563 Phil. 934

SECOND DIVISION

[G.R. No. 170180, November 23, 2007]

ARSENIO VERGARA VALDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

TINGA, J,:

The sacred right against an arrest, search or seizure without valid warrant is not only ancient. It is also zealously safeguarded. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.[1] Any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding. Indeed, while the power to search and seize may at times be necessary to the public welfare, still it must be exercised and the law implemented without contravening the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[2]

On appeal is the Decision[3] of the Court of Appeals dated 28 July 2005, affirming the Judgment[4] of the Regional Trial Court (RTC), Branch 31, Agoo, La Union dated 31 March 2004 finding petitioner Arsenio Vergara Valdez guilty beyond reasonable doubt of violating Section 11 of Republic Act No. 9165 (R.A. No. 9165)[5] and sentencing him to suffer the penalty of imprisonment ranging from eight (8) years and one (1) day of *prision mayor* medium as minimum to fifteen (15) years of *reclusion temporal* medium as maximum and ordering him to pay a fine of P350,000.00.[6]

I.

On 26 June 2003, petitioner was charged with violation of Section 11, par. 2(2) of R.A. No. 9165 in an Information[7] which reads:

> That on or about the 17th day of March 2003, in the Municipality of Aringay, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody dried marijuana leaves wrapped in a cellophane and newspaper page, weighing more or less twenty-five (25) grams, without first securing the necessary permit, license or prescription from the proper government agency.
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> CONTRARY TO LAW.[8]

On arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued with the prosecution presenting the three (3) barangay *tanods* of San Benito Norte, Aringay, La Union namely, Rogelio Bautista (Bautista), Nestor Aratas (Aratas) and Eduardo Ordoño (Ordoño), who arrested petitioner.

Bautista testified that at around 8:00 to 8:30 p.m. of 17 March 2003, he was conducting the routine patrol along the National Highway in Barangay San Benito Norte, Aringay, La Union together with Aratas and Ordoño when they noticed petitioner, lugging a bag, alight from a mini-bus. The *tanods* observed that petitioner, who appeared suspicious to them, seemed to be looking for something. They thus approached him but the latter purportedly attempted to run away. They chased him, put him under arrest and thereafter brought him to the house of Barangay Captain Orencio Mercado (Mercado) where he, as averred by Bautista, was ordered by Mercado to open his bag. Petitioner's bag allegedly contained a pair of denim pants, eighteen pieces of eggplant and dried marijuana leaves wrapped in newspaper and cellophane. It was then that petitioner was taken to the police station for further investigation.[9]

Aratas and Ordoño corroborated Bautista's testimony on most material points. On cross-examination, however, Aratas admitted that he himself brought out the contents of petitioner's bag before petitioner was taken to the house of Mercado.[10] Nonetheless, he claimed that at Mercado's house, it was petitioner himself who brought out the contents of his bag upon orders from Mercado. For his part, Ordoño testified that it was he who was ordered by Mercado to open petitioner's bag and that it was then that they saw the purported contents thereof.[11]

The prosecution likewise presented Police Inspector Valeriano Laya II (Laya), the forensic chemist who conducted the examination of the marijuana allegedly confiscated from petitioner. Laya maintained that the specimen submitted to him for analysis, a sachet of the substance weighing 23.10 grams and contained in a plastic bag, tested positive of marijuana. He disclosed on cross-examination, however, that he had knowledge neither of how the marijuana was taken from petitioner nor of how the said substance reached the police officers. Moreover, he could not identify whose marking was on the inside of the cellophane wrapping the marijuana leaves. [12]

The charges were denied by petitioner. As the defense's sole witness, he testified that at around 8:30 p.m. on 17 March 2003, he arrived in Aringay from his place in Curro-oy, Santol, La Union. After alighting from the bus, petitioner claimed that he went to the house of a friend to drink water and then proceeded to walk to his brother's house. As he was walking, prosecution witness Ordoño, a cousin of his brother's wife, allegedly approached him and asked where he was going. Petitioner replied that he was going to his brother's house. Ordoño then purportedly requested to see the contents of his bag and appellant acceded. It was at this point that Bautista and Aratas joined them. After inspecting all the contents of his bag, petitioner testified that he was restrained by the *tanod* and taken to the house of Mercado. It was Aratas who carried the bag until they reached their destination.[13]

Petitioner maintained that at Mercado's house, his bag was opened by the *tanod* and Mercado himself. They took out an item wrapped in newspaper, which later turned out to be marijuana leaves. Petitioner denied ownership thereof. He claimed to have

been threatened with imprisonment by his arrestors if he did not give the prohibited drugs to someone from the east in order for them to apprehend such person. As petitioner declined, he was brought to the police station and charged with the instant offense. Although petitioner divulged that it was he who opened and took out the contents of his bag at his friend's house, he averred that it was one of the *tanod* who did so at Mercado's house and that it was only there that they saw the marijuana for the first time.[14]

Finding that the prosecution had proven petitioner's guilt beyond reasonable doubt, the RTC rendered judgment against him and sentenced him to suffer indeterminate imprisonment ranging from eight (8) years and one (1) day of *prision mayor* medium as minimum to fifteen (15) years of *reclusion temporal* medium as maximum and ordered him to pay a fine of P350,000.00.[15]

Aggrieved, petitioner appealed the decision of the RTC to the Court of Appeals. On 28 July 2005, the appellate court affirmed the challenged decision. The Court of Appeals, finding no cogent reason to overturn the presumption of regularity in favor of the barangay *tanod* in the absence of evidence of ill-motive on their part, agreed with the trial court that there was probable cause to arrest petitioner. It observed further:

> That the prosecution failed to establish the chain of custody of the seized marijuana is of no moment. Such circumstance finds prominence only when the existence of the seized prohibited drugs is denied. In this case, accused-appellant himself testified that the marijuana wrapped in a newspaper was taken from his bag. The *corpus delicti* of the crime, *i.e.*[,] the existence of the marijuana and his possession thereof, was amply proven by accused-appellant Valdez's own testimony.[16]

In this appeal, petitioner prays for his acquittal and asserts that his guilt of the crime charged had not been proven beyond reasonable doubt. He argues, albeit for the first time on appeal, that the warrantless arrest effected against him by the barangay tanod was unlawful and that the warrantless search of his bag that followed was likewise contrary to law. Consequently, he maintains, the marijuana leaves purportedly seized from him are inadmissible in evidence for being the fruit of a poisonous tree.

Well-settled is the rule that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect and weight, in the absence of any clear showing that some facts and circumstances of weight or substance which could have affected the result of the case have been overlooked, misunderstood or misapplied.[17]

After meticulous examination of the records and evidence on hand, however, the Court finds and so holds that a reversal of the decision *a quo* under review is in order.

II.

At the outset, we observe that nowhere in the records can we find any objection by petitioner to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that

petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. The legality of an arrest affects only the jurisdiction of the court over his person.[18] Petitioner's warrantless arrest therefore cannot, in itself, be the basis of his acquittal.

However, to determine the admissibility of the seized drugs in evidence, it is indispensable to ascertain whether or not the search which yielded the alleged contraband was lawful. The search, conducted as it was without a warrant, is justified only if it were incidental to a lawful arrest.[19] Evaluating the evidence on record in its totality, as earlier intimated, the reasonable conclusion is that the arrest of petitioner without a warrant is not lawful as well.

Petitioner maintains, in a nutshell, that after he was approached by the *tanod* and asked to show the contents of his bag, he was simply herded without explanation and taken to the house of the barangay captain. On their way there, it was Aratas who carried his bag. He denies ownership over the contraband allegedly found in his bag and asserts that he saw it for the first time at the barangay captain's house.

Even casting aside petitioner's version and basing the resolution of this case on the general thrust of the prosecution evidence, the unlawfulness of petitioner's arrest stands out just the same.

Section 5, Rule 113 of the Rules on Criminal Procedure provides the only occasions on which a person may be arrested without a warrant, to wit:

> Section 5. *Arrest without warrant; when lawful.*—A peace officer or a private person may, without a warrant, arrest a person:
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> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (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; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
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> x x x

It is obvious that based on the testimonies of the arresting barangay *tanod*, not one of these circumstances was obtaining at the time petitioner was arrested. By their own admission, petitioner was not committing an offense at the time he alighted from the bus, nor did he appear to be then committing an offense.[20] The *tanod* did not have probable cause either to justify petitioner's warrantless arrest.

For the exception in Section 5(a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) the person to be arrested must execute an overt

act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[21] Here, petitioner's act of looking around after getting off the bus was but natural as he was finding his way to his destination. That he purportedly attempted to run away as the *tanod* approached him is irrelevant and cannot by itself be construed as adequate to charge the *tanod* with personal knowledge that petitioner had just engaged in, was actually engaging in or was attempting to engage in criminal activity. More importantly, petitioner testified that he did not run away but in fact spoke with the barangay *tanod* when they approached him.

Even taking the prosecution's version generally as the truth, in line with our assumption from the start, the conclusion will not be any different. It is not unreasonable to expect that petitioner, walking the street at night, after being closely observed and then later tailed by three unknown persons, would attempt to flee at their approach. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt.[22] Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz*[23] that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one.

Moreover, as we pointed out in *People v. Tudtud,*[24] "[t]he phrase 'in his presence' therein, connot[es] penal knowledge on the part of the arresting officer. The right of the accused to be secure against any unreasonable searches on and seizure of his own body and any deprivation of his liberty being a most basic and fundamental one, the statute or rule that allows exception to the requirement of a warrant of arrest is strictly construed. Its application cannot be extended beyond the cases specifically provided by law."[25]

Indeed, the supposed acts of petitioner, even assuming that they appeared dubious, cannot be viewed as sufficient to incite suspicion of criminal activity enough to validate his warrantless arrest.[26] If at all, the search most permissible for the *tanod* to conduct under the prevailing backdrop of the case was a stop-and-frisk to allay any suspicion they have been harboring based on petitioner's behavior. However, a stop-and-frisk situation, following *Terry v. Ohio,*[27] must precede a warrantless arrest, be limited to the person's outer clothing, and should be grounded upon a genuine reason, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.[28]

Accordingly, petitioner's waiver of his right to question his arrest notwithstanding, the marijuana leaves allegedly taken during the search cannot be admitted in evidence against him as they were seized during a warrantless search which was not lawful.[29] As we pronounced in *People v. Bacla-an* —

> **A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.** The following searches and seizures are deemed