

## SECOND DIVISION

[ G.R. No. 128253, September 22, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANIEL BAO-IN Y VENTURA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Accused-appellant **DANIEL BAO-IN y VENTURA** was found guilty of violating Section 8, Article II of R.A. 6425, as amended by R.A. 7659, for illegal possession of eight (8) bricks of wrapped, compressed marijuana leaves, weighing approximately eight (8) kilograms. He was sentenced to suffer the penalty of reclusion perpetua and to pay a fine of P20,000.00.<sup>[1]</sup> He is now before us on appeal.

At the trial, the prosecution presented four (4) witnesses, viz: security guard **RICKY MACADANGDANG**, CIS agents **SPO3 ROMEO G. DULAY** and **SPO2 MAXIMIANO PERALTA**, and forensic chemist **ALMA MARGARITA VILLASEÑOR**.

**SPO3 ROMEO G. DULAY**, a CIS agent stationed in Baguio City, recounted that on November 14, 1995, at about 5:00 p.m., he and **SPO2 MAXIMIANO PERALTA** were sent by their office to the Dagupan Bus Terminal in Governor Pack Road, Baguio City, to check an intelligence report about a gunrunning activity in the area.<sup>[2]</sup>

While in front of the bus terminal, they observed a man, about 10-15 meters away, carrying a black bag and acting suspiciously. The man was always looking behind his back on his way to the ticket booth of the terminal.<sup>[3]</sup> After a while, a commotion ensued between the man carrying a black bag and his companion, on the one hand, and two security guards of the Dagupan Bus Terminal, on the other. The CIS agents approached the group to investigate the dispute. They found accused **DANIEL BAO-IN** and a certain **MARIO** in front of a Philippine Rabbit bus bound for Cavite. It was Mario who was holding a black traveling bag. Security guard **RICKY MACADANGDANG** told the agents that Mario and the accused refused to have the black bag inspected prior to boarding the bus. When the agents turned and started talking to the accused, Mario dropped the black bag and fled. Accused just stood where he was. SPO3 Dulay chased but failed to capture Mario.<sup>[4]</sup>

When SPO3 Dulay returned to the terminal, he saw SPO2 Peralta inspecting the bag. They found eight (8) bricks of marijuana, each wrapped in a plastic bag. After marking the bag and its contents, the CIS agents brought the accused and security guard Macadangdang to the CIS office for further investigation. The contents of the plastic bags were forwarded to the PC Crime Laboratory for analysis.<sup>[5]</sup> It was confirmed that they contained eight (8) kilos of marijuana.<sup>[6]</sup>

Even during the interrogation by the CIS, the accused denied ownership of the black bag and claimed that it belonged to Mario. He insisted that he did not know about its contents. He maintained that he just arrived in Baguio and was on his way home to Benguet when he chanced upon Mario at the bus terminal. When the CIS agents came, he was standing by the door of the bus bound for Cavite to see Mario off. When asked by the CIS agents whether he had a bus ticket for said trip, accused replied in the negative.<sup>[7]</sup>

To blunt the testimony of **SPO3** Dulay that Mario was the one holding the black bag containing marijuana, the prosecution presented **SPO2 MAXIMIANO PERALTA**. He testified that accused also carried the black bag during the incident. He declared that when they first approached the two groups, Mario was holding the black bag. However, when he asked the guard to open the bag, he saw the guard take the bag from the accused. In all other aspects, SPO2 Peralta's testimony corroborated that of SPO3 Dulay.<sup>[8]</sup>

The testimony of security guard **RICKY MACADANGDANG** corroborated that of **SPO3** Dulay. He recounted that on said date and time, he was assigned at the Dagupan Bus Terminal. His duty was to frisk the passengers and inspect their baggage before boarding the bus.<sup>[9]</sup> Mario and accused came to board a Saulog Transit bus bound for Cavite. He asked them if they had tickets for said trip as all the seats were already reserved. When they replied in the negative, he instructed them to purchase tickets. When they returned to the bus after buying tickets, he informed Mario that he had to inspect the bag he was carrying. Mario refused and he insisted on the inspection. They argued and they caught the attention of two CIS officers who were then in the bus terminal. When the **CIS** officers introduced themselves, Mario immediately dropped the black bag in front of accused and scampered away. Accused, however, did not run. **SPO3** Dulay pursued Mario but failed to capture him.<sup>[10]</sup>

For his part, accused, a 30-year old farmer, residing at La Trinidad, Benguet, denied ownership of the black bag and maintained that it belonged to Mario. Accused recounted that on said date and time, he just arrived in Baguio from Nueva Ecija on board a Philippine Rabbit bus. He alighted at the Dagupan Bus terminal in Baguio where he saw Mario whom he met a month earlier in a billiard game. Mario was then carrying a black traveling bag and was about to board a Dagupan bus bound for Cavite. They greeted each other and engaged in small talk. When Mario was about to board the bus, security guard Ricky Macadangdang informed him that his bag has to be inspected. Mario refused but the guard insisted and the two exchanged arguments. This attracted the attention of two CIS agents who approached them to intervene. As soon as they identified themselves as CIS agents, Mario immediately dropped the bag in front of him and fled. One of the CIS agents pursued him to no avail. Unlike Mario, the accused stayed where he was. The black bag left by Mario was inspected and it yielded eight (8) bricks of marijuana. Upon inquiry, accused confirmed that he came to know Mario in a billiard game. He was brought to the police station for further interrogation. He could not inform the authorities about the residence or place of work of Mario as he met him only in October of 1995, just a month prior to his arrest.<sup>[11]</sup> He did not even know Mario's full name. Their meeting at the terminal on that fateful day was purely accidental.<sup>[12]</sup>

After trial, accused was convicted, hence, this appeal.

In a Manifestation and Motion In Lieu of Appellee's Brief, the Solicitor General recommended the acquittal of accused.<sup>[13]</sup>

We agree.

In every criminal prosecution, what is needed is that degree of proof which produces conviction in an unprejudiced mind. Conviction must rest on nothing less than a moral certainty of guilt.<sup>[14]</sup> Thus, the task of the prosecution is to establish by proof beyond reasonable doubt the particular circumstances constituting the offense charged. Where the prosecution fails to meet the exacting test of moral certainty and proof beyond reasonable doubt, a reversal of the trial court's guilty verdict is mandatory.

In the case at bar, the prosecution evidence failed to establish accused-appellant's guilt. The totality of evidence shows that the black traveling bag containing eight (8) kilos of marijuana belonged to accused-appellant's companion, Mario. The first prosecution witness SPO3 Dulay, a senior officer of the CIS, categorically and repeatedly declared that at no time did he see accused-appellant hold the black bag.<sup>[15]</sup> This testimony is corroborated by security guard Macadangdang. Nor is there any proof of an overt act of accused-appellant from which it can be inferred that he had previously come to an agreement with Mario to commit the crime charged. Conspiracy cannot be deduced solely from an accused's presence in the *locus criminis*. Conspiracy transcends companionship<sup>[16]</sup> and must be proved as clearly as the crime itself.

To be sure, some of the prosecution evidence even support the story of accused-appellant. SPO3 Dulay testified that he found no bus ticket in accused-appellant's person.<sup>[17]</sup> He also declared that accused-appellant replied in the negative when he initially asked accused-appellant if he was boarding the bus.<sup>[18]</sup> This lends credence to accused-appellant's claim that he was at the Saulog Transit bus door merely to see Mario off.<sup>[19]</sup>

We reject the testimony of **SPO2** Peralta that accused-appellant was holding the black bag when security guard Macadangdang demanded its inspection.<sup>[20]</sup> The testimonies of security guard Macadangdang and **SPO3** Dulay contradict Peralta's observation. As per Macadangdang's testimony, it was Mario who was carrying the bag; it was Mario to whom he addressed his request to submit the bag for inspection before boarding; it was Mario who refused to have the bag examined, and when the CIS agents came, it was "the person holding the bag who ran away."<sup>[21]</sup> **SPO3** Dulay repeatedly confirmed that it was Mario, and not accused-appellant, who was carrying the black bag.

It is erroneous for the trial court to rely on the rule that conspiracy may be inferred from the coordinated movements of the co-conspirators.<sup>[22]</sup> In the case at bar, the acts of Mario and accused-appellant were not synchronized as to establish a prior agreement between them to commit the crime. Hence, the evidence shows that it was Mario who acted suspiciously, who was furtively looking behind him while carrying the black bag containing marijuana, and who refused to submit the bag for inspection. He escaped when the CIS officers came to investigate. In contrast,