

## THIRD DIVISION

[ G.R. No. 146706, July 15, 2005 ]

**TOMAS SALVADOR, PETITIONER, VS. THE PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

At bar is the petition for review on certiorari<sup>[1]</sup> filed by Tomas Salvador assailing the Decision<sup>[2]</sup> dated August 9, 2000 and Resolution dated January 9, 2001 of the Court of Appeals in CA-G. R. CR No. 20186.

On the wee hours of June 4, 1994, Aurelio Mandin, Danilo Santos and petitioner Tomas Salvador, then aircraft mechanics employed by the Philippine Air Lines (PAL) and assigned at the Ninoy Aquino International Airport (NAIA) and Manila Domestic Airport, were nabbed by intelligence operatives of the Philippine Air Force (PAF) for possessing thirteen (13) packets containing assorted smuggled watches and jewelries valued at more than half a million pesos.

Consequently, they were charged before the Regional Trial Court (RTC), Branch 117, Pasay City with violation of Section 3601 of the Tariff and Customs Code, docketed as Criminal Case No. 94-5843. The Information reads:

"That on or about the 4<sup>th</sup> day of June 1994 at the NAIA/Domestic Airport vicinity, Pasay City and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and felonious assist in the concealment and unlawful importation of the following items:

198 pieces of means watches	P187,110.00
76 pieces of men's diving watches	8,640.00
32 pieces of ladies watches	11,600.00
1600 grams of assorted jewelry	322,000.00

with a total market value of P537,500.00 FIVE HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED FIFTY PESOS, more or less, Philippine Currency, without authority or permit from proper authorities.

CONTRARY TO LAW."<sup>[3]</sup>

When arraigned, all the accused, duly assisted by counsel, pleaded not guilty to the charge. Trial on the merits then ensued.

The prosecution established the following facts:

On June 3, 1994, a Special Mission Group from the PAF Special Operations Squadron, headed by Major Gerardo B. Pagcaliuangan and composed of Sgts. Rodolfo A. Teves, Geronimo G. Escarola, Virgilio M. Sindac and Edwin B. Ople, conducted routine surveillance operations at the Manila Domestic Airport to check on reports of alleged drug trafficking and smuggling being facilitated by certain PAL personnel.

Major Pagcaliuangan then ordered Sgts. Teves and Ople to keep close watch on the second airplane parked inside the Domestic Airport terminal. This aircraft is an Airbus 300 with tail number RPC-3001. It arrived at the NAIA at 10:25 in the evening of June 3, 1994 from Hong Kong as Flight No. PR-311. After its passengers disembarked and its cargo unloaded, it was towed by the PAL ground crew and parked at the ramp area of the Domestic Airport terminal.

At around 11:30 that same evening, Sgt. Teves reported over his radio that three (3) persons had boarded the Airbus 300. The team did not move, but continued its surveillance.

At 12:15 a.m. the following day (June 4), Sgt. Teves reported that the three (3) persons who earlier boarded the Airbus 300 had disembarked with their abdominal areas bulging. They then boarded an airplane tow truck with its lights off.

The PAF surveillance team promptly boarded their vehicles and followed the aircraft tow truck. At the Lima Gate of the Domestic Airport, the team blocked and stopped the tow truck. Sgt. Teves then got off, identified himself and asked the four (4) persons on board to alight. They were later identified as Tomas Salvador, petitioner, Aurelio Mandin, Danilo Santos and Napoleon Clamor, the driver of the tow truck.

Sgt. Teves approached Aurelio Mandin. He noticed that Mandin's uniform was partly open, showing a girdle. While Sgt. Teves was reaching for the girdle, a package wrapped in brown packaging tape fell. Suspecting that the package contained smuggled items, Sgt. Teves yelled to his teammates, "Positive!" Thereupon, the rest of the team surrounded petitioner and his two co-accused who surrendered without a fight. The team searched their bodies and found that the three were wearing girdles beneath their uniforms, all containing packets wrapped in packaging tape. Mandin yielded five (5) packets, while petitioner and Santos had four (4) each. The team confiscated the packets and brought all the accused to the PAFSECOM Office.

At around 8:00 o'clock the following morning, Emilen Balatbat, an examiner of the Bureau of Customs, arrived at the PAFSECOM Office. She opened one of the packets and on seeing that it contained dutiable goods, she proceeded to weigh the thirteen (13) packets seized from the accused. She then prepared an inventory of the items seized and listed the weight of the packets.<sup>[4]</sup> Thereafter, she brought the seized packets to the In-Board Section, Bureau of Customs, Airport Office where their contents were identified and appraised. The Bureau of Customs found 248 pieces of assorted watches and fourteen karat (14K) gold jewelries valued as follows:

QTY.	UNIT	DESCRIPTION	APPRAISED VALUE
10	pcs.	Half-bangles with Charms Tricolors	122.8 gms.
6	pcs.	Bracelet with Charms Tricolors	52.4 gms.
8	pcs.	Bracelet (Tricolor)	64.2 gms.
5	pcs.	Bangles (3 pcs./set) Tricolor	155.3 gms.
		Baby's Bangles with charm	18.2 gms.
		L-Bangles with charm	68.5 gms.
		L-Bangles	112.3 gms.
		L-Creolla Earrings	901.56 gms.
		<b>TOTAL GRAMS 1,495 x P200.00/gm.</b>	<b>+P 299,052.00</b>
		Assorted Watches	
204	pcs.	Citizen M watches with black dial with gold metal bracelet (-1) x \$25	\$2,600.00
24	pcs.	Seiko 5 Ladies watches with blue dial with white metal bracelet (-1) x \$25	600.00
16	pcs.	Seiko Divers Watch Mens- Black dial with rubberized bracelet (-1) x \$50	800.00
4	pcs.	Seiko 5 Ladies watches with yellow dial with gold metal bracelet (1) x \$25	100.00
4	pcs.	Citizen L-watches with white dial (4) x \$20	80.00
62	pcs.	Seiko 5 Men's watches with yellow dial with gold metal bracelet (1) x \$25	1,550.00
<u>34</u>	pcs.	Seiko 5 Men's watches with black dial with gold metal bracelet (1) x \$25	<u>850.00</u>
248	pcs.		\$6,580.00

The Investigating State Prosecutor conducted an inquest and thereafter recommended that petitioner and his co-accused be charged with violating Section 3601 of the Tariff and Customs Code. Accordingly, the Information, mentioned earlier, was filed with the RTC.

After the prosecution rested its case, the accused filed a Joint Demurrer to Evidence.

In an Order dated October 12, 1995, the trial court denied the demurrer and directed the accused to present their evidence.

All the accused denied committing the offense charged, claiming they were framed-up by the military.

Danilo Santos testified that on the night of June 3, 1994, he was assigned to the Airbus 300 with tail No. RPC-3001, joining three junior mechanics who were then working on said aircraft. He was conducting a visual check of the plane when a tow truck arrived on its way to Nichols Airfield. He told one of the junior mechanics that he would take a break and be back in an hour. He then boarded the tow truck. When it was near the Lima Gate, a jeep with four (4) men in civilian attire aboard approached him. The four pointed their firearms at him and, after searching him for drugs, he was frisked but nothing was found. He was nonetheless brought by the men to the PAFSECOM Office, then to Villamor Airbase Hospital for a medical examination and alcohol test. Thereafter, he was brought back to the PAFSECOM Office. There, another military man arrived and brought out a box containing packets. Then he and his companions were told to put on their mechanic's uniforms and to wear girdles. The packets were placed on their bodies, after which they were

photographed. He further testified that he was asked to sign a certain paper but was not allowed to read it thoroughly. During the investigation, he was not apprised of his rights nor assisted by a counsel.

Petitioner Tomas Salvador likewise denied any knowledge of the questioned items seized from him. He testified that during the incident in question, he only boarded the tow truck to take a break at the PAL canteen. He saw a box on the tow truck but was not aware of its contents. After his arrest, he was made to sign a document under duress.

Aurelio Mandin also denied committing the offense charged. He declared that after his arrest, he was made to sign a document by the PAF personnel, the contents of which he was not able to read. He signed it because he was struck with a .45 caliber handgun by one of the military men and threatened him with summary execution if he would not do so. He was not informed of his rights nor given the services of counsel during the investigation.

After hearing, the trial court rendered its Decision convicting all the accused of the offense charged, thus:

"WHEREFORE, in view of the foregoing, the Court finds the accused Aurelio Mandin y Liston, Danilo Santos y Antonio and Tomas Salvador y Magno **GUILTY** beyond reasonable doubt for violation of Section 3601 of the Tariff and Customs Code of the Philippines (TCCP). There being no aggravating or mitigating circumstance and applying the Indeterminate Sentence Law, the court sentences each of the accused to an indeterminate term of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to TEN (10) YEARS of *prision mayor*, as maximum, and to pay a fine of EIGHT THOUSAND PESOS (P8,000.00), without subsidiary imprisonment in case of insolvency, and to pay the costs. The court also orders the forfeiture of the confiscated articles in favor of the Government.

SO ORDERED."<sup>[5]</sup>

All the accused then seasonably interposed an appeal to the Court of Appeals, docketed as CA-G.R. CR No. 20186.

On August 9, 2000, the Appellate Court promulgated its Decision affirming the trial court's Decision, thus:

"We cannot see any justification for the setting aside of the contested Decision.

THE FOREGOING CONSIDERED, the appealed Decision is hereby AFFIRMED.

SO ORDERED."<sup>[6]</sup>

They filed a motion for reconsideration but was denied in a Resolution dated January 9, 2001.<sup>[7]</sup>

Only Tomas Salvador opted to elevate his case to this Court by way of the instant petition for review on *certiorari*. He submits for our consideration the following assignments of error:

"I

THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED IN THE INFORMATION LIKE UNLAWFUL IMPORTATION, POSSESSION OF UNLAWFULLY IMPORTED ARTICLES AND CONSPIRACY IN THE COMMISSION OF THE SAME, WERE NEVER PROVEN BEYOND REASONABLE DOUBT.

II

THERE WAS NO PROBABLE CAUSE FOR THE ARREST AND SEARCH OF THE PERSONS OF THE ACCUSED.

III

THE ACCEPTANCE BY THE TRIAL COURT AND THE AFFIRMANCE BY THE APPELLATE COURT OF THE TESTIMONIES OF PROSECUTION WITNESSES, AS WELL AS ALL ITS DOCUMENTARY EXHIBITS, DESPITE THE FACT THAT THE SAME WERE APPARENTLY OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED WERE UNLAWFUL.

IV

THE DENIAL BY THE TRIAL COURT AND THE CONCURRENCE BY THE APPELLATE COURT OF THE DEMURRER TO EVIDENCE WERE ALSO WITHOUT LEGAL BASIS."<sup>[8]</sup>

The above assignments of error boil down to these issues: (1) whether the seized items are admissible in evidence; and (2) whether the prosecution has proved the guilt of petitioner beyond reasonable doubt.

On the **first issue**, petitioner contends that the warrantless search and seizure conducted by the PAF operatives is illegal. Citing *People v. Burgos*,<sup>[9]</sup> he maintains that at the time he and his co-accused were stopped by the PAF law enforces, they were unaware that a crime was being committed. Accordingly, the law enforcers were actually engaged in a fishing expedition in violation of his Constitutional right against unlawful search and seizure. Thus, the seized items should not have been admitted in evidence against him.

The Office of the Solicitor General (OSG) counters that under the factual circumstances of the case at bar, there was sufficient probable cause for the PAF surveillance team to stop and search petitioner and his companions. They boarded the parked Air Bus 300 PAL plane at the time when there were no other PAL personnel working therein. They stayed inside the plane for sometime and surprisingly, came out with bulging waists. They then stopped and looked around and made apparent signals. All these acts were sufficient to engender a reasonable suspicion that petitioner and his colleagues were up to something illegal. Moreover, the search and seizure was conducted in connection with the enforcement of