

EN BANC

[G.R. No. 124526, March 17, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JIMMY SAPAL Y NASA, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

This is an automatic review of the Decision, dated 8 March 1996, of the Regional Trial Court, Branch 35 of Manila in Criminal Case No. 95-142470, which sentenced accused-appellant Jimmy Sapal ("accused") to DEATH and to pay the fine of ten million pesos (P10,000,000.00) after he was found guilty beyond reasonable doubt of the crime of unlawful possession of three (3) kilograms of marijuana.^[1]

The Information charged accused and his wife, Maria Luisa Sapal, with violation of Section 8, Article II in relation to Section 2(e) (1), Article I, Republic Act No. 6425, as amended, committed as follows:

That on or about April 22, 1995, in the City of Manila, Philippines, the said accused, not being authorized by law to possess or use any prohibited drug, did then and there wilfully, unlawfully and knowingly have in their possession and under their custody and control 3 kg. of dried flowering top of Marijuana, which is a prohibited drug.

Contrary to law.^[2]

Upon motion of the prosecution, the trial court dismissed the charge against Maria Luisa Sapal. Only accused was thus arraigned. At his arraignment, accused entered a plea of not guilty. Subsequently, trial ensued.

The prosecution presented two (2) witnesses, namely, PO3 Jesus Gomez and Renee Eric P. Checa, a forensic chemist. Gomez testified as to the events leading to the arrest of accused.^[3] According to Gomez, he is an investigator of the Drug Enforcement Unit (DEU) of the Western Police District (WPD) Command at U.N. Avenue in Manila. On 22 April 1995, around 3:30 in the morning, the office of the DEU received a call from a reliable informant that accused, who had a standing warrant of arrest, had been seen at Jocson St., Sampaloc, Manila. The warrant of arrest was issued by then Judge Roberto A. Barrios (now Justice of the Court of Appeals) for failure of accused to appear at the hearing of a criminal case involving illegal possession of .3381 gram (less than 1 gram) of "shabu" which was earlier filed against him.^[4]

Acting on the said information, Senior Inspector Ferdinand Ampil, Chief of the DEU, briefed his men about accused. Ampil then mobilized a team composed of fourteen (14) police operatives, including Gomez, to nab accused. To seal all possible escape

routes of accused, the team was divided into three (3) groups: one group was instructed to proceed to Jocson Street, another group to Lepanto Street and the last group to Earnshaw Street.

Gomez was assigned to the team led by Ampil. Their group proceeded to Jocson Street where they spotted the mica blue Toyota Corolla with plate number TSR 619 which was reported to be frequently used by accused. Apparently, accused sensed the presence of the law enforcers because he tried to flee by driving the car towards Earnshaw Street. The other groups, however, managed to block the car at the corner of Earnshaw and Lepanto streets. Accused was with his wife.

The police operatives approached the car, identified themselves and informed accused that he was being arrested pursuant to the warrant issued by Judge Barrios. Accused and his wife were told to get down from the car. Forthwith, Gomez conducted a search of the vehicle. In the course thereof, Gomez found a light green plastic bag^[5] in the back seat of the car containing three (3) bricks of suspected marijuana. One brick was wrapped in a newspaper tied with a string while the other two were wrapped in an aluminum foil bound with masking tapes.^[6]

Accused and his wife were brought to the police headquarters in U.N. Avenue, Manila for investigation. The bricks of suspected marijuana were referred to the Criminal Investigation and Laboratory Division for examination. Checa, the chemist on duty at the time, testified that the results of the tests he conducted confirmed that the three (3) bricks were marijuana, a prohibited drug. Each brick weighed about one (1) kilogram and the total gross weight of the illegal substance was placed at three (3) kilograms.^[7]

For his part, accused denied the charges against him and claimed that he was a victim of a "frame-up". The defense presented as witnesses accused, his wife, Maria Luisa, and their friends, Jerry and Marlene Cayetano, The defense' version of what transpired during the arrest of accused is as follows:^[8]

At around 1:00 in the morning of 22 April 1995, accused and his wife, who both just arrived from Hongkong, proceeded to the house of Jerry and Marlene to deliver their "pasalubong". The group decided to eat out thus they all boarded the mica blue Toyota Corolla which accused borrowed from one Maria Theresa Yamamoto. Accused was driving the car while his wife was seated beside him. Jerry and Marlene were seated at the back. When they reached the corner of Lepanto and Earnshaw Streets, their car was blocked by two (2) vehicles carrying armed men. These men alighted from their vehicles, approached the car driven by accused and poked their guns at its passengers. Accused and his companions were ordered to get out of the car. They did as told. Two (2) policemen, Gomez and SPO2 Leoncio Donor, Jr., with their flashlights, then conducted an on-the-spot search. Gomez was heard to have uttered, "Negative for drugs." Turning his attention to accused, Gomez ordered him to board the Toyota Corolla to be brought to the headquarters. The other three (3) companions of accused were made to board one of the vehicles used by the police operatives.

Accused further testified that he was blindfolded while on board the Toyota Corolla with the police operatives. He was not brought to the headquarters but to an undisclosed place which he later learned to be Maples Inn in Apacible Street. There,

he was made to undress and then mauled and tortured. The police operatives took his wallet which contained seven thousand pesos, a few Hongkong dollars and several ATM cards. They coerced him into divulging to them the PIN numbers of his ATM cards. Accused gave them the correct PIN number to his Far East Bank account but purposely mixed up the other PIN numbers to his other bank accounts. As a result, the police operatives were able to withdraw the amount of thirty thousand pesos from his Far East Bank account. His other two (2) ATM cards were eaten up by the machines. Accused was detained in Maples Inn for four (4) days and on 25 April 1995, he was finally brought to the police headquarters for inquest.

At the headquarters, accused initially refused to sign the Booking Sheet and Arrest Report. Gomez, however, took out his gun. He (Gomez) removed five bullets from the gun but left one bullet. He then rolled the cylinder and poked the gun at the accused. He pulled the trigger but the gun did not fire. Trembling with fear, accused hastily signed the Booking Sheet and Arrest Report.^[9]

Maria Luisa, Jerry and Marlene, in their respective testimonies,^[10] averred that they were ordered to board one of the vehicles of the police operatives. They were brought to the headquarters of the WPD in U.N. Avenue, Manila. According to Jerry, upon reaching the headquarters, he was mauled and tortured. The police operatives were forcing him to admit that "shabu" was recovered from their group. Jerry insisted that no illegal drugs were recovered from any of them. In another room, Marlene and Maria Luisa were also being coerced into admitting that illegal drugs were recovered from their group. Like Jerry, Marlene and Maria Luisa refused to do so.

Jerry, Marlene and Maria Luisa were detained at the headquarters for a day. Thereafter, they were transferred to the Maples Inn. They learned that accused was also being kept there. Upon Maria Luisa's plea, she was allowed to see her husband but only for a few minutes. They were detained in Maples Inn for three (3) days. Accused was not with them during the entire time.

Thereafter, they were all brought back to the headquarters. Florentino and Jovita Balgos, Marlene's parents, came to visit them. Florentino, a retired policeman, talked to Ampil and after their conversation, Jerry and Marlene were released. Ampil warned the couple against testifying for accused. Maria Luisa was released on 14 September 1995 when the trial court dismissed the case as against her.^[11]

In the course of the trial, Joel N. Go filed a motion,^[12] dated 16 October 1995, seeking the release of the Toyota Corolla driven by accused at the time of his arrest. Go claimed that he is the owner of said car having bought the same from Maria Theresa Yamamoto. However, on 20 April 1995, Yamamoto borrowed the car from Go as she had to fetch a friend (a businessman), who was arriving from Hongkong, from the airport. In his motion, Go stated that he did not know the accused and that he was not involved in the crime for which accused was being tried.

After trial, the trial court rendered its Decision the dispositive portion of which reads:

WHEREFORE, judgment is rendered pronouncing accused JIMMY SAPAL y NASA guilty beyond reasonable doubt of illegal possession of dried

flowering tops of marijuana weighing three (3) kilograms or 3,000 grams, penalized under Section 8, Article II of Republic Act No. 6425, as amended, and further amended by Section 13 in relation to Section 17 of Republic Act No. 7659, and sentencing said accused to DEATH by means of execution provided by law, and to pay a fine of P10,000,000.00, and the costs.

The three bricks of dried flowering tops of marijuana (Exhibits B-1, B-2 and B-3) involved in this case are confiscated and forfeited to the Government to be disposed of in accordance with law. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of this Court is ordered to turn over, under proper receipt, the prohibited drug involved in this case to the Dangerous Drugs Custodian, National Bureau of Investigation, as appointed by the Dangerous Drugs Board, for appropriate disposition.

The Toyota Corolla vehicle with plate No. TSR 619, in the custody of the Drugs Enforcement Unit, WPDC, U.N. Avenue, Ermita, Manila, is also confiscated and forfeited to the Government, unless it can be conclusively shown that said motor vehicle is the property of a third person not liable for the offense.

Serve a copy of this Decision on the Executive Director, Dangerous Drugs Board, for his information and guidance.

SO ORDERED.^[13]

Accused seasonably filed his notice of appeal. In his appeal brief, he made the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ILLEGAL POSSESSION OF 3 KILOGRAMS OF MARIJUANA.^[14]

These contentions shall be discussed jointly considering that the issues they raise are interrelated and deal with the question of whether or not the guilt of accused was proven beyond reasonable doubt to warrant the supreme penalty of death.

The Court finds for the accused.

In convicting the accused, the trial court accorded full faith and credence to the testimony of Gomez who, as a police officer, was presumed to have performed his duty in a regular manner. The testimonies of the defense witnesses, upon the other hand, were given scant consideration on account of their affinity to the accused.

While the Court is mindful that law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent^[15] and it cannot, by itself, constitute proof of guilt beyond reasonable doubt.^[16] In this case, there are attendant circumstances that, to the Court's mind, negate the presumption accorded to the prosecution witness. In fact, there is sufficient evidence to show that the manner by which the law enforcers effected the arrest of accused was highly irregular and suspect.

Gomez claimed that they arrested accused pursuant to the warrant issued by Judge Barrios in Criminal Case No. 94-133847. The Alias Order of Arrest against accused stated:

TO ANY LAWFUL OFFICER:

You are hereby commanded to arrest Jimmy Sapal y Nasa @ "Tisoy" for failure to appear for arraignment who is said to be at 1301 Torres Bugallon St., Tondo, Manila and who stands charged before me of violation of Sec. 16 RA 6425 and to bring him before me as soon as possible to be dealt with as the law and Rules of Court direct.

Manila, Philippines, December 13, 1994.^[17]

Contrary to the clear directive of the warrant, however, the law enforcers never brought him before Judge Barrios. Gomez himself admitted the same and did not offer any convincing explanation for this omission:

Q: My question is: Did you comply with the mandate of the warrant of arrest to bring the arrestee to the Judge who issue [sic] the warrant of arrest, Judge Barrios?

A: I did not, sir.

Q: Why did you not bring him before Judge Barrios?

A: We have different assignments, Your Honor.^[18]

It must be pointed out that the alias warrant of arrest against accused was issued by Judge Barrios only because accused failed to appear during his arraignment in Criminal Case No. 94-133847. The information in said criminal case charged accused of possession of .3381 gram of "shabu". Without meaning to make light of the said offense, the amount of illegal substance allegedly recovered from accused therein, i.e., less than one (1) gram, hardly made him a "notorious drug dealer" as what the prosecution tried to present.

Moreover, there is no dispute that accused was arrested with Maria Luisa on 22 April 1995. In his testimony, Gomez claimed that they brought accused and his wife to the headquarters and he (Gomez) immediately prepared the necessary documents.^[19] The records, however, reveal that the documents relating to the arrest of accused and his wife, e.g., Booking Sheet and Arrest Report^[20] and Affidavit of Apprehension,^[21] were prepared three (3) days after the arrest. The length of time