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[G.R. No. 129296, September 25, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABE VALDEZ Y DELA CRUZ, ACCUSED-APPELLANT.

DECISION

QUISUMBING, J.:

For automatic review is the decision[1] promulgated on February 18, 1997, by the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27, in Criminal Case No. 3105. It found appellant Abe Valdez y Dela Cruz guilty beyond reasonable doubt for violating Section 9 of the Dangerous Drugs Act of 1972 (R.A. No. 6425), as amended by R.A. No. 7659. He was sentenced to suffer the penalty of death by lethal injection.

In an Information dated September 26, 1996, appellant was charged as follows:

> "That on or about September 25, 1996, at Sitio Bulan, Barangay Sawmill, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was caught in *flagrante delicto* and without authority of law, did then and there wilfully (sic), unlawfully and feloniously plant, cultivate and culture seven (7) fully grown marijuana plants known as Indian Hemp weighing 2.194 kilos, from which dangerous drugs maybe (sic) manufactured or derived, to the damage and prejudice of the government of the Republic of the Philippines.
>
> "That the property where the said seven (7) fully grown marijuana plants were planted, cultivated and cultured shall be confiscated and escheated in favor of the government.
>
> "CONTRARY TO LAW."[2]

On November 15, 1996, appellant was arraigned and, with assistance of counsel, pleaded not guilty to the charge. Trial on the merits then ensued.

The first witness for the prosecution was SPO3 Marcelo Tipay, a member of the police force of Villaverde, Nueva Vizcaya. He testified that at around 10:15 a.m. of September 24, 1996, he received a tip from an unnamed informer about the presence of a marijuana plantation, allegedly owned by appellant at Sitio Bulan, Ibung, Villaverde, Nueva Vizcaya.[3] The prohibited plants were allegedly planted close to appellant's hut. Police Inspector Alejandro R. Parungao, Chief of Police of Villaverde, Nueva Vizcaya then formed a reaction team from his operatives to verify the report. The team was composed of SPO3 Marcelo M. Tipay, SPO2 Noel V. Libunao, SPO2 Pedro S. Morales, SPO1 Romulo G. Tobias and PO2 Alfelmer I. Balut.

Inspector Parungao gave them specific instructions to "uproot said marijuana plants and arrest the cultivator of same."[4]

At approximately 5:00 o'clock A.M. the following day, said police team, accompanied by their informer, left for the site where the marijuana plants were allegedly being grown. After a three-hour, uphill trek from the nearest barangay road, the police operatives arrived at the place pinpointed by their informant. The police found appellant alone in his nipa hut. They, then, proceeded to look around the area where appellant had his *kaingin* and saw seven (7) five-foot high, flowering marijuana plants in two rows, approximately 25 meters from appellant's hut.[5] PO2 Balut asked appellant who owned the prohibited plants and, according to Balut, the latter admitted that they were his.[6] The police uprooted the seven marijuana plants, which weighed 2.194 kilograms.[7] The police took photos of appellant standing beside the cannabis plants.[8] Appellant was then arrested. One of the plants, weighing 1.090 kilograms, was sent to the Philippine National Police Crime Laboratory in Bayombong, Nueva Vizcaya for analysis.[9] Inspector Prevy Fabros Luwis, the Crime Laboratory forensic analyst, testified that upon microscopic examination of said plant, she found cystolitic hairs containing calcium carbonate, a positive indication for marijuana.[10] She next conducted a chemical examination, the results of which confirmed her initial impressions. She found as follows:

> "SPECIMEN SUBMITTED: Exh "A" - 1.090 grams of uprooted suspected marijuana plant placed inside a white sack with markings.
>
> x x x
>
> "FINDINGS: Qualitative examination conducted on the above stated specimen gave POSITIVE result to the test for Marijuana, a prohibited drug."[11]

The prosecution also presented a certification from the Department of Environment and Natural Resources that the land cultivated by appellant, on which the growing marijuana plants were found, was Lot 3224 of Timberland Block B, which formed part of the Integrated Social Forestry Area in Villaverde, Nueva Vizcaya.[12] This lot was part of the public domain. Appellant was acknowledged in the certification as the occupant of the lot, but no Certificate of Stewardship had yet been issued in his favor.[13]

As its sole witness, the defense presented appellant. He testified that at around 10:00 o'clock A.M., September 25, 1996, he was weeding his vegetable farm in Sitio Bulan when he was called by a person whose identity he does not know. He was asked to go with the latter to "see something."[14] This unknown person then brought appellant to the place where the marijuana plants were found, approximately 100 meters away from his nipa hut.[15] Five armed policemen were present and they made him stand in front of the hemp plants. He was then asked if he knew anything about the marijuana growing there. When he denied any knowledge thereof, SPO2 Libunao poked a fist at him and told him to admit ownership of the plants.[16] Appellant was so nervous and afraid that he admitted owning the marijuana.[17]

The police then took a photo of him standing in front of one of the marijuana plants. He was then made to uproot five of the cannabis plants, and bring them to his hut, where another photo was taken of him standing next to a bundle of uprooted marijuana plants.[18] The police team then brought him to the police station at Villaverde. On the way, a certain Kiko Pascua, a barangay peace officer of Barangay Sawmill, accompanied the police officers. Pascua, who bore a grudge against him, because of his refusal to participate in the former's illegal logging activities, threatened him to admit owning the marijuana, otherwise he would "be put in a bad situation."[19] At the police headquarters, appellant reiterated that he knew nothing about the marijuana plants seized by the police.[20]

On cross-examination, appellant declared that there were ten other houses around the vicinity of his *kaingin*, the nearest house being 100 meters away.[21] The latter house belonged to one Carlito (Lito) Pascua, an uncle of the barangay peace officer who had a grudge against him. The spot where the marijuana plants were found was located between his house and Carlito Pascua's.[22]

The prosecution presented SPO3 Tipay as its rebuttal witness. His testimony was offered to rebut appellant's claim that the marijuana plants were not planted in the lot he was cultivating.[23] Tipay presented a sketch he made,[24] which showed the location of marijuana plants in relation to the old and new nipa huts of appellant, as well as the closest neighbor. According to Tipay, the marijuana plot was located 40 meters away from the old hut of Valdez and 250 meters distant from the hut of Carlito Pascua.[25] Tipay admitted on cross-examination that no surveyor accompanied him when he made the measurements.[26] He further stated that his basis for claiming that appellant was the owner or planter of the seized plants was the information given him by the police informer and the proximity of appellant's hut to the location of said plants.[27]

Finding appellant's defense insipid, the trial court held appellant liable as charged for cultivation and ownership of marijuana plants as follows:

> "WHEREFORE, finding the accused GUILTY beyond reasonable doubt of cultivating marijuana plants punishable under section 9 of the Dangerous Drugs Act of 1972, as amended, accused is hereby sentenced to death by lethal injection. Costs against the accused.
>
> "SO ORDERED."[28]

Appellant assigns the following errors for our consideration:

I

> THE TRIAL COURT GRAVELY ERRED IN ADMITTING AS EVIDENCE THE SEVEN (7) MARIJUANA PLANTS DESPITE THEIR INADMISSIBILITY BEING PRODUCTS OF AN ILLEGAL SEARCH.

II

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING APPELLANT OF VIOLATION OF SECTION 9, REPUBLIC ACT NO. 6425 DESPITE THE

INADMISSIBILITY OF THE *CORPUS DELICTI* AND THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE THAT THE LAND WHERE THE MARIJUANA PLANTS WERE PLANTED IS A PUBLIC LAND ON THE ASSUMPTION THAT INDEED APPELLANT PLANTED THE SUBJECT MARIJUANA.[29]

Simply stated, the issues are:

(1) Was the search and seizure of the marijuana plants in the present case lawful?

(2) Were the seized plants admissible in evidence against the accused?

(3) Has the prosecution proved appellant's guilt beyond reasonable doubt?

(4) Is the sentence of death by lethal injection correct?

The first and second issues will be jointly discussed because they are interrelated.

Appellant contends that there was unlawful search. First, the records show that the law enforcers had more than ample time to secure a search warrant. Second, that the marijuana plants were found in an unfenced lot does not remove appellant from the mantle of protection against unreasonable searches and seizures. He relies on the ruling of the US Supreme Court in *Terry v. Ohio, 392 US 1, 20 L. Ed 2d 898, 88 S. Ct. 1868 (1968)*, to the effect that the protection against unreasonable government intrusion protects people, not places.

For the appellee, the Office of the Solicitor General argues that the records clearly show that there was no search made by the police team, in the first place. The OSG points out that the marijuana plants in question were grown in an unfenced lot and as each grew about five (5) feet tall, they were visible from afar, and were, in fact, immediately spotted by the police officers when they reached the site. The seized marijuana plants were, thus, in plain view of the police officers. The instant case must, therefore, be treated as a warrantless lawful search under the "plain view" doctrine.

The court *a quo* upheld the validity of the search and confiscation made by the police team on the finding that:

"...It seems there was no need for any search warrant. The policemen went to the plantation site merely to make a verification. When they found the said plants, it was too much to expect them to apply for a search warrant. In view of the remoteness of the plantation site (they had to walk for six hours back and forth) and the dangers lurking in the area if they stayed overnight, they had a valid reason to confiscate the said plants upon discovery without any search warrant. Moreover, the evidence shows that the lot was not legally occupied by the accused and

there was no fence which evinced the occupant's desire to keep trespassers out. There was, therefore, no privacy to protect, hence, no search warrant was required."[30]

The Constitution[31] lays down the general rule that a search and seizure must be carried on the strength of a judicial warrant. Otherwise, the search and seizure is deemed "unreasonable." Evidence procured on the occasion of an unreasonable search and seizure is deemed tainted for being the proverbial fruit of a poisonous tree and should be excluded.[32] Such evidence shall be inadmissible in evidence for any purpose in any proceeding.[33]

In the instant case, there was no search warrant issued by a judge after personal determination of the existence of probable cause. From the declarations of the police officers themselves, it is clear that they had at least one (1) day to obtain a warrant to search appellant's farm. Their informant had revealed his name to them. The place where the cannabis plants were planted was pinpointed. From the information in their possession, they could have convinced a judge that there was probable cause to justify the issuance of a warrant. But they did not. Instead, they uprooted the plants and apprehended the accused on the excuse that the trip was a good six hours and inconvenient to them. We need not underscore that the protection against illegal search and seizure is constitutionally mandated and only under specific instances are searches allowed without warrants.[34] The mantle of protection extended by the Bill of Rights covers both innocent and guilty alike against any form of high-handedness of law enforcers, regardless of the praiseworthiness of their intentions.

We find no reason to subscribe to Solicitor General's contention that we apply the "plain view" doctrine. For the doctrine to apply, the following elements must be present:

(a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

(b) the evidence was inadvertently discovered by the police who have the right to be where they are; and

(c) the evidence must be immediately apparent; and

(d) plain view justified mere seizure of evidence without further search. [35]

In the instant case, recall that PO2 Balut testified that they first located the marijuana plants before appellant was arrested without a warrant.[36] Hence, there was no valid warrantless arrest which preceded the search of appellant's premises. Note further that the police team was dispatched to appellant's *kaingin* precisely to search for and uproot the prohibited flora. The seizure of evidence in "plain view" applies only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object.[37] Clearly, their discovery of the cannabis plants was not inadvertent. We also note the testimony of SPO2 Tipay that upon arriving at the area, they first had to "look around the area" before they could spot the illegal plants.[38] Patently, the seized marijuana plants