



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 247906

Present:

PERALTA, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

SALVADOR AGUNDAY ALBERTO
II and MARY JANE TURALDE
VARGAS,

Promulgated:

Accused-Appellants.

FEB 10 2021 *m/hubert*

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D E C I S I O N

CARANDANG, J.:

This is an ordinary appeal¹ filed by accused-appellants Salvador Agunday Alberto II (Alberto) and Mary Jane Turalde Vargas (Vargas) [collectively, accused-appellants] of the Decision² dated May 22, 2018 and Resolution³ dated August 28, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07050. The CA affirmed the Decision⁴ dated March 11, 2014 of the Regional Trial Court (RTC) of Pasay City, Branch 110 in Criminal Case No. R-PSY 09-00753-CR. The RTC found accused-appellants guilty beyond

¹ *Rollo*, pp. 25-30.

² Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Manuel M. Barrios and Maria Elisa Sempio Dy; *id.* at 3-24.

³ *CA rollo*, pp. 363-364.

⁴ Penned by Presiding Judge Petronilo A. Sulla, Jr.; *id.* at 32-47.

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reasonable doubt of violation of Section 5, Article II of Republic Act No. (R.A.) 9165:

WHEREFORE premises considered and the prosecution having proven the guilt of both herein accused **SALVADOR AGUNDAY ALBERTO II** and **MARY JANE TURALDE VARGAS**, beyond reasonable doubt of the offense charge [*sic*] in the information, judgment is hereby rendered finding them **GUILTY** as charged, and they are hereby sentenced each to suffer the penalty of life imprisonment and to pay a fine of **Five Hundred Thousand Pesos (P500,000.00)**, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The preventive imprisonment which said accused have undergone during the pendency of this case, shall be credited in full in their favor, in the computation of their sentence, provided they agreed voluntary in writing to abide with the same disciplinary rules and resolutions imposed upon convicted prisoners.

The 887.88 grams of heroin subject of this case is confiscated in favor of the government and the Branch Clerk of Court/Officer-in-Charge is directed to cause the transportation thereof to the Philippine Drug Enforcement Agency, for proper disposition in accordance with law.

SO ORDERED, Pasay City, March 11, 2014.⁵
(Emphasis in the original)

Antecedents

Accused-appellants were charged with violation of Section 5, Article II of R.A. 9165 in an Information⁶ dated August 3, 2009 that states:

That on or about the 31st day of July 2009, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without authority of law, did then and there wilfully, unlawfully and feloniously transport 887.88 grams of Heroin, a dangerous drug, from the Pinoy Family Club Hotel in Pasay City up to the departure area of the Ninoy Aquino International Airport.

Contrary to law.⁷

Accused-appellants filed their respective motions to quash⁸ wherein both argued that their arrest and the search conducted on the bags were illegal. The RTC denied both motions in its Order⁹ dated November 5, 2009 on the ground that the averments therein are evidentiary matters that could

⁵ Id. at 47.

⁶ Records, p. 1.

⁷ Id.

⁸ Records, pp. 76-87, 100-104.

⁹ Id. at 105.

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be properly threshed out in a full-blown trial.¹⁰ On December 9, 2009, accused-appellants were arraigned and they pleaded not guilty.¹¹

During the preliminary conference on January 14, 2010, the parties admitted the following facts:

1. The identity of accused SALVADOR AGUNDAY ALBERTO II and MARY JANE TURALDE VARGAS as the same persons being charged in Criminal Case No. R-PSY-09-00753-CR with Violation of Section 5, Article II, of Republic Act No. 9165;
2. Both accused were arrested without warrant in Pasay City, which is within the jurisdiction of this Honorable Court.
3. The qualification of Forensic Toxicologist III Rubie Banela-Calalo of the National Bureau of Investigation Forensic Chemistry Division, Manila as an expert witness;
4. That said Forensic Toxicologist conducted laboratory examination on two (2) separate improvised envelopes with markings "MEE-2" and "MEE-3" each containing off-white powder with a total weight of 887.88 grams;
5. The existence, due execution and authenticity of the Certification (Exhibit "C") dated August 01, 2009 issued by the National Bureau of Investigation with the qualification from the Defense that they are going to dispute the validity of the findings when the Forensic Toxicologist concerned is presented in court.¹²

The prosecution presented the following as its witnesses: Special Investigator (SI) Joel Otic (SI Otic), SI Nelson Saul (SI Saul), SI Melvin Escurel (SI Escurel), and Atty. Fatima Liwalug (Atty. Liwalug).¹³ According to them, a Filipino male informant sent an email to SI Otic on July 27, 2009 telling him that a lady courier named Anita Agunday Alberto (Anita) will be arriving in the Philippines from Malaysia carrying an undetermined quantity of heroin. SI Otic instructed the informant to gather more information. On July 31, 2009, the informant called SI Otic to inform him that the lady courier, now identified to be Vargas, arrived in the Philippines from Malaysia on board Cebu Pacific Flight No. 5J501 between 5:00 to 6:00 a.m. Vargas will proceed from the Ninoy Aquino International Airport (NAIA) to the Pinoy Family Club Hotel (Hotel) in Pasay City where she will meet with Alberto and give him a package/luggage. Alberto shall depart for China later that day. Alberto has a Chinese residency visa and has previously transported drugs outside the country. SI Otic verified the status of Vargas and discovered that she is also an Overseas Filipino Worker who works as a teacher in China and has a residency visa.¹⁴

¹⁰ Id.

¹¹ Id. at 111.

¹² Id. at 123-124.

¹³ CA *rollo*, p. 33.

¹⁴ *Rollo*, p. 5.

SI Otic relayed the information to HA Rowel Bolivar (HA Bolivar), Chief of the Reaction Arrest and Interdiction Division (RAID)¹⁵ of the National Bureau of Investigation (NBI) located at Room 302, Third Floor, NBI Main Headquarters, Taft Avenue, Manila.¹⁶ Consequently, HA Bolivar formed a group of NBI operatives to conduct operations against accused-appellants at the Hotel. SI Otic was designated as the team leader while SI Saul, SI Escurel, Atty. Liwalug, SI Junnel Malaluan (SI Malaluan), and Agent Jerome Bomediano were the members of his team. After the briefing of the team, SI Otic prepared the required documents for coordination with the Department of Justice (DOJ), Philippine Drug Enforcement Agency (PDEA), and the local police of Pasay City. HA Bolivar coordinated with the NBI personnel assigned at NAIA.¹⁷

The team used two Mitsubishi Adventure vehicles to travel from their office to the Hotel. Upon their arrival at the Hotel at around 9:00 a.m., SI Otic coordinated with Jovic Sanchez (Sanchez), Security Officer of the Hotel, regarding Vargas.¹⁸ Sanchez informed him that Vargas was billeted at Room 21 of the Hotel. He described her as a thin lady, more or less five feet tall, fair-skinned, and has long sexy brown hair. SI Otic ordered SI Saul to stay in the cafeteria to monitor Vargas and Alberto. SI Otic and Atty. Liwalug positioned themselves along the driveway. SI Malaluan and SI Escurel remained inside one of the vehicles parked 10 to 15 meters away from the cafeteria.¹⁹

After a while, a shuttle van arrived and a man wearing a blue polo shirt and dark slacks alighted from it. Sanchez told SI Otic that this was Alberto, a client of the hotel. At 10:00 a.m., Vargas came out of her room and proceeded to the cafeteria where she met Alberto. They briefly exchanged pleasantries. SI Saul overheard Alberto telling Vargas “[k]adarating ko lang. Mamaya aalis na rin ako.” Vargas responded “[p]unta tayo kwarto, kunin natin ang mga bagahe.” Accused-appellants went out of the cafeteria and proceeded to Vargas’ room.²⁰ After a few minutes, accused-appellants returned to the cafeteria. Vargas was carrying a black trolley bag while Alberto was carrying a laptop bag. They briefly talked. Vargas told Alberto “[e]to na yung bag. May laman na yan, padala ni Choks.” Alberto left the Hotel on board the same shuttle van before 12:00 NN. Vargas remained in the cafeteria. When she went back to her room, SI Saul left the hotel together with SI Escurel on board one of the NBI’s vehicles and followed Alberto to NAIA. SI Otic instructed them to invite Alberto to the NBI office. If he refuses to cooperate, they can seek the assistance of the K9 unit of the PDEA at NAIA.²¹

Alberto, SI Saul, and SI Escurel arrived at Terminal 1 of NAIA. Before Alberto could proceed to the inspection gate, SI Saul and SI Escurel approached him and introduced themselves as NBI operatives. They told

¹⁵ CA rollo, p. 32.

¹⁶ TSN dated June 2, 2010, p. 5.

¹⁷ Rollo, pp. 5-6.

¹⁸ Id.

¹⁹ Id. at 6.

²⁰ Id.

²¹ Id. at 7.

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him that they received information that the bag he was carrying contained illegal drugs.²² Alberto responded that the bag was just given to him by Vargas who was billeted at the Hotel. SI Saul and SI Escurel invited him to come with them to the NBI. Alberto agreed to do so.²³

Meanwhile, after being informed by SI Saul that they already invited Alberto to their office, SI Otic, with the assistance of Sanchez, knocked on Room 21. He was accompanied by Atty. Liwalug and the other NBI operatives. When Vargas opened the door, SI Otic invited her to come with them to the office because she was identified as the owner of the suspected luggage. Vargas assented and said “[s]asama naman ako. Wala akong ginagawang masama.”²⁴

Upon arrival at the NBI office at around 1:00 p.m., SI Otic requested for representatives from the DOJ and the media, as well as barangay officials, to witness the inspection of the bags.²⁵ The bags were placed on top of a table beside Alberto.²⁶ The NBI operatives explained to accused-appellants why they were invited to the NBI office.²⁷ While waiting for the witnesses, the NBI operatives just guarded accused-appellants.²⁸ SI Escurel and Atty. Liwalug said that they did not leave their office in the meantime.²⁹

At around 5:00 p.m., SI Otic and SI Escurel inspected the bags³⁰ in the presence of accused-appellants, Senior State Prosecutor Theodore Villanueva (Villanueva) of the DOJ, Pasay City Barangay Kagawad Andres Ilejay (Brgy. Kgw. Ilejay), Pasay City Barangay Tanod Diosdado Sadasip, Jr. (Brgy. Tanod Sadasip, Jr.), and Natividad William (William) of ABS-CBN.³¹ They opened the laptop bag and discovered that it contained personal effects of Alberto. Afterwards, they opened the black trolley bag and found nothing of consequence inside. However, SI Escurel noticed that the sides of the bag were protruding. SI Escurel informed Alberto that he will open the side of the bag. Alberto agreed. SI Escurel used a knife to slash the bulging part of the bag and found a pack of brown envelopes inside. They asked Alberto if they could open the envelopes to which he acceded. The brown envelopes contained white powdery substance. Based on his experience, SI Otic determined the substance to be heroin. Atty. Liwalug videotaped the opening of the luggage, though the battery of the camera died midway.³²

SI Escurel conducted an inventory of the items and marked the envelopes as MEE-2 and MEE-3, respectively weighing 447.30 grams and 440.58 grams.³³ SI Saul prepared the Booking Sheet and Arrest Report. At

²² Id.

²³ Id. at 8.

²⁴ Id.

²⁵ TSN dated June 2, 2010, pp. 31-32.

²⁶ TSN dated April 28, 2010, p. 10.

²⁷ TSN dated September 1, 2010, p. 14.

²⁸ TSN dated November 3, 2010, p. 13.

²⁹ Id. at 8; TSN dated February 23, 2011, pp. 4-5.

³⁰ *Rollo*, p. 8.

³¹ Records, p. 7.

³² *Rollo*, pp. 8-9.

³³ Id. at 17.

10:30 p.m., SI Escurel turned over the items to the NBI Forensic Chemistry Division. Forensic Toxicologist III Rubie Banela-Calalo (Calalo) conducted an examination on the specimens of heroin with a total weight of 887.88 grams and found that it tested positive for heroin.³⁴

Alberto testified that he was employed as an Oral English Teacher at Shanwei University in Guandong, China from 2004 to 2009. He met Vargas, who works at a travel agency, sometime in 2005 during a Filipino gathering in China. He travelled with her to Malaysia in 2006 upon her invitation. In July of the same year, he went back to the Philippines to attend the burial of his brother. He went home again during the Beijing Olympics in 2008 because foreign nationals were required to secure invitation letters for their residence visa.³⁵

On July 23, 2009, Vargas sent Alberto a text message asking him how and where he was. He told her that he was going to the Philippines for a five-day vacation to visit his family in Virac, Catanduanes. Vargas texted him again on July 30, 2009 asking him if they can meet up in Manila. Alberto replied that he will try to meet her. Alberto left Catanduanes on July 31, 2009. When he arrived from Catanduanes at NAIA Terminal 1 at 8:45 a.m., Vargas asked him if they could meet and told him that a shuttle van will pick him up and bring him to the Hotel where she was staying. Thus, Alberto rode the Hotel's shuttle van and met Vargas at the Hotel's cafeteria. After exchanging pleasantries, she informed him that she had a gift for him. Vargas also asked if he could carry some items for her friends back in China. Vargas said that her friend will fetch Alberto from the airport upon his arrival. Accused-appellants then proceeded to Vargas' room where she showed Alberto the Philippine-made products placed inside her black trolley bag. Thereafter, accused-appellants went back to the cafeteria. Alberto boarded the shuttle van while the black trolley bag was placed at its back portion. He was carrying his own laptop bag. Alberto left for the airport at around 10:30 a.m., in time for his 2:00 p.m. flight to China.³⁶

When Alberto arrived at NAIA and was about to alight from the van, a man opened the door of the van and introduced himself as an NBI agent. He invited Alberto for questioning and held his hand tightly. The man pushed Alberto inside another vehicle that was parked nearby. He asked for his passport and cellphone which Alberto gave. The man also asked for his bag. When Alberto showed it to him, he told him not to open it. The man asked him how many bags he was carrying to which he replied that he only had the laptop bag. The driver then said "*Nilagay ko na sir sa likod. Ok na yan. Ok na yan.*" While they were on their way to the NBI, the man insinuated that if Alberto wanted to give money for settlement, he should do so while they were still in transit. Thereafter, he called up someone and said "Positive, positive."³⁷

³⁴ Records, p. 242.

³⁵ *Rollo*, p. 9.

³⁶ *Id.* at 9-10.

³⁷ *Id.*

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Alberto arrived at the RAID office past 1:00 p.m. The black trolley bag was brought to a cubicle inside the office. Pictures of Alberto and the black trolley bag were taken. At 2:30 p.m., the black trolley bag was taken to the office next door that was seven meters away. After waiting for several hours, the black trolley bag was finally opened at 10:00 p.m. in the presence of representatives from the media and the DOJ. When accused-appellants were brought to where the bag was, they saw that it was already opened and slashed on the sides. Brown envelopes containing dangerous drugs were inside the bag. Alberto then confronted Vargas about the drugs found inside the bag but she denied knowing that it was placed inside. Accused-appellants were detained at the NBI Detention Center. Alberto did not file any administrative complaint against any of the operatives of the NBI.³⁸

Vargas testified that she travelled from Malaysia, where she met up with her boyfriend Mansur Amiria, to the Philippines on July 31, 2009. Nothing happened when she passed through the routine inspection at NAIA. She was carrying two bags, one of which contained gifts for her friends in China. Vargas purchased these gifts from Malaysia, at the Duty Free shops, and at shops near the Hotel. She checked in at the Hotel and contacted Alberto to meet with him. When he arrived, they briefly talked before going to her room. Once inside the room, she showed him the gifts she was going to give to her friends in China, which were placed inside a black trolley bag. Afterwards, they went back to the Hotel's cafeteria. The driver of the shuttle van placed the black trolley bag at the back of the van. Thereafter, Alberto left the hotel.³⁹ Vargas went to the nearby Metro Point Mall. When she was leaving the mall, several men with big body built approached her and invited her to come with them. They claimed that Alberto was at the NBI office. Vargas and the men returned to the Hotel. The men packed her belongings and confiscated her laptop. Vargas checked out of the Hotel and arrived at the NBI at around 2:00 p.m. She saw Alberto but they waited in different cubicles. She did not see the black trolley bag.⁴⁰

Ruling of the Regional Trial Court

In its March 11, 2014 Decision,⁴¹ the RTC convicted accused-appellants of transporting dangerous drugs under Section 5, Article II of R.A. 9165 and sentenced them to each suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.⁴² The RTC was convinced that accused-appellants conspired with each other to transport dangerous drugs. SI Saul testified that they went to the Hotel in response to the information received by SI Otic that Vargas would bring heroin to the country and stay at the Hotel. At the Hotel, he saw accused-appellants together at the cafeteria. Vargas gave a trolley bag to Alberto and he brought the bag with him to the shuttle van. SI Otic suspected that Alberto was carrying the bag containing the heroin. As such, he ordered SI Saul to follow Alberto and invite him to the NBI for interrogation. SI Saul and SI Escurel

³⁸ Id. at 11.

³⁹ Id.

⁴⁰ Id. at 12.

⁴¹ *CA rollo*, pp. 32-47.

⁴² Id. at 47.

thus intercepted Alberto at the departure area of NAIA and invited him to their office for interrogation. Alberto accepted their invitation. At the NBI, they discovered two brown envelopes inside the bag. The envelopes contained powdery substance.⁴³ The examination of the forensic chemist confirmed that the substance found inside the envelopes in the bag was heroin.⁴⁴ SI Otic corroborated SI Saul's testimony.⁴⁵

SI Saul and SI Escurel testified that they merely invited Alberto to the NBI but did not arrest him. SI Otic likewise testified that he invited Vargas to come with them to the NBI for questioning.⁴⁶ Alberto's counsel admitted that the accused-appellants were merely invited but not arrested. Therefore, the legality of accused-appellants' arrest can no longer be questioned. In any case, there was legal basis to arrest accused-appellants. The acts of accused-appellants showed that as drug couriers, they had the common objective of transporting drugs to China.⁴⁷ Further, accused-appellants consented to the opening of the bags. Heroin was found inside the black trolley bag after it was inspected in the presence of accused-appellants, representatives from the DOJ and the media, and barangay officials.⁴⁸ Accused-appellants offered nothing more than mere denial in their defense. They failed to show any ill motive on the part of the NBI operatives to falsely charge them. As such, the testimony of the NBI operatives are entitled to full weight and credit.⁴⁹

Alberto filed a motion for outright reconsideration but the RTC denied it.⁵⁰ Subsequently, accused-appellants appealed to the CA.

Ruling of the Court of Appeals

On May 22, 2018, the CA rendered its Decision⁵¹ affirming the RTC. The CA held that the essential element of illegal transportation of dangerous drugs is the movement of dangerous drug from one place to another.⁵² Since the crime is *mala prohibita*, the intent, motive, and knowledge of the accused need not proven.⁵³ In this case, accused-appellants were caught *in flagrante delicto* in committing this crime.⁵⁴ The totality of the circumstances showed that they conspired with each other to transport the heroin to China.⁵⁵ The testimonies of SI Saul and SI Otic duly established this.⁵⁶ Any alleged inconsistencies in the testimonies of plaintiff-appellee's witnesses deserve little weight and were inconsequential. In addition, there was no showing that the NBI operatives had any ill motive against accused-appellants. Alberto even admitted that he met the arresting officers for the first time on July 31, 2009. Accordingly, the testimonies of the NBI

⁴³ Id. at 42-44.

⁴⁴ Id. at 46.

⁴⁵ Id. at 43.

⁴⁶ Id. at 44-45.

⁴⁷ Id. at 46.

⁴⁸ Id. at 45-46.

⁴⁹ Id. at 46.

⁵⁰ Records, p. 433.

⁵¹ Supra note 2.

⁵² *Rollo*, p. 14.

⁵³ Id. at 15.

⁵⁴ Id. at 14.

⁵⁵ Id. at 22.

⁵⁶ Id. at 14.

operatives must be respected and the presumption of regularity in the performance of their duties must be upheld.⁵⁷

Accused-appellants were not authorized by law to transport dangerous drugs. Thus, the CA ruled that their warrantless arrest was permissible under Section 5(a), Rule 113 of the Rules of Court. It follows then that the subsequent seizure of the illegal drugs was also valid.⁵⁸

The CA likewise held that the identity of the heroin was duly preserved. The substance inside the envelopes marked as MEE-2 and MEE-3 was the same substance examined by Calalo. She found that it tested positive for heroin. SI Escurel identified the specimens when he testified before the court. Accused-appellants did not submit proof that the evidence submitted by the prosecution was tampered with.⁵⁹

Alberto filed a motion for reconsideration. After the CA denied it, accused-appellants appealed before this Court. In addition to adopting their briefs before the CA, accused-appellants also filed their respective supplemental briefs.⁶⁰ Plaintiff-appellee manifested that it was not going to file a supplemental brief because its brief before the CA sufficiently discussed its position.⁶¹

First, Vargas claimed that she was illegally arrested. The NBI operatives did not have any warrant against her. She was not caught in the act of committing a crime that would justify her warrantless arrest. Vargas was neither informed of her rights nor assisted by counsel. She was scared. Alberto himself protested against the NBI operatives because he was about to leave the country.⁶² *Second*, Vargas did not see the black trolley bag after she gave it to Alberto until at 10:00 p.m. of July 31, 2009 when it was already opened. The NBI operatives had full control and possession of the bag which they examined at 5:00 p.m. They conducted an inventory of the bag an hour later. Accused-appellants were not present during the inspection. Pictures were only taken in the presence of a representative from the media and the DOJ at 11:00 p.m.⁶³ *Third*, the allegation that Vargas is part of the West African Drug Syndicate is hearsay.⁶⁴ In fact, she was not even the subject of the operation but Anita. It was not explained why the identity of the lady courier was suddenly changed to Vargas.⁶⁵ *Fourth*, the NBI operatives received the information about the alleged transportation of heroin from Anita to Alberto three days before their operation. They had sufficient time to secure a warrant of arrest but did not do so.⁶⁶ *Fifth*, the NBI operatives disregarded the requirements under Section 21 of R.A. 9165. The NBI operatives took the trolley bag from Alberto and accused-

⁵⁷ Id. at 18.

⁵⁸ Id. at 15-16.

⁵⁹ Id. at 17.

⁶⁰ Id. at 41-43, 64-65, 88-98.

⁶¹ Id. at 56-58.

⁶² Id. at 91-92; CA rollo, pp. 67-68.

⁶³ Rollo, p. 93; CA rollo, pp. 67, 69.

⁶⁴ CA rollo, pp. 68-69.

⁶⁵ Rollo, p. 89.

⁶⁶ Id. at 89-90.

appellants did not know where they kept it. They did not explain or justify their lapses.⁶⁷ *Sixth*, the testimonies of plaintiff-appellee's witnesses were inconsistent with one another. SI Otic claimed that he and SI Saul searched the bag. However, SI Saul denied participating in the search. SI Escurel said that he was the one who opened the bag. Another inconsistency is SI Escurel's testimony that Atty. Liwalug took pictures during the examination of the bag but Atty. Liwalug herself denied taking pictures. She claimed that she only took a video of the proceedings.⁶⁸

Alberto argued that *first*, he was arrested at the parking area of NAIA and not merely invited. The Booking Sheet and Arrest Report indicates his place, date, and time of arrest as Pasay City, July 31, 2009, 1:00 p.m. If he was merely invited, then the Booking Sheet and Arrest Report would have stated otherwise. Also, plaintiff-appellee agreed to stipulate that accused-appellants were arrested in Pasay City without a warrant. SI Otic himself testified that SI Saul arrested Alberto. In addition, Alberto did not have any opportunity to reject the invitation from the NBI operatives because they forced him inside a vehicle.⁶⁹ Accused-appellants were not informed of their rights when they were arrested in accordance with R.A. 7438, or "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof."⁷⁰ *Second*, the search conducted on the bags was illegal. Alberto was not in a position to give valid consent to the search because he was under the control of the NBI operatives and was not assisted by counsel. Accused-appellants' approval of the search was not sought and the bag was already opened when they saw it. Independent witnesses, such as the representatives from the DOJ and the media as well as the barangay officials, did not testify to affirm that Alberto consented to the search of the bag. Alberto's approval of the search cannot be presumed simply because he failed to object to it. Since the search was illegal, any object obtained as a result cannot be admitted as evidence against Alberto for being the fruit of a poisonous tree.⁷¹ *Third*, SI Escurel testified that the substance he saw inside the brown envelopes was white. When the substance was presented in court, he said that he did not remember it and has not even seen it because it was yellowish. He later tried to claim that what he saw inside the envelopes was a yellowish substance. Plaintiff-appellee did not explain the discrepancy. Thus, the substance supposedly confiscated from accused-appellants was not the same one presented in court.⁷² *Fourth*, the testimonies of plaintiff-appellee's witnesses were inconsistent. SI Otic testified that he and SI Saul searched the bag. SI Saul denied this and said that it was SI Escurel who searched the bag with SI Otic. In addition, SI Escurel claimed that Atty. Liwalug took pictures while the bag was being searched but Atty. Liwalug denied this. The pictures should not have been admitted as evidence because it was not properly identified by the person who actually took it.⁷³ *Fifth*, there was no proof that

⁶⁷ Id. at 93-95.

⁶⁸ Id. at 93-94.

⁶⁹ CA rollo, pp. 183-185.

⁷⁰ Id. at 183-189.

⁷¹ Id. at 191-192.

⁷² Id. at 197-199.

⁷³ Id. at 200-203.

accused-appellants conspired with one another to transport dangerous drugs. Even if the black trolley bag contained heroin, it cannot be presumed that Alberto was aware that it was inside the bag given to him by Vargas.⁷⁴

Plaintiff-appellee averred that it was able to prove actual physical possession and control of prohibited drugs in this case. Plaintiff-appellee also presented the *corpus delicti* in court. Thus, it was able to prove that accused-appellants transported drugs in violation of Section 5, Article II of R.A. 9165. Plaintiff-appellee refuted Vargas' claim that she was not caught *in flagrante delicto*. Alberto arrived at the Hotel empty-handed but carried a trolley bag after he went with Vargas to her room. Clearly, Vargas acted as a principal by direct participation. Plaintiff-appellee also insisted that the chain of custody rule was observed in this case. Alberto was in possession of the trolley bag from the time that he was invited to go to the NBI until the bag was inspected in his presence as well as that of the required witnesses under Section 21 of R.A. 9165. SI Escurel was the one who slashed the side of the trolley bag. The items did not pass through any other person apart from him and Alberto.⁷⁵

Issue

The sole issue before Us is whether the CA erred in upholding the conviction of accused-appellants for illegal transportation of dangerous drugs under Section 5, Article II of R.A. 9165.

Ruling of the Court

We dismiss the appeal.

The transportation of dangerous drugs is punishable under Section 5, Article II of R.A. 9165. To be convicted under this provision, movement of the dangerous drugs from one place to another is essential.⁷⁶ In *People v. Asislo*,⁷⁷ We clarified that “[w]hen the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.”⁷⁸ In this case, Vargas undoubtedly brought a black trolley bag from NAIA to the Hotel which she later gave to Alberto. Alberto brought the same bag to NAIA where the NBI operatives invited him to their office. At the NBI office, the black trolley bag was searched and substance suspected to be heroin was found inside. Calalo confirmed that the substance is heroin after examining it. It is thus clear that accused-appellants illegally transported heroin, a dangerous drug.



⁷⁴ Id. at 205.

⁷⁵ Id. at 127-129.

⁷⁶ *People v. Macaspac y Llanete*, G.R. No. 246165, November 28, 2019.

⁷⁷ 778 Phil. 509 (2016).

⁷⁸ Id. at 523.

However, accused-appellants question the legality of their arrest. Arrest is defined under Section 1, Rule 113 of the Revised Rules of Criminal Procedure as the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. A person is arrested when there is an actual restraint of the person arrested or by that person's voluntary submission to the custody of the one making the arrest. We have long settled that the application of actual force, manual touching of the body, or physical restraint, or a formal declaration of arrest, is not required. The intention on the part of one of the parties to arrest the other, and the intent on the part of the other to submit, under the belief and impression that submission is necessary, is sufficient.⁷⁹

SI Saul testified that he and SI Escurel informed Alberto that they were from the NBI and that they received information that the bag he was carrying contained illegal drugs.⁸⁰ Thus, they invited him to their office.⁸¹ SI Escurel affirmed that they invited Alberto to question him about the luggage in his possession and to verify the information that he was in possession of heroin.⁸² As for Vargas, SI Otic testified that they informed her that they invited Alberto to the NBI and that Alberto claimed that she owned the luggage he was carrying. Vargas responded that she will be coming with them.⁸³ It is clear from the testimonies of SI Saul, SI Escurel, and SI Otic that they had no intention to arrest accused-appellants. Aside from their bare claims, accused-appellants did not present any other evidence to establish that they were arrested. Moreover, accused-appellants' own counsel admitted that they were merely invited by the NBI operatives.⁸⁴ Such admission made during the trial is binding upon them.⁸⁵

Alberto claimed that they were not informed of their rights pursuant to R.A. 7438. However, SI Saul testified that Alberto was informed that he could call his lawyer at the NBI office.⁸⁶ In any event, Alberto did not raise this specific argument in his motion to quash⁸⁷ but only during appeal. Consequently, it is deemed waived.⁸⁸ In addition, the Court has held that "any allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction."⁸⁹ This is not the case here because accused-appellants were convicted based on the evidence presented by the parties. There is no showing that they even made an extrajudicial admission or confession.

Accused-appellants also questioned the validity of the search of the bags. A search may be conducted even in the absence of a warrant under the following circumstances: (1) search incidental to a lawful arrest; (2) seizure

⁷⁹ *Homar v. People*, 768 Phil. 195, 206 (2015).

⁸⁰ TSN dated February 10, 2010, p. 18.

⁸¹ TSN dated March 17, 2010, p. 17.

⁸² TSN dated September 1, 2010, p. 11.

⁸³ TSN dated June 2, 2010, p. 31.

⁸⁴ Id. at 36.

⁸⁵ See *People v. Hernandez*, 328 Phil. 1123 (1996).

⁸⁶ TSN dated April 28, 2010, p. 8.

⁸⁷ Records, pp. 76-87.

⁸⁸ *People v. Usman*, 753 Phil. 200, 210 (2015).

⁸⁹ *Ho Wai Pang v. People*, 675 Phil. 692, 704 (2011).

of evidence in “plain view;” (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.⁹⁰

The search conducted in this case was a consented warrantless search. Consent to a warrantless search must be unequivocal, specific, intelligently given, and unattended by duress or coercion. Mere passive conformity or silence is insufficient.⁹¹ In order to determine the validity of a supposedly consented warrantless search, the totality of the attendant circumstances is considered. This includes the environment in which the consent was ostensibly given, such as the presence of coercive police procedures.⁹² In this case, SI Escurel explained that they waited for the witnesses whose presence are required under R.A. 9165.⁹³ Thus the search on the bags was not conducted immediately. The NBI operatives simply guarded accused-appellants while waiting for the witnesses.⁹⁴ They also explained to accused-appellants why they were invited to the NBI office.⁹⁵ Accused-appellants retained custody of the bags while waiting for the witnesses.⁹⁶ And though Alberto claimed that SI Otic asked him to admit what is inside the bag,⁹⁷ We reiterate that plaintiff-appellee did not submit evidence of an admission from Alberto.⁹⁸ In addition, accused-appellants did not allege during their testimony that they were physically harmed by the NBI operatives.

When the witnesses arrived, SI Escurel sought the permission of accused-appellants before searching the bags. Alberto responded by saying “[o]k, sir, you can open that.”⁹⁹ He also asked for permission before slashing the side of the black trolley bag¹⁰⁰ and opening the envelopes found inside.¹⁰¹ The search was conducted in the presence of DOJ Senior State Prosecutor Villanueva, Brgy. Kgw. Ilejay, Brgy. Tanod Sadasip, Jr., and William. Accused-appellants’ counsel admitted that the bag was opened in front of them.¹⁰² Thus, the search conducted was valid.

Even if accused-appellants were investigated in a hostile environment, though the NBI office does not qualify as such, that factor alone will not taint the proceedings because of the exigent need on the part of the government agencies to act with dispatch to prevent the transportation of almost a kilogram of heroin from the Philippines to China. Without a clear showing that the rights of accused were violated, operatives have to devise a procedure altogether different from a drug buy-bust operation to be able to apprehend drug couriers bringing in and out of the country illegal drugs and all sorts of prohibited substances.

⁹⁰ *Aparente v. People*, 818 Phil. 935, 943 (2017), citing *People v. Cogaed*, 740 Phil. 212, 228 (2014).

⁹¹ *Veridiano v. People*, 810 Phil. 642, 666 (2017).

⁹² *People v. Yanson*, G.R. No. 238453, July 31, 2019.

⁹³ TSN dated September 1, 2010, p. 39.

⁹⁴ TSN dated November 3, 2010, p. 13.

⁹⁵ TSN dated September 1, 2010, p. 14.

⁹⁶ TSN dated June 9, 2010, p. 26.

⁹⁷ TSN dated February 8, 2012, p. 19.

⁹⁸ Records, pp. 287-288.

⁹⁹ Id. at 14.

¹⁰⁰ TSN dated September 1, 2010, p. 18.

¹⁰¹ Id. at 45.

¹⁰² TSN dated June 2, 2010, p. 34.



Notably, SI Saul and SI Escurel could have allowed Alberto to enter NAIA and have his belongings searched within its premises. After all, the NBI operatives informed the NBI personnel in NAIA about the tip given by the confidential informant. A routine security airport security procedure is a recognized exception to the prohibition against warrantless search and seizure.¹⁰³ In fact, Section 9 of R.A. 6235¹⁰⁴ requires that the following condition be printed on the ticket issued to passengers of airlines or air carriers: “[h]older hereof and his hand-carried luggage(s) are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft.” Airport searches are reasonable because of their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel.¹⁰⁵ We further explained in *People v. O’Cochlain*¹⁰⁶ that airport searches are sanctioned “because of the magnitude and pervasiveness of the danger to the public safety and the overriding concern has been the threat of death or serious bodily injury to members of the public posed by the introduction of inherently lethal weapons or bombs.”¹⁰⁷ However, We held:

Airport search is reasonable when limited in scope to the object of the Anti-Hijacking program, not the war on illegal drugs. Unlike a routine search where a prohibited drug was found by chance, a search on the person of the passenger or on his personal belongings in a deliberate and conscious effort to discover an illegal drug is not authorized under the exception to the warrant and probable cause requirement. x x x¹⁰⁸

In said case, one of the airport personnel suspected that Eanna O’Cochlain (O’Cochlain) smoked marijuana in the airport parking lot and shared this information with the other airport personnel. When O’Cochlain was at the final security checkpoint, he was subjected to a pat down and was asked to take out the Marlboro box from his pocket. The box apparently contained two rolled sticks of dried marijuana leaves. We ruled that the seizure of the marijuana sticks from O’Cochlain cannot be justified as a result of a permissible airport search. But because O’Cochlain agreed to be pat down, it is a valid consented warrantless search.¹⁰⁹ Considering the foregoing, the NBI operatives cannot be faulted for opting to invite accused-appellants to their office where they asked permission to search the bags instead of subjecting Alberto to an airport search. The series of actions they took were interconnected. SI Otic received a tip that Vargas will arrive from Malaysia carrying an undetermined amount of heroin and will proceed to the Hotel where she will meet with Alberto to give him the package. True enough, the NBI operatives witnessed Alberto meet with Vargas at the Hotel. They went to her room and when they returned, Alberto now had in his

¹⁰³ *People v. Suzuki*, 460 Phil. 146, 159 (2003).

¹⁰⁴ An Act Prohibiting Certain Acts Inimical to Civil Aviation, and for Other Purposes.

¹⁰⁵ *People v. Cadidia*, 719 Phil. 538, 556 (2013).

¹⁰⁶ G.R. No. 229071, December 10, 2018.

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

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possession a black trolley bag. When Alberto arrived at NAIA Terminal I carrying the same black trolley bag, SI Escurel and SI Otic approached him. The NBI operatives need not wait for Alberto to actually check in before they may approach him and invite him to go to their office.

The NBI operatives also complied with Section 21 of R.A. 9165. Section 21 provides:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

Upon arrival at the NBI office, the black trolley bag was placed on top of a table and accused-appellants were seated beside the table.¹¹⁰ SI Escurel remained in the office and guarded accused-appellants while waiting for the witnesses.¹¹¹ When the bag was searched, it was in the presence of accused-appellants, DOJ Senior State Prosecutor Villanueva, Brgy. Kgw. Ilejay, Brgy. Tanod Sadasip, Jr., and William. The marking and inventory were also conducted by SI Escurel in their presence.¹¹² On the same day, SI Escurel turned over the envelopes marked as MEE-2 and MEE-3 containing heroin to the NBI Forensic Chemistry Division¹¹³ where it was examined by Calalo. Calalo found that the contents of the brown envelopes were positive for heroin.¹¹⁴ The heroin contained in two envelopes marked as MEE-2 and MEE-3 was duly identified in court by SI Escurel.¹¹⁵ The heroin inside the envelopes marked as MEE-2 and MEE-3 was offered by plaintiff-appellee as evidence¹¹⁶ and was admitted by the RTC.¹¹⁷ It is noteworthy that accused-

¹¹⁰ TSN dated April 28, 2010, p. 10.

¹¹¹ TSN dated November 3, 2010, pp. 8 & 13.

¹¹² Records, p. 9; TSN dated September 1, 2010, p. 20.

¹¹³ Id. at 241.

¹¹⁴ Id. at 243.

¹¹⁵ TSN dated September 1, 2010, p. 26.

¹¹⁶ Records, p. 2.

¹¹⁷ Id. at 299.

appellants' counsel admitted that the NBI operatives complied with Section 21 of R.A. 9165.¹¹⁸

All told, accused-appellants were duly found guilty of violating Section 5, Article II of R.A. 9165. The validity of the warrantless search conducted against them as well as their warrantless arrest were established. Compliance with Section 21 of R.A. 9165 was also proven in this case. The penalties imposed by the RTC were compliant with R.A. 9165. Accordingly, accused-appellants' appeal must be dismissed and the ruling of the CA must be upheld.

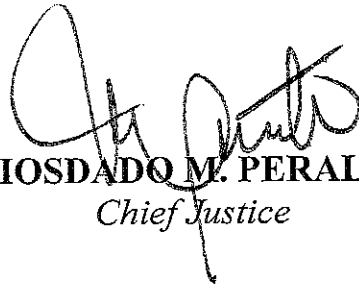
WHEREFORE, the appeal is **DISMISSED**. The Decision dated May 22, 2018 and the Resolution dated August 28, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 07050 finding accused-appellants Salvador Agunday Alberto II and Mary Jane Turalde Vargas **GUILTY** beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and sentencing them each to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, are **AFFIRMED**.

SO ORDERED.



ROS MARI D. CARANDANG
Associate Justice

¹¹⁸ TSN dated June 2, 2010, p. 34.

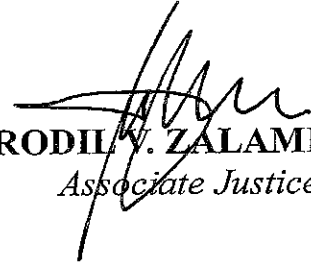
WE CONCUR:



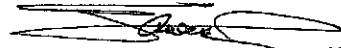
DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



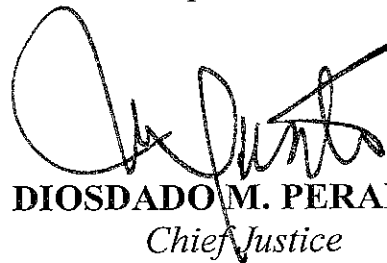
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice