

## SECOND DIVISION

[ G.R. No. 130805, April 27, 2004 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. TOKOHISA  
KIMURA AND AKIRA KIZAKI,<sup>[1]</sup> RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Appellants Tomohisa Kimura and Akira Kizaki seek reversal of the decision<sup>[2]</sup> dated June 27, 1997 in Criminal Case No. 94-5606, rendered by the Regional Trial Court (Branch 66), Makati City, finding them guilty beyond reasonable doubt of violation of Section 4, Article II of Republic Act No. 6425, as amended by R.A. No. 7659, otherwise known as the Dangerous Drugs Act of 1972, and sentencing each of them to suffer the penalty of *reclusion perpetua* and to pay a fine of P500,000.00.

The Information dated August 8, 1994 against the accused alleges:

The undersigned State Prosecutor of the Department of Justice accuses TOMOHISA KIMURA and AKIRA KIZAKI of violation of Section 4, Article II of Republic Act 6425, as amended by R.A. 7659, otherwise known as the Dangerous Drugs Act of 1972, committed as follows:

That on or about June 27, 1994 in Makati, Metro Manila 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 transport and deliver without lawful authority approximately 40,768 grams of Indian hemp (marijuana), a prohibited drug, in violation of the aforecited law.

CONTRARY TO LAW. <sup>[3]</sup>

Upon arraignment on October 10, 1994, the two accused, through counsel, entered their separate pleas of Not Guilty to the crime charged;<sup>[4]</sup> whereupon, the trial of the case ensued.

The testimonies of the following prosecution witnesses, to wit: SPO4 Juan Baldovino, Jr.,<sup>[5]</sup> SPO1 Rolando Cabato,<sup>[6]</sup> SPO1 Edmundo Badua, Chief Inspector Nilo Anso, PO3 Alfredo Cadoy, SPO1 Manuel Delfin and Forensic Chemist, Police Inspector Sonia Ludovico, sought to establish the following facts:

In the morning of June 27, 1994, Maj. Anso, head of Delta Group, Narcotics Command (NARCOM) I, North Metro District Command, Camp Karingal, Quezon City, received information from a confidential informant that a certain Koichi Kishi and Rey Plantilla were engaged in the selling of illegal drugs at the Cash and Carry

Supermarket, Makati City.<sup>[7]</sup> Acting on said information, Maj. Anso organized a team composed of SPO4 Baldovino, Jr., SPO1 Cabato and PO3 Cadoy to conduct surveillance of the area.<sup>[8]</sup> A buy-bust operation was launched and PO3 Cadoy was designated to act as poseur-buyer and they prepared the buy-bust money consisting of one P500.00 bill and five pieces of P100.00 bill.<sup>[9]</sup>

At around 3:00 in the afternoon of the same day, the team together with the informant arrived at the Cash and Carry Supermarket and conducted surveillance of the area.<sup>[10]</sup> Later, the informant was able to contact the targets who told him that they will be arriving at 8:00 in the evening at the parking area of the Cash and Carry Supermarket.<sup>[11]</sup> At around 8:00 in the evening, Koichi and Rey arrived and were met by PO3 Cadoy and the informant.<sup>[12]</sup> PO3 Cadoy gave the marked money worth P1,000.00 to Rey and Koichi who then handed him the "shabu". PO3 Cadoy scratched his head as a pre-arranged signal of the consummation of the sale.<sup>[13]</sup> The operatives were about five meters from the suspects.<sup>[14]</sup> While the team was approaching, PO3 Cadoy held Koichi by the hand while Rey scampered away to the direction of the South Superhighway.<sup>[15]</sup> The team brought Koichi to a safe area within the Cash and Carry Supermarket and interrogated him. They learned from Koichi that his friends/suppliers will arrive the same evening to fetch him.<sup>[16]</sup> Several minutes later, a white Nissan Sentra car driven by appellant Kimura with his co-appellant Kizaki seating at the passenger seat arrived at the parking area. Koichi pointed to them as the ones who will fetch him. Appellants remained inside the car for about ten to fifteen minutes.<sup>[17]</sup> Then, a certain Boy driving a stainless jeep, without a plate number, arrived and parked the jeep two to three parking spaces away from the Sentra car.<sup>[18]</sup> Boy approached the Sentra car and after a few minutes, appellants got out of their car. Appellant Kizaki went to the stainless jeep and sat at the passenger seat. Boy and appellant Kimura went to the rear of the Sentra car and opened its trunk.<sup>[19]</sup> Appellant Kimura got a package wrapped in a newspaper and gave it to Boy who walked back to his jeep.<sup>[20]</sup> While Maj. Anso and SPO4 Baldovino, Jr. were approaching to check what was inside the wrapped newspaper, appellant Kimura ran but was apprehended while Boy was able to board his jeep and together with appellant Kizaki who was seated at the passenger seat sped off towards South Superhighway.<sup>[21]</sup> The police operatives then inspected the contents of the trunk and found packages of marijuana.<sup>[22]</sup> They brought Koichi and appellant Kimura to the headquarters and turned over the seized marijuana to the investigator who made markings thereon.<sup>[23]</sup> Maj. Anso reported the escape of appellant Kizaki to their investigation section.<sup>[24]</sup>

The seized packages which were contained in 3 sacks were brought to the PNP Crime Laboratory on June 29, 1994.<sup>[25]</sup> Forensic Chemist Sonia Sahagun-Ludovico testified that the contents of the sacks weighed 40,768 grams and were positive to the test of marijuana.<sup>[26]</sup>

On June 29, 1994, appellant Kizaki while having dinner with his friends at the Nippon Ichi Restaurant located at Mabini, Malate, Manila<sup>[27]</sup> was arrested by another NARCOM group led by Maj. Jose F. Dayco.<sup>[28]</sup>

Appellants' defense is denial and alibi. In support thereof, both appellants were called to the witness stand.

Appellant Kimura's testimony is as follows: In the afternoon of June 27, 1994, Kimura was in the house of his co-appellant Kizaki at Dian Street, Makati City, together with Koichi Kishi, Luis Carlos and a certain "Sally" and "Boy".<sup>[29]</sup> In the evening of the said date, Kimura borrowed the car of Kizaki in order to get his (Kimura's) television from his house located in Evangelista Street, near the Cash and Carry Supermarket, and bring the same to a repair shop.<sup>[30]</sup> On their way to Kimura's house, Koichi requested Kimura to pass by Cash and Carry Supermarket because Koichi needed to meet a certain "Rey" who was borrowing money from him. Upon reaching Cash and Carry, Kimura parked the car about twenty meters from its entrance, then Koichi and Carlos alighted from the car and Koichi handed something to Rey.<sup>[31]</sup> Shortly thereafter, Koichi and Carlos were grabbed by two men from behind. Then four men approached the car and one guy ordered him to sit at the back and together with Koichi and Carlos, they were all brought to Camp Karingal allegedly for violating Sec. 4 of Republic Act No. 6425.<sup>[32]</sup> Kimura was asked questions about the address and business of Kizaki. Kimura denied that there was marijuana in the car on the night of June 27, 1994 but claims that he saw marijuana placed at the car trunk the following day at Camp Karingal. Kizaki was not with him at Cash and Carry on the night of June 27, 1994. There was no stainless jeep near the car on the same night. Carlos was released and was not charged because Kimura's girlfriend, Sally, served as Carlos' guarantor.

On the other hand, appellant Kizaki testified that on the date that the alleged crime was committed, he was in the company of his friends, Mr. and Mrs. Takeyama, his co-appellant Kimura, and his driver Boy and maid Joan at his house in Dian Street, Makati City;<sup>[33]</sup> that appellant Kimura borrowed his car on the night of June 27, 1994 to pick up Kimura's broken TV and bring it to the repair shop.<sup>[34]</sup>

Appellant Kizaki's alibi was corroborated by Rosario Quintia, his former housemaid, and his friend, Akiyoshi Takeyama, who both testified that they were at Kizaki's house on the night of June 27, 1994 from 7:00 to 10:00 in the evening and never saw Kizaki leave the house.<sup>[35]</sup>

Appellant Kizaki was arrested on June 29, 1994, two days after the Cash and Carry incident, in the Nippon Ichi Restaurant located at Mabini, Manila. He was having dinner with Lt. Col. Rodolfo Tan, Masami Y. Nishino, Anita Takeyama and Akiyoshi Takeyama. These witnesses executed a joint affidavit<sup>[36]</sup> and testified that while they were about to leave the restaurant, a man got near Kizaki and asked for his passport whom they thought was from the Immigration. Later, they learned that Kizaki was brought to Camp Karingal.<sup>[37]</sup>

On June 27, 1997, the trial court rendered the herein assailed judgment, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Akira Kizaki and Tomohisa Kimura GUILTY beyond reasonable doubt for violation of Section 4 of Republic Act 6425, as amended by Republic Act 7659, and the Court hereby sentences them to suffer, taking

into consideration the absence of mitigating or aggravating circumstances, the amount of marijuana seized from the accused which weigh 40,768 grams, the penalty of RECLUSION PERPETUA and to pay a fine of P500,000.00 each.

The Bureau of Immigration and Deportation is hereby ordered to deport Akira Kizaki and Tomohisa Kimura without further proceedings after the service of their sentence.

Let the marijuana, the subject matter of this case be immediately forwarded to the Dangerous Drugs Board for proper disposition.

SO ORDERED. [38]

In convicting appellants, the trial court made the following findings:

The settled jurisprudence is that alibi is inherently a weak defense. Like the defense of alibi, denial by the accused of the offense charged against him is also inherently a weak defense. It is also the settled jurisprudence that the defense of alibi and denial cannot prosper over the positive identification of the accused by the prosecution witnesses. For alibi to prosper, the accused must show that it was impossible for him to have been at the scene of the commission of the crime at the time of its commission.

Akira testified that on the evening of June 27, 1994, he was in his house located at Dian Street corner Ampil Street, Makati City, Metro Manila, which is a walking distance to Cash and Carry Supermarket, the scene of the offense. It was not therefore impossible for accused Akira Kizaki to have been present at the scene of the crime at the time of its commission.

Accused Kimura testified that on the evening of June 27, 1994, he was with his co-accused Kizaki at the Cash and Carry Supermarket but for another purpose, i.e., to meet Rey Plantilla who was borrowing money from him. In fine accused Kimura merely denied the offense charged against him, which is weak defense.

Both accused, Kizaki and Kimura, were positively identified by prosecution witnesses SPO4 Baldomino, SPO1 Cabatu, Maj. Anso and PO3 Cadoy as the persons whom they arrested for drug trafficking in a buy-bust operation at the Cash and Carry Supermarket on June 27, 1994.

Finally, although the evidence show that there is a doubt in the illegality of the arrest of accused Kimura by Major Dayco, the jurisprudence is that "the illegality of warrantless arrest cannot deprive the state of its right to convict the guilty when all the facts on record point to their culpability.

[39]

Hence, this appeal before us. Appellants assert the following:

THE COURT A QUO GRAVELY ERRED IN DISREGARDING ACCUSED-APPELLANTS' DEFENSE.

## II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANTS HAD BEEN PROVEN BEYOND REASONABLE DOUBT.

Appellants claim that although the defense of alibi and denial are weak, it is still the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt to support a judgment of conviction; that the trial court mainly relied on the weakness of the defense rather than on the strength of the evidence for the prosecution. They argue that appellant Kizaki's claim that he was not at the Cash and Carry Supermarket on the night of June 27, 1994 was corroborated by three independent witnesses including appellant Kimura who testified that he was not with appellant Kizaki at Cash and Carry Supermarket on the said night.

Appellants further question how the trial court could have been certain that the marijuana presented in court are the same articles confiscated from the appellants when the arresting officers did not place identifying marks on the confiscated items.

Appellant Kizaki further contends that he was arrested two days after the alleged buy-bust operation without a valid warrant of arrest. He points out that although the trial court expressed doubts as to the legality of his arrest, it nevertheless convicted him of the crime charged, which is in violation of the Constitution. Kizaki argues that he could not have been caught in *flagrante delicto* to justify the warrantless arrest when he was arrested two days after the alleged Cash and Carry incident while he was only having dinner with his friends at a restaurant.

In the appellee's brief, the Solicitor General prays that the decision of the trial court finding appellants guilty as charged be affirmed. He argues that appellants were positively identified by four prosecution witnesses, all police officers, as among the three persons engaged in the transportation and delivery of about 40,768 grams of marijuana on June 27, 1994 at the Cash and Carry Supermarket; that the police operatives were able to seize the marijuana from the Sentra car they were using to transport the marijuana; that the marijuana introduced and offered at the trial were positively identified by the arresting officers as those seized from the car of the appellants; that the contention of appellant Kizaki that his warrantless arrest two days after the alleged incident, was unlawful, is legally inconsequential in this case considering that his conviction was not based on his arrest on June 29, 1994 but on his having participated in the transport and delivery of marijuana on June 27, 1994; that appellant Kizaki never questioned the validity of the warrantless arrest of his co-appellant Kimura on June 27, 1994, either before the trial court or before this Court; thus, any challenge against the search and seizure of the marijuana based on constitutional ground is deemed waived insofar as appellant Kizaki is concerned.

We will first resolve the issue on the alleged warrantless arrest of appellant Kizaki.

Appellant Kizaki assails the legality of his warrantless arrest. Indeed, SPO1 Delfin, one of those who arrested appellant Kizaki at the Nippon Ichi restaurant, admitted