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[G.R. No. 133917, February 19, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NASARIO MOLINA Y MANAMAT @ "BOBONG" AND GREGORIO MULA Y MALAGURA @ "BOBOY", ACCUSED-APPELLANTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

To sanction disrespect and disregard for the Constitution in the name of protecting the society from lawbreakers is to make the government itself lawless and to subvert those values upon which our ultimate freedom and liberty depend.[1]

For automatic review is the Decision[2] of the Regional Trial Court of Davao City, Branch 17, in Criminal Case No. 37,264-96, finding accused-appellants Nasario Molina y Manamat *alias* "Bobong" and Gregorio Mula y Malagura *alias* "Boboy," guilty beyond reasonable doubt of violation of Section 8,[3] of the Dangerous Drugs Act of 1972 (Republic Act No. 6425), as amended by Republic Act No. 7659,[4] and sentencing them to suffer the supreme penalty of death.

The information against accused-appellants reads:

> That on or about August 8, 1996, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, did then and there willfully, unlawfully and feloniously was found in their possession 946.9 grams of dried marijuana which are prohibited.
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> CONTRARY TO LAW.[5]

Upon arraignment on September 4, 1996, accused-appellants pleaded not guilty to the accusation against them.[6] Trial ensued, wherein the prosecution presented Police Superintendent Eriel Mallorca, SPO1 Leonardo Y. Pamplona, Jr., and SPO1 Marino S. Paguidopon, Jr. as witnesses.

The antecedent facts are as follows:

Sometime in June 1996, SPO1 Marino Paguidopon, then a member of the Philippine National Police detailed at Precinct No. 3, Matina, Davao City, received an information regarding the presence of an alleged marijuana pusher in Davao City.[7] The first time he came to see the said marijuana pusher in person was during the first week of July 1996. SPO1 Paguidopon was then with his informer when a motorcycle passed by. His informer pointed to the motorcycle driver, accused-appellant Mula, as the pusher. As to accused-appellant Molina, SPO1 Paguidopon

had no occasion to see him before the arrest. Moreover, the names and addresses of the accused-appellants came to the knowledge of SPO1 Paguidopon only after they were arrested.[8]

At about 7:30 in the morning of August 8, 1996, SPO1 Paguidopon received an information that the alleged pusher will be passing at NHA, Ma-a, Davao City any time that morning.[9] Consequently, at around 8:00 A.M. of the same day, he called for assistance at the PNP, Precinct No. 3, Matina, Davao City, which immediately dispatched the team of SPO4 Dionisio Cloribel (team leader), SPO2 Paguidopon (brother of SPO1 Marino Paguidopon), and SPO1 Pamplona, to proceed to the house of SPO1 Marino Paguidopon where they would wait for the alleged pusher to pass by.[10]

At around 9:30 in the morning of August 8, 1996, while the team were positioned in the house of SPO1 Paguidopon, a "trisikad" carrying the accused-appellants passed by. At that instance, SPO1 Paguidopon pointed to the accused-appellants as the pushers. Thereupon, the team boarded their vehicle and overtook the "trisikad."[11] SPO1 Paguidopon was left in his house, thirty meters from where the accused-appellants were accosted.[12]

The police officers then ordered the "trisikad" to stop. At that point, accused-appellant Mula who was holding a black bag handed the same to accused-appellant Molina. Subsequently, SPO1 Pamplona introduced himself as a police officer and asked accused-appellant Molina to open the bag.[13] Molina replied, "*Boss, if possible we will settle this*."[14] SPO1 Pamplona insisted on opening the bag, which revealed dried marijuana leaves inside. Thereafter, accused-appellants Mula and Molina were handcuffed by the police officers.[15]

On December 6, 1996, accused-appellants, through counsel, jointly filed a Demurrer to Evidence, contending that the marijuana allegedly seized from them is inadmissible as evidence for having been obtained in violation of their constitutional right against unreasonable searches and seizures.[16] The demurrer was denied by the trial court.[17] A motion for reconsideration was filed by accused-appellants, but this was likewise denied. Accused-appellants waived presentation of evidence and opted to file a joint memorandum.

On April 25, 1997, the trial court rendered the assailed decision,[18] the decretal portion of which reads:

> WHEREFORE, finding the evidence of the prosecution alone without any evidence from both accused who waived presentation of their own evidence through their counsels, more than sufficient to prove the guilt of both accused of the offense charged beyond reasonable doubt, pursuant to Sec. 20, sub. par. 5 of Republic Act 7659, accused NASARIO MOLINA and GREGORIO MULA, are sentenced to suffer a SUPREME PENALTY OF DEATH through lethal injection under Republic Act 8176, to be effected and implemented as therein provided for by law, in relation to Sec. 24 of Rep. Act 7659.
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> The Branch Clerk of Court of this court, is ordered to immediately elevate

> the entire records of this case with the Clerk of Court of the Supreme Court, Manila, for the automatic review of their case by the Supreme Court and its appropriate action as the case may be.
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> SO ORDERED.[19]

Pursuant to Article 47 of the Revised Penal Code and Rule 122, Section 10 of the Rules of Court, the case was elevated to this Court on automatic review. Accused-appellants contend:

> I.
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> THAT THE MARIJUANA IS INADMISSIBLE IN EVIDENCE FOR HAVING BEEN SEIZED IN VIOLATION OF APPELLANTS' CONSTITUTIONAL RIGHTS AGAINST UNREASONABLE SEARCHES AND SEIZURES;
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> II.
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> THAT ASSUMING IT IS ADMISSIBLE IN EVIDENCE, THE GOVERNMENT HAS NOT OTHERWISE PROVED THEIR GUILT BEYOND REASONABLE DOUBT; AND
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> III.
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> THAT, FINALLY, ASSUMING THEIR GUILT HAS BEEN PROVED BEYOND REASONABLE DOUBT, THE IMPOSABLE PENALTY FOR VIOLATION OF SEC. 8 OF RA No. 7659 *(sic)*, IN THE ABSENCE OF ANY AGGRAVATING CIRCUMSTANCE, IS LIFE IMPRISONMENT, NOT DEATH.[20]

The Solicitor General filed a Manifestation and Motion (In Lieu of Brief), wherein he prayed for the acquittal of both accused-appellants.

The fundamental law of the land mandates that searches and seizures be carried out in a reasonable fashion, that is, by virtue or on the strength of a search warrant predicated upon the existence of a probable cause. The pertinent provision of the Constitution provides:

> 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 witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[21]

Complementary to the foregoing provision is the exclusionary rule enshrined under Article III, Section 3, paragraph 2, which bolsters and solidifies the protection against unreasonable searches and seizures.[22] Thus:

> Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Without this rule, the right to privacy would be a form of words, valueless and undeserving of mention in a perpetual charter of inestimable human liberties; so too, without this rule, the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom implicit in the concept of ordered liberty.[23]

The foregoing constitutional proscription, however, is not without exceptions. Search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures;[24] and (6) stop and frisk situations (Terry search).[25]

The first exception (search incidental to a lawful arrest) includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest which must precede the search. In this instance, the law requires that there be first a lawful arrest before a search can be made --- the process cannot be reversed.[26] As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. The Rules of Court, however, recognizes permissible warrantless arrests. Thus, a peace officer or a private person may, without 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 (arrest *in flagrante delicto*); (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (arrest effected in hot pursuit); and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (arrest of escaped prisoners). [27]

In the case at bar, the court *a quo* anchored its judgment of conviction on a finding that the warrantless arrest of accused-appellants, and the subsequent search conducted by the peace officers, are valid because accused-appellants were caught *in flagrante delicto* in possession of prohibited drugs.[28] This brings us to the issue of whether or not the warrantless arrest, search and seizure in the present case fall within the recognized exceptions to the warrant requirement.

In *People v. Chua Ho San*,[29] the Court held that in cases of *in flagrante delicto* arrests, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. The arresting officer, therefore, must have personal knowledge of such fact or, as recent case law adverts to, personal knowledge of facts or circumstances convincingly indicative or constitutive of probable cause. As discussed in *People v. Doria*,[30] probable cause means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.,* supported by circumstances sufficiently strong in

themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

As applied to *in flagrante delicto* arrests, it is settled that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an *in flagrante delicto* arrest. Thus, in *People v. Aminnudin*, [31] it was held that "the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension."

Likewise, in *People v. Mengote*,[32] the Court did not consider "eyes... darting from side to side ... [while] holding ... [one's] abdomen", in a crowded street at 11:30 in the morning, as overt acts and circumstances sufficient to arouse suspicion and indicative of probable cause. According to the Court, "[b]y no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in [the arresting officers'] presence." So also, in *People v. Encinada*,[33] the Court ruled that no probable cause is gleanable from the act of riding a *motorela* while holding two plastic baby chairs.

Then, too, in *Malacat v. Court of Appeals*,[34] the trial court concluded that petitioner was attempting to commit a crime as he was "`standing at the corner of Plaza Miranda and Quezon Boulevard' with his eyes `moving very fast' and `looking at every person that come (sic) nearer (sic) to them.'"[35] In declaring the warrantless arrest therein illegal, the Court said:

> Here, there could have been no valid in *flagrante delicto* ... arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed.[36]

It went on to state that -

> Second, there was nothing in petitioner's behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were "moving very fast" - an observation which leaves us incredulous since Yu and his teammates were nowhere near petitioner and it was already 6:30 p.m., thus presumably dusk. Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble...
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> Third, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was "discovered" "inside the front