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[G.R. No. 123872, January 30, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN MONTILLA Y GATDULA, ACCUSED-APPELLANT.

D E C I S I O N

REGALADO, J.:

Accused-Appellant Ruben Montilla y Gatdula, alias "Joy," was charged on August 22, 1994 for violating Section 4, Article II of the Dangerous Drugs Act of 1972, Republic Act No. 6425, as amended by Republic Act No. 7659, before the Regional Trial Court, Branch 90, of Dasmariñas, Cavite in an information which alleges:

> That on or about the 20th day of June 1994, at Barangay Salitran, Municipality of Dasmariñas, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, wilfully, unlawfully and feloniously, administer, transport, and deliver twenty-eight (28) kilos of dried marijuana leaves, which are considered prohibited drugs, in violation of the provisions of R.A. 6425 thereby causing damage and prejudice to the public interest.[1]

The consequent arraignment conducted on September 14, 1994 elicited a plea of not guilty from appellant who was assisted therein by his counsel *de parte.*[2] Trial was held on scheduled dates thereafter, which culminated in a verdict of guilty in a decision of the trial court dated June 8, 1995 and which imposed the extreme penalty of death on appellant. He was further ordered to pay a fine in the amount of P500,000.00 and to pay the costs of the proceedings.[3]

It appears from the evidence of the prosecution that appellant was apprehended at around 4:00 A.M. of June 20, 1994 near a waiting shed located at Barangay Salitran, Dasmariñas, Cavite by SPO1 Concordio Talingting and SPO1 Armando Clarin, both members of the Cavite Philippine National Police Command based in Dasmariñas. Appellant, according to the two officers, was caught transporting 28 marijuana bricks contained in a traveling bag and a carton box, which marijuana bricks had a total weight of 28 kilos.

These two officers later asserted in court that they were aided by an informer in the arrest of appellant. That informer, according to Talingting and Clarin, had informed them the day before, or on June 19, 1994 at about 2:00 P.M., that a drug courier, whom said informer could recognize, would be arriving somewhere in Barangay Salitran, Dasmariñas from Baguio City with an undetermined amount of marijuana. It was the same informer who pinpointed to the arresting officers the appellant when the latter alighted from a passenger jeepney on the aforestated day, hour, and place.[4]

Upon the other hand, appellant disavowed ownership of the prohibited drugs. He claimed during the trial that while he indeed came all the way from Baguio City, he traveled to Dasmariñas, Cavite with only some pocket money and without any luggage. His sole purpose in going there was to look up his cousin who had earlier offered a prospective job at a garment factory in said locality, after which he would return to Baguio City. He never got around to doing so as he was accosted by SPO1 Talingting and SPO1 Clarin at Barangay Salitran.

He further averred that when he was interrogated at a house in Dasmariñas, Cavite, he was never informed of his constitutional rights and was in fact even robbed of the P500.00 which he had with him. Melita Adaci, the cousin, corroborated appellant's testimony about the job offer in the garment factory where she reportedly worked as a supervisor,[5] although, as the trial court observed, she never presented any document to prove her alleged employment.

In the present appellate review, appellant disputes the trial court's finding that he was legally caught in *flagrante* transporting the prohibited drugs. This Court, after an objective and exhaustive review of the evidence on record, discerns no reversible error in the factual findings of the trial court. It finds unassailable the reliance of the lower court on the positive testimonies of the police officers to whom no ill motives can be attributed, and its rejection of appellant's fragile defense of denial which is evidently self-serving in nature.

1. Firstly, appellant asserts that the court a quo grossly erred in convicting him on the basis of insufficient evidence as no proof was proffered showing that he wilfully, unlawfully, and feloniously administered, transported, and delivered 28 kilos of dried marijuana leaves, since the police officers "testified only on the alleged transporting of Marijuana from Baguio City to Cavite."

Further, the failure of the prosecution to present in court the civilian informant is supposedly corrosive of the People's cause since, aside from impinging upon appellant's fundamental right to confront the witnesses against him, that informant was a vital personality in the operation who would have contradicted the hearsay and conflicting testimonies of the arresting officers on how appellant was collared by them.

The pertinent provision of the penal law here involved, in Section 4 of Article II thereof, as amended, is as follows:

> SEC. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million 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.
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> Notwithstanding the provision of Section 20 of this Act to the contrary, 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.

Now, the offense ascribed to appellant is a violation of the Dangerous Drugs Act, some of the various modes of commission[6] being the sale, administration, delivery, distribution, and transportation of prohibited drugs as set forth in the epigraph of Section 4, Article II of said law. The text of Section 4 expands and extends its punitive scope to other acts besides those mentioned in its headnote by including these who 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." Section 4 could thus be violated by the commission of any of the acts specified therein, or a combination thereof, such as selling, administering, delivering, giving away, distributing, dispatching in transit or transporting, and the like.

As already stated, appellant was charged with a violation of Section 4, the transgressive acts alleged therein and attributed to appellant being that he administered, delivered, and transported marijuana. The governing rule with respect to an offense which may be committed in any of the different modes provided by law is that an indictment would suffice if the offense is alleged to have been committed in one, two or more modes specified therein. This is so as allegations in the information of the various ways of committing the offense should be considered as a description of only one offense and the information cannot be dismissed on the ground of multifariousness.[7] In appellant's case, the prosecution adduced evidence clearly establishing that he transported marijuana from Baguio City to Cavite. By that act alone of transporting the illicit drugs, appellant had already run afoul of that particular section of the statute, hence, appellant's asseverations must fail.

The Court also disagrees with the contention of appellant that the civilian informer should have been produced in court considering that his testimony was "vital" and his presence in court was essential in order to give effect to or recognition of appellant's constitutional right to confront the witnesses arrayed by the State against him. These assertions are, however, much too strained. Far from compromising the primacy of appellant's right to confrontation, the non-presentation of the informer in this instance was justified and cannot be faulted as error.

For one, the testimony of said informer would have been, at best, merely corroborative of the declarations of SPO1 Talingting and SPO1 Clarin before the trial court, which testimonies are not hearsay as both testified upon matters in which they had personally taken part. As such, the testimony of the informer could be dispensed with by the prosecution,[8] more so where what he would have corroborated are the narrations of law enforcers on whose performance of duties regularity is the prevailing legal presumption. Besides, informants are generally not presented in court because of the need to hide their identities and preserve their invaluable services to the police.[9] Moreover, it is up to the prosecution whom to present in court as its witnesses, and not for the defense to dictate that course.[10] Finally, appellant could very well have resorted to the coercive process of subpoena to compel that eyewitness to appear before the court below,[11] but which remedy was not availed of by him.

2. Appellant contends that the marijuana bricks were confiscated in the course of an unlawful warrantless search and seizure. He calls the attention of the Court to the fact that as early as 2:00 P.M. of the preceding day, June 19, 1994, the police

authorities had already been apprised by their so-called informer of appellant's impending arrival from Baguio City, hence those law enforcers had the opportunity to procure the requisite warrant. Their misfeasance should therefore invalidate the search for and seizure of the marijuana, as well as the arrest of appellant on the following dawn. Once again, the Court is not persuaded.

Section 2, Article III of the Constitution lays down the general rule that a search and seizure must be carried out through or on the strength of a judicial warrant, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.[12] Evidence secured on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding. This exclusionary rule is not, however, an absolute and rigid proscription. Thus, (1) customs searches;[13] (2) searches of moving vehicles,[14] (3) seizure of evidence in plain view;[15] (4) consented searches;[16] (5) searches incidental to a lawful arrest;[17] and (6) "stop and frisk" measures[18] have been invariably recognized as the traditional exceptions.

In appellant's case, it should be noted that the information relayed by the civilian informant to the law enforcers was that there would be delivery of marijuana at Barangay Salitran by a courier coming from Baguio City in the "early morning" of June 20, 1994. Even assuming that the policemen were not pressed for time, this would be beside the point for, under these circumstances, the information relayed was too sketchy and not detailed enough for the obtention of the corresponding arrest or search warrant. While there is an indication that the informant knew the courier, the records do not reveal that he knew him by name.

While it is not required that the authorities should know the exact name of the subject of the warrant applied for, there is the additional problem that the informant did not know to whom the drugs would be delivered and at which particular part of the barangay there would be such delivery. Neither did this asset know the precise time of the suspect's arrival, or his means of transportation, the container or contrivance wherein the drugs were concealed and whether the same were arriving together with, or were being brought by someone separately from, the courier.

On such bare information, the police authorities could not have properly applied for a warrant, assuming that they could readily have access to a judge or a court that was still open by the time they could make preparations for applying therefor, and on which there is no evidence presented by the defense. In determining the opportunity for obtaining warrants, not only the intervening time is controlling but all the coincident and ambient circumstances should be considered, especially in rural areas. In fact, the police had to form a surveillance team and to lay down a dragnet at the possible entry points to Barangay Salitran at midnight of that day notwithstanding the tip regarding the "early morning" arrival of the courier. Their leader, SPO2 Cali, had to reconnoiter inside and around the barangay as backup, unsure as they were of the time when and the place in Barangay Salitran, where their suspect would show up, and how he would do so.

On the other hand, that they nonetheless believed the informant is not surprising for, as both SPO1 Clarin and SPO1 Talingting recalled, he had proved to be a reliable

source in past operations. Moreover, experience shows that although information gathered and passed on by these assets to law enforcers are vague and piecemeal, and not as neatly and completely packaged as one would expect from a professional spymaster, such tip-offs are sometimes successful as it proved to be in the apprehension of appellant. If the courts of justice are to be of understanding assistance to our law enforcement agencies, it is necessary to adopt a realistic appreciation of the physical and tactical problems of the latter, instead of critically viewing them from the placid and clinical environment of judicial chambers.

3. On the defense argument that the warrantless search conducted on appellant invalidates the evidence obtained from him, still the search on his belongings and the consequent confiscation of the illegal drugs as a result thereof was justified as a search incidental to a lawful arrest under Section 5(a), Rule 113 of the Rules of Court. Under that provision, 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.

A legitimate warrantless arrest, as above contemplated, necessarily cloaks the arresting police officer with authority to validly search and seize from the offender (1) dangerous weapons, and (2) those that may be used as proof of the commission of an offense.[19] On the other hand, the apprehending officer must have been spurred by probable cause in effecting an arrest which could be classified as one in cadence with the instances of permissible arrests set out in Section 5(a).[20] These instances have been applied to arrests carried out on persons caught in flagrante delicto. The conventional view is that probable cause, while largely a relative term the determination of which must be resolved according to the facts of each case, is understood as having reference to such facts and circumstances which could lead a reasonable, discreet, and prudent man to believe and conclude as to the commission of an offense, and that the objects sought in connection with the offense are in the place sought to be searched.[21]

Parenthetically, if we may digress, it is time to observe that the evidentiary measure for the propriety of filing criminal charges and, correlatively, for effecting a warrantless arrest, has been reduced and liberalized. In the past, our statutory rules and jurisprudence required prima facie evidence, which was of a higher degree or quantum,[22] and was even used with dubiety as equivalent to "probable cause." Yet, even in the American jurisdiction from which we derived the term and its concept, probable cause is understood to merely mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of,[23] or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime.[24]

Felicitously, those problems and confusing concepts were clarified and set aright, at least on the issue under discussion, by the 1985 amendment of the Rules of Court which provides in Rule 112 thereof that the quantum of evidence required in preliminary investigation is such evidence as suffices to "engender a well founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof.[25] It has the same meaning as the related phraseology used in other parts of the same Rule, that is, that the investigating fiscal "finds cause to hold the