

## THIRD DIVISION

[ G.R. No. 113447, October 09, 1997 ]

**ALAIN MANALILI Y DIZON, PETITIONER, VS. COURT OF APPEALS  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.  
D E C I S I O N**

**PANGANIBAN, J.:**

When dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure an arrest or a search warrant, policemen should employ limited, flexible responses -- like "stop-and-frisk" -- which are graduated in relation to the amount of information they possess, the lawmen being ever vigilant to respect and not to violate or to treat cavalierly the citizen's constitutional rights against unreasonable arrest, search and seizure.

**The Case**

This rule is reiterated as we resolve this petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Decision of the Court of Appeals dated April 19, 1993 and its Resolution dated January 20, 1994 in CA G.R. CR No. 07266, entitled "People of the Philippines vs. Alain Manalili y Dizon."

In an Information dated April 11, 1988,<sup>[1]</sup> Petitioner Alain Manalili y Dizon was charged by Assistant Caloocan City Fiscal E. Juan R. Bautista with violation of Section 8, Article II of Republic Act No. 6425, allegedly committed as follows:<sup>[2]</sup>

"That on or about the 11th day of April 1988 in Caloocan City, MM, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there wilfully, unlawfully and feloniously have in his custody, possession and control crushed marijuana residue, which is a prohibited drug and knowing the same to be such.

Contrary to Law."

Upon his arraignment on April 21, 1988, appellant pleaded "not guilty" to the charge.<sup>[3]</sup> With the agreement of the public prosecutor, appellant was released after filing a P10,000.00 bail bond.<sup>[4]</sup> After trial in due course, the Regional Trial Court of Caloocan City, Branch 124, acting as a Special Criminal Court, rendered on May 19, 1989 a decision<sup>[5]</sup> convicting appellant of illegal possession of marijuana residue. The dispositive portion of the decision reads:<sup>[6]</sup>

"WHEREFORE, in view of all the foregoing, this Court finds the accused ALAIN MANALILI Y DIZON guilty beyond reasonable doubt of violation of Section 8, Article II, of Republic Act No. 6425, as amended (Illegal Possession of Marijuana residue), and hereby sentences (sic) said accused to suffer imprisonment of SIX (6) YEARS and ONE (1) DAY; and to pay a fine of P6,000.00; and to pay the costs.

xxx

xxx

xxx."

Appellant remained on provisional liberty.<sup>[7]</sup> Atty. Benjamin Razon, counsel for the defense, filed a Notice of Appeal<sup>[8]</sup> dated May 31, 1989. On April 19, 1993, Respondent Court<sup>[9]</sup> promulgated its assailed Decision, denying the appeal and affirming the trial court:<sup>[10]</sup>

"ACCORDINGLY, the decision appealed from dated May 19, 1989 is hereby AFFIRMED in all respects. Costs against appellant."

Respondent Court<sup>[11]</sup> denied reconsideration via its assailed Resolution dated January 20, 1994, disposing:

"ACCORDINGLY, accused-appellant's motion for reconsideration is, as is hereby DENIED."

### **The Facts**

#### **Version of the Prosecution**

The facts, as found by the trial court, are as follows:<sup>[12]</sup>

"At about 2:10 o'clock in the afternoon of April 11, 1988, policemen from the Anti-Narcotics Unit of the Kalookan City Police Station were conducting a surveillance along A. Mabini street, Kalookan City, in front of the Kalookan City Cemetery. The policemen were Pat. Romeo Espiritu and Pat. Anger Lumabas and a driver named Arnold Enriquez was driving a Tamaraw vehicle which was the official car of the Police Station of Kalookan City. The surveillance was being made because of information that drug addicts were roaming the area in front of the Kalookan City Cemetery.

Upon reaching the Kalookan City Cemetery, the policemen alighted from their vehicle. They then chanced upon a male person in front of the cemetery who appeared high on drugs. The male person was observed to

have reddish eyes and to be walking in a swaying manner. When this male person tried to avoid the policemen, the latter approached him and introduced themselves as police officers. The policemen then asked the male person what he was holding in his hands. The male person tried to resist. Pat. Romeo Espiritu asked the male person if he could see what said male person had in his hands. The latter showed the wallet and allowed Pat. Romeo Espiritu to examine the same. Pat. Espiritu took the wallet and examined it. He found suspected crushed marijuana residue inside. He kept the wallet and its marijuana contents.

The male person was then brought to the Anti-Narcotics Unit of the Kalookan City Police Headquarters and was turned over to Cpl. Wilfredo Tamondong for investigation. Pat. Espiritu also turned over to Cpl. Tamondong the confiscated wallet and its suspected marijuana contents. The man turned out to be the accused ALAIN MANALILI y DIZON.

Upon receipt of the confiscated suspected marijuana residue from Pat. Espiritu, Cpl. Tamondong wrapped the same with a white sheet of paper on which he wrote 'Evidence 'A' 4/11/88 Alain Manalili'. The white sheet of paper was marked as Exhibit 'E-3'. The residue was originally wrapped in a smaller sheet of folded paper. (Exhibit 'E-4').

Cpl. Tamondong next prepared a referral slip addressed to the NBI Forensic Chemistry Section requesting a chemical analysis of the subject marijuana residue (Exhibit 'D'). Cpl. Tamondong thereafter prepared a Joint Affidavit of the apprehending policemen (Exhibit 'A'). Pat. Angel Lumabas handcarried the referral slip (Exhibit 'D') to the National Bureau of Investigation (NBI), including the subject marijuana residue for chemical analysis. The signature of Pat. Lumabas appears on the left bottom corner of Exhibit 'D'.

The Forensic Chemistry Section of the NBI received the aforesaid referral slip and the subject marijuana residue at 7:40 o'clock in the evening of April 11, 1988 as shown on the stamped portion of Exhibit 'D'.

It was NBI Aida Pascual who conducted the microscopic and chemical examinations of the specimen which she identified. (Exhibit 'E')<sup>[13]</sup> Mrs. Pascual referred to the subject specimen as 'crushed marijuana leaves' in her Certification dated April 11, 1988 (Exhibit 'F').<sup>[14]</sup> These crushed marijuana leaves gave positive results for marijuana, according to the Certificate.

Mrs. Pascual also conducted a chromatographic examination of the specimen. In this examination, she also found that the 'crushed marijuana leaves' gave positive results for marijuana. She then prepared a Final Report of her examinations (Exhibit 'G').

After conducting the examinations, Ms. Pascual placed the specimen in a white letter-envelope and sealed it. (Exhibit 'E'). She then wrote identification notes on this letter-envelope. (Exhibit 'E-1').

Pat. Lumabas carried the Certification marked as Exhibit 'F' from the NBI Forensic Chemistry Section to Cpl. Tamondong. Upon receipt thereof, Cpl. Tamondong prepared a referral slip addressed to the City Fiscal of Kalookan City. (Exhibit 'C')"

On rebuttal, Pat. Espiritu testified that appellant was not riding a tricycle but was walking in front of the cemetery when he was apprehended.<sup>[15]</sup>

#### Version of the Defense

The trial court summarized the testimonies of the defense witnesses as follows:<sup>[16]</sup>

"At about 2:00 o'clock in the afternoon of April 11, 1988, the accused ALAIN MANALILI was aboard a tricycle at A. Mabini street near the Kalookan City Cemetery on the way to his boarding house. Three policemen ordered the driver of the tricycle to stop because the tricycle driver and his lone passenger were under the influence of marijuana. The policemen brought the accused and the tricycle driver inside the Ford Fiera which the policemen were riding in. The policemen then bodily searched the accused and the tricycle driver. At this point, the accused asked the policemen why he was being searched and the policemen replied that he (accused) was carrying marijuana. However, nothing was found on the persons of the accused and the driver. The policemen allowed the tricycle driver to go while they brought the accused to the police headquarters at Kalookan City where they said they would again search the accused.

On the way to the police headquarters, the accused saw a neighbor and signaled the latter to follow him. The neighbor thus followed the accused to the Kalookan City Police Headquarters. Upon arrival thereat, the accused was asked to remove his pants in the presence of said neighbor and another companion. The policemen turned over the pants of the accused over a piece of bond paper trying to look for marijuana. However, nothing was found, except for some dirt and dust. This prompted the companion of the neighbor of the accused to tell the policemen to release the accused. The accused was led to a cell. The policemen later told the accused that they found marijuana inside the pockets of his pants.

At about 5:00 o'clock in the afternoon on the same day, the accused was brought outside the cell and was led to the Ford Fiera. The accused was told by the policemen to call his parents in order to 'settle' the case. The policemen who led the accused to the Ford Fiera were Pat. Lumabas, Pat. Espiritu and Cpl. Tamondong. Pat. Lumabas was the policeman who told the accused to call his parents. The accused did not call his parents and he told the policemen that his parents did not have any telephone.

At about 5:30 o'clock in the afternoon of the same day, the accused was

brought in the office of an inquest Fiscal. There, the accused told the Fiscal that no marijuana was found on his person but the Fiscal told the accused not to say anything. The accused was then brought back to the Kalookan City Jail.

Loreto Medenilla, the tricycle driver who was allegedly with the accused when he and the accused were stopped by policemen and then bodily searched on April 11, 1988, testified. He said that the policemen found nothing either on his person or on the person of the accused when both were searched on April 11, 1988.

Roberto Abes, a neighbor of the accused, testified that he followed the accused at the Kalookan City Police Headquarters on April 11, 1988. He said that the police searched the accused who was made to take off his pants at the police headquarters but no marijuana was found on the body of the accused."

Appellant, who was recalled to the stand as sur-rebuttal witness, presented several pictures showing that tricycles were allowed to ply in front of the Caloocan Cemetery.<sup>[17]</sup>

### **The Rulings of the Trial and the Appellate Courts**

The trial court convicted petitioner of illegal possession of marijuana residue largely on the strength of the arresting officers' testimony. Patrolmen Espiritu and Lumabas were "neutral and disinterested" witnesses, testifying only on what transpired during the performance of their duties. Substantially, they asserted that the appellant was found to be in possession of a substance which was later identified as crushed marijuana residue.

The trial court disbelieved appellant's defense that this charge was merely "trumped up," because the appellant neither took any legal action against the allegedly erring policemen nor moved for a reinvestigation before the city fiscal of Kalookan City.

On appeal, Respondent Court found no proof that the decision of the trial court was based on speculations, surmises or conjectures. On the alleged "serious" discrepancies in the testimonies of the arresting officers, the appellate court ruled that the said inconsistencies were insubstantial to impair the essential veracity of the narration. It further found petitioner's contention -- that he could not be convicted of illegal possession of marijuana residue -- to be without merit, because the forensic chemist reported that what she examined were marijuana leaves.

#### **Issues**

Petitioner assigns the following errors on the part of Respondent Court:

**"I**

The Court of Appeals erred in upholding the findings of fact of the trial court.