

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO YANSON Y RIVERA, ACCUSED-APPELLANT.

G.R. No. 111951. February 24, 1994

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Alfredo Yanson y Rivera was charged with illegal possession of firearms and ammunition, in an information reading:

That on or about May 3, 1991, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) handgun, Cal. 380 TM Star, SN-DK-819747 with one spent shell and four (4) live ammunition, said accused not having any license and/or permit to possess and carry the same from the authorities charged with the issuance thereof.

CONTRARY TO LAW.

(p. 1, Record.)

After trial, the court a quo on December 16, 1991, rendered a decision, disposing:

WHEREFORE, for all the foregoing, the Court finds accused Alfredo Yanson y Rivera guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition under Section 1 of Presidential Decree No. 1866 and hereby sentences said Alfredo Yanson y Rivera to suffer the penalty of reclusion perpetua and to pay the costs. The handgun (Exh. A) and the four rounds of live ammunition and spent shell (Exhs. B to B-4) are confiscated and ordered forfeited in favor of the Government.

(p. 113, Record.)

Dissatisfied, accused-appellant has interposed the instant appeal, assigning the following alleged errors of the trial court:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF VIOLATION OF SECTION 1 OF PRESIDENTIAL DECREE NO. 1866, OTHERWISE KNOWN AS ILLEGAL POSSESSION OF FIREARM AND AMMUNITION, DESPITE FAILURE OF THE PROSECUTION TO OVERCOME THE PRESUMPTION OF INNOCENCE WITH MORAL CERTAINTY AS MANDATED BY THE CONSTITUTION, BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT HE WAS NOT LICENSED OR AUTHORIZED TO CARRY A FIREARM.

III

THE TRIAL COURT GRAVELY ERRED IN ADMITTING EXHIBITS "C" AND "F" DESPITE FAILURE OF THE PROSECUTION TO PROPERLY IDENTIFY THE SAME AND THAT THE ACCUSED WAS NOT GIVEN AN OPPORTUNITY TO CROSS-EXAMINE THE SIGNATORIES THEREIN.

The facts of the case, as established by the evidence and as correctly summarized by the Office of the Solicitor General, are as follows:

In the morning of May 3, 1991, at around ten o'clock, Barangay Tanod Rodolfo Arnaldo was drinking liquor with Roberto Bon, Lorenzo Resta and Francisco Dacer inside the yard of his (Arnaldo's) residence at Barangay Concepcion Pequeña, Naga City, on the occasion of his son's birthday (TSN, July 30, 1991, pp. 1-3). Appellant Alfredo Yanson happened to pass by and he was invited by Rodolfo Arnaldo to drink with the group (TSN, July 23, 1991, p. 5).

After having imbibed a considerable amount of liquor, appellant began boasting that he had a gun (TSN, July 23, 1991, pp. 19-20). While the drinking continued, appellant left for his house and returned after 5 to 10 minutes carrying a caliber .38 pistol (TSN, July 25, 1991, p. 6). Appellant cocked the pistol and pointed it at Arnaldo (TSN, July 30, 1991). Arnaldo raised the gun with his hand and the gun fired upwards (TSN, July 23, 1991). Arnaldo then grappled with appellant for the gun and was able to take it away from him. Having been thus disarmed, appellant fled (TSN, July 23, 1991, pp. 7-8). He was later apprehended by unnamed, Barangay Tanods of the area (TSN, July 23, 1991, p. 9) and brought to Arnaldo with whom they waited for the police.

Lorenzo Resta went to the police substation of Concepcion Pequeña and reported the incident to Pfc. Orlando Pitaliano of the Naga City Police Force who was then on duty (TSN, August 1, 1991, p. 4). Pfc. Pitaliano proceeded to the scene of the crime and upon approaching it, met Arnaldo and appellants. Arnaldo turned over to Pfc. Pitaliano appellant's gun, a "Star" .38 caliber handgun with serial number DK-819747, and four rounds of live ammunition. When asked about them, appellant told Pfc. Pitaliano that his employer gave them to him and he did not have the necessary papers for them. Pfc. Pitaliano then brought appellant to the police headquarters of Naga City where appellant was investigated and detained (TSN, August 1, 1991, pp. 4-6).

Accused-appellant claims that there is no evidence to show that the gun (Exh. A) was actually confiscated from him inasmuch as Pfc. Orlando Pitaliano, the arresting officer, did not issue a confiscation receipt for said gun, nor did he place identifying marks on the gun. Whatever shortcomings there may be in the official behavior of Pfc. Pitaliano do not vitiate the evidence of the prosecution that the gun, Exhibit A, was confiscated from accused-appellant, for prosecution witness Barangay Tanod Rodolfo Arnaldo categorically testified that Exhibit A was the gun which he confiscated from accused-appellant and that before he turned it over to the police he jotted down on a piece of paper (Exh. A-1) the serial number, trade mark, and caliber of the gun (Exh. A).

A : For purposes of identification, Your Honor, please, the gun which I am presenting has (already) previously been marked as Exhibit "A" during the pre-trial, and the gun is described as trade mark star, it is a pistol, caliber .380, with Serial No. DK 819747.

Q : Now, why were you able to state before this Honorable Court that this is the very same gun which you confiscated from the accused?

A : Before I turned over it to the police I listed the serial number.

Q : You mean you jotted down the serial number?

A : Yes, sir.

Q : What else did you jot down in identifying this gun?

A : The trade mark Star and caliber .380, and serial no. DK-S19747. I wrote them.

Q : Where did you jot them down?

A : I wrote them in a piece of paper. (The witness is presenting to the Court a piece of paper with writing STAR, Caliber .380, Serial No. DK-S19747.)

Q : When did you jot them down?

A : On May 3, 1991

Q : Before turning over the gun to the police?

A : Yes, sir

At this juncture, we would like to request that the piece of paper with the writing Star, caliber .380 DK-819747, be marked as Exhibit "A-1"

(TSN, July 23, 1991, pp. 12-13)

And of course, Pfc. Orlando Pitaliano unequivocally testified that Exhibit A was the gun which Barangay Tanod Rodolfo Arnaldo turned over to him, mentioning the serial number and the trade mark of the gun.

Q : Please point to him.

A : (Witness pointing to accused Alfredo Yanson).

Q : You said that the gun was turned over to you by Barangay Tanod Rodolfo Arnaldo together with four live bullets and one empty shell. If you see this gun again will you be able to identify it?

A : Yes, sir

Q : Showing to you here a pistol - a handgun - look at it and tell the Court what relation has this to that one turned over to you by Rodolfo Arnaldo as the handgun taken from the accused?

A : The same.

Q : Why do you say that it is the same?

A : Because of the serial number and the trade mark.

Q : What is the serial number?

A : 819747

Q : And the trade mark?

A : Star.

Q : And how about the four live bullets and an empty shell - if they are shown to you, will you be able to identify them?

A : Yes, sir.

(TSN, August 1, 1991, pp. 7-8)

As the gun was thus positively identified by the said two prosecution witnesses, no doubt can reasonably be engendered in the mind of this Court that Exhibit A is the gun confiscated from accused-appellant by Barangay Tanod Arnaldo and turned over by Arnaldo to Pfc. Pitaliano. The testimony of Pfc. Pitaliano, a police officer, and Arnaldo, a Barangay Tanod exercising the functions of a policeman, must be given full credit in the absence of evidence that they were actuated by any improper motive for they are presumed to have performed their duties in a regular manner.

The appellant failed to show that the police officers were actuated by any improper motive in testifying as they did. Courts generally give full faith and credit to police officers for they are presumed to have performed their duties in a regular manner (Rule 131, Sec. 5[m], Rules of Court; *People vs. Gamayon*, 121 SCRA 642; *People vs. Policarpio*, 158 SCRA 85; *People vs. Patog*, G.R. No. 69620, September 24, 1986; *People vs. Natipravat*, 145 SCRA 483; *People vs. De Jesus*, 145 SCRA 521).

(*People vs. Lamog*, 172 SCRA 342, 348 [1989])

Accused-appellant charged that Arnaldo was enraged by accused-appellant's remark that Arnaldo was better off because he was engaged in jueteng and cara y cruz, is totally uncorroborated and comes from an obviously biased and interested witness, and, therefore, cannot be given any evidentiary weight.

Next, accused-appellant tries to capitalize on the supposed mistake of prosecution witness Lorenzo Resta in declaring that the color of the handle of the gun is white, while defense counsel in his manifestation stated that he perceived the color of the handle to be cream. The difference between the colors white and cream is so slight that even if Resta were wrong, his mistake would not affect his credibility. The thrust of the testimony of prosecution witnesses Arnaldo and Pitaliano, identifying the gun on the basis of its serial number and brand, renders Resta's mistake insignificant and inconsequential.

Finally, accused-appellant contends that the prosecution failed to prove that he had no license or permit to carry firearms. In support of his contention, accused-appellant assails the admission of Exhibits C and F, the certifications respectively, issued by the Philippine National Police, Camarines Sur Provincial Office, and the Firearms and Explosives Offices, Camp Crame, to the effect that according to the records of said offices, accused-appellant was not issued a permit to carry firearms. He anchors his contention on Sections 24 and 25 of the Revised Rules of Evidence, which require that a copy of a public document, in order to be admissible in evidence, must contain an attestation by the official having legal custody of the document that the copy is a correct copy of the original or a specific part thereof, and he argues that, since Exhibits C and F do not contain such an attestation, they are not admissible in evidence. Accused-appellant misapprehends the rules on evidence, Section 24 and 25 apply to cases where there is an existing public document in the custody of a public officer. Where there is no existing public document or there is lack of record, the governing rule is Section 28 of Rule 132, which reads:

Sec. 28. Proof of lack of record. - A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

Exhibits C and F were issued in conformity with Section 28 of Rule 132, and are, therefore, admissible in evidence.

In the instant case, however, the decision rendered by the lower court makes mention of Exhibit F-2 showing that the accused is not a registered physician. That document is signed by Jose Ma. Delgado, chairman of the

Board of Medical Examiners, wherein it is stated, in part, that "there is nothing in the records of this Board to show that Mr. Fernando C. Quebral is a registered physician." This document is admissible as evidence of its contents, under one of the exceptions to the hearsay rule, regarding official written statements. "The certificate of a custodian that he has diligently searched for a document or an entry of a specified tenor and has been unable to find it ought to be usually as satisfactory for evidencing its non-existence in his office as his testimony on the stand to this effect would be." (3 Wigmore on Evidence, p. 561.)

(People vs. Quebral, 68 Phil 564, 567-568 [1939])

Moreover, had accused-appellant been issued such a permit to possess firearms, he could have easily presented it in court. But he did not. His failure to do so reinforces the position of the prosecution that he was not issued such a permit.

WHEREFORE, the decision appealed from is hereby affirmed in toto.

SO ORDERED.

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

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