

SECOND DIVISION

[G.R. No. 115581, August 29, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. VACITA LATURA JONES, ACCUSED-APPELLANT.

DECISION

TORRES, JR., J.:

The accused VACITA LATURA JONES, an Americal national, appeals from her conviction for violation of Section 4, Article II of the Dangerous Drugs Act of 1972, i.e., R.A. 6425, as embodied in the Decision^[1] of the Regional Trial Court of Pasay City, Branch 111 in Criminal Case No. 91-2026, dated January 24, 1994.

The records disclose that the accused was charged on December 16, 1991 for transporting 1.6 kilograms of heroin as per Information filed by the Office of the Senior State Prosecutor, as follows:

The undersigned Senior State Prosecutor of the Department of Justice hereby accuses VACITA LATURA JONES for violation of Section 4, Article 11 of R.A. 6425 as amended, otherwise known as 'The Dangerous Drugs Act of 1972', committed as follows:

That on or about the 11th day of December, 1991, about 6:30 o'clock in the morning at Ninoy Aquino International Airport, Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously transport without lawful authority 1.6 kilograms of heroin more or less, a prohibited drug.

CONTRARY TO LAW."

The accused pleaded not guilty upon arraignment on June 9, 1992. Thereafter, trial proceeded with the presentation of witness for the prosecution. To show that the accused was caught in flagrante of trying to transport five packets of heroin, a prohibited drug, from the country, the prosecution presented Rubilinda Rosal, a PNP Police Supervisor and civilian frisker, whose testimony was corroborated on its material points by arresting officers SPO1 Ricardo Bariuad, SPO1 Neowillie de Castro, and SPO3 Arsenio Suma-Oy. The lone defense witness presented was the accused herself, who denied all the charges set up against her.

The facts of the case, appearing on record are hereby reproduced verbatim:

The Narcotics Command (NARCOM) of the Philippine National Police (PNP) maintains a team of its personnel which conducts routinary security checks on all outgoing passengers at the final check, West Satellite, International Passenger Terminal, Departure Area, Ninoy Aquino International Airport, Pasay City. In the morning of December 11, 1991,

the members of the NARCOM team then assigned at the West Sattellite, Final Security Check, Departure Area, International Passenger Terminal, Ninoy Aquino International Airport were Senior Inspector Rustico C. Francisco, SP03 Arsenio B. Suma-Oy, SP01 Ricardo Bariuad, PO3 Neowillie U. de Castro and Rubilinda Rosal, a police supervisor and civilian frisker.

At around 6:30 o'clock in the morning of December 11, 1991, while Rubilinda Rosal was conducting the routinary security check by frisking the bodies of all outgoing passengers at the final check counter at the departure area, she happened to touch something unusual on the breast of an outgoing lady passenger. The frisker, Rubilinda Rosal, brought the said lady passenger to the side of the passengers' passage where she was bodily searched. The search yielded two (2) small packs (Exh. "C-2" and "C-3") hidden inside her bra and another pack (Exh "C-4") hidden in the front part of her panty. Immediately upon discovering the packs, Rubilinda Rosal informed SPO1 Bariuad of her findings. PO3 de Castro was requested to examine the contents of the packs, De Catro conducted a field test which gave positive result of heroin.

Rubilinda Rosal was further requested to search the personal belongings of the lady passenger. The black leather jacket (Exh. "F") was found to contain two (2) more packs in its two pockets. The NARCOM personnel immediately placed the lady passenger under arrest and the corresponding Booking Sheet and Arrest Report (Exh. "I") was accomplished. The arrested lady passenger identified herself as Miss VACITA LATURA JONES, 24 years old, American national, a resident of 296 West Marposa, Altudin, California, U.S.A. and an outgoing passenger of flight No. NW-066 bound for U.S.A. and a holder of passport Number 130478972 (Exh. "J"). She is the same person now accused in this case.

The five (packs) of suspected heroin were confiscated with an estimated weight of 1.6 kilograms for which a receipt (Exh. "G") was duly issued. The NARCOM personnel involved in the search and seizure of the suspected drugs executed a joint affidavit (Exh. "H"). The person of the accused, Vacita Latura Jones, the five (5) packs of suspected heroin and the other travel documents of accused were subsequently turned over to the Headquarters, PNP Narcotics Command, Special Operations Division, for further investigation.

On the same date, December 11, 1991, a communication (Exh. "A") was addressed by Chief Inspector Cezar D. Elezano, Division Chief of the Special Operations Division, PNP Narcotics Command, to the Director of the PNP Crime Laboratory requesting the latter to conduct laboratory examination of the five (5) packs of suspected heroin. Upon receiving the request (Exh. "A"), Insp. Leslie Chambers, a Forensic Chemist at the PNP Crime Laboratory conducted an examination of the five (5) packs of suspected heroin with a total weight of almost 1.6 kilos. In her Chemistry Report No. D-1441-91 (Exh. "B") Insp. Chambers arrived at the following

'FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Heroin, a prohibited drug.

CONCLUSIONS:

Exhs. "A-1" through "A-3" and "B-1" and "B-2" contain heroin, a prohibited drug.'

The Chemistry Report (Exh. "B") bears the approval of the Chief Insp. Marlene M. Salangad, Chief of the Chemistry Division and Chief Supt. Ricardo B. Trinidad, Director of the PNP Crime Laboratory Service (See Exhs. "B-2" and "B-3").^[2]

Upon such facts, the trial court found the accused guilty of violating Section 4, Article II of R.A. 6425. The dispositive portion of the court's decision reads:

WHEREFORE, the Court finds the accused VACITA LATURA JONES guilty beyond reasonable doubt of violating Section 4 Article II of Republic Act No. 6425, as amended, as charged in the information, and hereby sentences said accused to life imprisonment and pay a fine TWENTY THOUSAND (P20,000) PESOS. Let the heroin (Exhs. "C-2", "C-3", "C-4", "D-2" and "D-3" remain in the custody and possession of the Dangerous Drugs Board for proper disposition.

The immediate transfer and commitment of the accused from the Pasay City Jail to the Bureau of Corrections in Muntinlupa, Metro-Manila, is hereby ordered.

SO ORDERED."^[3]

Taking exception to the decision of the trial court, the accused appealed to the Court, raising the following alleged errors of the trial court:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PROSECUTION'S VERSION THAT ACCUSED-APPELLANT WAS CAUGHT IN FLAGRANTE POSSESSING THE FIVE (5) PACKS OF HEROIN WITH A TOTAL WEIGHT OF 1.6 KILOGRAMS, MORE OR LESS; WHEN SHE WAS FRISKED BY A CIVILIAN EMPLOYEE OF THE PHILIPPINE NATIONAL POLICE (PNP) AT THE NINYOY AQUINO INTERNATIONAL AIRPORT (NAIA) DEPARTURE AREA.

II

THE TRIAL COURT ERRED IN REJECTING THE DEFENSE OF DENIAL INTERPOSED BY ACCUSED-APPELLANT, COUPLED WITH A SHOWING OF THE FACTS AND CIRCUMSTANCES INDICATING THAT THE SUBJECT PACKS OF HEROIN COULD NOT HAVE BEEN IN HER POSSESSION.

III

ASSUMING THAT ACCUSED-APPELLANT WAS CAUGHT IN FLAGRANTE POSSESSING

THE PACKS OF HEROIN AT ISSUE, THE TRIAL COURT ERRED IN HOLDING HER LIABLE FOR UNLAWFUL TRANSPORTATION THEREOF UNDER SECTION 4, ARTICLE II OF REPUBLIC ACT NO. 6425, AS AMENDED, BECAUSE THERE WAS NO EVIDENCE INDICATING THE POINT OF ORIGIN OF SAID PACKS OF PROHIBITED DRUG AND THEY WERE NOT FOUND TO BE IN TRANSIT OR BEING TRANSPORTED.[4]

In furtherance of her appeal, the accused posits the following as the true facts surrounding her arrest.

In the early morning of December 11, 1991, accused Vacita Latura Jones, an American national, entered the NAIA Departure Area. After she had handed her passport to a security guard stationed therein, she proceeded to the ticketline. Meanwhile, a man with the physical features of an American came behind her. That man, later, introduced himself as Henry Lugoye and identified himself as a businessman and conversed with her. After that brief conversation, she proceeded to the Immigration Security Check where she was asked to present her passport and plane ticket. When she was cleared, she went to the Final Check Departure Area. She was followed by the man who had previously talked with her. The said man approached her and, while the area was busy, he placed his jacket on her rolling cart and hurriedly left. At the final Check Area, she was frisked by a woman who subsequently brought accused's luggage to a table, picked up the jacket and left. (TSN, August 23, 1993, pp. 13-17)

After a short while, the woman-frisker came back in the company of some men who directed accused to come with them near the Final Check Departure Office. There, accused saw the jacket and several packs on top of a table. She was asked to sign something and to affix her signature on the jacket. When she refused, she was boxed, prompting her to place a call of the American Embassy for assistance. (TSN, August 23, 1993, pp. 18-19)"[5]

According to the accused, it was highly improbable, if not impossible to her to conceal three of the five packets subject packets of heroin in her bosom (two packets weighing 288.8 grams and 330.7 grams; Exhs "C-2" and "C-3") and in between her thighs (one packet weighing 271.2 grams; Exh "C-4") because of their size. Corollary to this, accused points out that the trial court took judicial notice of the fact that the said packets were too big to be kept between her bosom and between her legs. (TSN, April 22, 1993. Pp. 4-5) The two other packets, weighing 342 grams and 295.4 grams (Exhs. "D-2" and "D-3"), found in a black leather jacket in her possession, could not be attributed to her as the jacket was not hers, but belonged to an American stranger she had met in the NAIA, just before she was arrested.

In the alternative, the accused posits that under the facts as found by the trial court, she could only be charged and convicted of possession of the prohibited drug, as the act of transporting was not proven by the prosecution, there being no evidence of the place of origin of the drug. Neither may the accused be convicted of transporting the prohibited drug, as she has not yet boarded the plane, and was still within the Departure Area of NAIA.

The decisive issue raised by the appellant involves the credibility of the prosecution