



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 189833

Present:

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

-versus-

JAVIER MORILLA Y AVELLANO,
Accused-Appellant.

Promulgated:

FEB 05 2014

x ----- x

RESOLUTION

PEREZ, J.:

Before us is an appeal filed by accused-appellant Javier Morilla y Avellano (Morilla) from the Decision¹ of the Court of Appeals which affirmed his conviction and that of his co-accused Ronnie Mitra y Tena (Mayor Mitra) by the trial court, sentencing them² to suffer the penalty of life imprisonment and to pay a fine of ₱10,000,000.00 each.

¹ Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rosmari D. Carandang and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 2-24.
² From the Records of the case, no appeal was timely made by the other accused, Mayor Mitra.

The Regional Trial Court Judgment

On 15 October 2001, Morilla, Mayor Mitra, Willie Yang y Yao (Yang) and Ruel Dequilla y Regodan (Dequilla) were charged in a criminal information as follows:

That on or about October 13, 2001, in Barangay Kiloloran, Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicate crime group as they all help one another, for purposes of gain in the transport of illegal drugs, and in fact, conspiring and confederating together and mutually aiding and abetting one another, did then and there wilfully, unlawfully, and feloniously transport by means of two (2) motor vehicles, namely a Starex van bearing plate number RWT-888 with commemorative plate to read "Mayor" and a municipal ambulance of Panukulan, Quezon Province, methamphetamine hydrochloride, a regulated drug which is commonly known as *shabu*, and with an approximate weight of five hundred three point sixty eight (503.68) kilos, without authority whatsoever.³

After trial, the Regional Trial Court of Quezon City⁴ on 1 August 2007 convicted Morilla and his co-accused Mayor Mitra, then incumbent Mayor of Panukulan, Quezon, of illegal transport⁵ of *methamphetamine hydrochloride*, commonly known as *shabu*, with an approximate weight of five hundred three point sixty eight (503.68) kilos. However, it absolved Dequilla and Yang due to the prosecution's failure to present sufficient evidence to convict them of the offense charged. The dispositive of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Ronnie Mitra y Tena and Javier Morilla y Avellana GUILTY beyond reasonable doubt of the offense charged. Accordingly,

³ Records, Vol. I, p. 2.

⁴ In a Letter dated 23 October 2001, Chief State Prosecutor Jovencito R. Zuño of the Department of Justice requested then Chief Justice Hilario G. Davide, through Court Administrator (now Associate Justice of this Court) Presbitero J. Velasco, Jr. for a transfer of venue of the case from Real, Quezon to any Regional Trial Court in Metro Manila, preferably in Quezon City, due to the large quantity of the confiscated drugs and difficulty on the part of the Government to prosecute the case in Quezon from Metro Manila. (Records, pp. 49-50). The said request was granted by this Court in a Resolution dated 6 March 2002. (Id. at 97).

⁵ Republic Act No. 6425 or The Dangerous Drugs Act of 1972. – Art. III, Section 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs*. The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. In case of a practitioner, the maximum of the penalty herein prescribed and the additional penalty of the revocation of his license to practice his profession shall be imposed.

both accused are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P10,000,000.00 each. Accused Willie Yang y Yao and Ruel Dequilla y Regodan are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt and are ordered immediately released from custody unless held for some other lawful cause.

The methamphetamine hydrochloride ordered retained by the Court as representative sample which is still in the custody of the PNP Crime Laboratory is ordered turned over to the Philippine Drug Enforcement Agency for proper disposition.⁶

The trial court found valid the search conducted by police officers on the vehicles driven by Mayor Mitra and Morilla, one with control number 888 and the other an ambulance with plate number SFK-372, as the police officers have already acquired prior knowledge that the said vehicles were suspected to be used for transportation of dangerous drugs. During the checkpoint in Real, Quezon, the information turned out to be accurate and indeed, the two accused had in their motor vehicles more than five hundred kilos of *methamphetamine hydrochloride*.⁷

The trial court dismissed the arguments of Mayor Mitra that he was without any knowledge of the contents of the sacks and that he was merely requested to transport them to Manila on board his Starex van. He explained that he only accommodated the request of a certain Ben Tan because the latter bought his fishing boat. It likewise dismissed the defense of ambulance driver Morilla of lack of knowledge of the illegality of the contents. Morilla insisted that he thought that he was just transporting wooden tiles and electronic spare parts together with Dequilla. The other passenger of the ambulance, Yang, in his defense, did not bother to inquire about the contents of the vehicle as he was merely an accommodated passenger of the ambulance.

The court rejected the defenses presented by Morilla and Mayor Mitra as they were caught *in flagrante delicto* of transporting dangerous drugs in two vehicles driven by each of them. Absent any convincing circumstance to corroborate their explanations, the validity of their apprehension was sustained.⁸

The ruling of conspiracy between Mayor Mitra and Morilla was based on the testimonies of the four accused themselves. It was found by the trial

⁶ CA *rollo*, pp. 66-67.

⁷ Id. at 57.

⁸ Id. at 61-62.

court that the two vehicles, the Starex van driven by Mayor Mitra and the ambulance van driven by Morilla, left Infanta, Quezon en route to Manila. The Starex van which was ahead of the ambulance was able to pass the checkpoint set up by the police officers. However, the ambulance driven by Morilla was stopped by police officers. Through the untinted window, one of the police officers noticed several sacks inside the van. Upon inquiry of the contents, Morilla replied that the sacks contained narra wooden tiles. Unconvinced, the police officers requested Morilla to open the rear door of the car for further inspection. When it was opened, the operatives noticed that white crystalline granules were scattered on the floor, prompting them to request Morilla to open the sacks. At this moment, Morilla told the police officers that he was with Mayor Mitra in an attempt to persuade them to let him pass.⁹ His request was rejected by the police officers and upon inspection, the contents of the sacks turned out to be sacks of *methamphetamine hydrochloride*.¹⁰ This discovery prompted the operatives to chase the Starex van of Mayor Mitra. The police officers were able to overtake the van and Mayor Mitra was asked to stop. They then inquired if the mayor knew Morilla. On plain view, the operatives noticed that his van was also loaded with sacks like the ones found in the ambulance. Thus, Mayor Mitra was also requested to open the door of the vehicle for inspection. At this instance, Mayor Mitra offered to settle the matter but the same was rejected. Upon examination, the contents of the sacks were likewise found to contain sacks of *methamphetamine hydrochloride*.¹¹

The two other accused in this case, Dequilla and Yang, were acquitted by the trial court for failure on the part of the prosecution to establish their guilt beyond reasonable doubt. The court ruled that Dequilla's and Yang's mere presence inside the vehicle as passengers was inadequate to prove that they were also conspirators of Mayor Mitra and Morilla.¹²

The Court of Appeals Decision

On 13 July 2009, the appellate court affirmed the ruling of the trial court. It upheld the finding of conspiracy between Mayor Mitra and Morilla in their common intent to transport several sacks containing *methamphetamine hydrochloride* on board their respective vehicles. The singularity of their intent to illegally transport *methamphetamine hydrochloride* was readily shown when Morilla agreed to drive the

⁹ Id. at 63-65.

¹⁰ Id. at 46-47.

¹¹ Id. at 44-45.

¹² Id. at 65.

ambulance van from Infanta, Quezon to Manila together with Mayor Mitra, who drove the lead vehicle, the Starex van.¹³

The appellate court likewise dismissed the argument of lack of knowledge of the illegal contents of the sacks. The claim that the sacks were loaded with wooden tiles was implausible due to the obvious disparity of texture and volume.¹⁴

Court's Ruling

We affirm the ruling but modify the penalty imposed.

In his supplemental brief, Morilla raised the issues: (1) whether he may be convicted for conspiracy to commit the offense charged sans allegation of conspiracy in the Information, and (2) whether the prosecution was able to prove his culpability as alleged in the Information.¹⁵

We dismiss his arguments.

Morilla primarily cites the provision on Sec. 1(b), Rule 115 of the Rules on Criminal Procedure¹⁶ to substantiate his argument that he should have been informed first of the nature and cause of the accusation against him. He pointed out that the Information itself failed to state the word conspiracy but instead, the statement “the above-named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicated crime group as they all help one another, did then and there wilfully, unlawfully and feloniously transport x x x.” He argued that conspiracy was only inferred from the words used in the Information.¹⁷

Even assuming that his assertion is correct, the issue of defect in the information, at this point, is deemed to have been waived due to Morilla's failure to assert it as a ground in a motion to quash before entering his plea.¹⁸

¹³ *Rollo*, pp. 21-22.

¹⁴ *Id.* at 22-23.

¹⁵ Supplemental Brief. *Id.* at 52-53.

¹⁶ Rule 115, Section 1(b). – To be informed of the nature and cause of the accusation against him.

¹⁷ Supplemental Brief. *Rollo*, pp. 53-54.

¹⁸ Revised Rules of Criminal Procedure, Rule 117, Section 9 stating that:

Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be

Further, it must be noted that accused Morilla participated and presented his defenses to contradict the allegation of conspiracy before the trial and appellate courts. His failure or neglect to assert a right within a reasonable time warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.¹⁹

The finding of conspiracy by both courts is correct.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.²⁰ To determine conspiracy, there must be a common design to commit a felony.²¹

Morilla argues that the mere act of driving the ambulance on the date he was apprehended is not sufficient to prove that he was part of a syndicated group involved in the illegal transportation of dangerous drugs.

This argument is misplaced.

In conspiracy, it need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole.²² In this case, the totality of the factual circumstances leads to a conclusion that Morilla conspired with Mayor Mitra in a common desire to transport the dangerous drugs. Both vehicles loaded with several sacks of dangerous drugs, were on convoy from Quezon to Manila. Mayor Mitra was able to drive through the checkpoint set up by the police operatives. When it was Morilla's turn to pass through the checkpoint, he was requested to open the rear door for a routinary check. Noticing white granules scattered on the floor, the police officers requested Morilla to open the sacks. If indeed he was not involved in conspiracy with Mayor Mitra, he would not have told the police officers that he was with the mayor.

deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

¹⁹ *Figuroa v. People*, 580 Phil. 58, 73-74 (2008).

²⁰ Revised Penal Code, Article 8.

²¹ *Ho Wai Pang v. People*, G.R. No. 176229, 19 October 2011, 659 SCRA 624, 637 citing *People v. Miranda*, G.R. No. 92369, 10 August 1994, 235 SCRA 202, 214.

²² *Id.* citing *People v. Ponce*, 395 Phil. 563, 572 (2000); *People v. Mateo, Jr.*, 258-A Phil. 886, 904 (1989).

His insistence that he was without any knowledge of the contents of the sacks and he just obeyed the instruction of his immediate superior Mayor Mitra in driving the said vehicle likewise bears no merit.

Here, Morilla and Mayor Mitra were caught *in flagrante delicto* in the act of transporting the dangerous drugs on board their vehicles. “Transport” as used under the Dangerous Drugs Act means “to carry or convey from one place to another.”²³ It was well established during trial that Morilla was driving the ambulance following the lead of Mayor Mitra, who was driving a Starex van going to Manila. The very act of transporting *methamphetamine hydrochloride* is *malum prohibitum* since it is punished as an offense under a special law. The fact of transportation of the sacks containing dangerous drugs need not be accompanied by proof of criminal intent, motive or knowledge.²⁴

In a similar case of *People v. Libnao*,²⁵ this Court upheld the conviction for illegal transportation of *marijuana* of Libnao and Nunga, who were caught carrying a bag full of *marijuana* leaves when they were flagged down on board a passing tricycle at a checkpoint.

However, we modify the penalty imposed by the trial court as affirmed by the Court of Appeals.

Originally, under Section 15 of Republic Act No. 6425,²⁶ the penalty for illegal transportation of *methamphetamine hydrochloride* was imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos. Pursuant to Presidential Decree No. 1683,²⁷ the penalty was amended to life imprisonment to death and a fine ranging from twenty to thirty thousand

²³ *People v. Baludda*, 376 Phil. 614, 626 (1999).

²⁴ *People v. Del Mundo*, 418 Phil. 740, 754-755 (2001).

²⁵ 443 Phil. 506 (2003).

²⁶ *Supra* note 5.

²⁷ Presidential Decree No. 1683. – Amending Certain Sections of Republic Act No. 6425, As Amended, Otherwise Known as the Dangerous Drugs Act of 1972 and for Other Purposes.

SECTION 5. Section 15 of the same Act is hereby amended to read as follows:

Section 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* — The penalty of life imprisonment to death and a fine ranging from twenty to thirty thousand pesos shall be imposed upon any persons who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. If the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

pesos. The penalty was further amended in Republic Act No. 7659,²⁸ where the penalty was changed to *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos.

From the foregoing, we sustain the imposed penalty of fine of ₱10,000,00.00 to be paid by each of the accused but amend the penalty to *reclusion perpetua* following the provisions of Republic Act No. 7659 and the principle of retroactive application of lighter penalty. *Reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, *etc.* Life imprisonment, on the other hand, does not appear to have any definite extent or duration and carries no accessory penalties.²⁹

The full particulars are in *Ho Wai Pang v. People*,³⁰ thus:

As to the penalties imposed by the trial court and as affirmed by the appellate court, we find the same in accord with law and jurisprudence. It should be recalled that at the time of the commission of the crime on September 6, 1991, Section 15 of R.A. No. 6425 was already amended by Presidential Decree No. 1683. The decree provided that for violation of said Section 15, the penalty of life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00 shall be imposed. Subsequently, however, R.A. No. 7659 further introduced new amendments to Section 15, Article III and Section 20, Article IV of R.A. No. 6425, as amended. Under the new amendments, the penalty prescribed in Section 15 was changed from “life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00” to “*reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10 million.” On the other hand, Section 17 of

²⁸ An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Laws, As Amended, Other Special Penal Laws, And For Other Purposes.

Section 14. Sections 14, 14-A, and 15 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, are hereby amended to read as follows:

x x x x

Section 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

²⁹ Supreme Court Administrative Circular No. 6-A-92, 21 June 1993 *Re: The Correct Application of the Penalties of Reclusion Perpetua and Life Imprisonment; Potenciano v. Reynoso*, 449 Phil. 396, 409 (2003).

³⁰ *Supra* note 21.

R.A. No. 7659 amended Section 20, Article IV of R.A. No. 6425 in that the new penalty provided by the amendatory law shall be applied depending on the quantity of the dangerous drugs involved.

The trial court, in this case, imposed on petitioner the penalty of *reclusion perpetua* under R.A. No. 7659 rather than life imprisonment ratiocinating that R.A. No. 7659 could be given retroactive application, it being more favorable to the petitioner in view of its having a less stricter punishment.

We agree. In *People v. Doroja*, we held:

“In *People v. Martin Simon* (G.R. No. 93028, 29 July 1994) this Court ruled (a) that the amendatory law, being more lenient and favorable to the accused than the original provisions of the Dangerous Drugs Act, should be accorded retroactive application, x x x.”

And, since “*reclusion perpetua* is a lighter penalty than life imprisonment, and considering the rule that criminal statutes with a favorable effect to the accused, have, as to him, a retroactive effect,” the penalty imposed by the trial court upon petitioner is proper. Consequently, the Court sustains the penalty of imprisonment, which is *reclusion perpetua*, as well as the amount of fine imposed by the trial court upon petitioner, the same being more favorable to him.³¹

WHEREFORE, premises considered, the petition is **DENIED** and the assailed 13 July 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. 02967 is **AFFIRMED WITH MODIFICATION** with respect to the penalty to be imposed as *Reclusion Perpetua* instead of Life Imprisonment and payment of fine of ₱10,000,000.00 by each of the accused.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

³¹

Id. at 640-641.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



ESTELA M. PERLAS-BERNABE

Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



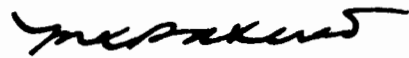
ANTONIO T. CARPIO

Associate Justice

Second Division Chairperson

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice