

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DATUKON BANSIL Y ALOG, ACCUSED-APPELLANT.*G.R. No. 120163. March 10, 1999*

Ponente: QUISUMBING, J.

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This is an appeal from the decision[1] of the Regional Trial Court of Manila, Branch 43, in Criminal Case No. 93-128854 finding accused-appellant Datukon Bansil y Alog guilty beyond reasonable doubt of the crime of illegal possession of firearms under Presidential Decree No. 1866[2] for having in his possession a .45 cal. pistol and six (6) live ammunitions without the required license, and sentencing him to suffer the penalty of reclusion perpetua.

Appellant herein is a twenty-eight (28) year-old construction worker residing in Quiapo, Manila, who was arrested by a team of policemen allegedly led by Major Jaime Ortega of Substation 3 of the Western Police District (WPD), upon an informer's tip that appellant was one of the suspects in the killing of three persons some weeks before in Quiapo, Manila.

The facts as presented by the prosecution show that on October 28, 1993 at around 5:00 o' clock in the afternoon, the desk officer of Sub-station 3 of the Western Police District (WPD) received information from an informant (whose identity was not divulged) that a suspect in a killing in Quiapo some weeks before was in the vicinity of the Muslim Mosque in Quiapo, Manila.[3] Responding to the information, Sub-station Commander Jaime Ortega, PO3 Liquido Delgado, Mario Montes and SPO4 Oscar V. Clemente proceeded to the Muslim area where they saw several persons conversing at the corner of Elizondo St.. One of said persons had a suspicious bulge in his stomach, and when frisked, a .45 cal. pistol with an extended magazine and six (6) live bullets was recovered from the center front of his waist line. Major Ortega took the gun and brought appellant to the sub-station.[4] SPO4 Redolfín Coloma notified SPO3 Jaime D. Mendoza of the WPD Homicide Division to take custody of the appellant. That same day, SPO3 Mendoza received the person of the accused and the subject firearm for safekeeping.

The defense contradicts the prosecution's version. According to the defense, prior to his arrest appellant was given by his cousin, Mike Mancupao, the patrolman commander of precinct no. 3, to Major Ortega, one of the arresting officers, as a "helper." [5] On three occasions, Major Ortega asked appellant to collect money from a certain Hadji Baddie allegedly arising from certain drug deals. On the fourth occasion, appellant was unable to locate Hadji Baddie at his residence near the Pasig River.[6] His further efforts to locate Hadji Baddie proved futile, hence, appellant stopped reporting to Major Ortega. On October 28, 1993, at around 3:00 o'clock in the afternoon, while appellant and his companions, Hidrain Soliman and Teecaria, were having halo-halo at the Hadji Asia Restaurant at Elizondo St. in Quiapo, Manila, Major Ortega came up to him, companionably placed his hand on his shoulder and invited him to talk outside.[7] The two then proceeded in the direction of the Barter Trade Area. This exchange was witnessed by one of the waitresses in said restaurant, Serabanon Angcob, who also testified in court that she knows both appellant and Major Ortega since the two used to have halo-halo at the restaurant where she

worked.

Appellant claims that Major Ortega asked him about the money from Hadji Baddie and appellant explained that he could no longer find him, which made Major Ortega angry. Major Ortega then brought appellant to the precinct where he was locked up.[8] Thereafter, according to appellant, several persons showed him a gun; they insisted it belonged to him. He was told that to prevent further harm on himself, he should sign a document admitting that he committed a crime. When appellant adamantly refused to do so, some unidentified persons mauled him before sending him back to jail.[9]

Appellant insists that he never met the prosecution witness SPO4 Clemente prior to the court hearing, and that the only person who arrested him was Major Ortega.[10] He categorically denies ever having in his possession a gun at the time he was arrested by Major Ortega.

In an Information[11] dated November 4, 1993, Assistant City Prosecutor Tomas R. Romaquin charged the accused-appellant with the crime of violation of Presidential Decree No. 1866, allegedly committed as follows:

"That on or about October 28, 1993, in the City of Manila, Philippines, the said accused, did then and there wilfully and unlawfully have in his possession and under his control and custody a .45 Colt pistol with Serial No. FG-788041 with six (6) live ammunitions which was tucked in his waist, without first securing the necessary license or permit therefor from the proper authorities.

CONTRARY TO LAW."

Upon arraignment on December 22, 1993, appellant, assisted by counsel de oficio, Atty. Bonifacio M. Macabaya,[12] entered a plea of "not guilty".

During trial, the prosecution presented four (4) witnesses, namely: (1) SPO3 Romeo T. de Guzman, a representative from the Firearms and Explosives Unit of Camp Crame, whose testimony was dispensed with when the defense stipulated with the prosecution that the certification (Exh. "A") dated January 21, 1994 (that the accused is not a licensed/ registered firearms holder of any kind and caliber) was duly issued and signed by the proper authorities;[13] (2) SPO4 Oscar V. Clemente, one of the apprehending officers; (3) SPO3 Jaime D. Mendoza, the investigating officer; and (4) Police Chief Inspector Manolo G. Martinez, who testified that his participation in the case is limited to the fact that the firearm allegedly confiscated from the appellant was turned over to his division for safekeeping purposes only.[14]

On the other hand, the defense presented two witnesses: (1) appellant Datukon Bansil himself, and (2) Serabanon Angcob, the waitress at the Hadji Asia Restaurant.

After trial, the lower court rendered a decision[15] finding appellant guilty as charged, the dispositive portion of which reads:

"WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt of Violation of P.D. 1866 as charged and therefore, the accused, Datukon Bansil y Alog is hereby sentenced to suffer the penalty of reclusion perpetua.

SO ORDERED."

Hence, the present appeal. Appellant seeks reversal of his conviction on the following grounds:

I.

THE COURT A QUO ERRED IN NOT HOLDING THAT PRESIDENTIAL DECREE NO. 1866 VIOLATES SECTION 19 OF ARTICLE III OF THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES.

II.

THE COURT A QUO ERRED IN HOLDING THAT THE BULGING WAISTLINE OF APPELLANT DATUKON BANSIL MADE THE SEARCH AND ARREST LEGAL.

III.

THE COURT A QUO ERRED IN NOT HOLDING THAT THE ARREST OF APPELLANT DATUKON BANSIL WAS UNLAWFUL.

IV.

THE COURT A QUO ERRED IN FINDING APPELLANT DATUKON BANSIL GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF PRESIDENTIAL DECREE NO. 1866 AND IN THUS NOT ACQUITTING APPELLANT DATUKON BANSIL.

V.

THE COURT A QUO ERRED IN NOT HOLDING THAT MAJOR JAIME ORTEGA ALONE ARRESTED APPELLANT DATUKON BANSIL.

VI.

THE COURT A QUO ERRED IN NOT HOLDING THAT JAIME ORTEGA FELT ILL WILL ON APPELLANT DATUKON BANSIL.

VII.

THE COURT A QUO ERRED IN NOT HOLDING THAT THE PROSECUTION FAILED TO ESTABLISH BEYOND REASONABLE DOUBT THAT THE GUN IDENTIFIED BY SENIOR POLICE INSPECTOR MARTINEZ WAS CONFISCATED FROM APPELLANT DATUKON BANSIL.

Concisely put, the issues are first, whether or not P.D. No. 1866 is unconstitutional considering that the penalty imposed therein is allegedly disproportionate to the offense committed in violation of the constitutional proscription against "excessive fines" and "cruel, degrading and inhuman punishment" under Article III, Section 19 of the 1987 Constitution. Second, whether or not the trial court correctly gave credence to the testimony of the prosecution witnesses over the denial of the appellant. Third, whether or not appellant was lawfully arrested.

The question of proportionality of penalty to the crime charged has been rendered moot and academic with the passage of Republic Act No. 8294,[16] which lowered the penalty for the crime of illegal possession of firearms from the previous "reclusion temporal in its maximum period to reclusion perpetua" under P.D. No. 1866 to "prision mayor in its minimum period and a fine of P30,000.00" in cases involving high powered firearms under R.A. No. 8294. We also deem it not necessary to delve into the constitutionality of P.D. No. 1866 considering that it has long been settled by this Court in no less than two en banc decisions - *Misolas v. Panga*, 181 SCRA 648 (1990), and *Baylosis v. Chavez*, 202 SCRA 405 (1991).[17]

The decisive issue then is whether or not the trial court erred in relying on the testimony of the prosecution witnesses, in particular the testimony of SPO4 Oscar V. Clemente, one of the apprehending officers, in convicting appellant. After a thorough scrutiny of SPO4 Clemente's testimony, we find the same insufficient to prove beyond reasonable doubt the culpability of the appellant for the crime charged.

Generally, the issue of credibility of witnesses is 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.[18] Hence, the general rule is that factual findings of the trial court are accorded respect and are not disturbed on appeal.[19] However, a review of the records of the case compels us to take exception to the aforesaid rule. We believe 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.

We find the testimony of SPO4 Clemente full of inconsistencies on material points, such as how the arresting team was able to single out appellant as the suspect, and among them who actually recovered the firearm from appellant. Initially, SPO4 Clemente testified that they were able to identify appellant because the informant told the desk officer the attire of the accused, yet upon further questioning, he could not even remember the supposed attire of the appellant used in identifying the latter at the time of arrest.[20] Further, on direct examination, SPO4 Clemente initially testified that he was the one who recovered the subject firearm from the appellant;[21] however, on cross-examination, he testified that it was actually another operative whose name he can no longer recall who recovered the firearm from the appellant.[22] Considering that there were only four members of the arresting team, including himself, his memory lapses renders his credibility suspect.

While a police officer is not expected to remember every single detail regarding the arrest, he is supposed to remember the important details relating to the commission of the crime, most especially when such incident occurred in his presence and with his active involvement. Further, no seizure receipt was issued by the arresting team for the gun, if indeed it was taken from the accused. Receipts for seized items are mandatory on the part of apprehending and seizing police officers.[23]

We are aware of the time-honored rule that "credence should be given to the narration of an incident by prosecution witnesses who are police officers and presumed to have performed their duties in a regular manner, in the absence of evidence to the contrary." [24] However the instant case calls for the application of the exception rather than the rule. The testimony of the prosecution witness who was a member of the arresting team is replete with inconsistencies and contradictions that reliance thereon by the trial court seems to be misplaced.

While the trial court found that appellant was lawfully arrested without a warrant since he was actually committing a crime in the presence of a peace officer under Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure based on the informant's tip and the "bulging waistline" of the appellant, we find that there was no probable cause for the arrest of the appellant. The arresting team was only armed with the knowledge of the suspect's "attire" which the prosecution witness admitted during trial he cannot even remember. The team did not have a physical description of the suspect nor his name. They were not even given a specific place within which to target their search of the suspect, only a vicinity of the Muslim Area in Quiapo, near the Muslim Mosque. Yet the arresting team directly zeroed in on the accused and his companions who were only eating halo-halo at a small restaurant, surely not a crime in itself. While SPO4 Clemente claims that accused had a "bulging waistline", this alone, in the light of the availing circumstances, is insufficient to constitute probable cause for the arrest of the accused.

Moreover, in crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same.[25] The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm. In the instant case, the link of the accused to the subject firearm is tenuous at best. The prosecution failed to prove beyond reasonable doubt that the gun which was allegedly recovered from the accused is the same gun which was examined by its corroborating

witnesses, Jaime Mendoza and Manolo Martinez.

Faced with outright denial of the accused of the possession of the gun, the prosecution had all the opportunity to cross-examine the accused and his witness in order to ferret out the truth and expose the falsity of their allegations. This the public prosecution failed to do. On the other hand, we find the testimony of the accused and his witness delivered in a spontaneous, natural, and consistent manner. No ulterior motive was ascribed to witness Serabanon Angcob to testify in favor of accused.

In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[26] On the whole, the meager evidence for the prosecution casts serious doubts as to the guilt of accused. It does not pass the test of moral certainty and is insufficient to rebut the constitutional presumption of innocence.

WHEREFORE, the appealed decision is REVERSED and SET ASIDE, and appellant DATUKON BANSIL is hereby ACQUITTED for insufficiency of evidence to prove his guilt beyond reasonable doubt. Appellant's immediate release is ordered unless he is detained for some other lawful cause.

SO ORDERED.

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

[1] Penned by Judge Angel Valera Colet.

[2]"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, ammunitions or explosives, and imposing stiffer penalties for certain violations thereof, and for relevant purposes."

[3] TSN, March 4, 1994, p. 3.

[4] Ibid., p. 4.

[5] TSN, July 15, 1994, p. 3.

[6] Ibid., p. 6.

[7] Ibid., p. 7.

[8] Ibid., p. 8.

[9] Id., p. 9.

[10] TSN, September 2, 1994, pp. 7-8.

[11] Rollo, p.5

[12] Later replaced during trial by counsel de parte Atty. Reynaldo Y. Sarmiento.

[13] TSN, March 04, 1994, p. 2.

[14] TSN, April 4, 1994, p. 5.

[15] Rollo, p. 86.

[16] An Act Amending the Provisions of Presidential Decree No. 1866, as amended, entitled "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, ammunitions or explosives, and imposing stiffer penalties for certain violations thereof, and for relevant purposes."

[17] In *Misolas v. Panga*, the Court, speaking through Justice Cortes, upheld the constitutionality of the third paragraph of Section 1 of P.D. No. 1866 against the challenge that said law violates substantive due process. Justices Cruz and Sarmiento dissented on the grounds that P.D. No. 1866 constitutes a bill of attainder and a violation of the constitutional proscription against double jeopardy. The *Misolas* ruling was strongly reiterated in another en banc decision in *Baylosis v. Chavez*, 202 SCRA 405 (1991). Justice Narvasa said that "[s]ince it does not seem that the passage of time has infused any validity into those arguments, they shall again be struck down as specious, and the second constitutional challenge, like the first, repulsed."

[18] *People v. Villanueva*, 275 SCRA 489 (1997); *People v. Errojo*, 229 SCRA 49 (1994); *People v. Gomez*, 229 SCRA 138 (1994).

[19] *Del Mundo v. Court of Appeals*, 252 SCRA 432 (1996); *Lim v. Court of Appeals*, 229 SCRA 616 (1994).

[20] TSN, March 4, 1994, p. 8.

[21] TSN, March 4, 1994, pp. 3-4.

[22] TSN, March 4, 1994, p.9.

[23] *People v. Rosas*, 149 SCRA 464 at p. 469.

[24] *People v. Boholst*, 152 SCRA 263 at p. 270, citing *People v. Gamayon*, 121 SCRA 642; *People v. Campana*, 124 SCRA 271; *People v. Rosas*, 149 SCRA 464.

[25] *People v. Villanueva*, *supra*.

[26] Rule 133, Section 2, Revised Rules of Court.

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