

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONWAY B. OMAWENG, ACCUSED-APPELLANT.

G.R. No. 99050. September 02, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Conway B. Omayeng was originally indicted for the violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, in a criminal complaint filed with the Municipal Trial Court of Bontoc, Mountain Province on 12 September 1988.[1] Upon his failure to submit counter-affidavits despite the granting of an extension of time to do so, the court declared that he had waived his right to a preliminary investigation and, finding probable cause against the accused, ordered the elevation of the case to the proper court.[2]

On 14 November 1988, the Office of the Provincial Fiscal of Mountain Province filed an Information charging the accused with the violation of Section 4, Article II of the Dangerous Drugs Act of 1972, as amended. The accusatory portion thereof reads:

"That on or about September 12, 1988, at Dantay, Bontoc, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously dispatch in transit or transport in a Ford Fiera, owned and driven by him, 10¼ kilos of processed marijuana in powder form contained in 41 plastic bags of different sizes which were placed in a travelling bag destined (sic) and intended for delivery, disposition and sale in Sagada, Mountain Province, with full knowledge that said processed marijuana is (sic) prohibited drug or from which (sic) prohibited drug maybe manufactured.

CONTRARY TO LAW."[3]

The case was docketed as Criminal Case No. 713.

After his motion for reinvestigation was denied by the Provincial Fiscal,[4] the accused entered a plea of not guilty during his arraignment on 20 June 1989.

During the trial on the merits, the prosecution presented four (4) witnesses. The accused did not present any evidence other than portions of the Joint Clarificatory Sworn Statement, dated 23 December 1988, of prosecution witnesses Joseph Layong and David Fomocod.

On 21 March 1991, the trial court promulgated its Judgment[5] convicting the accused of the crime of transporting prohibited drugs penalized under Section 4, Article II of R.A. No. 6425, as amended. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered imposing upon the accused herein the penalty of life imprisonment and a fine of Twenty Five Thousand Pesos.

Pursuant to Sec. 20, Art. IV of the aforecited special law, the drugs subject of the crime are ordered confiscated

and forfeited in favor of the Government. Accordingly, it is further directed that such drugs so confiscated and forfeited be destroyed without delay per existing rules and regulations on the matter.

Costs against the accused.

SO ORDERED."[6]

Hence, this appeal.

In the Appellant's Brief, accused imputes upon the trial court the commission of the following errors:

"I

x x x IN CONVICTING THE ACCUSED DESPITE INSUFFICIENCY OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

x x x IN NOT CONSIDERING THE JOINT CLARIFICATORY STATEMENT OF THE ARRESTING OFFICERS TO THE EFFECT THAT THE ACCUSED IS NOT THE OWNER OF THE PROHIBITED DRUG SUBJECT OF THIS CASE.

III

x x x IN NOT RULING THAT THE CONTRABAND SUBJECT OF THE INSTANT CASE IS INADMISSIBLE IN EVIDENCE FOR HAVING BEEN OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED AGAINST UNREASONABLE SEARCH (sic) AND SEIZURE."[7]

The appeal is without merit. The decision appealed from must be upheld.

After a careful review and evaluation of the evidence, We find to have been fully proven the following facts as summarized by the Solicitor General in the Brief for the Appellee.[8]

"In the morning of September 12, 1988, Joseph Layong, a PC constable with the Mt. Province PC Command at Bontoc, Mt. Province proceeded with other PC soldiers to Barrio Dantay, Bontoc and, per instruction of their officer, Capt. Eugene Martin, put up a checkpoint at the junction of the roads, one going to Sagada and the other to Bontoc (TSN, November 9, 1989, pp. 3-4). They stopped and checked all vehicles that went through the checkpoint (TSN, April 5, 1990, p. 12).

At about 9:15 A.M., Layong and his teammate, Constable David Osborne Famocod (sic), saw and flagged down a cream-colored Ford Fiera bearing Plate No. ABT-634 coming from the Bontoc Poblacion and headed towards Baguio (TSN, November 9, 1989, pp. 4-5, 8). The vehicle was driven by appellant and had no passengers (TSN, November 9, 1989, pp. 4-5).

Layong and his companions asked permission to inspect the vehicle and appellant acceded to the request (TSN, November 9, 1989, pp. 4-5). When they peered into the rear of the vehicle, they saw a travelling bag which was partially covered by the rim of a spare tire under the passenger seat on the right side of the vehicle (TSN, November 9, 1989, pp. 6, 10, 11).

Layong and his companions asked permission to see the contents of the bag (TSN, November 9, 1989, p. 6). Appellant consented to the request but told them that it only contained some clothes (TSN, November 9, 1989, p. 6). When Layong opened the bag, he found that it contained forty-one (41) plastic packets of different sizes containing pulverized substances (TSN, November 9, 1989, pp. 7, 9).

Layong gave a packet to his team leader, constable David Osborne Fomocod, who, after sniffing the stuff concluded that it was marijuana (TSN, November 9, 1989, p. 16).

The PC constables, together with appellant, boarded the latter's Ford Fiera and proceeded to the Bontoc poblacion to report the incident to the PC Headquarters (TSN, November 9, 1989, pp. 7-8). The prohibited drugs were surrendered to the evidence custodian, Sgt. Angel Pokling (TSN, November 9, 1989, pp. 7-8).

Major Carlos Figueroa, a PC Forensic Chemist at Camp Dangwa, La Trinidad, Benguet, who has conducted more than 2500 professional examinations of marijuana, shabu and cocaine samples, conducted two chemistry examinations of the substance contained in the plastic packets taken from appellant and found them to be positive for hashish or marijuana (TSN, October 24, 1990, pp. 3, 5-81)."[9]

Anent the first assigned error, the accused contends that the prosecution failed to prove that he is the owner of the marijuana found inside the travelling bag which he had in his vehicle, a Ford Fiera. Proof of ownership is immaterial. Accused was prosecuted for the dispatching in transit or transporting of prohibited drugs pursuant to Section 4, Article II of R.A. No. 6425, as amended. This section does not require that for one to be liable for participating in any of the proscribed transactions enumerated therein, he must be the owner of the prohibited drug. It simply reads:

"SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. -- 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, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed."

This section penalizes the pusher, who need not be the owner of the prohibited drug. The law defines pusher as "any person who sells, administers, delivers, or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports any dangerous drug or who acts as a broker in any of such transactions, in violation of this Act.[10]

In *People vs. Alfonso*,^[11] where the accused was charged with the unlawful transportation of marijuana under the aforesaid Section 4, this Court ruled that ownership is not a basic issue.

The facts, as proven by the prosecution, establish beyond cavil that the accused was caught in the act of transporting the prohibited drug or, in other words, in *flagrante delicto*. That he knew fully well what he was doing is shown beyond moral certainty by the following circumstances: (a) the prohibited drug was found in a travelling bag, (b) he is the owner of the said bag, (c) he concealed the bag behind a spare tire, (d) he was travelling alone, and (e) the Ford Fiera in which he loaded the bag was under his absolute control; pursuant to Section 4, Rule 133 of the Rules of Court (on circumstantial evidence), the combination of all these circumstances is such as to produce a conviction beyond reasonable doubt. Such circumstances, unrebutted by strong and convincing evidence by the accused, even gave rise to the presumption that he is the owner of the prohibited drug.[12]

The second assigned error is devoid of merit. The declaration in the joint clarificatory sworn statement executed by the apprehending officers, that the marijuana subject of the case was surreptitiously placed by an unknown person in the bag of the accused, is not supported by evidence. Said sworn statement cannot be used as a basis for exoneration because the very same officers who signed the same reiterated on the witness stand their statements in their original affidavit implicating the accused; both the criminal complaint before the Municipal Trial Court of Bontoc and the information in this case were based on this original affidavit. No probative value could be

assigned to it not only because it was procured by the defense under questionable circumstances, but also because the affiants therein merely expressed their personal opinion. The trial court's correct exposition on this point, to which nothing more may be added, deserves to be quoted, thus:

"From the portions of the 'Joint Clarificatory Sworn Statement' of prosecution witnesses Layong and Fomocod cited (Exhs. "I" to "I-C"; p. 155, Record), the defense would want this Court to draw the inference that the accused Conway Omaweng is innocent as confirmed by no less than the persons who apprehended the suspect in flagranti (sic). In other words, that the said accused is not the owner of the contraband confiscated but someone else; that to (sic) mysterious individual placed the prohibited articles inside the travelling bag of the accused without the knowledge and consent of the latter; and that the identity of this shadowy third person is known by the PC/INP investigators. The isolated declarations, albeit under oath are much too asinine to be true and do not affect the credibilities of the witnesses -- affiants and the truth of their affirmations on the stand. As gleaned from parts of the record of the re-investigation of this case conducted by the Provincial Fiscal (Exhs. "G" and "D"; pp. 158 and 161, Record), it appears that Layong and Fomocod were prevailed upon to affix their signatures to (sic) the document styled as 'Joint Clarificatory Sworn Statement' by interested persons in a vain ploy to extricate the accused from the morass he got himself into. Testifying in open court, the same witnesses maintained the tenor of their original affidavit supporting the filing of the criminal complaint in the lower court (Exh. "C"; p. 2, Record). No additional information was elicited from said witnesses during their examination from which it can reasonably be deduced that a third person instead of the accused is the culprit and that the suspect is being framed-up for a crime he did not commit. Nonetheless, granting arguendo that the declarations of Layong and Fomocod now the bone of contention, are on the level, the same are but mere opinions and conclusions without bases. Any which way, to believe that any person in his right mind owning several kilos of hot hashish worth tens of thousands of pesos would simply stash it away in the travelling bag of someone he has no previous agreement with is a mockery of common sense. And to think further that the PC/INP agents know of such fact yet they kept the vital information under 'confidential Status' (whatever that means in police parlance) while an innocent person is being prosecuted and practically in the shadow of the gallows for the offense would be stretching human credulity to the snapping point. By and large, the fact remains as the circumstances logically indicate that the accused Conway Omaweng has knowledge of the existence of the contraband inside his vehicle and he was caught red-handed transporting the hot stuff." [13]

The third assignment of error hardly deserves any consideration. Accused was not subjected to any search which may be stigmatized as a violation of his Constitutional right against unreasonable searches and seizures.[14] If one had been made, this Court would be the first to condemn it "as the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the Court." [15] He willingly gave prior consent to the search and voluntarily agreed to have it conducted on his vehicle and travelling bag. Prosecution witness Joseph Layong testified thus:

"PROSECUTOR AYOCHOK:

Q When you and David Fomocod saw the travelling bag, what did you do?

A When we saw that travelling bag, we asked the driver if we could see the contents.

Q And what did or what was the reply of the driver, if there was any?

A He said 'you can see the contents but those are only clothings (sic).'

Q When he said that, what did you do?

A We asked him if we could open and see it.

Q When you said that, what did he tell you?

A He said 'you can see it.'

Q And when he said 'you can see and open it,' what did you do?

A When I went inside and opened the bag, I saw that it was not clothings (sic) that was contained in the bag.

Q And when you saw that it was not clothings (sic), what did you do?

A When I saw that the contents were not clothes, I took some of the contents and showed it to my companion Fomocod and when Fomocod smelled it, he said it was marijuana." [16]

This testimony was not dented on cross-examination or rebutted by the accused for he chose not to testify on his own behalf.

Thus, the accused waived his right against unreasonable searches and seizures. As this Court stated in *People vs. Malasugui*: [17]

"x x x When one voluntarily submits to a search or consents to have it made of (sic) his person or premises, he is precluded from later complaining thereof (Cooley, Constitutional Limitations, 8th ed., vol. I, page 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."

Since in the course of the valid search forty-one (41) packages of drugs were found, it behooved the officers to seize the same; no warrant was necessary for such seizure. Besides, when said packages were identified by the prosecution witnesses and later on formally offered in evidence, the accused did not raise any objection whatsoever. Thus, in the accused's Comments And/Or Objections To Offer of Evidence, [18] We merely find the following:

"EXHIBIT COMMENTS AND/OR OBJECTIONS

"A" The bag was not positively identified to be the same bag allegedly found inside the vehicle driven by the accused. The arresting officers failed to show any identifying marks; thus, said bag is an irrelevant evidence not admissible in court;

"A-1" to "A-40" Objected to also as irrelevant as the 40 bags now being offered are not the same bags alleged in the information which is 41 bags. The prosecution failed to proved (sic) beyond reasonable doubt that Exhibit "A-1" to "A-40" are the same bags allegedly taken from inside Exhibit "A" because what is supposed to be inside the bag are 41 bags and not 40 bags."

x x x

WHEREFORE, the decision of Branch 36 of the Regional Trial Court of Bontoc, Mountain Province of 21 March 1991 in Criminal Case No. 713 finding the accused CONWAY B. OMAWENG guilty beyond reasonable doubt of the crime charged, is hereby AFFIRMED.

Costs against the accused.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Romero, JJ., concur.

Feliciano, J., on official leave.

[1] Original Records, 1.

[2] Id., 28-29.

[3] Original Records, 30.

[4] Id., 163.

[5] Id., 355-361.

[6] Original Records, 361.

[7] Rollo, 149.

[8] Rollo, 183, et seq.

[9] Brief for the Appellee, 4-6.

[10] Section 2 (m), R.A. No. 6425, as amended.

[11] 186 SCRA 576 [1990].

[12] Section 3 (j), Rule 131, Rules of Court.

[13] Original Records, 359-360; Rollo, 116-117.

[14] Section 2, Article III, 1987 Constitution.

[15] *Rodriguez vs. Villamiel*, 65 Phil. 230 [1937].

[16] TSN, 9 November 1989, 6-7.

[17] 63 Phil. 221, 226 [1936]. See also *Vda. de Garcia vs. Locsin*, 65 Phil. 689 [1938]; *People vs. Donato*, 198 SCRA 130 [1991]; *People vs. Rodriguez*, 205 SCRA 791 [1992].

[18] Original Records, 344.

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