

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NUMERIANO JUBILAG, ACCUSED-APPELLANT.**

G.R. No. 112148. October 28, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Appellant NUMERIANO JUBILAG was charged with violating Presidential Decree No. 1866[1] for having "in his possession and under his custody and control one (1) .38 cal. Smith and Wesson paltik six shooter, with two spent shells, two dud bullets and one live ammunition x x x without x x x the necessary license or permit from the proper authorities." [2] Upon arraignment, the appellant pleaded not guilty. Trial on the merits ensued, after which, Branch 12 of the Regional Trial Court of Manila convicted appellant of the crime charged and sentenced him to suffer the penalty of "life imprisonment RECLUSION PERPETUA with the accessories of the law". [3] aggrieved, appellant interposed the present appeal assigning as errors the following:

I

"GRANTING ARGUENDO THAT THE GUN SUBJECT OF THIS CASE BELONGS TO THE ACCUSED APPELLANT, THE LOWER COURT ERRED IN ADMITTING IT IN EVIDENCE HAVING BEEN TAKEN IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS, AND EXISTING JURISPRUDENCE ON THE MATTER.

II

"THE LOWER COURT GRAVELY ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES, INSTEAD OF FINDING THEM HIGHLY CONTRADICTORY AND IMPROBABLE." [4]

In support of his first assigned error, appellant invokes his constitutional right to be secure against unreasonable search and seizure, [5] and the corollary proscription against admitting any evidence obtained in violation of the said right. [6] For its part, the prosecution contends that as the appellant was arrested in flagrante delicto, his arrest without a warrant is expressly allowed by law, thus:

"SEC. 5. Arrest without a warrant; when lawful,- 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;

x x x x x x x x [7]

The prosecution further posits that the seizure of the unlicensed firearm in appellant's possession, having been made pursuant to a lawful arrest, is likewise valid even in the absence of the requisite search warrant. [8] Hence, the inapplicability of the exclusionary rule.

The resolution of the issues presented before us ultimately boils down to a determination of facts, first and

foremost of which is whether or not appellant was indeed arrested in the actual commission of the crime charged. As in every case, there are two sides to this one, the prosecution's and the appellant's. Who to believe is a matter of credibility, and is usually best ascertained by the trial court which had the opportunity to observe the witnesses directly and to test their credibility by their demeanor on the stand.[9] Thus, the general rule that factual findings of the trial court are accorded respect and are not disturbed on appeal.[10] But a review of the records of the instant case compels us to take exception to the aforementioned general rule. At the outset, it is important to note that the judge who decided this case was not the same one who heard the evidence. And the rule that findings of the trial court on the credibility of witnesses are accorded great weight does not apply when the judge who rendered the decision was not the judge who heard the witnesses.[11] More importantly, we find that the trial court erred in adopting the prosecution's story "hook, line and sinker" albeit riddled with patent inconsistencies and improbabilities on material points.

The prosecution summarized its story as follows:

"On December 17, 1988, between 12:30 and 1:00 o'clock in the afternoon, upon verbal complaint of Lilian Alcantara (also referred to as Mrs. Santos) that the brother of the appellant, Lorezo Jubilag, shot her with a "sumpac", a police team headed by Lt. Hernandez was formed and dispatched to arrest Lorenzo Jubilag at his residence located at No. 1276 Gonzalo St., San Andres, Manila (TSN, March 6, 1987, p. 3).

"Upon arriving at the designated place, Lt. Hernandez and company positioned themselves at the back of the house, while the group of Pat. de Leon, Flores, Qitos, and the complainant went to the front of the house whose (sic) entrance door was half-open (TSN, March 6, 1989, p. 31). When Pat. de Leon introduced and identified themselves as policemen, Lorenzo Jubilag who was inside the house fired a gun at them, then ran towards the roof of the house, prompting Pat. de Leon to give chase followed by Pat. Flores and Qitos (TSN March 6, 1989, pp. 6-8).

"Pat Flores while entering the house, saw appellant point a gun at him, causing him to duck and seek cover beside the door. Then noticing that appellant was fixing his gun, Pat. Flores rushed and grappled with him for possession of it and in the course of which it fired, the bullet hitting the wall. Thereafter, Pat. Qitos arrived and helped Pat. Flores wrest the gun from appellant (TSN, May 12, 1989, pp. 5-6).

"After subduing appellant, they placed him under arrest and handcuffed him. Meanwhile, the rest of the team searched the house and found Roberto Jubilag in possession of marijuana inside one of the rooms for which he was arrested (TSN, March 6, 1989, pp. 10 and 24). Afterwards, both the appellant and his brother Roberto Jubilag were brought to the police station for investigation. Lorenzo Jubilag however, eluded arrest." [12]

However, when questioned on the witness stand, the police officers involved in the arrest of the appellant gave testimonies differing on material aspects. As correctly pointed out by the appellant, the testimony of Pat. Manuel de Leon that their mission was to arrest the Jubilag brothers for selling prohibited drugs and illegal possession of firearms blatantly contradicted the declaration made in open court by Pat. Pedro Flores that their mission was only to arrest appellant's brother, Lorenzo Jubilag, for allegedly shooting the complainant Lilian Alcantara (also known as Mrs. Santos) with a "sumpac". [13] Thus, the following irreconcilable testimonies.

Pat. Manuel de Leon:

"Q

And will you tell us exactly where you were prior to 12:30 in the afternoon of that date?

A

We were dispatched by our Superintendent, General Lim together with out (sic) Deputy Commander, Lt. Hernandez to proceed at San Andres, Manila and arrest the Jubilag brothers. [14]

x x x x x x x x

Q

In connection with the complaint of Mr. and Mrs. Santos," I am sorry, Your Honor" he was complaining against one Lorenzo Jubilag, is that correct?

A

No, sir, it's the Jubilag brothers.

Q

Not only Lorenzo Jubilag?

A

All the Jubilag brothers.

Q

Did not Mr. and Mrs. Santos, particularly Mrs. Santos tell you that Lorenzo Jubilag fired at her a sumpak but missed?

A

I do not know about that, sir.

Q

So you would insist that your purpose in going there was on the basis of the complaint of Mr. and Mrs. Santos and to arrest the four Jubilag brothers, is that correct?

A

Yes, sir.

Q

And did this (sic) Mr. and Mrs. Santos ever tell you what kind of crime the four brothers committed?

A

Yes, sir.

Q

What crime?

A

The illegal selling of drugs like marijuana and illegal possession of firearm."[15]

Pat. Pedro Flores:

"Q

Do you know what was the basis of complaint of Lilian Alcantara (also referred to as Mrs. Santos)?

A

Lt. Hernandez told us to arrest Lorenzo Jubilag, Jr. because he shot her.

Q

Did Lt. Hernandez in fact organized (sic) a team as ordered by Gen. Lim?

A

Yes sir.

Q

Who composed the team organized by Lt. Hernandez?

A

Pat. Manuel de Leon, Pat Ernesto de Leon, Pat Francisco Quito and I, sir.

x x x x x x x x[16]

Q

And you would insist that this order was to arrest Lorenzo Jubilag?

A

Yes sir.[17]

Appellant further maintains that the testimony of Pat. de Leon that as the policemen were about to enter the house, Lorenzo Jubilag who was then inside, pointed and fired a gun at them is at odds with the statement of Pat. Flores that it was the appellant who fired a gun at them.[18] This discrepancy is most crucial as it goes into the very basis of appellant's arrest. While the prosecution claims that appellant's act of pointing and firing a gun at them justifies his warrantless arrest, appellant insists that such alleged actuations did not take place.

In recounting the events that transpired immediately prior to the arrest of appellant, Pat. de Leon testified as follows:

"Q

Before that (arrest), you said that you introduced yourself (sic) as members of the police?

A

Yes, sir, loud enough to hear us.

Q

When you introduced yourselves to the Jubilag brothers, what was their answer?

A

They fired a gun to (sic) us.

Q

Which is which -- before they pointed the gun, now you said they fired a gun -- which is which, Mr. witness?

A

Both, sir, pointed and fired tu (sic) us.

x x x x x x x x

Q

And you said that when you introduced yourselves as police officers to the Jubilag brothers including the accused in this case, you were answered by pointing and firing a gun.

COURT

Who among the four pointed and fired a gun?

A

Lorenzo, Your Honor.

PROSECUTOR

Q

And insofar as the accused Numeriano Jubilag is concerned, what if any, did he do at that point and time?

A

He hid in one of the cabinets.

Q

How do you know that he hid one of the cabinets when you said that you are not the one who entered the house of the Jubilag brothers?

A

When two of my companions entered their house, Lorenzo pointed the gun and fired at us. After he pointed and fired a gun he 3

Q

And that circumstance that you mentioned, did you actually see with your own two eyes?

A

Yes, sir."[19]

On the other hand, Pat Pedro Flores was categorical in his declaration that it was appellant who pointed and fired a gun at the policemen upon their entry into the Jubilag residence. Thus:

"Q

What happened when you reached the target area?

A

We introduced ourselves as policemen because the door was ajar, sir.

Q

What happened next after that?

A

When we went upstairs (sic), as we introduced ourselves as policemen, we step (sic) the door, I saw Numeriano

Jubilag pointing a gun at me, causing me to duck, sir.

Q

By the way, where is the specific location or address of your target area where you are supposed to effect the arrest of Lorenzo Jubilag?

A

1276 Gonzalo St., San Andres, Manila, sir.

Q

And what happened after you saw Numeriano Jubilag pointed (sic) to you a firearm to (sic) which you ducked?

A

It cause (sic) me to duck and second (sic) later I peep (sic) through the door and I saw that he was fixing his gun, sir.

Q

What happened after you saw Numeriano Jubilag fixing his gun?

A

So I rushed to him, sir.

Q

What happened after that?

A

While we scuffled for the possession of the gun, the gun went off, sir.

Q

What else happened after that?

A

When the gun went off and we were grappling for the gun, Pat. Quinto came to help me and so we wrested the gun from Numeriano Jubilag and arrested him, sir."[20]

We are baffled by the glaring inconsistencies between the testimonies of these two key eyewitnesses. As their testimonies cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and as correctly averred by the appellant, their story is a mere concoction. What actually transpired in the afternoon of December 17, 1988 may be culled from the testimonies of the appellant and defense witness Roberto Jubilag as follows: On the said date, between 12:30 and 1:00 o'clock in the afternoon, some members of the Jubilag household, including appellant's brother, Roberto were in the sala watching the television program "Eat Bulaga" while appellant was sleeping in his room. Suddenly, Pat. Manuel de Leon kicked and pushed their door open then fired a shot. Pat Manuel de Leon pointed a gun to the head of Roberto who, fearing that the gun might go off, ducked. Immediately thereafter, Roberto heard a shot and came to know later that his grandmother was hit on the foot by the said shot. Six other persons namely, Pat. Pedro Flores, Pat. Emerito de Leon, Pat. Quito, Lt. Hernandez, a civilian, Emmanuel Santos, and a photographer, Fidel also barged into the Jubilag's house. Pat. Manuel de Leon turned appellant over to Pat. Flores while the former together with the photographer entered

appellant's room.[21] Meanwhile, appellant was awakened by the sound of gunshots and was seated on his bed when Pat. Manuel de Leon and the photographer entered his room. The latter pointed his gun at appellant and dragged him outside. At the sala, one of the policemen asked Emmanuel Santos if appellant was Lorenzo, the person they were looking for. Emmanuel Santos replied that appellant was not Lorenzo, but he should nevertheless be brought to the police station with the others.[22] While at the police station, appellant and Roberto were brought to another room where they saw, for the first time, a gun and marijuana on top of the table. The policemen then asked them to stand behind the table while the photographer took their picture.[23]

The appellant was an unfortunate scapegoat and the victim of a frame-up. The foregoing circumstances lead us to the conclusion that the gun allegedly confiscated from him was planted evidence. He is correct in his assertion that had the policemen really caught him in flagrante delicto, they would have caused a photograph of him and the incriminating evidence to be taken right at the scene of the crime. Was that not the purpose of bringing the photographer along with them on their raid of the Jubilag residence? Another suspicious circumstance is the fact that according to the policemen, they found Roberto inside one of the rooms in possession of marijuana. What were the policemen doing inside the room of Roberto if appellant was already arrested in the sala allegedly while in the act of committing a crime? How can they now deny that they illegally searched every room of the house?

The credibility of the prosecution witnesses is highly questionable and crumbles in the face of the aforementioned inconsistencies in their testimonies and the suspicious circumstances surrounding appellant's arrest. How the trial court could have overlooked these continues to puzzle us. In upholding the prosecution, the trial court erroneously relied, first, on the general rule that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony,[24] and second, on the presumption of regularity in the performance of official duties by the police officers.[25] However entrenched these rules may be, they do not find application in the case at bar. Thus, in *People v. Remorosa*,[26] where the testimony of the police officer was tainted with material contradictions, we held that, "irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the guilt of the appellant and his culpability of the crime charged." [27] As in the said case, the moral certainty of the appellant's culpability has not been established in this case. Instead, the palpable inconsistencies on material points corroborate and strengthen appellant's version of the incident. Finally, it is a settled rule in our jurisprudence that:

"If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction." [28]

WHEREFORE, in view of the foregoing, the appealed decision is REVERSED and SET ASIDE, and the appellant NUMERIANO JUBILAG is hereby ACQUITTED for lack of proof beyond reasonable doubt of his guilt of the crime charged. Appellant's immediate release is ordered unless he is detained for some other lawful cause.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.

[2] Informations dated December 29, 1988; Records, p. 1.

[3] Decision dated February 25, 1992, p. 6; Rollo, p. 17.

N.B. The correct imposable penalty under Sec. 1 of P.D. No. 1866 is reclusion temporal in its maximum period to reclusion perpetua. Reclusion perpetua is not synonymous with life imprisonment.

[4] Appellant's Brief, p. 1; Rollo, p. 37.

[5] Section 2, Article III of the 1987 Constitution.

[6] Section 3, Article III of the 1987 Constitution.

[7] Section 5, Rule 113 of the Rules of Court.

[8] Section 12 Rule 127 of the Rules of Court provides that, "[a] person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

[9] *People vs. Errojo*, 229 SCRA 49 (1994); *People vs. Gomez*, 229 SCRA 138 (1994).

[10] *People vs. San Andres*, G.R. No. 107735, February 1, 1996; *Del Mundo vs. Court of Appeals*, G.R. No. 108522, January 29, 1996; *Lim vs. Court of Appeals*, 229 SCRA 616 (1994).

[11] *People vs. Lizada*, 225 SCRA 708 (1993).

In the case of *People vs. Escalante*, 238 SCRA 554 (1994), we held that: "Ordinarily, this Court will not interfere with the trial court's findings and conclusions on the credibility of the witnesses, in deference to the rule that the trial court having had the opportunity to observe the demeanor and conduct of the witnesses while testifying, is in a better position to properly gauge their credibility. This rule of appreciation of evidence however, does not apply where-as in the present case-one judge heard the testimony and another penned the decision, for, in such a case, the reason for the rule does not exist (p. 563).

[12] Appelle's Brief, pp. 2-4; Rollo, p. 76a-78a.

[13] *Supra* note 4, p. 14; Rollo, p. 50.

[14] TSN, Pat. Manuel de Leon, Hearing on March 6, 1988, p. 3.

[15] *Id.* at p. 18.

[16] TSN, Pat Pedro Flores, Hearing on May 12, 1989, p. 4.

[17] *Id.*, at p. 10.

[18] *Supra* note 4, p. 15; Rollo, p. 51.

[19] *Supra* note 14, pp. 7-8 [Underscoring provided].

[20] *Supre* note 16, p. 5 [Underscoring provided].

[21] TSN, Roberto Jubilag, June 2, 1989, pp. 5-10.

[22] TSN, Numeriano Jubilag, June 13, 1989, pp. 2-3.

[23] *Id.*, at p. 11.

[24] *People vs. Porras*, G.R. No. 114263-64, March 29, 1996; *People vs. Conde*, G.R. No. 112034, January 31,

1996; People vs. San Andres, G.R. No. 107735, February 1, 1996

[25] People vs. Bagares, 235 SCRA 30 (1994); People vs. Muyano, 235 SCRA 184 (1994).

[26] 200 SCRA 350 (1991).

[27] Id., at p. 359; People vs. Gesmundo, 219 SCRA 443, 751(1993); People vs. Adonis, 240 SCRA 773.

[28] Supra note 26 at p. 360 citing People vs. Ale, 145 SCRA 64; People vs. Salangga, 234 SCRA 407; People vs. Villagonzalo, 238 SCRA 215.

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