

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIRSO ACOL Y BARNUBAL AND PIO BOSES Y DOLFO, DEFENDANTS, PIO BOSES, APPELLANT.

G.R. No. L-106288-89. May 17, 1994

Ponente: MELO, J.

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MELO, J.:

Two passengers who were apprehended after they supposedly staged a hold-up inside a passenger jeepney on September 29, 1990 were haled to court, not for the felonious asportation, but for possession of the two unlicensed firearms and bullets recovered from them which were instrumental in the commission of the robo (pp. 7-8, Rollo.)

Of the two persons accused, only Pio Boses interposed an appeal from the trial court's judgment (p. 23, Rollo) inasmuch as Tirso Acol y Barnubal had escaped from incarceration (p. 5, Brief for the Accused-Appellant, p. 60, Rollo) thereby abating any review of his culpability for the misdeed.

The People's inculpatory accusations during the joint trial were to the effect that at around 3:45 in the morning of September 29, 1990, when Percival Tan was driving his jeepney, two men boarded the vehicle in Cubao. When they crossed Pasay Road, the two wayfarers, together with two other companions, announced a hold-up. Percival Tan was instructed to proceed atop the Magallanes interchange where the other passengers were divested of their personal belongings, including the jacket of passenger Rene Araneta. Thereafter, the robbers alighted at the Shell Gas Station near the Magallanes Commercial Center after which Percival Tan and his passengers went to Fort Bonifacio to report the crime. A CAPCOM team was forthwith formed to track down the culprits. Victim Rene Araneta who went with the responding police officers, upon seeing four persons, one of whom was wearing his stolen jacket, walking casually towards Fort Bonifacio, told the police authorities to accost said persons. After the CAPCOM officers introduced themselves, the four men scampered to different directions but three of them, namely, Tirso Acol, Pio Boses, and Albert Blanco, were apprehended. Tirso Acol and Pio Boses were each found in possession of an unlicensed .38 caliber revolver with bullets. After the arrest, the three men were brought to Fort Bonifacio and were identified by Percival Tan and the passengers who ganged up on the accused.

To reinforce the theory of unauthorized possession of firearms, Sgt. Garcia presented a certification (Exhibit I) issued by the Firearms and Explosives Unit stating that the accused are not licensed firearm holders.

On the other hand, Pio Boses and Tirso Acol pleaded innocent to the charges levelled against them, proffering a general denial.

Accused-appellant Pio Boses asserted on the witness stand that after establishing his residence at Pasay City for about six months, he engaged in the business of vending "balut". During the incident in question, he recalled that while so engaged in his trade, three persons allegedly accosted him, took his money, "balut" and "penoy", and that he was thereafter brought to a cell where he was forced to confess ownership of one gun which was shown to him. He nonetheless denied participation in the hold up.

For his part, Tirso Acol, a laborer and at that time having resided in Metro Manila for about two months, recollected that he spent the night at his cousin's house in Paranaque on September 28, 1990, and that he left Paranaque at around 5 in the morning of September 29, 1990. According to him, the jeepney he was then riding developed engine trouble, and alighting therefrom he was arrested for no apparent reason. When he was brought to the cell, he was allegedly coerced into admitting possession of the other gun. Just like his co-accused, he too, denied knowledge of the hold up.

The court a quo was unpersuaded by these general denials, observing:

As can be gathered from the foregoing testimonies of the accused, the line of defense they have adopted is one of denial. Indeed, they denied that the firearms and ammunition in question were found in their persons in the early morning of September 29, 1989. They also denied the truth of the testimonies of Sgt. Faltado, Percival Tan, and Rene Araneta. The defense however did not cite any valid reasons for the Court not to give credence to the testimonies. In the circumstance, the Court is constrained to consider the testimonies of the accused to be self-serving. In the face of the positive testimonies of the prosecution witnesses, the Court can only take their denials with the proverbial grain of salt. Verily, it is simply hard for the Court to believe that the accused are simple provincials who are lost in the big city; that accused Pio Boses who is a resident of Pasay City, does not know well-known places in Metro Manila such as the South Super Highway and the Fort Bonifacio-Nichols interchange; that he did not know the streets where he plied his trade as a balut vendor. Indeed, how can this be true when he himself admitted that from 7:00 p.m. of September 28, 1989, he spent his time walking in the street in the area and yet he never claimed he had ever lost his way.

The same is true with accused Tirso Acol. The Court is convinced that he lied on the witness stand. He claimed that he was in the place where he was arrested because he had just come from the residence of his cousin, Genny Acol, and the passenger jeepney he had boarded on his way home just happened to break down at that place. In the mind of the Court this alibi of the accused is too much of a coincidence, and too convenient an excuse, for the Court to believe. In this connection, the Court notes his testimony on cross examination that he was unable to get in touch with his relatives, including Genny Acol, for possible assistance and to get Genny Acol to corroborate his testimony, because the latter had already left for the province and that none of his other relatives knew that he had been charged in this case. But when queried how he was able to say this, he testified that he had written to his Uncle and that he received a reply letter from him and that it was from this reply letter of his uncle that he learned that Genny Acol had already left for the province. This testimony of accused Tirso Acol, if it accomplished anything, helped convince the Court that he is given to lying. For sure, if he had written to his uncle and that the latter had replied to him, it is plain that he must have informed his uncle about the case and that the latter knew about the case and the fact that he was in jail and needed help. In any event, established jurisprudence dictates that between the positive testimonies of prosecution witnesses and the denials of the accused the Court must place its reliance on the former. As a matter of fact, jurisprudence also indicates that greater weight must be given to the testimonies of the prosecution witnesses when they are officers of the law. (*People vs. Mostoles, Jr.*, 124 SCRA 906; *People vs. Patog*, 144 SCRA 129).

(pp. 21-22, Rollo.)

As initially intimated herein, Tirso Acol escaped from detention during the trial below, thus obviating any review of his conviction, as indeed, even if he had appealed and thereafter escaped, he would be considered as having abandoned his appeal (*People vs. Quinitan*, 197 SCRA 32 [1991]; Section 8, Rule 124, Revised Rules on Criminal Procedure).

With respect to Pio Boses, he chose to articulate his protestation of innocence by claiming that the trial court below erred:

I

. . . IN NOT GIVING DUE COURSE TO THE URGENT MOTION OF ACCUSED PIO BOSES TO REOPEN THE CASE HENCE DEPRIVING HIM TO PRESENT HIS WITNESSES WHOSE TESTIMONIES WOULD HAVE BEEN MATERIAL TO HIS DEFENSE THEREBY AMOUNTING TO A DENIAL OF DUE PROCESS.

II

... IN NOT GIVING CREDENCE TO THE TESTIMONIES OF BOTH ACCUSED PIO BOSES AND TIRSO ACOL; INSTEAD, IT RELIED SOLELY ON THE TESTIMONIES OF THE PROSECUTION'S WITNESSES.

III

... IN ADMITTING THE PROSECUTION'S EVIDENCE CONSISTING OF EXHIBITS "E", "F", "F-1" TO "F-5", "G", "G--1" TO "G-5", SINCE THE ARRESTING OFFICERS ADMITTED THEY WERE NOT ARMED WITH A WARRANT OF ARREST, NOR A SEARCH WARRANT WHEN THEY CHASED AND FRISKED ACCUSED-APPELLANTS AND PROCEEDED TO ARREST THEM.

IV

. . . IN CONVICTING BOTH ACCUSED AS THERE WAS NOT CLEAR SHOWING THAT EXHIBITS "F", "F-1" TO "F-5", "G", "G-1" TO "G-4" WERE THE ONES USED BY THE ROBBERS IN COMMITTING THE CRIME OF ROBBERY/HOLD UP.

(p. 1, Appellant's Brief; p. 60, Rollo.)

But the appeal leaves much to be desired.

It is axiomatic to the point of being elementary that herein accused-appellant can not feign denial of due process where he had the opportunity to present his defense, through his own narration on the witness stand (*Domingo vs. Development Bank of the Philippines*, 207 SCRA 766 [1992]; *Gonzales vs. Court of Appeals*, 212 SCRA 595 [1992]. Withal, and as correctly pointed out by the People, the omission of a party to present witnesses to corroborate the principal basis for exculpation; on account of the witnesses' admitted tardiness in arriving in court, is a puerile proposition to support re-opening of the case.

In regard to the second ascription aired by the accused-appellant, emphasis is laid on the fact that the court a quo should have relied more on the explanation offered by the defense rather than giving credence to the testimony of the People's witnesses. For one thing, accused-appellant asseverates that they could not have been positively identified by Percival Tan and Rene Araneta considering that it was then still dark when the accused boarded the jeep, up to the time they were apprehended. But counsel for accused-appellant concedes that the jeep was lighted subject to the caveat that it was not well lighted (p. 12, Brief for Accused-Appellant) which does not entirely foreclose positive identification of the culprits who admittedly shared a ride with their victims and were thus seated within the closed quarters of the jeepney. Moreover, it was established by the prosecution that Rene Araneta's jacket was one of the items which was asported, that it was worn by one of the felons, and that the jacket was recognized by Rene Araneta from a distance of 1-1/2 meters (p. 7, Brief for Accused-Appellant). To lessen the impact of the affirmative statements uttered against accused-appellant, it is argued that the immediate propensity of a criminal is to move out from the scene of the locus criminis and not merely to walk casually within the vicinity. We said in *People vs. Ocampo* (G.R. No. 80262, September 1, 1993) that indeed, there can be no legal dispute to the legal proposition that flight from the scene of the felony is one of the indicia of a guilty

conscience, but it is equally true, we proceeded to say, that culprits, in exceptional cases, have become bolder by returning to the scene of the crime to feign innocence. At any rate, it has been repeatedly stressed by this Court that the factual findings of the trial court and the conclusions drawn therefrom are accorded utmost respect since the magistrate at the court of origin had the first hand impression of the demeanor and deportment of witnesses (People vs. Lim, 206 SCRA 176 [1992]; People vs. Castillo, 208 SCRA 62).

With respect to the so-called warrantless arrest of accused-appellant, we are of the view that the search falls within the purview of Section 5(b) of Rule 113 which serves as an exception to the requisite warrant prior to arrest:

When an offense has in fact been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it;

inasmuch as the police team was formed and dispatched to look for the persons responsible for the crime on account of the information related by Percival Tan and Rene Araneta that they had just been robbed (People vs. Gerente, 219 SCRA 756 [1993]; People vs. Tonog, Jr., 205 SCRA 772 [1992]). And since accused-appellant's arrest was lawful, it follows that the search made incidental thereto was valid (People vs. Tanielon, 221 SCRA 671 [1993]). Moreover, the unlicensed firearms were found when the police team apprehended the accused for the robbery and not for illegal possession of firearms and ammunition (People vs. Cruz, 165 SCRA 135 [1988]). The principle imparted by Justice Padilla in Cruz was based on the ruling of this Court in Magoncia vs. Palacio (90 Phil. 771 [1948]) that:

. . . When, in pursuing an illegal action or in the commission of a criminal offense, the offending police officers should happen to discover a criminal offense being committed by any person, they are not precluded from performing their duties as police officers for the apprehension of the guilty person and the taking of the corpus delicti.

Nonetheless, the penalty of "reclusion perpetua or life imprisonment", as erroneously imposed by the lower court must be modified to read only as reclusion perpetua, as provided by Section 1 of Presidential Decree No. 1866, said penalty being distinct from life imprisonment.

WHEREFORE, the decision appealed from is hereby affirmed with the slight modification that the proper penalty to be imposed is reclusion perpetua. Further, the court orders the forfeiture of the firearms and other incidental paraphernalia in favor of the Philippine National Police to be disposed of in accordance with law.

No pronouncement is made as to costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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