-existent under the given facts.

The contentions are futile attempts to strain the meaning of the operative acts of which appellant and his co-accused were charged in relation to the facts of the case. There is no doubt that law enforcers caught appellant and his co-accused in flagrante delicto of transporting a prohibited drug. The term "transport" is defined as "to carry or convey from one place to another."^[6] The operative words in the definition are "to carry or convey." The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed. It is immaterial whether or not the place of destination is reached. Furthermore, the argument of appellant gives rise to the illogical conclusion that he and his co-accused did not intend to bring the metamphetamine anywhere, i.e. they had no place of destination.

The situation in the instant case is one where the transport of a prohibited drug was interrupted by the search and arrest of the accused. Interruption necessarily infers that an act had already been commenced. Otherwise, there would be nothing to interrupt.

Therefore, considering the foregoing, since the information included the acts of delivery, dispatch or transport, proof beyond reasonable doubt of the commission of any of the acts so included is sufficient for conviction under Section 15, Article III of Republic Act No. 6425, as amended.

Moreover, the act of transporting a prohibited drug is a *malum prohibitum* because it is punished as an offense under a special law. It is a wrong because it is prohibited by law. Without the law punishing the act, it cannot be considered a wrong. As such, the mere commission of said act is what constitutes the offense punished and suffices to validly charge and convict an individual caught committing the act so punished, regardless of criminal intent.[7]

As to the third assigned error, appellant contests the discharge of accused Reynaldo Tia to testify for the prosecution on the ground that there was no necessity for the same. Appellant argues that deep penetration agents such as Tia "have to take risks and accept the consequences of their actions." [8] The argument is devoid of merit. The discharge of accused Tia was based on Section 9, Rule 119 of the Rules of Court, which reads in part:

"SEC. 9. Discharge of the accused to be state witness. - When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state x x x. (emphasis supplied)."

As correctly pointed out by the Solicitor General, the discharge of an accused is left to the sound discretion of the lower court. The trial court has the exclusive responsibility to see that the conditions prescribed by the rule exist.[9] In the instant case, appellant does not allege that any of the conditions for the discharge had not been met by the prosecution. Therefore, the discharge, as ordered by the trial court, stands.

Finally, appellant alleges that the testimony of Sgt. Roberto Cayabyab regarding the facts surrounding the commission of the offense proves that the discharge of accused Tia is unnecessary. The allegation is baseless. Appellant himself admits that the sergeant's testimony corroborates the testimony of the discharged accused. The fact of corroboration of the testimonies bolsters the validity of the questioned discharge precisely because paragraph (a) of the aforequoted rule on discharge requires that the testimony be substantially corroborated in its material points. The corroborative testimony of the PC-CIS operative does not debunk the claim of the prosecution that there is absolute necessity for the testimony of accused Tia.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto and the appeal is thereby **DISMISSED**. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 45, Rollo.

[2] Page 176, Rollo.

[3] 143 SCRA 267 (1986).

[4] Pages 244-245, Rollo.

[5] *Carroll vs. United States*, 267 U.S. 132, 153 (1925).

[6] *Black's Law Dictionary*, 1979 edition, page 1344.

[7] People vs. Bayona, 61 Phil. 181 (1935).

[8] Page 189, Rollo.

[9] People vs. Court of Appeals, 124 SCRA 338 (1983); People vs. Ibañez, 92 Phil. 933 (1953).

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