

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO CHANLIONGCO Y SUÑGA A.K.A. “AVE”, DEFENDANT-APPELLANT.

Ponente: DIAMANTE, J.

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DIAMANTE, J.:

Accused-appellant Leonardo Chanliongco y Suñga a.k.a. “Ave” was adjudged guilty by the Manila Regional Trial Court (RTC), Branch 20, in Criminal Case No. 13-296425 for Violation of COMELEC Resolution No. 9561 in relation to Sec. 261 (q), of the Omnibus Election Code and Sections 32 & 33 of R.A. 7166 & Criminal Case No. 13-296426 for Violation of P.D. 1866, as amended by R.A. 8294.

Accused-appellant contends that he was merely framed-up by the police officers who apprehended him in an attempt to extort money from him. Hence, the instant appellate entreaty for reversal, with errors assigned basically on that score.

Accused-appellant was charged for Violation of COMELEC Resolution No. 9561 in relation to Section 261(q), of the Omnibus Election Code and Sections 32 & 33 of Republic Act 7166, in an Information[1] dated April 16, 2013. The accusatory portion of the said Information reads:

“That on or about April 12, 2013, in the City of Manila, Philippines, the said accused then and there willfully, unlawfully and knowingly have in his possession and under his custody and control, one (1) silver chrome Colt 45 cal. with magazine and with Serial No. 5564 loaded with four (4) live ammunitions, by carrying the same along Katamanan St. near corner Tayabas St., Tondo, this City, which is a public place and outside of his residence without first securing the written authority from the COMELEC, as provided for the COMELEC Resolution No. 9561 in relation to Section 261 (q), Omnibus Election Code and Sections 32 & 33 of Republic Act 7166.

Contrary to law.”

In another Information[2] of even date, accused-appellant was also charged for Violation of P.D. 1866 as amended by RA 8294. The accusatory portion of the said Information reads:

“That on or about April 12, 2013, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) silver chrome Colt 45 cal. with magazine and with Serial No. 5564 loaded with four (4) live ammunitions, without first having secured from the proper authorities the necessary license thereof.

Contrary to law.”

Accused-appellant, assisted by counsel, registered a negative plea to the charges when arraigned on May 22, 2013.[3]

The testimony of prosecution witness PO2 Juan Paolo Libiano, as summed up by the trial court, more or less painted the picture of what transpired on April 12, 2013, which led to the arrest of herein accused-appellant, to wit:

“PO2 JUAN PAOLO LIBIANO is assigned as operative to the District Anti-Illegal Drugs (DAID), Special Operations Task Group (SOTG) of the Manila Police District (MPD). He has been a police officer for 6 years already.

As an operative of the DAID-SOTG, he conducts surveillance on suspects, participates in buy-bust operations and arrests violators of the law. He is always on call.

On April 11, 2013, a male confidential informant of the DAID/SOG arrived at the MPD office and reported to the group that he will have a drug deal with AVE at Katamanan Street near corner Yuseco Street, Tondo, Manila. On that day a buy[-]bust operation was to be conducted but the same did not materialize because there was no shabu to be used for the operation.

The following day, which was within the declared election period, about 3:00 o'clock in the afternoon, 5 members of the group with the informant proceeded to the stated meeting place. Officer Libiano was designated as the poseur buyer. The other members of the group took to their respective strategic positions. A P1,000.00 bill was marked to be used for the buy[-]bust operation. The operation was not logged but an authority to operate and pre-operation report was prepared by the members of the group.

The group was to conduct a buy[-]bust operation against some persons named in the pre-operation report and surveillance operations against the others.

The suspect aboard a red car waved at Officer Libiano (the poseur buyer) and the informant to approach. As soon as the two approached[,] the suspect alighted from the car and talked with the informant. Officer Libiano over heard them discussing about the drug deal the day before, i.e., that the informant will be buying P1,000.00 worth of shabu.

After the two finished talking, the informant introduced Officer Libiano (poseur buyer) to the suspect. The latter demanded the payment of P1,000.00 from the poseur buyer. Officer Libiano thus handed to the suspect a P1,000.00 bill which the latter immediately pocketed and then boarded his car.

While aboard his car, the suspect waved to Officer Libiano to approach and gave him a plastic sachet containing white crystalline substance suspected to be shabu. Officer Libiano pocketed the same and at the same time scratched his nape, the agreed pre-arranged signal for the other officers to approach.

When he saw the Officers approaching, the suspect started the engine of his car but he could not speed off because there were vendors in front of his car. He then decided to alight from his car and tried to escape holding a gun.

The Officers chased the suspect and caught up with him along Katamanan Street where he was ordered to surrender and drop his gun. He complied with the Officers' command.

Officer Libiano picked up the gun from the ground, the gun was a 45 COLT caliber silver chrome loaded with a magazine containing four live ammunitions. The suspect was also ordered to empty his pockets. The illegal drugs confiscated from the suspect were reflected in a Receipt for Property/Evidence Seized which is required in a case for R.A. 9165. Officer Libiano also prepared a separate report for the gun confiscated from the suspect.

The suspect was brought to the MPD headquarters for appropriate investigation. Thereat, photographs were taken of the firearm confiscated from him. The Officers also prepared an affidavit of arrest.

Officer Libiano identified the accused in open court.

Indeed, the Officers were tasked to conduct a buy[-] bust operation but they confiscated the firearm of the suspect because he was violating the law and the COMELC gun ban was effective.”[4]

Meanwhile, accused-appellant's version of facts is reproduced hereunder:

“The accused LEONARDO CHANLIONGCO is into the 'buy and sell' of cars since 2005 or 2006 albeit he did not secure any local permit for his business.

He denies the present charges filed against him as he claims that about 3:00 o'clock in the afternoon of April 12, 2013 while he was driving along Yuseco Street aboard his car on his way to SM San Lazaro to purchase materials for the repair of his garage door, 2 vehicles with more than 10 men on board blocked his car's path. One of the cars was in front of his car while the other was at the rear. The men were in ordinary clothes but were armed with guns which they poked at him. The men introduced themselves as elements of the DAID. He did not recognize any of the men.

The Officers ordered the accused to alight from his vehicle and boarded him on one of their vehicles; he was then brought to the DAID Office. He was not told what crime/s he committed.

After he was ordered to alight from his car, he saw 3 officers board his car. He did not see where the gun came from.

At the DAID Office, he was informed that illegal drugs and a firearm were found on his vehicle. At the time of his arrest, however, no illegal drugs or gun were found on his vehicle. He does not own any firearm.

After being so informed of such, Officer Libiano and the other Officers demanded P200,000.00 from the accused in order that only cases for illegal possession of firearm and illegal drugs will be filed against him. He refused to give the amount even if he had the money because he knew that nothing illegal was confiscated from him by the Officers. The Officers have in their custody his car.

If he gets an acquittal, the accused intends to file a case for extortion against the Officers.

Charges of Violation of Dangerous Drugs Law, Violation of P.D. 1816 as amended and Violation of COMELEC GUN BAN were filed against the accused by the Officers.

The accused saw the firearm for the first time at the DAID office when it was presented to him. Two hours after he was brought to the DAID office, he noticed his car thereat.

The accused does not know of any reason why the police Officers would fabricate the instant cases against him.”[5]

Ratiocinating that accused-appellant himself admitted that he does not know the officers who arrested him or of any reason, ulterior or otherwise, why these officers would fabricate the charges against him and finding that the testimony of witness Officer Libiano to be forthright as to the details surrounding the arrest of accused-appellant and the recovery of the subject firearm, the trial court disposed of the cases as follows:

“PREMISES CONSIDERED, his guilt having been proven beyond reasonable doubt, accused LEONARDO CHANLIONGCO y SUÑGA a.k.a. 'AVE' is sentenced to suffer the penalty of 6 years and 1 day of prison mayor and to pay a fine of P30,000 with subsidiary imprisonment in Criminal Case No. 13-296426.

In Criminal Case No. 13-296425, the Court finds accused LEONARDO CHANLIONGCO y SUÑGA a.k.a. 'AVE' guilty beyond reasonable doubt for Violation of COMELEC Resolution No. 9561 in relation to Section 261 (q) Omnibus Election Code and Sections 32 and 33 of R.A. 7166 and is sentenced to suffer the penalty of 2 years imprisonment.

The firearm (silver chrome Colt 45 cal. with magazine and with Serial No. 5564 with 4 live ammunitions) is forfeited in favor of the government, being a contraband, to be disposed of in accordance with law.”

In his appeal brief, accused-appellant contends that he should be acquitted as it appears from the testimony of

Officer Libiano that he was merely a bag man and not the poseur buyer as earlier claimed. According to accused-appellant, this casts serious doubt on his credibility as the lone prosecution witness. More so, that the confidential agent was not presented as witness. Accused-appellant asserts that Officer Libiano's testimony also inadvertently exposed the true intention of the arresting officers to frame him up when he testified, thus:

“xxx

Q: And apart from the information of the place and the nature of transaction, what else did this RCI or Regular Confidential Informant tell your group?

A: We were supposed to conduct the buy-bust operation that same day of April 11, 2013, but unfortunately, we did not have any stocks of shabu in the MPD.”[6]

Accused-appellant argues that having stock of shabu is not one of those things being prepared for a valid buy-bust operation. That the arresting officers needed to have shabu with them before conducting a buy-bust constitutes reason to believe that they have ill-motive to testify against him. Thus, as there was no valid buy-bust operation, the subject firearm allegedly taken from him is inadmissible in evidence for being a fruit of a poisonous tree. Lastly, accused-appellant posits that the failure on his part to question the legality of his arrest is of no moment for his waiver of this right does not necessarily carry with it his waiver of the right to question the admissibility of any evidence produced by law enforcement agents on the occasion of or incidental to his illegal arrest or thereafter.

The People, through the Office of the Solicitor General (OSG) insists that the buy-bust operation was valid and that accused was lawfully arrested. Accordingly, the firearm seized in the course thereof is admissible in evidence against accused-appellant pursuant to Section 13, Rule 127 of the Rules of Court which states:

“Sec. 13. Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.”

We rule for the People.

It is noted that the trial court anchored its decision on the testimony of Libiano as well as on the certification[7] that accused-appellant has not applied for and was not granted an exemption from the ban on bearing, carrying or transporting firearms or other deadly weapons during the election period of the May 13, 2013 Synchronized Automated National, Local and ARMM Regional Elections.

In his brief, accused-appellant questioned the credibility of Libiano by pointing out inconsistencies in his testimony specifically the reason why the buy-bust operation did not push through on April 11, 2013. Accused-appellant insinuates that the illegal drugs allegedly taken from his possession were actually planted by the group of Libiano.

It must be pointed out that accused-appellant was also charged with Violation of R.A. 9165 which was tried separately from the cases at bench. Thus, We are not in a position to discuss the validity of the buy-bust operation conducted on April 12, 2013 in this ponencia. Assuming ex-gratia argumenti that there was an irregularity in the conduct of the buy-bust operation, nonetheless, We are of the view that the trial court did not err in finding accused-appellant guilty of the charges leveled against him.

Indeed, under the Constitution, it is provided that “No search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized”. However, “warrantless search and seizure” may still be justified on the following situations, to wit:

1. Valid search and seizure incident to a lawful arrest.[8]
2. Prohibited article in plain view.[9]
3. Search of a moving vehicle.[10]
4. Search consented to by the accused.[11]

It is well-entrenched in our jurisdiction that in searches and seizures effected without a warrant, it is necessary for probable cause to be present. Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.[12]

Witness Libiano claimed that after he received the plastic sachet containing the suspected shabu, he gave the pre-arranged signal for the other officers to approach; that when accused-appellant saw them approaching, he started the engine of his car; that when accused-appellant sensed that he could not proceed because there were vendors in front of him, he alighted from the vehicle and tried to run away; that accused-appellant was carrying a firearm at the time he was trying to escape; that upon seeing accused-appellant carrying a firearm, they chased him until they cornered him; that when accused-appellant sensed that he could no longer escape, he dropped the firearm to the ground; that it was Libiano himself who recovered the said firearm. From Libiano's statements, it is clear that the firearm that was recovered was in plain view as it was being held by accused-appellant while he was trying to escape. Aware that there is a gun ban at that time, Libiano and his group had every reason to pursue accused-appellant for violating a COMELEC resolution. The recovery of the firearm was not a product of a search effected on the person of accused-appellant. It was the latter himself who placed the firearm on the ground upon realizing that he had no way out.

Section 5(a), Rule 113 of the Rules of Court provides that “a peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
 - (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and
 - (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
- Xxx.”

Ergo, the firearm recovered from accused-appellant is not a product of an illegal search that would make it “a fruit of a poisonous tree” as accused-appellant posited it to be but is legal and admissible in evidence.

Citing the cases of *People vs. Ladjaalam*,^[13] *Agote vs. Lorenzo, et al.*^[14] and *Madrigal vs. People*,^[15] the People respectfully recommended the setting aside of the conviction of accused-appellant in Criminal Case No. 13-296426 for Illegal Possession of Firearms. Moreover, with regards to the penalty imposed by the trial court, the People pointed out that while the latter correctly found accused-appellant guilty beyond reasonable doubt of violation of the COMELEC gun ban, it submits that the trial court erred in imposing a straight penalty of two (2) years imprisonment in disregard of the explicit provisions of the Indeterminate Sentence Law which reads:

“SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which

shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.”

The recommendations made by the People are well-taken.

The disquisition of the Supreme Court in the case of *Agote vs. Lorenzo, et al.*[16] is instructional on the issue of whether an accused may be convicted of two separate offenses of illegal possession of firearms and Violation of COMELEC gun ban, to wit:

The question then which appears to be of first impression, is whether or not the unlicensed firearm should be actually "used" and discharged in the course of committing the other crime in order that Sec. 1, Rep. Act No. 8294 will apply so that no separate crime of illegal possession of firearms may be charged.

Let us take a look at the jurisprudence once again. In *Cupcupin vs. People*, the accused was charged and convicted for two (2) separate crimes of illegal possession of firearms, and illegal possession of prohibited drugs. In the more recent case of *People vs. Almeida*, however, although the accused was acquitted of the separate charge of illegal possession of firearm for lack of evidence, the Court nevertheless made the following clear pronouncement:

Furthermore, in any event, the Court has ruled in previous cases that in view of the enactment of Republic Act No. 8294, there can be no separate offense of illegal possession of firearms and ammunition if there is another crime committed such as, in this case, that of illegal possession of dangerous drugs.

In *Almeida*, it should be noted that the unlicensed firearm was merely found lying around, together with the prohibited drugs, and therefore, was not being "used" in the commission of an offense.

Given this Court's aforequoted pronouncement in *Almeida*, can the accused in the present case still be separately convicted of two (2) offenses of illegal possession of firearms and violation of gun ban, more so because as in *Almeida*, the unlicensed firearm was not actually "used" or discharged in committing the other offense?

In *People vs. Walpan M. Ladjaalam*, this Court, interpreting the subject proviso in Section 1 of Rep. Act No. 8294, applied the basic principles in criminal law, and categorically held:

xxx A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the 'other crime' is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.

Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of RA 8294's simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused. Accordingly, appellant cannot be convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. xxx

xxx xxx xxx

xxx The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that 'no other crime was committed by the person arrested'. If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we.

The aforementioned ruling was reiterated and applied in the subsequent cases of *People vs. Garcia*, where the judgment of conviction of the accused-appellants for illegal possession of firearms was set aside there being another crime – kidnapping for ransom – which they were perpetrating at the same time; *People vs. Bernal*, where the Court retroactively applied Rep. Act No. 8294 in accused-appellant's favor because it would mean his acquittal from the separate offense of illegal possession of firearms; and *People vs. Bustamante*, where, in refusing to convict the accused-appellant of the separate offense of illegal possession of firearms, the Court declared that insofar as it is favorable to the appellant, the provisions of Rep. Act No. 8294 should be applied liberally and retroactively in that appellant must be acquitted of the charge of illegal possession of firearms.

Guided by the foregoing, the Court cannot but set aside petitioner's conviction in Criminal Case No. 96-149820 for illegal possession of firearm since another crime was committed at the same time, i.e., violation of COMELEC Resolution No. 2826 or the Gun Ban.

Xxx

As written, Sec. 1, Rep. Act No. 8294 restrains the Court from convicting petitioner of the separate crime of illegal possession of firearm despite the fact that, as in *Almeida*, the unlicensed firearm was not actually "used". For sure, there is, in this case, closer relation between possession of unlicensed firearm and violation of the COMELEC gun-ban than the illegal possession of unlicensed firearm to the crime of illegal possession of prohibited drugs in *Almeida*. (Emphasis Ours; citations omitted).

From the foregoing, the judgment of conviction of accused-appellant in Criminal Case No. 13-296426 for illegal possession of firearms should be dismissed while the judgment of conviction in Criminal Case No.13-296425 for Violation of the COMELEC gun ban should be affirmed.

Now on to the penalty.

Section 264 of the Omnibus Election Code reads:

"Sec. 264. Penalties. - Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. Xxx."

The trial court found accused-appellant guilty of violation of the COMELEC gun ban and sentenced him to suffer the straight penalty of two (2) years imprisonment.

Taking into consideration, however, the provisions of the Indeterminate Sentence Law that when an offense punished by the Revised Penal Code or its amendments is also punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by the said law and the minimum shall not be less than the minimum term prescribed by the same, the penalty imposed by the trial court should be modified. Instead of a straight term of two (2) years, accused-appellant should be sentenced to an indeterminate prison sentence the minimum of which shall not be less than one (1) year and the maximum of which shall not exceed six (6) years.

WHEREFORE, premises considered, the instant appeal is hereby **PARTIALLY GRANTED**. The October 30, 2013 Judgment of the Manila RTC – Branch 20 in Criminal Case Nos. 13-296425 to 26 is **AFFIRMED** insofar as accused-appellant was found **GUILTY** beyond reasonable doubt in Criminal Case No. 13-296425 for Violation of COMELEC Resolution No. 9561 in relation to Sec. 261 (q) of the Omnibus Election Code and is sentenced to suffer the indeterminate penalty of imprisonment from one (1) year, as minimum, to six (6) years, as maximum which shall not be subject to probation, and all the accessory penalties provided for by law. The said judgment is,

however, REVERSED and SET ASIDE insofar as accused-appellant was found guilty of illegal possession of firearm. Criminal Case No. 13-296426 is DISMISSED and accused-appellant is hereby ACQUITTED therein.

The silver chrome Colt 45 cal. with magazine and with Serial No. 5564 with 4 live ammunitions seized from accused-appellant, being a contraband, is forfeited in favor of the government to be disposed of in accordance with law.

SO ORDERED.

Dimaampao, J.B., Chairperson and Manahan, C.S.,J.J., concur.

[1] Records, p. 1.

[2] Id at 2.

[3] Id. at 39.

[4] Vide Judgment, id. at 143-145.

[5] Vide Judgment, id. at 146-147.

[6] Vide Brief for the Accused-Appellant, Rollo, pp. 33-34.

[7] Records, p. 50.

[8] People vs. Salazar, G.R. No. 98060, January 27, 1997.

[9] People vs Figueroa, G.R. No. 97143, October 2, 1995.

[10] People vs Balingan, G.R. No. 105834, February 13, 1995.

[11] People vs Cuizon, G.R. No. 109287, April 18, 1996.

[12] Caballes vs. Court of Appeals and People of the Philippines, G.R. No. 136292, January 15, 2002.

[13] G.R. Nos. 136149-51, September 19, 2000.

[14] G.R. No. 142675, July 22, 2005.

[15] G.R. No. 182694, August 13, 2008.

[16] Supra.

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