

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GABRIEL GERENTE Y BULLO, ACCUSED-APPELLANT.

G.R. Nos. 95847-48. March 10, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is an appeal from the decision of the Regional Trial Court of Valenzuela, Metro Manila, Branch 172, which found the appellant guilty of Violation of Section 8 of Republic Act. 6425 (Dangerous Drugs Act of 1972) and sentenced him to suffer, the penalty of imprisonment for a term of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum; and also found him guilty of Murder for which crime he was sentenced to suffer the penalty of reclusion perpetua. The dispositive portion of the appealed decision reads:

"WHEREFORE, in view of the foregoing the Court finds the accused Gabriel Gerente in Criminal Case No. 10255-V-90 guilty beyond reasonable doubt of Violation of Section 8 of R.A. 6425 and hereby sentences him to suffer the penalty of imprisonment of twelve years and one day as minimum to twenty years as maximum, and a fine of twelve thousand, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"In Criminal Case No. 10256-V-90, the Court finds the accused Gabriel Gerente guilty beyond reasonable doubt of the crime of Murder, and there by (sic) no aggravating circumstances nor mitigating circumstances, is hereby sentenced to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim in the sum of P30,000.00, and in the amount of P17,609.00 as funeral expenses, without subsidiary imprisonment in case of insolvency, and to pay the costs. The accused Gabriel Gerente shall be credited with the full term of his preventive imprisonment." (p. 25, Rollo.)

Appellant Gabriel Gerente y Bullo was charged with Violation of Section 8, Art. II of R.A. 6425, which was docketed as Criminal Case No. 10255-V-90 of the Regional Trial Court of Valenzuela, Metro Manila. The Information reads:

"That on or about the 30th day of April, 1990, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without justification, did then and there wilfully, unlawfully and feloniously have in his possession and control dried flowering tops wrapped in foil with markings and place in a transparent plastic bag which are considered prohibited drugs." (p. 2, Rollo.)

The same accused, together with Totoy and Fredo Echigoren who are both at large, was charged with Murder in Criminal Case No. 10256-V-90 in an information of the same date and signed by the same Assistant Provincial Prosecutor, as follows:

"That on or about the 30th day of April, 1990, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with two (2) others who are still at large and against whom the preliminary investigation has not yet been terminated by the Office of the Provincial Prosecutor of Bulacan, conspiring, confederating together and mutually helping one another, armed with a piece of wood and hallow (sic) block and with intent to kill one Clarito B. Blace, did then and

there wilfully, unlawfully and feloniously, with evident pre-meditation and treachery, attack, assault and hit with the said piece of wood and hollow block the said Clarito B. Blace, hitting the latter on the different parts of his body, thereby inflicting serious physical injuries which directly caused the death of the said victim." (p. 3, Rollo.)

Edna Edwina Reyes testified that at about 7:00 a.m. of April 30, 1990, appellant Gabriel Gerente, together with Fredo Echigoren and Totoy Echigoren, started drinking liquor and smoking marijuana in the house of the appellant which is about six (6) meters away from the house of the prosecution witness who was in her house on that day. She overheard the three men talking about their intention to kill Clarito Blace. She testified that she heard Fredo Echigoren saying, "Gabriel, papatayin natin si Clarito Blace," and Totoy Echigoren allegedly seconded Fredo's suggestion saying: "Papatayin natin 'yan mamaya." Appellant allegedly agreed: "Sigue, papatayin natin mamaya." (pp. 3-4, tsn, August 24, 1990.)

Fredo and Totoy Echigoren and Gerente carried out their plan to kill Clarito Blace at about 2:00 p.m. of the same day. The prosecution witness, Edna Edwina Reyes, testified that she witnessed the killing. Fredo Echigoren struck the first blow against Clarito Blace, followed by Totoy Echigoren and Gabriel Gerente who hit him twice with a piece of wood in the head and when he fell, Totoy Echigoren dropped a hollow block on the victim's head. Thereafter, the three men dragged Blace to a place behind the house of Gerente.

At about 4:00 p.m. of the same day, Patrolman Jaime Urrutia of the Valenzuela Police Station received a report from the Palo Police Detachment about a mauling incident. He went to the Valenzuela District Hospital where the victim was brought. He was informed by the hospital officials that the victim died on arrival. The cause of death was massive fracture of the skull caused by a hard and heavy object. Right away, Patrolman Urrutia, together with Police Corporal Romeo Lima and Patrolman Alex Umali, proceeded to Paseo de Blas where the mauling incident took place. There they found a piece of wood with blood stains, a hollow block and two roaches of marijuana. They were informed by the prosecution witness, Edna Edwina Reyes, that she saw the killing and she pointed to Gabriel Gerente as one of the three men who killed Clarito.

The policemen proceeded to the house of the appellant who was then sleeping. They told him to come out of the house and they introduced themselves as police-men. Patrolman Urrutia frisked appellant and found a coin purse in his pocket which contained dried leaves wrapped in cigarette foil. The dried leaves were sent to the National Bureau of Investigation for examination. The Forensic Chemist found them to be marijuana.

Only the appellant, Gabriel Gerente, was apprehended by the police. The other suspects, Fredo and Totoy Echigoren, are still at large.

On May 2, 1990, two separate informations were filed by Assistant Provincial Prosecutor Benjamin Caraig against him for Violation of Section 8, Art. II, of R.A. 6425, and for Murder.

When arraigned on May 16, 1990, the appellant pleaded not guilty to both charges. A joint trial of the two cases was held. On September 24, 1990, the trial court rendered a decision convicting him of Violation of Section 8 of R.A. 6425 and of Murder.

In this appeal of the appellant, the following errors are ascribed to the trial court:

1. the court a quo gravely erred in admitting the marijuana leaves adduced in evidence by the prosecution; and
2. the court a quo gravely erred in convicting the accused-appellant of the crimes charged despite the absence of evidence required to prove his guilt beyond reasonable doubt.

The appellant contends that the trial court erred in admitting the marijuana leaves as evidence in violation of his

constitutional right not to be subjected to illegal search and seizure for the dried marijuana leaves were seized from him in the course of a warrantless arrest by the police officers. We do not agree.

The search of appellant's person and the seizure of the marijuana leaves in his possession were valid because they were incident to a lawful warrantless arrest.

Paragraphs (a) and (b), Section 5, Rule 113 of the Revised Rules of Court provide:

'Section 5. Arrest without warrant: when lawful. -- A peace officer or a private person may, without a warrant arrest a person;

"(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

"(b) When an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; x x x.

The policemen arrested Gerente only some three (3) hours after Gerente and his companions had killed Blace. They saw Blace dead in the hospital and when they inspected the scene of the crime, they found the instruments of death: a piece of wood and a concrete hollow block which the killers had used to bludgeon him to death. The eye-witness, Edna Edwina Reyes, reported the happening to the policemen and pinpointed her neighbor, Gerente, as one of the killers. Under those circumstances, since the policemen had personal knowledge of the violent death of Blace and of facts indicating that Gerente and two others had killed him, they could lawfully arrest Gerente without a warrant. If they had postponed his arrest until they could obtain a warrant, he would have fled the law as his two companions did.

In *Umil vs. Ramos*, 187 SCRA 311, the arrest of the accused without a warrant was effected one (1) day after he had shot to death two Capcom soldiers. The arrest was held lawful by this Court upon the rationale stated by us in *People vs. Malasugui*, 63 Phil. 221, 228, thus:

"To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances."

The search conducted on Gerente's person was likewise lawful because it was made as an incident to a valid arrest. This is in accordance with Section 12, Rule 126 of the Revised Rules of Court which provides:

"Section 12. Search incident to lawful arrest. -- A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

The frisk and search of appellant's person upon his arrest was a permissible precautionary measure of arresting officers to protect themselves, for the person who is about to be arrested may be armed and might attack them unless he is first disarmed. In *Adams vs. Williams*, 47 U.S. 143, cited in Justice Isagani A. Cruz's *Constitutional Law*, 1991 Edition, p. 150, it was ruled that "the individual being arrested may be frisked for concealed weapons that may be used against the arresting officer and all unlawful articles found in his person, or within his immediate control may be seized."

There is no merit in appellant's allegation that the trial court erred in convicting him of having conspired and cooperated with Fredo and Totoy Echigoren to kill Blace despite the testimony of Dr. Valentin Bernales that the fracture on the back of the victim's skull could have been inflicted by one person only.

What Dr. Bernales stated was a mere possibility that only one person dropped the concrete hollow block on the head of the victim, smashing it. That circumstance, even if true, does not absolve the other two co-conspirators

in the murder of Blace for when there is a conspiracy to commit a crime, the act of one conspirator is the act of all. The conspiracy was proven by the eyewitness-testimony of Edna Edwina Reyes, that she overheard the appellant and his companions conspire to kill Blace, that acting in concert, they attacked their victim with a piece of wood and a hollow block and caused his death. "When there is no evidence indicating that the principal witness for the prosecution was moved by improper motive, the presumption, is that he was not so moved and his testimony is entitled to full faith and credit" (People vs. Belibet, 199 SCRA 587, 588). Hence, the trial court did not err in giving full credit to Edna Reyes' testimony.

Appellant's failure to escape (because he was very drunk) is no indicium of his innocence.

The Solicitor General correctly pointed out in the appellee's brief that the award of P30,000.00 as civil indemnity for the death of Clarito Blace should be increased to P50,000.00 in accordance with our ruling in People vs. Sison, 189 SCRA 643.

WHEREFORE, the appealed decision is hereby AFFIRMED, with modification of the civil indemnity awarded to the heirs of the victim, Clarito Blace, which is hereby increased to P50,000.00.
SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quason, JJ., concur.

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