

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO SOMOOC Y BUCO, ACCUSED-APPELLANT.

G.R. No. 100921. June 02, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Alberto Bucu Somooc appeals from a decision of the Regional Trial Court, Branch 88, Quezon City, convicting him of illegal possession of firearm, aggravated by the use of such firearm in a killing. He was sentenced to reclusion perpetua and to pay an indemnity of P30,000.00 to the heirs of the victim.

Somooc was charged in an Information which read as follows:

"The undersigned Assistant City Prosecutor accuses ALBERTO SIMOOC [sic] y BUCO of Violation of Presidential Decree 1866 Section 1 Second Paragraph (Illegal Possession of Firearm with Homicide) committed as follows:

That on or about the 27th day of June, 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, wilfully, unlawfully and feloniously have in his possession and under his custody and control a firearm, to wit: one (1) homemade .38 caliber revolver without any serial number with one (1) empty shell and four (4) live bullets in its cylinder [sic], further, said accused did then and there, wilfully, unlawfully, and feloniously shoot with said revolver at one ROLANDO DELOS REYES y TAGUIMACON hitting him on the head, thereby inflicting upon the latter serious and mortal gunshot wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said victim in such amount as maybe awarded under the provisions of the New Civil Code.

Contrary to law."^[1]

At arraignment, Somooc entered a plea of not guilty and trial on the merits ensued. In due time, the trial court rendered the judgment of conviction noted earlier.

The evidence of the prosecution consisted principally of the testimonies of Elias Teologo, M/Sgt. Salvador Sibayan, Romeo Teologo, S/Sgt. Romeo de Guzman, and Dr. Emmanuel Aranas. The trial court in its decision summarized the testimonies of these prosecution witnesses in the following manner:

"[T]he testimony of eyewitness Romeo Teologo, 30 years of age, married, a free lance car accessory installer placing tint on cars passing along Banawe Street and residing at 48 Araneta Avenue, Quezon City, tends to show the following:

At around 10:15 in the morning of June 27, 1989, Teologo was at Kaliraya Street looking for customers when he witnessed the shooting of one Rolando delos Reyes. Witness was at the other side of the street at the time of the shooting. He also positively identified the gun wielder in the person of Alberto Somooc. Romeo Teologo was beside the victim, Rolando delos Reyes, when the latter approached a man and told him not to wait and look for customers in that place. That man turned out to be accused Somooc. Accused left and proceeded to the

back of FGC Store located at the other side corner of Kaliraya Street. Afterwards, the group of delos Reyes approached the group of Somooc and went back to the place where Romeo Teologo was standing. Accused approached the group of delos Reyes asking why they were being prohibited from calling for customers. Suddenly, Somooc pulled a gun from his waist. Romeo Teologo tried to pacify both parties and succeeded. He brought Somooc at JC&E Store and instructed delos Reyes to leave because they were having heated argument. The victim crossed the street to move away from Somooc but witnesses saw Somooc turned around from the back of JC&E Store, and also crossed Banawe Street where he met and accosted delos Reyes. Teologo was about to cross the street to follow Somooc but he had to stop and talk to Johnny Co, owner of JC&E Store who was on his path. Romeo Teologo was facing Banawe Street when he heard a shot coming from the direction of Kaliraya and Banawe Streets. Simultaneously, he saw delos Reyes sprawled to the ground. Witness said it happened so fast. He immediately crossed Banawe Street and brought the victim to the hospital. He also recalled having seen Somooc running with the gun after delos Reyes was shot.

Elias Teologo, 35 years old, installer of car accessories, residing at Tatalon, Quezon City, testified that on June 27, 1989 he was at Banawe and Kaliraya Streets, Quezon City, working for a customer. He saw the group of Somooc in front of JC&E Store while Rolando delos Reyes was standing in front of Ever Goods Merchandising, both located at the other side of the street. Alberto Somooc left his companions and went towards Elias Teologo to look for customers. Rolando delos Reyes crossed Banawe Street and approached Elias Teologo. Witness noticed Alberto Somooc positioned himself and face Rolando delos Reyes. Accused at this juncture drew his gun, pointed it at Rolando delos Reyes and fired. Somooc ran away towards Kaliraya Street. Together with the cousin and uncle of delos Reyes, they pursued Somooc. Fortunately, soldiers from V. Luna arrived. The pursuing relatives of delos Reyes stopped the vehicle of the V. Luna soldiers and asked help from them to chase Somooc. They [drove] through Quezon Boulevard and returned back to Agno Street where they found Somooc blocked by the people. The soldiers arrested Somooc and brought him to the precinct.

M/Sgt. Salvador Sibayan, 39 years old, married and a soldier assigned at the AFP Medical Center testified that on June 27, 1989, at around ten in the morning, he was with M/Sgt. Heduca and Sgt. Maximiano Ampoc cruising along Banawe and Kaliraya Streets to purchase car spare parts. All of a sudden they heard a single gunfire. Immediately thereafter, people in the area ran to the direction of Agno Street. Somebody approached their vehicle and asked help in apprehending the suspect. They proceeded to Agno Street and found the suspect being mauled by the mob. They tried to pacify the mob and held the suspect. Sgt. Heduca frisked Somooc and found a gun against his waistline which is a little below the navel. The firearm recovered was a paltik .38 cal. revolver, snub nose with one spent shell and four live bullets. The holster was however taken off at the police station when the accused was told to undress.

S/Sgt. Romeo T. de Guzman of the Firearms and Explosives Unit of Camp Crame, Quezon City, attested to the fact that accused is not a licensed nor a registered firearm holder as shown by the certification issued by the same Office. (Exh. "G").

The medico-legal report prepared by Officer Emmanuel Aranas showed the following injuries sustained by Rolando delos Reyes:

1)

Contusion, frontal region, measuring 5 x 6 cm., 2 cm. right of the anterior line.

2)

Ecchymosis, right infra-orbital region, measuring 3 x 3 cm., 4 cm. from the interior midline.

3)

Gunshot wound point of entry, medial canthus of the left eye, measuring 0.7 x 0.8 cm., 1.5 cm. from the anterior midline, with an abraded collar, measuring 0.2 cm. superiorly and inferiorly, 0.1 cm. laterally and

medially, directed posteriorwards, slightly downwards and slightly medialwards, fracturing the left zygomatic and occipital bone, lacerating the brain with a .38 caliber slug recovered thereat.

4)

Grazed abrasion, mandibular region, measuring 5 x 2 cm., 1.5 cm. on right of the anterior midline.

There are subdural and subarachnoidal hemorrhages."^[2]

Dr. Emmanuel Aranas, Medico Legal Officer, on the witness-stand, described the point of entry of the fatal bullet as located on the inner corner of the left eye of the victim Rolando delos Reyes, just left of the bridge of the nose.

Appellant Somooc was the principal witness on his own behalf. The trial court summed up his testimony as follows:

"[Somooc] alleged that on June 27, 1989 at around 10:15 o'clock [sic] in the morning, he was in Banawe corner Kaliraya Streets, Quezon City, when suddenly, he heard a gunfire. Accused Somooc looked at the direction where the gunfire came from and saw Renato Buco holding a gun. Renato Buco scampered away. Accused Somooc, afraid of delos Reyes' relatives also ran away. The soldiers chased Renato Buco. They picked up the gun which fell loose from Renato Buco's hold. Somooc stopped running when he noticed that no one is following him. At this instance, Elias Teologo told the soldier, 'Yan huwag ninyonq pakawalan, kasamahan 'yan,' while pointing at Somooc. This soldier struck him with a butt of an armalite at his head while the other soldier boxed him at his chest. They [forced] the accused to admit that the gun was his. As Renato Buco disappeared from the sight of the soldiers, the accused instead was taken to the Galas Police Station where he was detained.

On cross-examination, accused revealed that it was a certain Jimmy Buco who brought him to Banawe Street to learn the trade. Previously, he was engaged in the fishing business. It was his fifth day at work when the incident took place. He denied ownership of a firearm and said that he would not know how to use any firearm."^[3] (Italics supplied)

Appellant ascribes the following as errors on the part of the trial court:

(1)

The trial court convicted Somooc although the prosecution witnesses could not have really seen Somooc shoot at the victim Rolando delos Reyes;

(2)

The trial court failed to consider the personal motives of the prosecution witnesses in testifying against appellant Somooc;

(3)

The trial court failed to consider the "straightforward" testimony of appellant Somooc which was "never rebutted" although appellant was in "a more difficult situation" than the prosecution because Somooc, being under detention, had no opportunity to look for defense witnesses; and

(4)

The trial court failed to entertain doubt as to the guilt of appellant Somooc and to resolve such doubt in his favor.^[4]

The Court, after careful examination of the record, finds no reversible error on the part of the trial court.

The Court notes at the outset that appellant Somooc was charged with and convicted of illegal possession of firearm, aggravated by the use thereof in a killing, an offense defined in the second paragraph of Section 1 of P.D. No. 1866 in the following terms:

"X X X X X X X X

The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

X X X X X X X X."

(Italics supplied)

The offense charged by the Information is clear enough from the terms of that document, although both the Information and the decision of the trial court used the term "Illegal Possession of Firearm with Homicide,"[5] a phrase which has sometimes been supposed to connote a "complex crime" as used in the Revised Penal Code. Such nomenclature is, however, as we have ruled in *People v. Caling*,[6] a misnomer since there is no complex crime of illegal possession of firearm with homicide. The gravamen of the offense penalized in P.D. No. 1866 is the fact of possession of a firearm without a license or authority for such possession. This offense is aggravated and the imposable penalty upgraded if the unlicensed firearm is shown to have been used in the commission of homicide or murder, offenses penalized under the Revised Penal Code. The killing of a human being, whether characterized as homicide or murder, is patently distinct from the act of possession of an unlicensed firearm and is separately punished under the provisions of the Revised Penal Code.

We turn to the appellant's first assignment of supposed error, that is, that prosecution witnesses Elias Teologo and Romeo Teologo could not have really seen the actual shooting of the victim Rolando delos Reyes. Defense argues that Elias Teologo did not see appellant Somooc in the very act of shooting at the victim delos Reyes, for Elias Teologo had stated on the witness stand that the firearm held by Somooc was pointed at the back of the victim while physical evidence showed otherwise. Romeo Teologo, the defense also argues, could not have seen appellant Somooc actually firing a handgun at delos Reyes because he (Romeo Teologo) was at "the other side of Banawe Street." [7]

The Court observes that witness Elias Teologo did make a statement which apparently runs counter both to the medical evidence submitted in the case and his own testimony on direct examination. Elias Teologo, responding to clarificatory questions posed by the trial judge, answered in part as follows:

"Court:

By the way, when Somooc drew his gun at the time when he was facing Rolando delos Reyes, where was the gun pointed at?

Witness:

The gun was pointed to Rolando delos Reyes, sir.

Court:

Towards what part of the body of Rolando delos Reyes was the gun pointed by Somooc?

Witness:

At the back, your honor."[8] (Italics supplied)

During his direct examination, Elias Teologo had declared that Alberto Somooc and the victim Rolando delos Reyes were facing each other when Somooc drew his gun and fired at delos Reyes.[9] The medical report prepared by Dr. Emmanuel Aranas identified the point of entry of the bullet which felled the deceased as the inner corner of the left eye near the bridge of the nose.[10]

Inconsistency there was, but that inconsistency alone cannot dissolve the entire case against appellant Somooc. Except for the abovementioned inconsistency on a fact detail, the testimony of Elias Teologo was found credible by the trial court and corroborated by the testimonies of other prosecution witnesses. Applicable case law is to the effect that the testimony of a witness may be believed in part and disbelieved in part, as the corroborative evidence or the lack thereof and the probabilities or improbabilities of the case may require.[11] Where a witness makes a statement contradicting another statement he had earlier made on direct examination and the medical evidence in a specific particular, there is no rule of law that requires the entire testimony of that witness to be rejected as such. To the contrary, portions of such testimony which are in themselves deemed worthy of belief, may be taken into account by the trial court.

In the instant case, there was no question that witness Elias Teologo was present at the scene of the crime at the time of the commission thereof. He witnessed the confrontation between appellant Somooc and victim delos Reyes, if not the actual impact of the bullet on the body of the victim. There was also no question that Elias Teologo saw appellant Somooc run away with a gun after a gunshot rang out and that Elias Teologo was among those who chased appellant Somooc immediately after the gunfire. These matters were set forth by Elias Teologo both in his affidavit executed at the police station immediately after the killing,[12] and in his testimony in open court.[13]

Romeo Teologo, another prosecution witness, testified that he saw the whole incident from across Banawe Street, about nine (9) to ten (10) meters away from the spot where the shooting occurred. Romeo positively identified appellant Somooc as the gun wielder and as the person who had fired at the victim Rolando delos Reyes. The contention of Somooc that Romeo Teologo could not have actually seen the incident finds no support in the record. The shooting had occurred at around 10:15 o'clock in the morning under conditions of full visibility and Romeo Teologo was only nine (9) to ten (10) meters away when the gunshot rang out. Thus, the separate accounts of the two (2) witnesses Elias Teologo and Romeo Teologo in respect of Alberto Somooc firing at Rolando delos Reyes were not only consistent with each other on material points, but also replete with details. As such, they cannot be disregarded as mere fabrications of lying witnesses. As stressed by this Court in *People v. Avila*,[14] so long as the witnesses concur on the material points of their respective testimonies, slight differences in their recollection of physical details do not destroy the essential veracity of their statements.

Corroboration of the testimony of the two (2) Teologos is found in the straightforward testimony of M/Sgt. Salvador Sibayan who had taken from the person of appellant Somooc a homemade .38 caliber revolver, with one spent shell and four (4) rounds of live ammunition, near the scene of the crime. M/Sgt. Sibayan also discovered a gun holster tucked away in the brief or underpants of Somooc at the police station, where the latter had been instructed to undress. The testimony of Sgt. Sibayan on these matters was not successfully rebutted by Somooc.

Appellant Somooc also contends that ill motives had moved the prosecution witnesses to impute to him the slaying of Rolando delos Reyes. These ill motives, in the theory of the defense, related to the business competition between two (2) different groups of sellers or marketers of tinted film attached to the windows of automobiles. Somooc claimed that the Teologos belonged to one group, while he belonged to another, competing,

group and that the Teologos pinned the killing on him because he (Somooc) was the only one of his group left at the scene of the crime upon the escape of the real assailant, one Renato Buco, a member of Somooc's own group. In respect of the testimony of M/Sgt. Salvador Sibayan, appellant Somooc claims that Sgt. Sibayan's testimony was intended to "cover-up" or divert attention from the physical beating and injuries inflicted upon the person of Somooc by the police authorities.

The Court finds unpersuasive these ascriptions of evil motives by Somooc to the Teologos and to M/Sgt. Sibayan and other police officers. Assuming that the Teologos and Somooc had belonged to two (2) different groups competing for the commercial patronage of motorists, it does not necessarily follow that the Teologos would have deliberately perjured themselves and falsely ascribed such a grave offense as the slaying of another human being to their business competitor. Similarly, we find no basis for believing that M/Sgt. Sibayan had perjurally imputed to appellant Somooc a very serious offense if Somooc had not in fact been arrested or captured at the scene of the killing being manhandled by a furious crowd which had chased him as he ran away, and if he had not been found with an unlicensed handgun tucked in his pants or underpants. Appellant Somooc offered in evidence only his own bare allegations or speculations. Absent clear and convincing evidence that the prosecution witnesses' testimony had in fact been false, as well as clear and convincing evidence of motives sufficiently powerful as reasonably to have induced deliberately false accusations of a serious offense, we are compelled to reject Somooc's speculations and to conclude that the prosecution witnesses' statements were not successfully rebutted.[15]

In the end, the issues raised by appellant Somooc essentially relate to the credibility of the witnesses. Appellant in effect contends that the prosecution's view of the facts was completely askew and false and that it was one Renato Buco, and not appellant Alberto Buco Somooc, who had shot the victim. Renato Buco, if he exists, has had the foresight to make himself very scarce. As far as the record of this case is concerned, no warrant for the arrest of Renato Buco was issued and no subpoena had been requested by Somooc directed to Renato Buco.

The rule that findings of the trial court as to the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal absent any clear showing that the court had overlooked or misapplied facts or circumstances of weight which would affect the result of the case, must once more be applied. In the case at bar, after having examined at length both the record and appellant's claims, the Court finds no cogent reason to overturn the trial court's findings of fact. Appellant's efforts to deflect responsibility and blame towards Renato Buco (assuming this person in fact existed) cannot dissolve the testimonies of the prosecution witnesses which the trial court found both positive and credible to the effect that he (Alberto Buco Somooc) had shot and killed a member of a competing group of auto accessories salesmen and installers.

We conclude that the trial court correctly convicted appellant Somooc and imposed upon him the penalty of reclusion perpetua, considering that the penalty prescribed in the second paragraph of Section 1 of P.D. No. 1866 cannot be enforced under Article III (19)(1) of the 1987 Constitution.[16] Finally, the award of civil indemnity in the amount of P30,000.00 must be deleted, since Alberto Somooc was in the instant case charged with and convicted, not of homicide, but rather of illegal possession of firearm aggravated by use of such weapon in a killing. Civil indemnity for death may, of course, be properly awarded in a separate criminal prosecution for homicide or murder. In *People v. Deunida*,[17] this Court held that:

"x x x the awards for actual damages in the amounts of P50,000.00, representing funeral expenses, although stipulated by the parties, and P50,000.00 as moral damages, which the parties left to the discretion of the trial court, are improper and should be deleted for, although death had taken place, the offense charged is illegal possession of firearm and the killing merely aggravated it. No private interest is therefore involved. The civil liability arising from death may be the subject of a separate civil action or impliedly instituted with the

criminal action for murder or homicide." [18] (*Italics supplied*)

WHEREFORE, for all the foregoing, the decision of the trial court finding appellant Alfredo Buco Somooc guilty of illegal possession of firearm aggravated by use of the weapon in a killing, and sentencing him to reclusion perpetua is hereby AFFIRMED, with the sole modification that the award of civil indemnity is hereby DELETED.

SO ORDERED.

Romero, Melo, Vitug, and Francisco, JJ., concur.

[1] Original Records, p. 1.

[2] *Id.*, pp. 1-3; Rollo, pp. 8-10.

[3] *Id.*, p. 31; Rollo, p. 10.

[4] Appellant's Brief, pp. 5-6.

[5] Information, Rollo, p. 3. Decision, pp. 1 and 5; Rollo, pp. 8 and 12.

[6] 208 SCRA 821 (1992).

[7] Appellant's Brief, pp. 6-9.

[8] TSN, 4 December 1989, p. 8.

[9] *Id.*, pp. 5-6.

[10] Exhibit "K-3," Folder of Exhibits, p. 6; TSN, 29 December 1989, p. 3.

[11] See *People v. Molina*, 213 SCRA 52 (1992); *People v. Empleo*, 226 SCRA 454 (1993) and *People v. Dulay*, 217 SCRA 103 (1993).

[12] Exhibit "2," Folder of Exhibits, p. 10.

[13] TSN, 4 December 1989, pp. 2-6.

[14] 192 SCRA 242 (1990).

[15] *People v. Taneo*, 218 SCRA 494 (1993); *People v. Rostata, Jr.*, 218 SCRA 657 (1993).

[16] Republic Act No. 7659, which took effect on 31 December 1993, and which imposed the death penalty on certain heinous crimes did not include violations of P.D. No. 1866 as among those crimes punishable with death.

[17] 231 SCRA 520 (1994).

[18] 231 SCRA at 535.

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