

JOHNNY DEMAISIP, PETITIONER, VS. COURT OF APPEALS, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 89393. January 25, 1991*

Ponente: SARMIENTO, J.

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The petitioner assails the decision of the Court of Appeals,[1] affirming that of the trial court,[2] finding him guilty of illegal possession of marijuana defined and punished by Section 8, Article II, of Republic Act No. 6425, as amended by Batas Blg. 179.

The facts are as follows:

"Acting on a confidential information that Johnny Demaisip had in his possession marijuana and brownies cake (spiced with marijuana ingredient), a surveillance was Conducted at the vicinity of the residence of the accused at No. 3, Mango Street, Carmen, Cagayan de Oro City, by the agents of the 10th NARCOTICS REGIONAL UNIT, Narcotics command, AFP, whose office is at the 3rd floor of the City Hall, Cagayan de Oro City. Sgt. Cariño's recollection of the house number, as No. 5, is faulty. It is No. 3. They posted themselves in strategic places at the vicinity of the accused's residence. They were M/Sgt. Dominador Pascua, PC; P/Sgt. Avelino Tampus, INF; Sgt. Reynaldo Miguel, PC, and prosecution witness P/Sgt. Rico Carino, INF. The confidential information, when verified by a 'Task Buy' was found to be positive. A search warrant, upon application was issued by Judge Antonio Orcullo of the Municipal Trial Court in Cities, Cagayan de Oro City. The search warrant, however, has neither been shown nor submitted as part of the evidence for the prosecution. Sgt. Carino mentioned it in his testimony during the trial. The accused admitted that there was a search warrant. The police team proceeded to the suspect's place to [verify] if the prohibited stuff was still in the residence of the accused. A test buy was made on October 11, 1983 through another confidential informer who was directed to buy ten-pesos worth of dried marijuana leaves from Joey - the brother of the accused. The agents, according to Sgt. Carino, were able to buy from Joey Demaisip ten-pesos worth of Marijuana leaves. Joey Demaisip upon interrogation, after the test buy, disclosed that the marijuana which he has sold came from their residence along Mango Street. The police-constabulary team forthwith proceeded to the Demaisip residence. The team brought along Cirilo Padla, Sr., a barangay councilman of Carmen, Cagayan de Oro City. The search warrant was presented to the father of Johnny Demaisip - Atty. Peter Demaisip who was then in the house. A search was thereupon made in one of the rooms of the Demaisip residence. Inside a room [in] the ground floor, on top of a cabinet, Sgt. Carino found a small plastic bag pocket containing dried marijuana leaves of approximately ten (10) (10) [grams]. The plastic pocket was wrapped in a newspaper. Johnny Demaisip, who was present, was confronted with the find, and he readily admitted that the marijuana was his. Further search yielded no other quantity of marijuana. Sgt. Rico Carino and his companions brought Johnny Demaisip to Narcom office at the City Hall for further interrogation. At the team's office, a tactical interrogation was made, [preceded] by [an information of] Johnny Demaisip of his constitutional right to remain silent, and to have counsel of his choice, and was further informed that the statement he would give might be used as evidence for or against him. Johnny Demaisip stated that he needed no counsel and that he was going to tell the truth. He did not ask for the presence of his father, who is a lawyer. (The father is the defense counsel in this case). Then and there the statement of Johnny Demaisip was reduced to two pages of

transcript (Exhibits A and A-1) in Visayan which is the dialect spoken and known by the accused. Sgt. Carino who conducted the investigation and who typed the statement, asked Johnny Demaisip if he was willing to sign it and he expressed willingness to sign it. It was prepared at about four o'clock in the afternoon of October 11, 1983. The statement was finished but could not then be brought to the Clerk of Court (of the Municipal Trial Court in Cities) [because it] was already closed. It was kept by Carino until the next day. In the morning of the next day, Johnny Demaisip was directed by Sgt. Carino to bring his statement to the Clerk of Court for his signing and swearing to it before said officer. Carino stayed outside the office of the Clerk of Court Evelyn Gamotin Nery at the City Hall. After the lapse of about thirty to forty-five minutes Johnny Demaisip came out of clerk of Court Nery's office bringing with him his statement already subscribed and sworn to by him before MTCC Clerk of Court Evelyn Gamotin Nery. The date of the jurat is '12th day of October 1983.' Below the jurat is the following certification 'This is to certify that I have personally examined the herein affiant and satisfied that he have (sic) read and fully understood his statement'. (Sgd.) alf [sic] of Mamotin Nery, MTCC Clerk of Court, Cagayan de Oro City'.

"Sgt. Carino, who had waited outside the office of the Clerk of Court Nery while the accused was inside, got from the accused his statement (Exh. A & A-1) already signed by him and the Clerk of Court. He and the accused returned to Carino's office together, where the accused was next placed in the NARCOM's detention cell. Subsequently, Johnny Demaisip's sworn statement (Exhibits A & A-1) and other papers were turned over to the office of the City Fiscal for further action.

"The plastic bag with its contents was submitted for laboratory examination at the PC Crime Laboratory, Camp Evangelista, Patag, Cagayan de Oro City, by M/Sgt. Dominador Pascua, PC, for in behalf of Major Patricion E. Bara, Jr., PC, C.O. of the 10th NARCOTICS REGIONAL UNIT, NARCOTICS COMMAND, AFP, Cagayan de Oro POLICE STATION under a written request (Exhibit C) which was received at the PC Crime Laboratory Regional Unit at Camp Evangelista, Cagayan de Oro City on October 12, 1983 at 10:52 A.M. The specimen which had been submitted for laboratory examination is described as 'one (1) small plastic bag containing suspected dried marijuana leaves with a weight of ten (10) grams.'" (Decision, pp. 1-4).[3]

The petitioner here assigns the following errors:

- THE RESPONDENT COURT OF APPEALS ERRED IN FINDING THE MATTER HERE SEIZED AS A "MARIJUANA", A PROHIBITED DRUG, ON THE BASIS OF AN INCONCLUSIVE EXAMINATION.
- ASSUMING IT TO BE "MARIJUANA", A PROHIBITED DRUG, THE RESPONDENT COURT OF APPEALS ERRED IN ADMITTING IT IN EVIDENCE.
- IT ERRED TOO IN ADMITTING THE CONFESSION OF ACCUSED-APPELLANT IN EVIDENCE DESPITE DEMAND [sic] TO BE ASSISTED BY COUNSEL[4]

As to the first assigned error, the petitioner argues the prosecution had failed to prove that the substance seized from his premises as a result of the police search was in fact, marijuana, in the absence, allegedly, of findings, that: (1) it was of the female, rather than male, gender, which is allegedly the "marijuana" referred to by law; (2) it contained tetrahydrocannabinol, the active ingredient of marijuana, that is, that which produces the physiological or hallucinogenic effect defined by law.

There is no merit in either contention.

Under the pertinent provisions of Republic Act No. 6425, as amended, "marijuana" or "Indian hemp" "embraces every kind, class, genus or specie of the plant cannabis sativa L., including cannabis americana, hashish, bhang, guaza, churrus and ganjab, and embraces every kind, class and character thereof, whether dried or fresh and flowering or fruiting tops or any parts or portions of the plant, seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever." [5] It is clear to us that as to gender, the

statute makes no distinction, and from its very language, the term covers "every kind, class, genus or specie" of the plant in question. Hence, it can not be successfully argued that the prosecution need show that the marijuana subject of prosecution belongs to the female class. The fact that the Government had marijuana, male or female, in its hands is sufficient to start a prosecution.

There is no arguing the fact that based on the examination and testimony of P/Lt. Marilene Maglague, forensic analyst of the Philippine Constabulary crime laboratory, the substance found in the petitioner's possession was marijuana. We quote:

P/Lt. Marilene LL. Maglague, INP, Forensic analyst and OIC Chemistry Section, of the Philippine Constabulary Crime Laboratory Regional Unit 10, performed the requested laboratory examination on October 12, 1983 to determine the presence of marijuana in the specimen submitted. The qualitative examination conducted by her on the aforementioned specimen (Exhibit D) yielded the positive result to the test for the presence of marijuana, a prohibitive drug. Lt. Maglague first physically examined the specimen submitted and then subjected it to a series of chemical examinations which she described as the DUQUENOIS-LEVINE test, using chemical reagents and the petroleum-ether test, both of which she personally performed and had yielded positive results as to the presence of marijuana, a prohibited drug. She submitted and testified on her written Chemistry Report No. C-083-83 marked as Exhibit "B". [RTC Decision, pp. 3 & 4][6]

Parenthetically, the petitioner can not validly insist that the authorities must perform three alleged kinds of examinations, i.e., the microscopic, chemical, and chromatographic tests, in ascertaining the existence of marijuana, as this Court supposedly ruled in the case of *People v. Aminnudin*.^[7] First, Aminnudin did not require resort to these three kinds of tests, to sustain a prosecution for a drug rap. Second, there is no law that imposes such recourses on forensic analysts. The law leaves them, on the other hand, enough freedom to conduct their work freely, based on their qualifications and individual competence, and the law can not impose requirements that would violate that freedom.

The petitioner can not maintain either that the three above tests are necessary to enable the examiner "to make sure"^[8] that the thing before him is marijuana. Based on the PC crime laboratory's examination, that "thing" was indeed marijuana. If the petitioner is of a contrary opinion, he must show, and he has failed here, that it was not marijuana.

Moreover, it has been held that:

xxx xxx xxx

The accused's argument is not persuasive. There is no rule of evidence which requires a forensic chemistry report to set down the micro-details which the defense is apparently demanding. Such details are appropriately matters for cross-examination of the person presented as the forensic chemist who had performed the tests, especially where the defense may have doubts as to the technical competence of the witness presented. In the case at bar, the defense has not asserted that Forensic Chemist De la Cruz was not technically competent to carry out or that she had not actually carried out, microscopic, chemical and chromatographic examination of the suspected sticks of marijuana. In fact, the defense did ask De la Cruz about the "standard procedure in which the NBI conducts its examination of drugs submitted for laboratory tests. Will you please tell the Honorable Court?": The trial court asked her to so do "step by step." Witness De la Cruz started to do so. She was promptly sidetracked by defense counsel who was at that time far more interested in the bureaucratic procedure by which the suspected marijuana cigarettes actually reached Forensic Chemist De la Cruz. If she did not go to specific, detailed operating procedures in her cross-examination, it was up to the defense to compel her to do so by appropriate questioning if the defense really thought those detailed scientific procedures material and important for its case. The defense did not do so; indeed, the defense did not give her a

chance to do so. Finally, and in any event, NBI Forensic Chemist De la Cruz also has in her favor the presumption that she had regularly performed her official duty, which was to carry out those tests in accordance with standard accepted procedures.[9]

If indeed, the accused was possessed of doubts that Lt. Maglague might have been mistaken, or is incompetent or negligent, the next best thing he should have done was to subject her to a rigid cross-examination, otherwise, her findings pass as evidence. He can not now insist that Lt. Maglague was incompetent (for using but two kinds of tests), or fault the trial court for accepting her findings and holding that they are competent evidence, when he has failed to show at the trial that those findings are, on the contrary, vague and can not suffice for a conviction. It is too late in the day to do so.

As to the alleged failure of the prosecution to prove the existence of tetrahydrocannabinol, suffice it to say that the existence of this ingredient is presumed from the existence of Indian hemp. The lower court has found as a fact that there was marijuana--and inevitably, one that contains tetrahydrocannabinol--and as a general rule, this Court defers to the trial court as to factual findings.

The Court can not accept the petitioner's argument that the Government must satisfy itself that any Indian hemp confiscated produces the "physiological effects" referred to by the Dangerous Drugs Act before it can be correctly categorized as a "dangerous drug." The Act itself presumes that all classes of marijuana produce these effects otherwise, it is not marijuana but some other plant. The Act does not ban marijuana, "provided it produces these effects."

The Court is not of course closing its mind on scientific possibilities that marijuana is either malignant or benign, as it were, and apparently, Republic Act No. 6425, as amended, does not do so either, under its "reclassification provision," which we quote:

SEC. 40. Reclassification, Addition or Removal of Any Drug from the List of Dangerous Drugs. -- The Board shall give notice to the general public of the reclassification, addition to or removal from the list of any drug by publishing such notice in any newspaper of general circulation once a week for two consecutive weeks.

The effect of such reclassification, addition or removal shall be as follows:

- (1) In case a prohibited drug is reclassified as regulated, the penalties for violations of this Act involving the latter shall, in case of conviction, be imposed in all pending criminal prosecutions;
- (2) In case a regulated drug is reclassified as prohibited, the penalties for violations of this Act involving regulated drugs shall, in case of conviction, be imposed in all pending criminal prosecutions;
- (3) In case of the addition of a new drug to the list of dangerous drugs, no criminal liability involving the same under this Act shall arise until after the lapse of fifteen (15) days from the last publication of such notice; and
- (4) In case of removal of a drug from the list of dangerous drugs, all pending criminal prosecutions involving such a drug under this Act shall forthwith be dismissed.[10]

in particular, its "removal" provisions under the last paragraph above. If indeed, marijuana is therefore either dangerous or harmless, the law allows the Dangerous Drugs Board to make the proper reclassification. However, unless and until the Board acts, the courts must read the law based on its plain terms and conditions.

The next question is whether or not the petitioner's premises were validly searched. The petitioner stresses the fact that the alleged search warrant was never produced in court, and that in the absence thereof, it was as if the authorities were armed with none at the time of the search.

It is a fact that no warrant was shown in court, although there were supposed testimonies of its existence. The

Court is of the opinion nonetheless that this is not necessarily fatal. As found by the Court of Appeals:

At any rate, objections to the legality of the search warrant and to the admissibility of the evidence obtained thereby were deemed waived when no objection to the legality of the search warrant was raised during the trial of the case nor to the admissibility of the evidence obtained through said warrant.[11]

It is indeed fundamental that the objections are a matter of privilege, which may be waived.[12] Amid a waiver, the court is duty bound to admit the evidence, in this case, testimony as to the existence of a piece of paper.

The petitioner's final objections as to the authorities' failure to apprise him of his right to counsel when he wrote his confession, is however, well-taken. We have indeed held that the accused's waiver of his rights and signification of a willingness to make a confession are ceremonies that require the presence of counsel.[13] However, there was other evidence against the petitioner, apart from his alleged confession, notably, the testimonies of the searching officers who found, indeed, marijuana in his premises. Hence, even if we disregard his extrajudicial confession, we can not reject the testimonies of the prosecution witnesses, as culled by the trial court and affirmed by the Appellate Court. And like the Appellate Court, we affirm the lower court's decision.

WHEREFORE, premises considered, the decision appealed from is AFFIRMED. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Paras, J., no part.

[1] Nocon, Rodolfo, P.J.; Paras, Gloria and Cacdac, Bonifacio, JJ., Concurring.

[2] Regional Trial Court, Misamis Oriental, Branch XVIII.

[3] Rollo, 15-18.

[4] Id., 6.

[5] Rep. Act No. 6425, sec. 2, par. (i).

[6] Rollo, id., 39-40.

[7] No. 74869, July 6, 1988, 163 SCRA 402.

[8] Rollo, id., 52.

[9] People v. Borja, G.R. No. 71838, February 26, 1990, 182 SCRA 581, 589-590.

[10] Rep. Act No. 6425, supra, sec. 40.

[11] Rollo, id., 19.

[12] 6 MORAN, COMMENTS ON THE RULES OF COURT 125 (1980 ed.)]

[13] Morales v. Moncupa, Nos. 61016-61107, April 26, 1983, 121 SCRA 538; People v. Galit, No. 51770, March 20, 1985, 135 SCRA 465; People v. Decierdo, No. L-46956, May 7, 1987, 149 SCRA 496.

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