

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIA ROMA PALMIANO, ACCUSED-APPELLANT.

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HERNANDO, J:

Before Us is an Appeal from the Decision[1] dated January 4, 2013 rendered by the Regional Trial Court (RTC), Branch 28 of Catbalogan City, finding accused-appellant Maria Roma Palmiano, guilty beyond reasonable doubt for Violation of Par. G, Section 2 of Republic Act (R.A.) No. 9287[2]. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, this Court finds accused Maria Roma Palmiano guilty beyond reasonable doubt of the crime charged in the Information, and hereby sentences her to suffer the penalty of Six (6) years and One (1) day, as minimum to Seven (7) years as maximum.

Furthermore, the gambling paraphernalia consisting of a bunch of stabs, a red ball pen and cash amounting to Php35.00 representing as bet are ordered confiscated in favor of the government.

SO ORDERED.

The Antecedents:

On May 14, 2009, an Information[3] for Violation of Par. G, Section 2, Republic Act No. 9287 was filed against accused Maria Roma Palmiano before the Regional Trial Court, Branch 28 of Catbalogan City, Samar, the accusatory portion of which reads as follows:

That on February 23, 2009, at about 6:00 o'clock in the evening, more or less, at public market site, Barangay 11, Catbalogan City, Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to gain and without being authorized by law, did, then and there, willfully, unlawfully and feloniously engage and directly and indirectly take part as a collector of money bets in an illegal gambling locally known as “swertes”(sic), a variant of illegal numbers game, and collect, receive and accept the bet money from a bettor relative to said swertes, and have in her possession, custody and control of the following illegal gambling paraphernalia, to wit

“a bunch of stubs with different number combination;

“a piece of red ball pen; and,

“cash bet money of Php35.00.00(sic)”

which were all confiscated from the accused in an operation conducted by the members of the Catbalogan City Police Station, Catbalogan City in the aforesaid place.

CONTRARY TO LAW.

When arraigned on September 25, 2009, accused, with the assistance of her counsel, Atty. Ritchie B. Reyes of the Public Attorney's Office (PAO), entered a plea of not guilty[4] to the crime charged.

After the pre-trial was terminated[5], trial on the merits ensued.

Version of the Prosecution

As narrated by the People in its Brief[6], the version of the prosecution is as follows:

At about six o'clock in the evening of February 23, 2009, P/Insp. Jason Gutierrez, acting upon the order/instruction of his superior, was at the public market of Catbalogan City, Samar to conduct a surveillance on the alleged rampant illegal number game activities in the area. He was wearing civilian attire during the surveillance.

While in the area, P/Insp. Gutierrez noticed the presence of accused on the other side of the street, about three (3) meters from where he was positioned, holding one bundle of stub and a ball pen and talking to a man who was later identified as a bettor. Thereafter, P/Insp. Gutierrez saw the man hand money to accused. Afterwards, accused wrote something on the stub and as soon as the transaction was completed, Inspector Gutierrez approached them, arrested accused while the bettor scampered away.

Inspector Gutierrez brought accused to Catbalogan Police station and subsequently to the Samar Provincial Hospital for medical examination. Appellant was frisked by a lady police officer Magdaso. The frisking yielded several gambling paraphernalia or items consisting of a bunch of stubs, ballpen and money of different denominations. The items confiscated from the possession of appellant were surrendered to the police investigator, PO1 Alfonso Lucero.

During the investigation, PO1 Lucero asked accused if she was the one carrying the confiscated articles. She answered yes. PO1 Lucero then received the confiscated items from accused which he subsequently turned over to the evidence custodian, PO2 Delos Reyes as shown by the Receipt of Object Evidence.

During his testimony, PO2 Delos Reyes presented one transparent plastic cellophane containing the following: written documents, A Receipt of Object Evidence and a list of the items inside the cellophane such as red ballpen, a bunch of stubs, one piece of Php20.00 bill with serial number ZP518647, three pieces Php5.00 coins, a Philippine Lotto 6/42 bet card with number combinations, a Philippine Lotto EZ2 bet card with number combinations, a notebook leaf with written names.

Version of the Defense

On the other hand, the version of the defense as culled from the Brief for Accused-Appellant[7], is as follows:

Accused Maria Roma Palmiana testified in court that she was at the public market of Catbalogan City, Samar at around 6:00 in the evening of February 23, 2009 in order to collect payments from certain Aileen, Manang Auring and other meat vendors for the snacks which she peddled in the morning. Accused declared that she earns a living by peddling food such as spaghetti, pork barbeque, cassava cake and nilupak to customers who are mostly meat vendors in the public market. She denied the allegation that she collected payment for swertres and that she was engaged in any illegal numbers game at the time that she was arrested. She claimed that she voluntarily went with police officer Jason Gutierrez when the latter informed her that the Chief of Police of Catbalogan City wanted to see her at the police station. According to accused, when they reached the police station, she was no longer allowed to go home. She later learned that she was charged with illegal numbers game only during the initial hearing of the case.

On January 4, 2013, the trial court rendered a Decision convicting accused of the crime charged against her. It rejected accused's defense of denial since her defense of denial is futile when compared to the positive narration of P/Insp. Jason Gutierrez surrounding the illegal acts of accused and her subsequent arrest in connection thereto. According to the trial court, accused never bother to offer or present this Aileen or Manang Auring or any of her

customers in the public market if only to corroborate her testimony that indeed she was not engaged in any illegal number games but was merely at the public market to collect payments for the snacks that she supposedly sold to them. The trial court opined that her bare denial, not having been corroborated by an independent evidence, was self-serving and that self-serving negative evidence cannot be accorded greater evidentiary weight than that of a credible witness who testified on affirmative matter. The trial court also considered in favor of police officers the presumption of regularity in the performance of their official duties.

Hence, this appeal by accused-appellant Maria Roma Palmiano anchored on the following assignment of errors, to wit:

The Assigned Errors[8]:

I. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED NOTWITHSTANDING THE ABSENCE OF A PENAL LAW PUNISHING THE ACT COMPLAINED OF IN THE INFORMATION.

The Court's Ruling:

We find no reversible error committed by the trial court in ruling for appellant's conviction.

For being interrelated, the issues raised shall be dealt with jointly.

Gambling is prohibited by the laws of the Philippines as specifically provided in Articles 195 to 199 of the Revised Penal Code, as amended.[9] Gambling is an act beyond the pale of good morals, and is thus prohibited and punished to repress an evil that undermines the social, moral, and economic growth of the nation.[10] Presidential Decree (P.D) No. 1602[11], which modified Articles 195-199 of the Revised Penal Code and repealed inconsistent provisions[12], prescribed stiffer penalties on illegal gambling.[13] Republic Act No. (R.A) 9287[14] which amended certain provisions of P.D. 1602, further increased the penalties on illegal gambling.

Appellant is charged with Violation of R.A. No. 9287, particularly Sec. 2, par. g thereof which states:

Sec. 2. Definition of Terms. - As used in this Act, the following terms shall mean:

x x x

g) Collector or Agent ("Cabo", "Cobrador", "Coriador" or variants thereof). - Any person who collects, solicits or produces bets in behalf of his/her principal for any illegal numbers game who is usually in possession of gambling paraphernalia.

After a careful and judicious re-examination of the evidence on record, We find and so rule that the prosecution was able to duly and more than convincingly establish the guilt of appellant on the crime charged against her.

To recall, Police officer Jason Gutierrez positively testified in court the circumstances surrounding the appellant's commission of the crime charged and the latter's eventual arrest. He narrated, thus:

Q:

Can you tell the Court Mr. Witness, where were you on February 23, 2009 at around 6:00 o'clock in the evening?

A:

I am at the Market place of Catbalogan City, conducting surveillance regarding the alleged information given

to our Chief of Police, P/Supt. Ramil Ramirez for the illegal activities regarding illegal number game.

x x x x x x x x

Q:

When you said illegal activities, what do you mean by that?

A:

They are collecting bets.

Q:

While you were there, what happened next?

A:

At around 6:00 in the evening, I saw one (1) old woman in front or across of the stree carrying one (1) stub and having a ballpen writing on the stub.

Q:

After seeing the old woman writing something on the stub with ballpen, was she alone?

A:

No.

Q:

She was with whom?

A:

She was with one (1) male bettor.

Q:

After seeing the elderly woman and one (1) bettor, what did you do, if any?

A:

I was observing for the reason that the bettor gives money to the woman.

Q:

Do you know how much money was given by the male bettor to the old woman?

A:

I could not see.

Q:

How did you know that it was money given to the woman, when you said that you did not see?

A:

I did not know the amount given to the old woman.

Q:

But you were certain that it was money that was given by the bettor?

A:

Yes, because I am across the road at least three (3) meters away because the public market has only one (1) road.

Q:

Afterwhich, what happened?

A:

When I saw that the bettor gave the money, I saw also the woman finished writing on the stub. I approached her but when I got near her, she walked fast to evade but I immediately apprehended her. The bettor was able to scamper away.

x x x x x x x x

Q:

When you said you apprehended the woman receiving bets from the bettor, how did you do it?

A:

First when I apprehended her, I told her the nature of her arrest and apprise her of her Constitutional Rights.

Q:

What was the reaction of the woman when you apprehended her?

A:

Nothing.

Q:

Afterwhich, what happened?

A:

After I arrested her, I brought her to the Police Station for the medical examination.[15]

x x x x x x x x

The foregoing evidently shows that appellant was caught redhanded in the act of collecting bets for illegal number game, hence, liable as collector or agent defined under Sec. 2, par. g of R.A. 9287 above-quoted.

In her attempt at acquittal, appellant argues that it is contrary to human experience for a person to commit a crime so blatantly in public view, thereby making the testimony of P/Insp. Gutierrez that she committed the crime in a public market just about three meters away from him, unworthy of belief. She also questions why she was the only one charged with the crime while the supposed bettor was excluded when a bettor in an illegal numbers game likewise incurs criminal liability. She further argues that she cannot be convicted as collector of bets since the prosecution failed to prove that the money allegedly received by appellant was intended as a bet for an illegal numbers game and that the prosecution likewise failed to establish by any competent proof how the numbers appearing on a pad of paper could be used in an illegal numbers game. There being no legal presumption under the law, the court cannot make a conclusion that a list of numbers relates to is used in an illegal numbers game.

We hold otherwise.

It is noteworthy that illegal gambling on small level, like drug-pushing, belongs to that class of crime that may be committed at anytime at any place. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same.[16] Also, there is no requirement in the law that the bettor must be charged together with the collector or agent for the latter to be liable as the criminal liability of the two is separate and distinct.

In addition, contrary to the belief of appellant that there is no presumption of law with respect to illegal number games, Sec. 4 of R.A. 9287 expressly provides:

Sec. 4. Possession of Gambling Paraphernalia or Materials. - The possession of any gambling paraphernalia and other materials used in the illegal numbers game operation shall be deemed prima facie evidence of any offense covered by this Act.

Prima facie evidence is defined as evidence good and sufficient on its face.[17] Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient.[18] Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.[19] Such prima facie evidence, if unexplained or uncontradicted, can counterbalance the presumption of innocence to warrant a conviction.[20]

Accordingly, the fact of the recovery of the gambling paraphernalia from appellant immediately after she was apprehended already constitutes a prima facie evidence that she was engaged in the illegal numbers games. Necessarily, it was then incumbent upon her to destroy such presumption of law but which the appellant regrettably failed to do.

Appellant argues that there is a nagging doubt whether the items presented were in fact confiscated from her. She questions the failure of the prosecution to present in court PO1 Magdaso, who according to P/Insp. Gutierrez was the one who bodily searched her in a private room, so said PO1 Magdaso would be able to identity the supposed items recovered from her.

We remain unpersuaded.

It is Our firm belief that the non-presentation in court of PO1 Magdaso, a lady officer who bodily searched appellant, in order to identify the supposed confiscated items from appellant is not fatal to the case of the prosecution. In Our view, the positive testimony of P/Insp. Gutierrez that he saw appellant during her apprehension in possession of a stub, red ballpen and amount of money[21], coupled with his declaration in court that he was present when the body search was conducted although he did not witness the actual search as it was conducted inside a private room, he, nonetheless, personally saw the recovered items as the same were shown to them right after the two stepped out of the room and turned over to the duty investigator, PO1 Alfonso Lucero[22], are sufficient proofs that indeed the gambling paraphernalia presented in court are those taken from appellant's possession. This is further bolstered by the Receipt of Object Evidence[23] duly identified in court and adduced as evidence.

At this point, We stress the apt observation of the trial court in upholding the presumption of regularity of the police officers in the performance of their official function absent any proof of irregularity in their performance thereof much less, no ill motives to make false charge was successfully attributed to these police officers.

On the other hand, the only defense proffered by appellant is denial. The Supreme Court has consistently held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit

credibility.[24] Here, other than the self-serving allegation of appellant, no other witnesses were presented to corroborate her testimony. Hence, appellant's denial cannot prevail over the positive testimonies of the prosecution witnesses.

The totality of the evidence of the prosecution undoubtedly proves appellant's guilt, notwithstanding the inconsistencies and conflicting testimonies of police officers as pointed out by appellant. We have reviewed the relevant portions of the transcripts pointed out by the appellants and have confidently arrived at the conclusion that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue.[25]

The failure of PO1 Alfonso Lucero to mention PO1 Magdaso as the lady officer who bodily searched appellant did not affect the credibility of his entire testimony. After all, PO1 Lucero had no participation before and during the apprehension of the appellant[26] and only came into the picture when the confiscated items were turned over to him by P/Insp. Gutierrez[27]. On the other hand, P/Insp. Gutierrez' declaration that PO2 Delos Reyes was off-duty at that time did not likewise detract the fact that the confiscated items were turned over to PO2 Delos Reyes after all, it was PO1 Lucero who turned them over to PO2 Delos Reyes.[28] Finally, the confiscated items from appellant which are necessary for her conviction on illegal gambling were duly shown in the Receipt of Object Evidence[29].

Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value.[30] It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants.[31] As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility.[32] Inconsistencies on minor details do not undermine the integrity of a prosecution witness.[33]

At any rate, this matter essentially involves an issue of credibility. When confronted with the issue of credibility of witnesses on appeal, this Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand.[34] From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.[35] Absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.[36]

Finally, appellant argues that she cannot be convicted for collecting money bets for swertes in violation of Sec. 2, par. g of Republic Act 9287 considering that the act complained of against her does not fall within the penal statute. She insists that the enumeration of illegal numbers game under R.A. 9287 is specific and does not include swertes and even if it does, swertes does not come within its coverage. She asserts that swertes is an authorized numbers game being ran by the Philippine Charity Sweepstakes Office. As such, it does not fall within the definition of the Illegal Numbers Game defined and penalized by R.A. 9287. At the most, appellant insists that she was only deficient in securing the necessary permit to operate swertes. However, she asserts that such deficiency should not be over-stretched as to bring it within the ambit of the law.

This is not so.

Concededly, swertes or suertes is a form of lotto. The game of lotto is a game of chance duly authorized by the national government through an Act of Congress.[37] Republic Act 1169, as amended by Batas Pambansa Blg. 42, is the law which grants a franchise to the PCSO and allows it to operate the lotteries.[38] The pertinent provision reads:

Section 1. The Philippine Charity Sweepstakes Office.- The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One thousand four hundred fifty-nine, as amended, and shall have the authority:

A. To hold and conduct charity sweepstakes races, lotteries, and other similar activities, in such frequency and manner, as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors.

To carry out its business of selling sweepstakes and lottery tickets, PCSO may approve applications from persons (individual or corporation) to become its agents after certain requirements and conditions have been successfully met. Here, appellant openly admitted that she had no permit to operate, hence, she is evidently not an agent of PCSO. Needless to say, all forms of gambling is illegal. The suertres lotto, however, is legal because there is a law legalizing it and said law grants to PCSO the authority to operate the same. Hence, for an operation of suertres to be lawful and legal, a necessary permit must be first secure. Otherwise, such operation is deemed illegal. Consequently, appellant's act of collecting money bets for suertres, she being not an agent or sub-agent of PCSO, is evidently unlawful. Resultantly, she is liable for illegal gambling.

In the same vein, it is highly notable that the supposed swertres appellant had been engaged in appeared to be not the legal suertres allowed by the law. As correctly pointed out by the People, it was an illegal numbers game which only uses the result of the PCSO's lottery as basis for its winning jackpot numbers. To recall, Section 2 of R.A. 9287 defined an illegal numbers games as any form of illegal gambling activity which uses numbers or letters or combinations thereof as factors in giving out jackpots, as in this case.

In fine, as the appellant's guilt was convincingly proven by the prosecution by overwhelming evidence, We, thus, find no cogent reason to reverse the trial court's conviction.

WHEREFORE, in view of the foregoing premises, the instant appeal is DENIED for lack of merit. The assailed Decision dated January 4, 2013 of the Regional Trial Court, Branch 28 of Catbalogan City in Criminal Case No. 6879 finding accused-appellant Maria Roma Palmiano guilty for Violation of Section 2, Par. G of Republic Act No. 9287 is hereby AFFIRMED. No cost.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Record, pp. 144-147.

[2] An Act Increasing the Penalties for Illegal Numbers Games, Amending Certain Provisions of Presidential Decree No. 1602, and for Other Purposes.

[3] Record, pp. 1-2.

[4] Record, Order dated September 25, 2009, p. 20; Certificate of Arraignment, p. 22.

[5] Record, Pre-trial Conference, p. 64.

[6] Per Appellee's Brief, Counterstatements of Facts; Rollo, pp. 71-72.

[7] Rollo, pp. 27-28.

- [8] Rollo, Brief for the Accused-Appellant, p. 24.
- [9] Yun Kwan Byung v. Philippine Amusement and Gaming Corporation, G.R. No. 163553, December 11, 2009.
- [10] Ibid.
- [11] Prescribing Stiffer Penalties on Illegal Gambling. Took effect on 11 June 1978.
- [12] Gambling and Illegal Lottery are crimes covered by Chapter One, Title VI (Crimes against Public Morals) of the Revised Penal Code.
- [13] Yun Kwan Byung v. Philippine Amusement and Gaming Corporation, G.R. No. 163553, December 11, 2009.
- [14] An Act Increasing the Penalties for Illegal Numbers Games, Amending Certain Provisions of Presidential Decree No. 1602, and for Other Purposes. Took effect on April 2, 2004.
- [15] Transcript of Stenographic Notes, August 19, 2010, pp. 4-8.
- [16] People v. Alaban, G.R. No. 97431, September 28, 1992.
- [17] Wa-Acon v. People, G.R. No. 164575, December 6, 2006.
- [18] Ibid.
- [19] Ibid.
- [20] Ibid.
- [21] Transcript of Stenographic Notes, August 19, 2010, p. 5.
- [22] Ibid, pp. 11-12.
- [23] Exh. "B"; Exhibits for the Prosecution, p. 2.
- [24] People v. Colorado, G.R. No. 200792, November 14, 2012.
- [25] People v. Dadao, et. al., G.R. No. 201860, January 22, 2014.
- [26] TSN, November 17, 2010, p. 12.
- [27] TSN, August 19, 2010, p. 11; TSN, November 17, 2010, p. 5.
- [28] TSN, November 17, 2010, p. 7.
- [29] Exh. "B"; Exhibits for the Prosecution, p. 2.
- [30] People v. Dadao, et. al., G.R. No. 201860, January 22, 2014.
- [31] Ibid.
- [32] Ibid.
- [33] Ibid.
- [34] People v. Sanchez, G.R. No. 197815, February 08, 2012.
- [35] Ibid.
- [36] Ibid.

[37] Lina, Jr., et. al. v. Paño and Calvento, G.R. No. 129093, August 30, 2001.

[38] Ibid.

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