ALEJANDRO TECSON, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 113218. November 22, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal by certiorari is the Decision[1] of the Court of Appeals in CA-G.R. No. 11744 promulgated on August 31, 1993, and its Resolution dated December 23, 1993, denying petitioner's motion for reconsideration.

This case stemmed from a charge of illegal possession and use of counterfeit US dollar notes, as defined and penalized under Article 168 of the Revised Penal Code, against herein petitioner Alejandro Tecson y Florencio. The Information reads:

> That on or about April 28, 1990, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, feloniously and knowingly have in his possession and under his custody and control, with intent to use and pass, as in fact he did use and pass ten (10) pieces of 100-US dollar notes of the Federal Reserve Note, or a sum of $1,000.00 (US Dollar) to Pedro C. Labita, a confidential assistant of the Central Bank of the Philippines, which bills were in the resemblance and similitude of the dollar bills issued by the United States Government, the said accused knowing, as he did, that the said US dollar bills were forged and falsified.
>
> Contrary to law.

Upon being arraigned on July 20, 1990, the petitioner entered the plea of "Not guilty" to the charge.

After trial on the merits, the trial court rendered a Decision[2] dated May 6, 1991, the dispositive portion of which reads:

> WHEREFORE, the Court finds and declares accused ALEJANDRO F. TECSON, GUILTY beyond reasonable doubt of the offense as defined in Art. 168 and penalized in Art. 166 paragraph 1 of the Revised Penal Code; and hereby sentenced him to suffer an indeterminate penalty of from EIGHT (8) YEARS and ONE (1) DAY of prision mayor in its medium period as minimum to TEN (10) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of prision mayor in its medium period as maximum; to pay a fine of P5,000.00; and to pay the cost.
>
> The Branch Clerk of Court is directed to burn the ten (10) pieces of 100 US dollar notes subject of the offense.
>
> SO ORDERED.

Aggrieved by the decision of the trial court, the petitioner filed an appeal with the Court of Appeals which affirmed the judgment of the trial court in toto on August 31, 1993. Petitioner sought a reconsideration of the decision of the appellate court but it was denied on December 23, 1993.[3]

Hence, the instant petition.

From the evidence adduced by the prosecution, it appears that a civilian informer personally informed the Cash

Department of the Central Bank of the Philippines that a certain Mang Andy was involved in a syndicate engaging in the business of counterfeit US dollar notes. On April 26, 1990 a test-buy operation was ordered by Atty. Pio Chan, Jr., Chief of the Investigation Staff of the Central Bank, which resulted in the purchase from Mang Andy of one (1) US dollar note for Two Hundred Pesos (P200.00) that was found to be counterfeit by the Currency Analysis and Redemption Division of the Central Bank. Consequently, Atty. Chan formed a team to conduct a buy-bust operation composed of prosecution witnesses Pedro Labita, Confidential Assistant of the Investigation Staff of the Central Bank, and Cpl. Johnny Marqueta, a representative of the US Secret Service, together with William Pasive, Warren Castillo and Carlos Toralde, Jr. also of the Investigation Staff of the Central Bank.[4]

On April 28, 1990, at about 11:30 o'clock in the morning, the team proceeded to the Jollibee restaurant in Rizal Ave., Sta. Cruz, Manila. Three (3) members of the team namely: William Pasive, Carlos Toralde, Jr., and Warren Castillo positioned themselves outside the Jollibee restaurant while Pedro Labita and Johnny Marqueta proceeded inside. Subsequently, the civilian informer arrived inside the restaurant and approached a man who was seated two (2) tables away from where Labita and Marqueta were positioned. The informer introduced to Mang Andy the said Pedro Labita and Johnny Marqueta as the persons interested in buying US dollar notes. Apparently convinced, the man drew ten (10) pieces of US $100 dollar notes from his wallet. At that moment, and upon a pre-arranged signal from the informer, Labita and Marqueta introduced themselves as Central Bank operatives and apprehended the man called Mang Andy whom they later identified as the herein petitioner Alejandro Tecson.[5]

During the investigation at the Central Bank, the petitioner affixed his initial on the dorsal portion of each of the ten (10) pieces of US $100 dollar notes[6] and signed the corresponding receipt[7] for the said US dollar notes seized from him. He also executed a "Pagpapatunay"[8] attesting to the proper conduct of the investigation by the Central Bank operatives on the petitioner. Subsequent examination by the Currency Analysis and Redemption Division of the Central Bank shows that the ten (10) pieces of US $100 dollar notes confiscated from the petitioner are indeed counterfeit.[9]

The defense denied any liability of the petitioner for the crime of illegal possession and use of counterfeit US dollar notes. Petitioner testified that he was inside the Jollibee restaurant in Sta. Cruz, Manila on April 28, 1990 to meet a certain Nora Dizon, wife of his friend, Reynaldo de Guzman, who previously sought his assistance in securing insurance payment bond. After Nora's arrival at the restaurant, she handed to him a sealed envelope which he accepted thinking that it contained the documents pertaining to the insurance payment bond. Upon receipt of the sealed envelope, however, two (2) male persons approached and immediately handcuffed him. They dragged him outside the restaurant where three (3) other persons were waiting. After boarding a taxi, they blindfolded the petitioner and took him to the Central Bank building in F. B. Harrison St., Manila where he was investigated.[10]

The investigators inquired from the petitioner about the source of the fake US dollar notes. Petitioner vehemently denied having possession nor any knowledge as to the source of the fake US dollar notes and claimed that the same were merely planted by the arresting officers. Petitioner also claimed that he was tortured into initialing the dorsal portions of the ten (10) counterfeit US $100 dollar notes and into signing the Receipt and Inventory for Property/Articles Seized as well as the "Pagpapatunay".[11]

The instant appeal by certiorari[12] reveals the following assignment of errors:

> I
>
> RESPONDENT COURT OF APPEALS FAILED TO FIND THAT THE PROSECUTION'S EVIDENCE IS NOT SUFFICIENT TO SUPPORT PETITIONER'S CONVICTION OF THE CRIME CHARGED.

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II

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION IS NOT ADMISSIBLE IN LAW.

In essence, petitioner claimed that no buy-bust operation took place inside the Jollibee restaurant in Rizal Ave., Sta. Cruz, Manila on April 28, 1990 inasmuch as there was no haggling as to the price between him and the poseur buyers, and that no money changed hands. He was merely framed up by the Central Bank operatives by planting fake US dollar notes inside the envelope which was handed to him by the wife of his friend who earlier asked for his assistance regarding insurance payment bond. He accepted the envelope thinking that it contained the documents pertaining to the insurance payment bond.

Assuming arguendo that a buy-bust operation was conducted, the petitioner claimed that the testimony of prosecution witness Pedro Labita to the effect that the civilian informer had to convince the petitioner negated any alleged intent on his part to sell counterfeit US dollar notes to the poseur buyers. In addition, he averred that prosecution witnesses Labita and Marqueta had no personal knowledge as to petitioner's alleged possession of counterfeit US dollar notes as they merely relied on the predetermined signal of the civilian informer before making the arrest. Hence, the ten (10) counterfeit US $100 dollar notes allegedly confiscated from him (petitioner) incidental to his arrest are inadmissible in evidence. Likewise, his initial on the dorsal portion of the said US dollar notes and his signature on the "Pagpapatunay" are inadmissible for having been obtained without the aid of counsel. That is the version of the petitioner.

The respondents, represented by the Office of the Solicitor General (OSG), countered in their Comment that the absence of haggling among the parties to the buy-bust operation did not negate petitioner's actual possession and use of the ten (10) counterfeit US $100 dollar notes, which fact of possession is punishable by law. Prosecution witnesses Pedro Labita and Johnny Marqueta, who acted as poseur buyers, testified that they saw the petitioner drew the subject fake US dollar notes from his wallet[13] in order to sell the same to them.

While respondents, through counsel, conceded that the "Pagpapatunay" and the "Receipt and Inventory for Property/Articles Seized" which were signed by the petitioner during his custodial investigation are inadmissible in evidence for having been obtained in the absence of his counsel, they maintained that there are sufficient independent evidence on record to prove his guilt beyond reasonable doubt.[14]

By way of reply,[15] the petitioner, who is now 70 years of age,[16] contends that possession should be coupled with intent to use the counterfeit US dollar bills in order to hold him liable under the provision of Article 168 of the Revised Penal Code.

Article 168 of the Revised Penal Code provides that:

> ART. 168. Illegal possession and use of false treasury or bank notes and other instruments of credit.--Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

The elements of the crime charged for violation of Article 168 of the Revised Penal Code, are: 1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; 2) that the offender knows that any of the said instruments is forged or falsified; and 3) that he either used or possessed with intent to use any of such forged or falsified instruments.[17] Hence, possession of fake dollar notes must be coupled with the act of using or at least with intent to use the same as shown by a clear and deliberate overt act in order to constitute a

crime,[18] as was sufficiently proven in the case at bar.

We find no cogent reason to overturn the decision of respondent Court of Appeals which affirmed the judgment of the trial court finding the petitioner guilty beyond reasonable doubt of the crime charged in the case at bar. The prosecution established, through the testimonies of Pedro Labita and Johnny Marqueta, that a buy-bust operation was conducted by the combined agents of the Central Bank of the Philippines and the US Secret Service, and that the petitioner was therein caught in flagrante delicto in the possession of and in the act of offering to sell counterfeit US dollar notes. During the buy-bust operation, prosecution witnesses Labita and Marqueta were introduced by the civilian informer to the petitioner as interested buyers of fake US dollar notes. When the petitioner was in the act of drawing the ten (10) pieces of fake US $100 dollar notes from his wallet, he was immediately placed under arrest by Labita and his team.

The testimony of Pedro Labita which was corroborated by Johnny Marqueta and the presentation during the trial of the ten (10) counterfeit US $100 dollar notes, which were confiscated from the petitioner when he was arrested, proved beyond reasonable doubt the guilt of the petitioner for the crime of illegal possession and use of fake US dollar notes under Article 168 of the Revised Penal Code. The trial court in its decision characterized the respective testimonies of prosecution witnesses Labita and Marqueta as "clear, straightforward, impartial and (thus) convincing".[19] We fail to discern any ill motive on the part of the said prosecution witnesses in testifying against the petitioner whom they met for the first time only on April 28, 1990. Petitioner himself admitted during the trial that he was not aware of any ill motive on the part of the prosecution witnesses to implicate him in the crime of counterfeiting US dollar notes.[20] The settled rule is that the testimony of even a lone prosecution witness as long as it is positive and clear and not arising from an improper motive to impute a serious offense to the accused, deserves full credit.[21]

The absence of haggling as to the price of the subject fake US dollar notes between the petitioner and the poseur buyers did not negate the fact of the buy-bust operation. Significantly, the transaction for the purchase of fake US dollar notes was only at its inception when the Central Bank operatives at that point decided to apprehend the petitioner. Mere possession coupled with intent to use the counterfeit US dollar notes, as proven in the case at bar, is sufficient to constitute the crime under Article 168 of the Revised Penal Code.

The facts, as established by the evidence adduced, show that the civilian informer introduced prosecution witnesses Labita and Marqueta to the petitioner as the persons interested in buying fake US dollar notes. Having been thus convinced, petitioner removed his wallet from his pocket and drew the ten (10) pieces of fake US $100 dollar notes to show the same to the supposed buyers. Petitioner's natural reaction to the seeming interest of the poseur buyers to buy fake US dollar notes constitutes an overt act which clearly showed his intention to use or sell the counterfeit US dollar notes. In any event, what we have here is a case of entrapment which is allowed, and not instigation.

Petitioner cannot validly claim that he had no intention of committing the crime by citing the testimony of Pedro Labita to the effect that he (petitioner) was merely convinced by the civilian informer that Labita and Marqueta were interested to buy fake US dollar notes. The pertinent portion of Labita's testimony reads, thus:

> ASST. CITY PROSECUTOR:
>
> Q
>
> All right, let me clarify this, Mr. Witness. This informant or informer that you mentioned, he also arrived there at the Jollibee Restaurant, Mr. Witness?
>
> A

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Yes, sir, but he arrived late.

Q

So, he arrived late. Now, after the arrival of this informant at the Jollibee Restaurant, what did this informant do inside the Jollibee restaurant while you were there, Mr. Witness?

A

Our informer tried to convince the accused and after convincing that we are the buyers of said counterfeit notes, he immediately draws (sic) from his wallet that (sic) counterfeit notes, and upon pre-signal of our informer, we immediately apprehended the accused, sir.[22]

The above-quoted testimony of prosecution witness Labita negates the petitioner's claim that he was merely instigated into committing the crime by the civilian informer. It appears that prior to the buy-bust operation, the petitioner already had the intention to sell counterfeit US dollar notes as he, in fact, had an agreement with the civilian informer to arrange for a meeting with interested buyers. In other words, the civilian informer did not have to convince the petitioner to sell fake US dollar notes during the buy-bust operation on April 28, 1990 inside the Jollibee restaurant in Rizal Ave., Sta. Cruz, Manila. What the informer actually did during the buy-bust operation was simply to convince the petitioner that prosecution witnesses Labita and Marqueta were interested buyers of counterfeit US dollar notes.

The petitioner cannot validly impugn the admissibility of the subject ten (10) counterfeit US $100 dollar notes confiscated from him when he was thus arrested. It is clear from the testimony of prosecution witness Pedro Labita that he saw the petitioner drew several pieces of fake US dollar notes from his wallet to show to them after they were introduced by the civilian informer as the interested buyers while they were inside the Jollibee restaurant, thus:

ASST. CITY PROSECUTOR:

Q

Now, Mr. Witness, after this Johnny Marqueta and you were introduced to the accused, what did the accused do after the introduction?

A

He immediately drew his counterfeit dollar notes from his wallet and right after that we identified ourselves as agents of the Central Bank, sir.[23]

When the arrest of the petitioner was made, Labita did not have to rely on the prearranged signal of the informer inasmuch as he (Labita) had unhindered view and appreciation of what was then taking place right before his eyes. Hence, the ten (10) counterfeit US $100 dollar notes are admissible in evidence for the reason that the petitioner was caught in flagrante delicto by the prosecution witnesses during the said buy-bust operation. In other words, this is a case of a legally valid warrantless arrest and seizure of the evidence of the crime.

In view of the foregoing, petitioner's allegation that he was framed-up by the Central Bank agents does not deserve any consideration. This hackneyed defense of alleged frame-up of the accused caught in flagrante delicto during a buy-bust operation has been viewed with disdain by the courts for it is easy to concoct and difficult to prove.[24] Besides, there is a legal presumption that public officers, including arresting officers, regularly perform their official duties.[25] That legal presumption was not overcome by any credible evidence to the contrary.

Apparently clutching at the last straws, as it were, petitioner also alleged that he was tortured into signing the

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dorsal portions of the fake ten (10) US $100 dollar notes confiscated from him by the arresting officers and the "Pagpapatunay". Other than his self-serving testimony, the petitioner failed to prove his allegation of torture. Also, he did not file any criminal or administrative action against his alleged tormentors. Suffice it to state that petitioner's conviction for the crime charged in the information is not anchored on the evidence obtained during his custodial investigation which were disregarded by respondent appellate court for having been obtained without the assistance of his counsel.

In sum, there is no reversible error in the subject Decision of the Court of Appeals.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. No. 11744 is hereby AFFIRMED. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Penned by Associate Justice Antonio M. Martinez and concurred in by Associate Justices Serafin V. C. Guingona and Eubolo G. Verzola, Twelfth Division; Rollo, pp. 22-32.

[2] Penned by Judge Benito C. Se, Jr. Original Records, pp. 110-114.

[3] Rollo, p. 45.

[4] TSN dated August 29, 1990, pp. 8-10; TSN dated September 13, 1990, pp. 6-7.

[5] TSN dated August 29, 1990, pp. 10-14; TSN dated September 13, 1990, pp. 8-9.

[6] Exhibits "A" to "A-9".

[7] Exhibits "D" to "D-1".

[8] Exhibits "C" to "C-1".

[9] Exhibit "E".

[10] TSN dated February 6, 1991, pp. 3-4.

[11] TSN dated February 6, 1991, pp. 4-7.

[12] Rollo, pp. 8-20.

[13] Comment. Rollo, pp. 59-71.

[14] Ibid.

[15] Rollo, pp. 81-86.

[16] Rollo, p. 111.

[17] The Revised Penal Code by Luis B. Reyes, Twelfth Edition, Revised 1981, p. 203.

[18] People v. Digoro, 123 Phil. 196, 199 (1966).

[19] Decision, p. 4. Original Records, pp. 110-114.

[20] TSN dated February 6, 1991, pp. 11-12.

[21] Garcia v. CA, 254 SCRA 542, 551 (1996) citing People v. Abelita, 210 SCRA 497, 503 (1992).

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[22] TSN dated August 29, 1990, p. 12.

[23] TSN dated August 29, 1990, p. 13.

[24] People v. Chen Tiz Chang, 325 SCRA 776, 803 (2000); People v. Sy Bing Yok, 309 SCRA 28, 38 (1999).

[25] People v. Gonzales, 230 SCRA 291, 296 (1994).

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