

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE JAIN AND BELTRAN GARAIS, DEFENDANTS-APPELLANTS.*G.R. Nos. 104088-89. March 13, 1996*

Ponente: HERMOSISIMA, JR., J.

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This is an appeal interposed by appellants Vicente Jain and Beltran Garais from a Consolidated Decision rendered by the Regional Trial Court, Branch 33, Bauang, La Union in Criminal Cases Nos. 906 and 907-Bg dated September 30, 1991. The said decision found appellants, together with George Agoni, Ireneo Amodia, Justiniano Gregorio, Diosdado Catamora and Hidetomi Sakihama, guilty of violating (a) Section 4 of Republic Act 6425 as amended, otherwise known as the Dangerous Drugs Act and (b) Section 1 of Presidential Decree 1866, a law which penalizes illegal possession of firearms and ammunition.

The undisputed facts, as correctly found by the court a quo, are as follows:

"x x x in the morning of March 2, 1988, P03 Armando Ayson (an OIC of the Coast Guard Detachment of Damortis, La Union), Cesar Rodolfo Corpuz (Petty Officer Third Class Officer of the Philippine Navy) and Haravata also called 'Wengweng' (a civilian agent) conducted a sea patrol by using a banca, and while they were at the sea in Bauang, La Union, they saw a fishing boat named 'Milogen de Luxe' (Milogen for short) with its front end pointed upward with the marking '2 CGD' which marking belongs to the 2nd Coast Guard District in Cebu (the marking of banca in La Union is '7 CGD'. As the Milogen is not registered in La Union, they went near the 'Milogen' which is anchored about two hundred (200) meters away from the mouth of the Bauang river x x x Ayson and Haravata boarded the 'Milogen', while Corpuz was left in the patrol boat. Then Ayson asked the crew of the 'Milogen' and a person who gave his name 'Ireneo Amodia,' answered that they came from the Visayas. Ayson asked Amodia why they were there and Amodia told Ayson that their 'catig' was destroyed. Ayson asked for the documents of the 'Milogen' and Amodia handed (sic) him documents (Exhs. D, D-1 to D-16). He read the documents and all (sic) are expired particularly, Conditional Certificate of Inspection (Exh. D-4) and the Special Permit No. 0468-86 (Exh D-5). He asked permission from Amodia to see the effects, and he went inside, the bodega and he saw marijuana, .38 cal. guns and ammunitions. At that time, the crew on board the 'Milogen' were Ireneo Amodia, Beltran Garais, Justiniano Gregorio, Diosdado Catamora, Hidetomi Sakihama. He asked Amodia who (sic) was their leader, and Amodia told him that it was Vicente Jain who together with George Agoni went ashore. Then he radioed their headquarters, informing what they found and he received by radio from Commander Halanes, Chief of the Staff an order to impound the 'Milogen x x x They waited for Jain and Agoni who arrived after the lapse of forty-eight (48) minutes, and then Ayson arrested Jain and Agoni. Ayson got the documents (Exhs. D, D-1 to D-16) of the Milogen from Amodia and he issued an Inspection! Apprehension Report (Exh. F) to Amodia and Jain xxx Later, members of coast guard from headquarters on board a 6 x 6 truck arrived at the seashore. Then Ayson ordered the crew of the Milogen to pull the anchor and they brought the Milogen to their headquarters at Poro Point, San Fernando, La Union, while PO3 Corpuz was alone on board the patrol boat. Arriving at their headquarters, Ayson and P03 Corpuz turned over the x x x seven (7) accused to their operation officer, Lt. Alvarez, together with seven (7) and one-half (1/2) sacks of marijuana, four (4) cartons of Champion and Hope containing marijuana, ninety (90) guns, .38 cal. and one thousand and one hundred fifty (1. 150) pieces of .38 cal. bullets

all of which were unloaded from the Milogen under the supervision of District Commander Benjamin Nebres, Jr. and were taken to the office of the Coast Guards. Then the intelligence officer of Coast Guard took several pictures of the Milogen and also the sacks and cartons of marijuana, guns and bullets with the seven (7) accused (Exhs. C, C-2, C-3, C-4, C-5, C-6 and C-7). The seven and one-half (7 1/2) sacks of marijuana weighing 166 kilos (Exhs. A, A-1 to A-7, respectively), eighty-four (84) pieces of .38 cal. (Exhs. A, A-1 to A-84), (the other six [6] guns were sent to the ballistics/Exhs. I, I-1 to I-5/) and 1,150 pieces of bullets (Exhs. B, B-1 to B-1034, x x x, were inventoried by PO1 Feliciano Mina and PO2 Bongolan and made a typewritten Inventory Report (Exh. E) which was signed by PO1 Mina and the accused Jain, Agoni, Garais, Amodia and Gregorio.

Samples of marijuana taken from the sacks placed in thirty-six (36) envelopes (Exhs. I, J, K, L, M, N, O, P, Q, R, S, and T and their submarkings) were sent for examination to Capt. Carlos Figueroa, Forensic Chemist of the PC Crime Laboratory Service, Camp Dangwa, who, after conducting a chemical analysis on the samples, has found the sample to be positive of marijuana, which finding is embodied in Chemistry Report NRD 031-88 (Exh "G").

Six (6) pieces of the confiscated guns (Exhs. I, I-1 to I-5) and live bullets were sent for ballistic examination to C2C Rolando Gallardo a ballistics of the Crime Laboratory Service of Camp Bado Dangwa. After each of the six (6) guns were test fired by him to determine if they are serviceable, he found that they are functioning very well and he issued a Ballistic Report (Exh. G).

According to Sgt. Eliseo Buen, the Registry and Records of Firearms in La Union do not show that the seven (7) accused are registered firearms holders in La Union. Likewise, according to the Master's List of Licensed Firearms holders throughout the Philippines of (sic) Firearms and Explosive Unit of the PC, the said seven (7) accused are not registered owners of firearms evidenced of which is a certification dated September 15, 1988 (Exh. N) issued by PC Capt. Jeoffrey Palalay, Chief of the Records and Legal Research of the Firearms and Explosive Unit.

After the accused were brought to Coast Guard Headquarters, Police Corporal Romeo Ochoco of the Police Station of San Fernando, La Union, took separately the sworn statements of Vicente Jain (Exh. W) and George Agoni (Exh. X) who were assisted by Atty. Raymund Tabangin and Atty. Oscar Lorenzo, respectively, both lawyers of the CLAO. "[1]

In due course, the following informations were filed in the Regional Trial Court of Bauang, La Union, by Provincial Fiscal Francisco M. Tejano:

Crim. Case No. 906-Bg. "Violation of R.A. No. 6425"[2]

"That on or about the 2nd day of March, 1988, in the Municipality of Bauang, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, while managing and operating (sic) fishing boat (motorized banca) identified as M/S MILOGEN DE LUXE had in their control, custody (sic) loaded and being transported in the said motorized banca 166 kilos of marijuana leaves which is a source of prohibited drugs without having secured any permit, license or legal authority to possess and transport the same." [3]

Crim. Case No. 907-Bg. - "Illegal Possession of Firearms and Ammunitions"

"That on or about the 2nd day of March, 1988, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating with each other and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession, control and custody Ninety (90) revolvers (homemade) and One Thousand One Hundred Fifty (1,150) rounds of live ammunitions, without having secured any permit, license

or legal authority to possess, and be in the custody of the said firearms and ammunitions from the proper government agency." [4]

Upon arraignment, all the accused entered pleas of "not guilty" to the offenses charged and, thereafter, a joint trial ensued. [5]

On September 30, 1991, a Consolidated Decision was rendered by the trial court finding appellants and their co-accused guilty in both cases.

The dispositive portion of the appealed Decision reads:

"WHEREFORE, judgment is hereby rendered as follows:

1. Criminal Case No. 906-Bg.

Finding all the accused guilty beyond reasonable doubt for violation of the provisions of Section 4, of Republic Act No. 6425, as amended, particularly in the transport of prohibited drugs, each accused is hereby sentenced to suffer the penalty of life imprisonment, and each to pay a fine of Thirty Thousand Pesos (P30,000.00);

2. Criminal Case No. 907-Bg.

Also finding all the accused guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition, each accused is hereby sentenced to suffer the penalty of twenty (20) years of reclusion temporal in its maximum period." [6]

In their brief, appellants Jam and Garais alleged that the trial court erred in not dismissing the two cases filed against them. [7] They claim that the prosecution failed to adduce any evidence showing that they participated in a conspiracy to illegally transport marijuana, guns and ammunition from Samar to Itbayat Island via the vessel "Milogen de Luxe." [8]

Appellants' contention is bereft of merit.

Jurisprudence is replete with the rule that, in the absence of a showing that serious and substantial errors were committed by the lower court in the appraisal of the evidence before it, factual findings, particularly, the trial judge's assessment of the credibility of the testimony of the witnesses are accorded great weight and respect. [9] For the trial judge enjoys the advantage of directly observing and examining the demeanor of witnesses while testifying and on the basis thereof, form accurate impressions and conclusions. [10] We do not see any reason to depart from this rule in the case at bench.

A perusal of the records show that appellant Jain was pointed to by his co-accused as their leader and head of the crew. [11] He even offered to settle the case with the officers of the Coast Guard, who accosted them, right after the illegal cargoes were discovered and were seized. [12] Furthermore, as testified to by PO3 Armando Ayson, it was appellant Jain who personally gave to the arresting officers the expired documents covering the vessel seized. [13]

Moreover, his co-accused Ireneo Amodia testified that Jam was in charge of ascertaining the cargoes and passengers to be loaded into the vessel. [14] Hence, he cannot evade his criminal responsibility with the simple expediency of denying his participation in the illegal activities, as he knew beforehand about the presence of marijuana, firearms and ammunition, for he had approved their loading and transport on board M/S Milogen de Luxe.

Appellant Beltran Garais, on the other hand, cannot claim innocence regarding the illegal transport of the subject cargoes. As he was a member of the crew which manned "M/S Milogen de Luxe" from Samar to Itbayat Islands,

he had actual knowledge of his destination, the purpose of the trip, and the cargoes he was supposed to transport.

As found by the trial court, he knew about the unlawful objects loaded into the vessel because he even looked into the "bodega" where the said cargoes were being stored and the "bodega" was kept open to him and the rest of the crew throughout their journey.[15] Furthermore, when the coast guards accosted him, he never denied any knowledge about the illegal cargoes nor did he express any protest when he was apprehended and the cargoes were seized.

Conspiracy may be inferred from the concerted acts of the co-conspirators.[16] As such, direct proof is not essential to prove conspiracy.[17] Its existence, and the conspirator's participation may be established through circumstantial evidence.[18] Thus, as correctly elucidated by the court *a quo*, conspiracy by and among appellants and their co-accused was present in this case, as it may be inferred from the fact that each accused had agreed to work and cooperate in the commission of the crime. In their original plan, the route to be taken by the vessel was supposed to be from Samar to Palawan but, subsequently, this plan was abandoned. After being informed of the change in the original route, the appellants together with their co-accused agreed to the arrangement that the vessel sail from Samar to meet the boat of Rayosen Agoni somewhere at Itbayat Island, north of Batanes. The appellants had knowledge of the fact that the cargo of M/S Milogen de Luxe consisted of marijuana, guns and live ammunitions. The contraband was supposed to be delivered to Rayosen's other boat. This finding is contrary to what accused Amodia wanted the lower court to believe, that is, that the accused's intention was just to get additional "lambat" (fishnets) from Rayosen's other boat.[19]

Proof of ownership is immaterial where appellants are charged with the unlawful transportation of marijuana.[20] Section 4, Art. II of R. A. 6425, as amended, which was the law in force at the time appellants committed the crime, does not require that, for one to be liable for dispatching in transit or transporting a prohibited drug, he must be its owner. The law 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 x x x."

There is substantial evidence to prove that appellants were directly involved in the unlawful dispatch in transit of the marijuana. The appellants and their co-accused were caught in *flagrante delicto* transporting prohibited drugs. The evidence of the prosecution, particularly the testimonies of P03 Armando Ayson and Cesar Corpuz, had clearly established that appellants indubitably committed the crimes charged. As law enforcers, their narration of the incident is worthy of belief and as such they are presumed to have performed their duties in a regular manner, there being no evidence to the contrary.[21] More so, appellants did not impute any false motive on the part of the officers who arrested them.[22]

With regard to violation of P.D. 1866 mere possession of unlicensed firearms by appellants is sufficient to sustain their conviction. This is because the offense is *malum prohibitum*, it being punished by a special law and good faith or absence of criminal intent is not a valid defense.[23]

However, as to penalty, the Indeterminate Sentence Law should be applied. There should be imposed for the violation of Illegal Possession of Firearms and Ammunition, the penalty of Seventeen (17) Years, Four (4) Months and One (1) Day, as minimum, to twenty (20) years of reclusion temporal, as maximum.

WHEREFORE, the decision appealed from is AFFIRMED, with the MODIFICATION that, in respect to the violation of the offense of Illegal Possession of Firearms and Ammunition, appellants should be, as they each are, sentenced to suffer an indeterminate penalty of, from seventeen (17) Years, Four (4) Months and One (1) Day, as

minimum, to Twenty (20) Years of reclusion temporal, as maximum with the accessory penalties of the law. Costs against the appellants.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, pp. 95-96.

[2] Drugs Act of 1972 as amended.

[3] Id. at p. 60.

[4] Id.

[5] While trial was ongoing, Hidetomi Sakihama died.

[6] Rollo, pp. 103-104.

[7] Accused George Agoni and Ireneo Amodia withdrew their appeal before this Court.

[8] Rollo, pp. 133-136.

[9] People v. Manalo, 229 SCRA 479 (1994); People v. Salinas, 228 SCRA 45 (1993); People v. Villagracia, 226 SCRA 374; People v. De Guzman, 199 SCRA 35 (1991).

[10] People v. Errojo, 229 SCRA 49 (1994).

[11] Rollo, p. 64.

[12] Id.

[13] Id.

[14] TSN, April 20, 1989, p.6.

[15] Rollo, p. 102.

[16] Venturina v. Sandiganbayan, 193 SCRA 40 (1991).

[17] People v. Lug-aw, 229 SCRA 308 (1994).

[18] People v. Regalario, 220 SCRA 368 (1993).

[19] Rollo, p. 103.

[20] People v. Omaweng, 213 SCRA 462 (1992).

[21] People v. Nario 224 SCRA 647 (1993).

[22] People v. Labra, 215 SCRA 822 (1992)

[23] People v. Bayona, 61 Phil. 181 (1935).

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