

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO BARROS, ACCUSED-APPELLANT.

G.R. No. 90640. March 29, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Bonifacio Barros was charged with violating Section 4 of R.A. No. 6425, as amended (known as the Dangerous Drugs Act of 1972), in an information which read as follows:

"That on or about September 6, 1987, from Chackchakan, Bontoc, Mountain Province, to Nacagang, Sabangan, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused while being a passenger in a Dangwa Bus with Plate No. ABZ 242, destined for Baguio City, without lawful authority did then and there willfully, unlawfully and feloniously carry with him as part of his baggage and transport about four (4) kilos of dried marijuana which the accused intended for distribution and sale at Baguio City, knowing fully well that said marijuana is a prohibited drug or [a] source of [a] prohibited drug.

Contrary to law."[1]

After trial, the trial court convicted Bonifacio Barros of violation of Section 4 of R.A. No. 6425 as amended and sentenced him to suffer the penalty of reclusion perpetua[2] and to pay a fine of P20,000.00.

Barros now appeals from the judgment of conviction and essentially asks this Court to determine -?

"Whether the [trial] court deprived [the] accused of his right to due process by:

- (1) ignoring manifest absence of the mandatory warrant in the arrest and search of the accused;
- (2) admitting confessions extracted from the accused after two hours of interrogation conducted by four (4) soldiers one after the other under intimidating circumstances; and
- (3) misappreciation of facts."[3]

The relevant facts as found by the trial court and as set forth in the court's decision are as follows:

"That on September 6, 1987, M/Sgt. Francis Yag-as and S/Sgt. James Ayan, both members of the P.C. Mountain Province Command, rode the Dangwa Bus bearing Plate No. ABZ-242 bound for Sabangan, Mountain Province. Upon reaching Chackchakan, Bontoc, Mountain Province, the bus stopped and both M/Sgt. Yag-as and S/Sgt. Ayan, who were seated at the back, saw accused carrying a carton, board the bus and seated himself on seat No. 18 after putting the carton under his seat. Thereafter, the bus continued and upon reaching Sabangan, M/Sgt. Yag-as and S/Sgt. Ayan before they alighted, it being their station, called C2C [Fernando] Bongyao to inspect the carton under seat No. 18. After C2C Bongyao inspected the carton, he found out that it contained marijuana and he asked the passengers [who] the owner of the carton [was] but nobody answered. Thereafter, C2C Bongyao alighted with the carton and S/Sgt. Ayan and C2C Bongyao invited the herein accused to the detachment for questioning as accused was the suspected owner of the carton containing marijuana. As both P.C. officers Yag--as and Ayan saw accused, Bonifacio Barros carrying that

same carton when he boarded the bus at Chackchakan. That upon entering the detachment the carton was opened in the presence of accused and accused Bonifacio Barros was asked if he owned the carton of marijuana and accused denied [this]. That when accused denied ownership of the carton of marijuana, the P.C. officers called for the bus conductor who pinpointed to Bonifacio Barros as the owner of the carton of marijuana. That during the oral investigation of accused, he finally admitted ownership of the carton (Exhibit 'B') containing [four] 4 paper-wrapped packages of dried marijuana. (Exhibits 'B-1, 'B-2,' 'B-3' and 'B--4').

x x x [A]fter he was orally investigated, [the accused] was brought to the Abatan General Hospital, Bauko, Mountain Province, for physical examination and a Medico Legal Certificate was issued (Exhibits 'F' and 'F-1'), indicating that accused suffered no physical injuries and that accused was probably under the influence of marijuana. That Dra. Danna Aleta inquired from accused Bonifacio Barros if he smoked marijuana and accused admitted having smoked marijuana. That after accused was medically examined, he was escorted by three members of the P.C. to the P.C. detachment at Tadian, Mountain Province, where the carton of marijuana (Exhibit 'B') was also brought. That at Tadian, a seizure receipt was made together with a certification (Exhibit 'C') pointing out the fact that approximately 4 kilos of dried marijuana leaves were from accused Bonifacio Barros and which certification was signed by the accused (Exhibit 'C-1') and subscribed before Judge Romualdo P. Awisan (Exhibit 'C-2'). That in connection with the confiscation of the marijuana subject of the instant case and the apprehension of accused Bonifacio Barros, the P.C. officers who figured in this case namely M/Sgt. Yag-as and S/Sgt. Ayan and C2C Bongyao have correspondingly executed their sworn statements (Exhibits 'A,' 'A-1, 'A--2, 'D,' 'D-1' and 'D-2').

x x x [S]amples of the marijuana were taken from each of the four packages marked Exhibits 'B-1,' 'B-2,' 'B-3' and 'B-4' and placed in four separate envelopes, following an order of the court to that effect and were hand-carried by Police Officer Jack Masilian to Camp Dangwa, La Trinidad, Benguet for laboratory test. That Capt. Carlos Figueroa, the Forensic Expert conducted two kinds of test on the four samples sent by the court and found them to be positive of marijuana as per his report No. D-011-88. (Exhibits 'I' and 'I-1')."[4]

The defense of the accused on the facts consisted of a simple denial of the ownership or possession of the carton box containing the four (4) kilos of marijuana. The trial court summarized the story of the accused in the following manner:

"That accused Bonifacio Barros since 1984 was employed at the Honeymoon Disco Pad, Baguio City. That on September 5, 1987, accused was sent by his Manager, Engineer Arsenio Cuanguy to Bontoc, Mountain Province, to get their records from one Billy Cuanguy at Chackchakan, Bontoc, Mountain Province. That upon arriving at Chackchakan, Bontoc, Mountain Province, accused looked for the residence of Billy Cuanguy and he was pointed to a house where someone was tending a store. That accused asked the man if Billy Cuanguy was there and the man answered that he did not know where Billy went. So accused asked the man if Billy left [in] his room the tapes and records and the man said he did not know. Thereafter, accused asked the man to stay over night in that house where Billy was staying as it was the instruction of his manager. That the following day, September 6, 1987, after taking breakfast, accused, was going back to Baguio. On that morning of September 6, 1987, accused Bonifacio Barros boarded the Dangwa Bus at Chackchakan, Bontoc, Mountain Province bound for Baguio City. That when the Dangwa Bus reached the P.C. Checkpoint, soldiers went inside the bus and checked the baggages. That a soldier fished out a carton under the seat of [the] accused and shouted who owns the carton but nobody answered. Thereafter, the soldier went down with the carton and moments later returned to the bus and called accused Bonifacio Barros to alight from the bus. That Mr. Barros was surprised why he was ordered to alight and accused took his baggage which consisted of a pasiking and went down the bus. That accused was led by the soldiers to a house where his pasiking was taken and his clothes removed and his wallet taken. Accused was made to accept ownership of the carton of marijuana but he refused.

x x x [A]t 11:00 o'clock that same day, September 6, 1987, three soldiers escorted accused to the hospital and from the hospital, they proceeded to the Municipality of Tadian, Mountain Province. That upon reaching

Tadian, accused was brought to the P.C. Camp and there he saw someone typing. Later, the soldiers allegedly presented to accused some papers which he was asked to sign but accused refused. That accused was threatened and if he refused to sign the papers that something will happen to him. That moments later, accused was threatened [by] a soldier [who] pointed a gun to him and told him to sign the paper and because of fear, he had to sign the document marked Exhibit 'C.' Thereafter, the soldiers allegedly threatened again accused and asked him to sign his name on the inside part of the cover of the carton of marijuana. Exhibit 'X' for the court and Exhibit 'B-5' for the prosecution. That after staying at Tadian for one night, accused was brought back to Sabangan and later transferred to the Bontoc Provincial Jail." [5]

Turning to the legal defenses of the accused, we consider first his allegation that the police authorities had impermissibly extracted confessions from him after two (2) hours of interrogation, "under intimidating circumstances," by four (4) soldiers one after the other. The accused complains that he was not informed of his rights to remain silent and to counsel, that he had not waived his rights as an accused person, and that he had signed a confession involuntarily and without the assistance of counsel. He essentially contends that the confession is inadmissible as evidence against him.

We find, however, that it is not necessary to pass upon the above contention of appellant Barros. For the trial court in reaching its judgment of conviction had not taken into consideration the statements which had been obtained from the appellant during the interrogation conducted by the police officers. The trial court, so far as can be determined from its decision, totally disregarded Exhibits "C," "E" and "B-5," the alleged uncounselled confessions. The trial court made very clear the bases of its conclusion that the accused was guilty beyond reasonable doubt of the offense charged; those bases did not include the alleged confessions:

"First - M/Sgt. Francis Yag-as and S/Sgt. James Ayan testified that they saw the accused carrying the carton (Exhibit 'B') when he boarded the bus at Chackchakan, Bontoc, Mountain Province. That the bus conductor pointed to accused at the checkpoint of Sabangan, Mountain Province. That accused is the owner of the carton (Exhibit 'B'). That the carton (Exhibit 'B') which contained four packages of dried marijuana leaves (Exhibits 'B-1', 'B-2', 'B-3' and 'B-4') was fished out from under the seat of the accused which fact was admitted by the accused himself.

Second - That per testimony of Dra. Danna Aleta, she examined accused Bonifacio Barros and that he suffered no physical injuries that would show that the accused was in anyway maltreated by the police authorities, and this fact was also admitted by accused to the effect that he was never harmed by the police nor the soldiers. Dra. Aleta also found that the accused was under the influence of drug[s] and that the accused admitted [to] her that he, accused, smoked marijuana. This is clear evidence that accused is not only a pusher of marijuana but also a user of said prohibited drugs. (See Exhibits 'F' and 'F-1' and TSN - Page 24 - Orpecio).

Third - The samples taken from Exhibits 'B--1', 'B-2', 'B-3' and 'B-4' sent by the court for laboratory test at Camp Dangwa, La Trinidad, Benguet were all positive of marijuana per Report No. D-011-88 (Exhibits 'I' and 'I-1') of Captain Carlos Figueroa, forensic expert.

Lastly, accused's testimony in his own behalf does not impress the court at it lacks the ring of truth. Besides, it is devoid of any corroboration. Our Supreme Court in this respect said:

"The weak and uncorroborated denial of the accused cannot prevail over the clear, positive and straightforward testimony of prosecution witnesses [sic]." (People v. Acelajao, 148 SCRA 142)." [6]

We turn, therefore, to the second legal defense asserted by appellant Barros -- i.e., that his constitutional right against unreasonable searches and seizures had been violated by the police authorities. The relevant constitutional provisions are found in Sections 2 and 3 [2], Article III of the 1987 Constitution which read as follows:

"Sec. 2. 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 witness as he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3. x x x

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

The general rule is that a search and seizure must be carried out through or with a judicial warrant; otherwise such search and seizure becomes "unreasonable" within the meaning of the above quoted constitutional provision.[7] The evidence secured thereby -- i.e., the "fruits" of the search and seizure -- will be inadmissible in evidence "for any purpose in any proceeding." [8]

The requirement that a judicial warrant must be obtained prior to the carrying out of a search and seizure is, however, not absolute. There are certain exceptions recognized in our law, one of which relates to the search of moving vehicles.[9] Peace officers may lawfully conduct searches of moving vehicles -- automobiles, trucks, etc. -- without need of a warrant, it not being practicable to secure a judicial warrant before searching a vehicle, since such vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought.[10] In carrying out warrantless searches of moving vehicles, however, peace officers are limited to routine checks, that is, the vehicles are neither really searched nor their occupants subjected to physical or body searches, the examination of the vehicles being limited to visual inspection. In *Valmonte v. De Villa* [11], the Court stated:

"[N]ot all searches and seizures are prohibited. Those which are reasonable are not forbidden. A reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case.

Where, for example, the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds,⁷ or simply looks into a vehicle,⁸ or flashes a light therein, these do not constitute unreasonable search." (Citations omitted)

When, however, a vehicle is stopped and subjected to an extensive search, such a warrantless search would be constitutionally permissible only if the officers conducting the search have reasonable or probable cause to believe, before the search, that either the motorist is a law-offender or the contents or cargo of the vehicle are or have been instruments or the subject matter or the proceeds of some criminal offense.[12]

This Court has in the past found probable cause to conduct without a judicial warrant an extensive search of moving vehicles in situations where (1) there had emanated from a package the distinctive smell of marijuana; [13] (2) agents of the Narcotics Command ("Narcom") of the Philippine National Police ("PNP") had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; [14] (3) Narcom agents were informed or "tipped off" by an undercover "deep penetration" agent that prohibited drugs would be brought into the country on a particular airline flight on a given date; [15] (4) Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province, had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian, because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; [16] and (5) Narcom agents had received confidential information that a woman having the same physical appearance as that of the accused would be transporting marijuana. [17]

In the case at bar, however, we have been unable to find in the record of this case any circumstance which constituted or could have reasonably constituted probable cause for the peace officers to search the carton box allegedly owned by appellant Barros. The carrying of such a box by appellant onto a passenger bus could not, by

itself, have convinced M/Sgt. Francis Yag-as and S/Sgt. James Ayan either that the appellant was a law violator or the contents of the box were instruments or the subject matter or proceeds of some criminal offense. The carrying of carton boxes is a common practice among our people, especially those coming from the rural areas since such boxes constitute the most economical kind of luggage possible. The peace officers here involved had not received any information or "tip-off" from an informer; no such a "tip-off" was alleged by the police officers before or during the trial. The police officers also did not contend that they had detected the odor of dried marijuana, or appellant Barros had acted suspiciously in the course of boarding the bus and taking a seat during the trip to Sabangan, nor in the course of being asked whether he owned the carton box later ascertained to contain four (4) kilos of marijuana. The testimony of the law enforcement officers who had apprehended the accused (M/Sgt. Francis Yag-as and S/Sgt. James Ayan), and who had searched the box in his possession, (C2C Fernando Bongyao), simply did not suggest or indicate the presence of any such probable cause.

M/Sgt. Francis Yag-as testified as follows:

"Direct Examination by Fiscal Moises Ayochok:

x x x x x x x x

Q: On September 6, 1987, do you recall if you reported for duty?

A: Yes, sir.

Q: And where did you go on the morning of September 6, 1987?

A: I went to Sabangan, sir.

Q: What transportation did you use?

A: Dangwa Bus with Plate No. ABZ-242.

Q: Where did you board the Dangwa Bus?

A: At the Dangwa Terminal at Bontoc.

Q: When you said you boarded the bus with Plate No. ABZ-242 which started for Baguio City from Bontoc, Mountain Province, and while it stopped at Chackchakan, Bontoc, Mountain Province, was there anything that happened.

x x x x x x x x

A: When the bus stopped at Sitio Chackchakan, we saw a person carrying a baggage or carton and boarded the bus then took his seat, seat No. 18.

Q: What was he carrying that time Mr. witness?

A: A carton.

Q: And where did he place that carton which he was carrying?

A: In front of seat No. 18 where he sat.

Q: You mean inside the bus?

A: Yes.

Q: And after this person boarded the bus at sitio Chackchakan and holding a carton and placed it in front of seat No. 18, what happened to the bus afterwards?

A: It proceeded to Sabangan.

Q: And at Sabangan, Mountain Province, what happened, if any?

A: The bus stopped for the routinary checkpoint and inspection.

Q: When they [were at] the routinary checkpoint, what happened?

Atty. Sokoken:

He did not say routinary checkpoint. He said routinary inspection.

Fiscal Ayochok:

We substitute the word inspection with checkpoint to satisfy the objection of counsel.

Q: What happened when you stopped for the routinary inspection?

A: We called C2C Bongyao a member of the detachment to inspect the baggage of the suspect and when C2C ...

Atty. Sokoken:

We request that [the] witness answers the question that he testifies [to] not in the narrative way.

Fiscal Ayochok:

He is answering the question.

Court:

Let the witness finish.

A: When Bongyao inspected the baggage of the suspect and he found out that it contained MJ.

Q: What do you mean MJ?

A: Marijuana.

x x x x x x x x."[18]

For his part, S/Sgt. James Ayan testified as follows:

"Direct Examination:

x x x x x x x x

Q: And in the morning of September 6, 1987, do you recall where you were particularly in the afternoon?

A: In the morning of September 6, 1987, we rode on a Dangwa bus [with Plate] No. ABZ-242 going to Sabangan.

Q: You said we. Who was your companion that time?

A: Master Sgt. Yag-as, sir.

Q: And when this bus reached Chackchakan, Bontoc, Mountain Province, what did you see?

A: We saw a civilian board the bus we were riding carrying a carton.

Q: And where did this civilian who boarded the bus which you were riding on place that carton?

A: He placed the carton under the seat of No. 18.

Q: Inside the bus, Mr. witness?

A: Inside the bus, sir.

Q: And what about the passenger who boarded the bus carrying the carton baggage, where did he go?

A: He sat facing the seat No. 18.

Q: Between seat No. 18 and the seat seated by the civilian who brought the carton, where was the carton exactly located?

A: As far as I know, sir, it was located just beneath seat No. 18.

Q: When this bus which you rode on which the passenger carrying the carton luggage you saw reached Sabangan what happened there?

A: When the bus reached Sabangan that we were riding, it was stopped for routinary inspection.

Q: What happened next?

A: We called C2C Bongyao to inspect the baggage that we have just seen at Chackchakan.

Q: Did he inspect the baggage?

A: Yes, sir.

Q: And what was the contents of that baggage if there was any?

A: It turned out that the contents of the baggage was MJ sir.

Q: You mean marijuana?

A: Yes, sir.

x x x x x x x x

Cross Examination:

x x x x x x x x

Q: You stated that on September 6, 1987, a Dangwa bus stopped at Sabangan, Mt. Province for purposes of military check-up, is that correct?

A: Routinary inspection, sir.

Q: But it was not you who entered the Dangwa bus for routinary check-up?

A: We were there riding in the bus, sir, and we called C2C Bongyao to come.

Q: So your purpose in riding inside the Dangwa bus was actually to see that person carrying this carton which is marked Exhibit 'B'?

A: No, sir, because I am a detachment commander at Sabangan and that is why I called one of my men, sir.

Q: So that you have full knowledge that from Chackchakan, Bontoc, going to Sabangan, there is already marijuana being carried inside that bus?

A: That is only our suspect [should be suspicion], sir.

Q: Would you please tell this Honorable Court why you have not inspected it when you arrived at Alab? Why have you waited to reach Sabangan to inspect it?

A: Because it is the checkpoint, sir, at Nacagang, Sabangan.

Q: Are you now admitting that you do not have authority to inspect the baggage here in Bontoc?

A: We just wanted it checked in Sabangan, sir.

Q: Could you give us a very special reason why you have to wait in Sabangan?

A: Because we are stationed in Sabangan and that is the checkpoint.

Fiscal Ayochok:

Why argue with the witness? It is up for them to check it at the proper checkpoint.

Court:

Sustained.

x x x x x x x x.[19]

The testimony of C2C Fernando Bongyao is much briefer, but equally uninformative:

"Direct Examination:

Q: On September 6, 1987, at around 9:30 a.m., do you recall having reported for duty at Nacagang, Sabangan, Mountain Province?

A: Yes, sir.

Q: And while you were on duty at Nacagang, Sabangan, was there anything unusual that happened that time?

A: Yes, sir.

Q: What was that Mr. witness?

A: When we were on the checkpoint, the bus stopped bearing Plate No. ABZ-242.

Q: When the bus stopped, what did you do?

A: While on my way to check the bus, Master Sergeant Yag-as and Ayan called for me, sir, and they told me that a carton was placed under seat No. 18, sir.

Q: And when you were told to inspect that carton under Seat No. 18, did you inspect that carton?

A: I inspected it, sir.

Q: You said you inspected that carton, what did you do in inspecting that carton?

A: I inserted my hand inside and when I removed my hand, it was a stuff of marijuana, sir.

x x x x x x x x.[20]

So far as the record itself is concerned, therefore, it would appear that there existed no circumstance which might reasonably have excited the suspicion of the two (2) police officers riding in the same bus as appellant Barros. They asked the police officers at the checkpoint at Sabangan to inspect the box allegedly carried by appellant Barros apparently on a mere guess that appellant Barros might be carrying something in the nature of contraband goods. There was, in other words, nothing to show that appellant Barros was then in the process of "actually

committing" or "attempting to commit" a crime.[21] There was, moreover, nothing on the record that could have reasonably led the two (2) police officers to believe that "an offense [had] in fact just been committed" when appellant Barros boarded the bus at Chakchakan or when he was asked whether he owned the box here involved at the checkpoint in Sabangan. The two (2) police officers, according to the record, had no "personable knowledge of facts indicating that the person to be arrested (appellant Barros) had committed it." There was, in brief, no basis for a valid warrantless arrest. Accordingly, the search and seizure of the carton box was equally non-permissible and invalid.[22] The "fruits" of the invalid search and seizure -- i.e., the four (4) kilos of marijuana -- should therefore not have been admitted in evidence against appellant Barros.

The Solicitor General, however, contends that appellant Barros had waived any irregularities which may have attended his arrest. Presumably, the Solicitor General also argues that appellant Barros has waived the non-admissibility of the carton (Exhibit "B") which contained four (4) packages of dried marijuana leaves (Exhibits "B-1," "B-2," "B-3" and "B-4"). The Solicitor General said:

"x x x [E]ven assuming in gratia argumenti that irregularities attended the arrest of appellant, still the same cannot be questioned at this late stage. Well-settled is the doctrine laid down in the case of *Callanta v. Villanueva* (77 SCRA 377), and later reiterated in the more recent case of *Bagcal v. Villaraza* (120 SCRA 525), that 'posting of [a] bail bond constitutes waiver of any irregularity attending the arrest of a person and estops him from questioning its validity.' Here, appellant had in fact posted the required bail to obtain his provisional liberty, albeit his application was subsequently denied (see TSN, Feb. 10, 1988, p.65). Consistent with jurisprudence, therefore, he should be deemed to have waived any irregularity attending his arrest, if any there be, and cannot now be heard to assail the same." [23]

It might be supposed that the non-admissibility of evidence secured through an invalid warrantless arrest or a warrantless search and seizure may be waived by an accused person. The a priori argument is that the invalidity of an unjustified warrantless arrest, or an arrest effected with a defective warrant of arrest may be waived by applying for and posting of bail for provisional liberty, so as to estop an accused from questioning the legality or constitution-ality of his detention or the failure to accord him a preliminary investigation. We do not believe, however, that waiver of the latter (by, e.g., applying for and posting of bail) necessarily constitutes, or carries with it, waiver of the former -- an argument that the Solicitor General appears to be making impliedly. Waiver of the non-admissibility of the "fruits" of an invalid warrantless arrest and of a warrantless search and seizure is not casually to be presumed, if the constitutional right against unlawful searches and seizures is to retain its vitality for the protection of our people. In the case at bar, defense counsel had expressly objected on constitutional grounds to the admission of the carton box and the four (4) kilos of marijuana when these were formally offered in evidence by the prosecution.[24] We consider that appellant's objection to the admission of such evidence was made clearly and seasonably and that, under the circumstances, no intent to waive his rights under the premises can be reasonably inferred from his conduct before or during the trial.

In the dissenting opinion, my learned brother Melo, J. takes the view that appellant Barros had waived his rights by his "stoic deportment" consisting of failure to object to the search by the police authorities immediately after the opening of the carton box:

"x x x. In point of fact, when the police authorities inspected the carton of marijuana and asked accused-appellant who owned the box, accused-appellant denied ownership of the box or carton and failed to even mutter the least bit of protest (p. 3, Decision). His demeanor should therefore be construed as implicit acquiescence to the search inasmuch as the objection thereto is vulnerable to express or implied waiver (*People v. Kaqui Malasuqui* (63 Phil. 221 [1936]); 1 *Bernas*, Constitution of the Republic of the Philippines, First ed., 1987, p. 108). x x x." [25]

It is submitted, with respect, that *Kaqui Malasugui* is not applicable to the case at bar; rather it is *People v.*

Burgos,[26] promulgated fifty (50) years after Kagui Malasugui, that is applicable. In Burgos, this Court ruled that the accused is not to be presumed to have waived the unlawful search conducted on the occasion of his warrantless arrest "simply because he failed to object" --

"x x x. To constitute a waiver, it must appear first that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and lastly, that said person had an actual intention to relinquish the right (*Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689). The fact that the accused failed to object to the entry into his house does not amount to a permission to make a search therein (*Magoncia v. Palacio*, 80 Phil. 770). As pointed out by Justice Laurel in the case of *Pasion Vda. de Garcia v. Locsin* (supra):

'x x x x x x x x

x x x As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.' (Citation omitted).

We apply the rule that: 'courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights.' (*Johnson v. Zerbst*, 304 U.S. 458)."[27] (Underscoring supplied)

Kagui Malasugui is not applicable to the instant case, because there the Court explicitly found that there was probable cause for the warrantless arrest of the accused and therefore, the warrantless search effected immediately thereafter was equally lawful. In *Kagui Malasugui*, a Chinese merchant was found lying on the ground with several nasty wounds in the head; one resulted in skull fracture and proved fatal. He died in the hospital to which he had been immediately brought by a policeman. Mr. Malasugui became a suspect because when the victim was found, still alive, and upon being asked who had attacked him, laconically answered, "Kagui." On the same day, the accused Kagui Malasugui was arrested and a search of his person was conducted without objection from the accused. Before the body search of the accused was carried out, the accused voluntarily surrendered to the police authorities a couple of bracelets belonging to the deceased victim and when asked if he had anything else to surrender, he, in a trembling voice, answered in the negative. The police thereupon conducted a body search of the accused, without any objection from him; the search resulted in the production of additional personal effects belonging to the deceased victim. Under these circumstances, the Court ruled that:

"When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from complaining later thereof. (Cooley, *Constitutional Limitations*, 8th ed., [V]ol. I, p. 631.) The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly."

A propos my distinguished brother Melo, J.'s suggestion that the right against an unlawful warrantless search or arrest is personal and may not be invoked by the accused's counsel during trial, it is relevant to note that the law (the Rules of Court) specifies the proper time when objections to admission of evidence must be raised and that in the case at bar, a timely objection was made by appellant Barros. Finally, the accused's silence during the warrantless search should not be lightly taken as consent to that search, but rather construed as explained by the Court in *Burgos*,[28] and as pointed out by Mr. Justice Laurel, a "demonstration of regard for the supremacy of the law."

It is, of course, possible that appellant Barros may in fact have been guilty of transporting the four (4) kilos of marijuana. His guilt must, however, be established by constitutional means. The non-admissibility of evidence secured through a disregard of the constitutional right of the accused against unreasonable searches and seizures is

the sanction imposed by the Constitution for disregard of such right; the sanction is a powerful one, for it renders inutile the work done by the police officers, by the prosecutor and by the trial court. It is a sanction which this Court has no choice but to apply in the instant case.

WHEREFORE, for all the foregoing, the decision of the Regional Trial Court, Branch 35, Bontoc, Mountain Province, in Criminal Case No. 687 is hereby REVERSED and SET ASIDE and appellant is hereby ACQUITTED of the crime charged, the evidence lawfully before the trial court not being sufficient to establish his guilt thereof beyond reasonable doubt. No costs.

SO ORDERED.

Bidin, Romero, and Vitug, JJ., concur.

Melo, J., see dissent.

[1] Rollo, p. 8.

[2] The penalty properly imposable under R.A. No. 6425, as amended, was life imprisonment and not reclusion perpetua; juridically, the former is different from the latter.

[3] Appellant's Brief, Rollo, pp. 37-48 at 41.

[4] Trial Court Decision, Records, pp. 207-208.

[5] Id., pp. 209-210.

[6] Records, p. 210.

[7] Pita v. Court of Appeals, 178 SCRA 362 (1989).

[8] People v. Zapanta, 195 SCRA 200 (1991); People v. Dendana, 190 SCRA 538 (1990); People v. Aminnudin, 163 SCRA 402 (1988).

[9] People v. Bagista, 214 SCRA 63 (1992); People v. Rodriguez, 205 SCRA 791 (1992); People v. Lo Ho Wing, 193 SCRA 122 (1991); Manipon v. Sandiganbayan, 143 SCRA 267 (1986).

[10] People v. Bagista, supra; People v. Lo Ho Wing, supra.

[11] 178 SCRA 211 (1989).

[12] People v. Bagista, supra; Valmonte v. de Villa, 185 SCRA 665 (1990).

[13] People v. Claudio, 160 SCRA 646 (1988).

[14] People v. Maspil, 188 SCRA 751 (1990).

[15] People v. Lo Ho Wing, supra.

[16] People v. Malmstedt, 198 SCRA 401 (1991).

[17] People v. Bagista, supra,

[18] TSN, 10 February 1988, pp. 43-46.

[19] TSN, 26 January 1988, pp. 3-13.

[20] Id., pp. 19-20.

[21] Section 5 [a], Rule 113, Rules of Court.

[22] Section 12, Rule 126, Rules of Court.

[23] Appellee's Brief, Rollo, pp. 62-67.

[24] Records, p. 191; See *Interpacific Transit, Inc. v. Aviles*, 186 SCRA 385 (1990) citing *People v. Teodoro* 98 Phil. 569 (1956); *People v. Santito*, 201 SCRA 87 (1991); *People v. Sayat*, G.R. Nos. 102773-77, 9 June 1993 where the Court ruled that objection to documentary evidence must be made at the time it is formally offered as an exhibit and not before. Objection prior to that time, i.e., when documents are merely being marked or identified, is premature.

See also Section 36 of Rule 132 of the Rules of Court.

[25] Dissenting Opinion of Melo, J., p. 2.

[26] 144 SCRA 1 (1986).

[27] 144 SCRA at 16.

[28] 144 SCRA at 16, citing *Pasion Vda. de Garcia*, 65 Phil. 689 (1938).

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