

GERARDO SARMIENTO Y CAHIWAT, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, ET AL., RESPONDENTS.

G.R. No. L-36042. July 15, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Antonio de la Cruz, Bernardo Asistio, Gerardo Sarmiento, Romulo Cerdenola and Antonio Mascardo, were charged in the City Court of Caloocan City, with illegal possession of firearms, and after trial, they were sentenced to imprisonment of five (5) years each, and the submachine gun in question was confiscated in favor of the government. Only Gerardo Sarmiento, Antonio Mascardo and Romulo Cerdenola perfected their appeal to the Court of Appeals which affirmed in toto the decision of the trial court. From the decision of the Court of Appeals, Gerardo Sarmiento and Antonio Mascardo filed separate petitions for review on certiorari, their petitions having been docketed in this Court as G. R. No. L-36042 for Gerardo Sarmiento, and G. R. No. L-36191 for Antonio Mascardo, which are hereby considered jointly for a single decision, the issues raised and arguments advanced in support of petitioners' contention being substantially the same.

The evidence for the prosecution is restated by the Solicitor General in appellee's brief in answer to appellant Mascardo's brief filed on June 29, 1973,[1] which is reproduced in the brief in answer to appellant Sarmiento's brief filed on July 18, 1973, as follows:

"Policeman Felipe Valderrama of the Caloocan Police Department was already sound asleep in his house located at 128 9th Ave., Grace Park, Caloocan City at about 10:30 o'clock in the evening of August 1, 1962 when he was awakened by the shouts of a man by the name of Ernesto de Ala who told him that there was some rhuarb or rumble in progress somewhere along 2nd St., 9th Ave., Caloocan City (pp. 2-3, t.s.n.). On receiving this information, Policeman Valderrama immediately hied to the place indicated, but upon his arrival, he was informed by the crowd that the trouble was over, but the maltreated persons before departing have threatened that they will come back (p. 4, t.s.n.). Some moments later, a passenger jeepney arrived and immediately the crowd shouted that its occupants were the persons who were maltreated. Because he was also informed that said persons will be armed, Policeman Valderrama at once pulled his pistol and fired in the air, and at the same time identified himself as a police officer. He also asked its occupants who turned out to be the petitioner and his co-accused in this case, to alight from the jeepney and to fall in line (pp. 4-5, t.s.n.). Policeman Valderrama immediately frisked the petitioner and his companions, after which he searched the jeepney and in the process, he found a sub-machinegun in front of the jeepney near the driver, and an icepick, a knife and a round iron bar in the rear seat (pp. 5-8, t.s.n.). On making this discovery, the policeman brought the petitioner and his companions together with the weapons he found to the headquarters of the Caloocan Police Department where he referred them for investigation to the Assistant Chief of the General Investigation Section, Detective Bureau, Caloocan City Lt. Rodolfo Adriano (pp. 9, 45, 46, t.s.n.).

"During the investigation, an occupant of the jeepney, co-accused Romulo Cerdeñola, admitted that the submachinegun belonged to him (pp. 59-69, 67-68, t.s.n.). A further search of the jeepney during the investigation was conducted and it yielded the handle of the submachinegun (pp. 51-52, t.s.n.). Lt. Adriano fitted said handle to the firearm after which he pulled the trigger and found out that the submachinegun was in

good working order (pp. 52-53, t.s.n.).

"On the other hand, Capt. Jesus N. Bautista, Chief of the Inspection Branch, Firearm and Explosive Section of the Philippine Constabulary testified that the firearm seized is of .38 caliber and has a resemblance to the type being manufactured by the British which they call British Stan 99 mm. (79, t.s.n). Said Constabulary officer also testified that said machinegun can fire and is in good working order (pp. 81-82, t.s.n.)."

In their attempt to destroy the finding of conspiracy against them which forms the principal basis of their conviction for the crime charged, appellants herein, as well as their co-accused Romulo Cerdenola, gave separate versions to show that each had his own purpose in taking a ride in the jeep that brought them together at the place where they were stopped by Policeman Valderrama, totally alien to the alleged common objective for which they rode together to accomplish it. For they deny the existence of such common objective, as the lower courts, the trial court and the Court of Appeals, found, claiming that they did not even know each other.

Thus, petitioner Sarmiento claims that he left his house located between "10th and 11th Avenue, 4th Street", Caloocan City, to buy medicine for his mother at the Asian Drug Store located at Rizal Avenue. He walked along 2nd Street where he hailed a passing jeepney and rode in it.

Petitioner Mascardo alleged that his compadre, Antonio de la Cruz, one of the accused who abandoned his appeal to the Court of Appeals, went to his house at 982 2nd Street, Caloocan City, and invited him to take coffee at Rizal Avenue. He accepted the invitation, and he and de la Cruz waited for a jeepney. When one arrived, they boarded it and seated themselves at the rear. This is the same jeepney in which petitioner Sarmiento rode.

For his part, Romulo Cerdenola claims that he took the jeepney when he went down his house to buy cigarettes at a store across the street but finding the store already closed, he waited for a jeepney for five minutes to go to another store at the corner of 9th Avenue, just 40 or 50 meters away. He took the same jeepney ridden by his co-accused, which as earlier recounted, was stopped by Policeman Valderrama.

To begin with, an invitation for coffee as late as 10:30 in the evening by the compadre of petitioner Mascardo, his co-accused, Antonio de la Cruz, who had to go to the former's house for the purpose, is a most unusual invitation, to inspire credence. Incidentally, Antonio de la Cruz abandoned his appeal from the decision convicting him, clearly indicating that appellant Mascardo's claim of innocence has become weak to say the least.

Waiting for five minutes for a passing jeepney to go from a store already closed, to another store just 40 to 50 meters away, hoping it may still be opened, and there to buy cigarettes, as is the story of petitioner Cerdenola, is likewise, quite hard to believe. The same is true with petitioner Sarmiento's story of having to take a jeepney along 2nd street without even asking where the vehicle that he took was going, to go to the drug store where he was to buy medicine which was only two blocks from his mother's house.

The individual pretexts as given by the three above named co-accused are quite clearly improbable to induce one to believe that they were together in the jeepney, with no other passengers, by mere coincidence, as against what the crowd shouted on sight of the unlighted jeepney, that they were the same ones who were maltreated in a rumble that occurred along 2nd Street corner 9th Avenue, Caloocan City, as Pat. Valderrama declared, and vowed to return for revenge. This is the same crowd that informed the patrolman that the maltreated persons departed with a threat to come back, thus effectively destroying the petitioners' transparent pretension of having been brought together in the same jeepney only by chance or accident. That the jeepney was travelling without lights either outside or inside, nor a signboard, adds to the conviction that its only passengers took the jeepney giving the driver specific instructions that were designed to accomplish their common devilish purpose. This is eloquently shown by the presence of deadly weapons in the jeepney, including the submachine gun near the driver, and the jeepney taking not its usual route but one that led to where Pat. Valderrama had joined the crowd

where the rumble had taken place moments before. By all appearances, therefore, the jeepney was specially hired or taken for no other purpose than, revealed by the information as imparted to Pat. Valderrama, that the persons who were maltreated in the rumble threatened to come back to exact vengeance.

From the facts just narrated, conspiracy among the accused is clear beyond doubt. Petitioners' claim of not knowing each other is disproved by Mascardo and de la Cruz being compadres, the latter supposedly having even invited the former for a late night coffee snack from his house, as is the testimony of appellant Mascardo.

Petitioners and their companions in the jeepney were pointed to as the same ones who, having been maltreated in a rumble occurring moments earlier, vowed to return to get even with their adversaries. It could not have been by pure coincidence that they all were on errands that led them to take the same jeepney and go to the same place where the rumble occurred, each one of them armed with different weapons, including the gun in question, all found in the jeepney in which they rode, suspiciously running without lights nor signboard, and not along its usual route. These circumstances can only indicate that petitioners and their companions were brought together that night with one common criminal purpose, motivated by the same desire to strike back against their enemies. This community of evil intent, and the concertedness of their action to accomplish their single purpose, more than suffice to establish conspiracy among petitioners and their companions[2] who were accused with them in the instant case, but wisely accepted the lower courts' verdict of guilt against them.

With conspiracy so convincingly established, possession of the submachine gun would be ascribed to all the accused as co-conspirators. The ruling quoted by petitioner Mascardo, after citing the case of *U.S. vs. Go Chico* (14 Phil. 128)[3] that where firearms are found in a vehicle with several persons as passengers, it would still be necessary to pinpoint physical possession and *animus possidendi*, is not actually found in the case cited. Counsel should have cited the source of the alleged ruling which he even quoted. In any event, the ruling wherever it was laid down, is not applicable here, where petitioners and their co-accused, who had accepted their conviction when they abandoned their appeal, as earlier stated, were acting under a manifest conspiracy. It is not necessary to pinpoint who among them is the real possessor solely liable for the crime charged. The firearm found in the jeepney in which they were the only passengers is one not subject to the ordinary individual firearm license. Hence, all petitioners are deemed to have joined in the unlawful carrying with them of such prohibited weapon, impelled as they were by the same feeling of extreme necessity for it in the accomplishment of their joint criminal purpose of retaliation against their adversaries. All petitioners were, therefore, in law deemed in actual possession of the submachine gun, if not physically, at least constructively which is just as punishable,[4] even if the possession is only for a short time. The gun was brought along by them in the jeepney, all with full knowledge of how usefully it would serve their common purpose. Their possession was, therefore, with *animus possidendi*, thus completing the elements of the crime charged which is that of illegal possession of firearm.[5]

WHEREFORE, We find no error in the judgment appealed from, and as recommended by the Solicitor General, we affirm the appealed judgment in toto with costs.

SO ORDERED.

Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.

Teehankee, (Chairman), J., in the result.

Guerrero, J., on leave.

[1] pp. 2-4, Mascardo's Brief, p. 61, Rollo, G. R. No. L-36191.

[2] *People vs. Monadi, et al.*, G. R. No. L-3370-71, September 27, 1955; *People vs. Mahlon, et al.*, G. R. No.

L-5198, April 17, 1953.

[3] p. 8, Mascardo's Brief, G. R. No. L-36191.

[4] People vs. Villanueva, 43 O.G. No. 4, April, 1947.

[5] Colmenares vs. Villar, 33 SCRA 186; People vs. Bayona, 61 Phil. 181; People vs. Go Chico, 14 Phil. 128.

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