

CAYETANO CAPANGPANGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 150251. November 23, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

The Case

Before us is a Petition for Review on Certiorari[1] under Rule 45 assailing the July 12, 2001 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 23655, which affirmed the conviction of petitioner Capangpangan in Criminal Case No. 03-6752 for illegal possession of firearms, ammunitions and explosives under Presidential Decree No. (PD) 1866,[3] as amended. Also assailed is the September 13, 2001 Resolution[4] of the CA denying petitioner's motion for reconsideration.

Petitioner was charged with Violation of PD 1866. The case was docketed as Criminal Case No. 03-6752 in the Iligan City RTC. The Information reads as follows:

That on or about the 1[st] day of July, 1997, at Tagoloan, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control the following items, to wit:

- Five (5) pcs. Handgrenades (live);
- Eight (8) pcs. garand clips;
- Sixteen (16) pcs. garand clips without ammo;
- Twenty-two (22) pcs. of cal. .45 ammo;
- Forty (40) pcs. M16 Armalite ammo;
- Five (5) pcs. Carbine ammo;
- Three (3) pcs. M16 magazine (empty);
- One (1) piece garand trigger housing group;
- One (1) piece shotgun rifle with SN-126184;
- Two (2) pcs. cal. .22 rifles with SN-2224758 and 126404, ARMSCOR;
- One (1) piece shotgun (defaced);
- One (1) piece cal. .22 rifle SN (defaced single shot M16 home-made); and
- One (1) piece cal. .22 magnum S&W, SN-175448,

without having first obtained the necessary [licenses] and/or permits to possess the same from the proper

authorities.[5]

Petitioner pleaded not guilty.

Evidence for the Prosecution

Armed with a valid warrant to search the house of petitioner Cayetano “Tano” Capangpangan, National Bureau of Investigation (NBI) agents with soldiers from the 30th Infantry Brigade and barangay officials searched petitioner’s house in Patag, Tagoloan, Lanao del Sur. Upon opening a portion of the ceiling, they saw, photographed, and opened an ammunition box. They found various ammunitions, ammunition magazines, hand grenades, and assorted firearms. They made an inventory and had NBI agent Nolan Gadia and barangay kagawads Esterlita Laurente and Renato Abellar sign it. The inventory was prepared in the presence of petitioner and his wife, Eldrid Nacua, the barangay kagawads, and the members of the 30th Infantry Brigade. Petitioner admitted he did not have firearms licenses to possess the seized firearms.

Evidence for the Defense

Petitioner interposed that the search was illegal since firearms, ammunitions, and grenades were found in an abandoned hut, while the warrant was for the search of his house.

Sgt. Roberto Legaspi, a member of the Infantry Brigade, testified that on the way to Patag, Tagoloan with other members of his company, they met petitioner and 10 others surveying their land. They saw a hut along their path and decided to rest. Upon entering the hut, they were surprised to find firearms, ammunitions, and grenades. They seized the cache. Along the way, they were joined by Rolando Guevara. Before reaching Patag, they met three or four NBI agents who immediately handcuffed petitioner and Guevara. Subsequently, they gave the contraband to the NBI agents without demanding a receipt. Upon arriving at their headquarters, they did not bother to report the incident to their company commander, Lt. Yecla.

Cpl. Romeo Sagarino corroborated Sgt. Legaspi’s testimony.

For his part, petitioner stated that around 1 p.m. on July 1, 1997, he was in his land at Sitio Paliamon, Tagoloan, while his brothers Popoy and Erlito Fernandez were plowing the land. He said the soldiers found the cache in an uninhabited hut. When they passed by his house, Guevarra and he were handcuffed, and he saw several men, some wearing bonnets. He claimed there were no barangay officials in his house when he was made to sign a receipt.

Rodolfo Fernandez and Guevarra substantially corroborated petitioner’s story on the incident that took place in the early afternoon of July 1, 1997.

The Ruling of the Regional Trial Court

On August 5, 1999, the trial court rendered a Decision convicting petitioner of the crime charged. The dispositive portion reads:

WHEREFORE, premises all considered, judgment is hereby rendered finding the accused Cayetano “Tano” Capangpangan guilty of the offense charged, beyond reasonable doubt. Accordingly, he is hereby sentenced to suffer an Indeterminate penalty of four (4) years, two (2) months and one (1) day to eight (8) years. Consequently, the bail bond posted by the accused is cancelled and the accused is ordered incarcerated immediately.

Finally, the firearms are ordered confiscated in favor of the government.

SO ORDERED.[6]

In its decision, the trial court gave credence to witnesses of the prosecution and noted that the presumption of

regularity in the performance of official duty by the soldiers-witnesses had not been successfully overturned in the absence of showing of any ill-motive on the part of the NBI agents.

The RTC found incredulous the defense that the seized items were just left by some strangers in an uninhabited hut. It found highly unusual petitioner's version that the soldiers who allegedly found the arms would simply turn these over to NBI agents without asking for a receipt nor their names. The trial court likewise found it strange that the soldiers did not report back to their commanding officer. Lastly, it observed glaring inconsistencies in the testimonies of the defense on the time petitioner was found by the soldiers.

The Ruling of the Court of Appeals

Petitioner appealed to the CA.

Before the CA was the sole issue of credibility of witnesses. In affirming the trial court's findings, the CA ruled that petitioner has not given cogent and weighty reasons for the appellate court to abandon the findings of the trial court. According to the CA, it was bound by the findings of the trial court unless it was shown that the RTC overlooked, misunderstood, or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case.[7]

The CA found that petitioner violated PD 1866 as the Certification issued by SPO1 Delfin E. Regis of the Philippine National Police (PNP) in Iligan City was proof that the firearms found in petitioner's possession were unlicensed.

The appellate court rendered the assailed Decision which affirmed in toto the August 5, 1999 RTC Decision. The decretal portion reads:

WHEREFORE, foregoing premises considered, and pursuant to applicable law and jurisprudence on the matter, judgment is hereby rendered dismissing the instant appeal for lack of merit in fact and in law. The assailed decision dated August [5], 1995 is AFFIRMED IN TOTO. No costs.

SO ORDERED. [8]

The appellate court denied petitioner's motion for reconsideration.[9]

The Issues

Hence, the instant petition with petitioner ascribing the following errors:

I

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED DESPITE LACK OF ADEQUATE PROOF TO SHOW THE ABSENCE OF A FIREARMS LICENSE.

II

THE COURT OF APPEALS ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PLAINTIFF-APPELLEE'S [PROSECUTION, HEREINAFTER] NBI WITNESSES WHICH HAVE BEEN TOTALLY NEGATED, BELIED AND REBUTTED BY THE WITNESSES FOR THE ACCUSED-APPELLANT TWO OF WHOM ARE MEMBERS OF THE ARMY, WHOSE TESTIMONIES HAVE NOT BEEN REBUTTED BY PLAINTIFF-APPELLEE; FURTHERMORE, THE PLAINTIFF-APPELLEE HAS SUPPRESSED EVIDENCE.

III

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ACCUSED-APPELLANT THAT THE FIREARMS, ETC. WERE NOT TAKEN FROM HIS HOUSE BUT ELSEWHERE.

IV

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF P.D. 1866, AS AMENDED.[10]

The Court's Ruling

The instant petition hinges primarily on the issue of credibility of witnesses. As this Court has ruled in innumerable cases, the trial court is best equipped to make the assessment on said issue and, therefore, its factual findings are generally not disturbed on appeal, "unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion." [11] We do not find in the instant case any of the above exceptions to make us reverse the factual findings of the trial court nor those of the CA. However, in the interest of substantial justice, we will tackle the issues raised by petitioner.

Petitioner had no license to possess firearms

In the first assignment of error, petitioner contends that there is no sufficient proof that he is not licensed to possess firearms. He argues that the Certification submitted by the prosecution came from the PNP in Iligan City and not from the Firearms and Explosives Unit at the PNP in Camp Crame, the repository of the records for all firearms licenses. Moreover, petitioner asserts that said certification is only limited to the Iligan City area and that it was not properly identified during the trial. Thus, petitioner strongly asserts that said certification from the local police unit is not sufficient and does not discount the issuance of the proper license or authority from any other legitimate source.

We disagree.

The essence of the crime penalized under PD 1866, as amended, is primarily the accused's lack of license or permit to carry or possess the firearm, as possession itself is not prohibited by law. [12] In the instant case, the prosecution has duly proven that petitioner has no license or permit to possess the seized contraband. The Certification dated January 23, 1998 issued by SPO1 Regis, Assistant Team Leader of the 90th Civil Security Team, PNP Headquarters, Iligan City, pertinently enunciates:

This is to certify that as per verification of records filed from this office as of [sic] Iligan City area, their [sic] is no name of Cayetano "Tano" Capangpangan appears [sic] in computerized firearm license as of this date.

This certification is issued for whatever legal purpose that may be serve [sic].

The contents, authenticity, and import of the above certification were admitted during the hearing by petitioner, thereby dispensing with the testimony of the issuing officer, SPO1 Regis. [13] Under Section 4 of Rule 129 of the Revised Rules on Evidence, "[A]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." Clearly, petitioner cannot take a contrary or different position considering that he has made an express admission of the Certification, which does not require proof and cannot be contradicted because there is no previous evidence that the admission was made through palpable mistake. After admitting it, he cannot now assail that said certification has not been properly identified. [14] Besides, he has had several occasions to present proof that he was licensed to possess firearms. Yet, even in this late stage he has not.

Petitioner's view that the certification is limited in scope, covering only Iligan City, and thus does not discount a proper license from any other legitimate source, cannot be sustained. The prosecution has presented the best evidence available. The Certification, duly admitted by petitioner, was issued by the proper authority and ineluctably attests that petitioner does not have any license or permit to possess firearms.

In cases of indictment for illegal possession of firearms, a negative allegation of lack of license or permit is an essential ingredient of the offense that must be proved by the prosecution. In this case there exists a prima facie case from the best available evidence.[15] This is so since a firearm license is within accused's peculiar knowledge or relates to him personally.

American case law likewise elucidates on this issue, thus:

Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the onus probandi rests upon him. Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control. For example, where a charge is made that the defendant carried on a certain business without a license, the fact that he has a license is peculiarly within his knowledge and he must establish that fact or suffer conviction. Similarly, the burden of proof as to whether a certain offense against property was committed without the owner's consent rests on the accused, since that is a fact or circumstance peculiarly within his own knowledge.[16]

In our view, the prosecution has carried such burden to prove lack of license or permit to possess firearms by presenting the best available evidence, that is, the duly admitted Certification.

Credibility of witnesses is domain of the trial court

Petitioner contends that the prosecution did not present evidence, such as the photographs allegedly taken by the NBI agents of the search, nor the testimonies of the two barangay kagawads who were allegedly present during the search of his house, to corroborate the testimonies of the NBI agents. Thus, according to him, his own evidence stands un rebutted and so must prevail. He also posits that the prosecution's failure to present the photographs amounts to evidence willfully suppressed and thus must be presumed as adverse to the prosecution if produced. He adds that in a place that is a hot bed for insurgency, it was not unusual that firearms are left unattended in abandoned huts. Petitioner explains that the surrender of the cache by army men without asking for a receipt and their failure to report to their commanding officer were minor details which do not detract from the significant fact that the cache was seized in Paliamon, Tagoloan, and not from petitioner's house in Patag, Tagoloan, five kilometers away.

We are unconvinced by petitioner.

It is well-settled in our jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court. The investigating judge is in the best position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[17] After review of the records, we find no reason to disbelieve the trial judge's assessment of the credibility of the witnesses.

Neither have we in our review, found palpable discrepancies in the testimonies of Sgt. Legaspi, Fernandez, and petitioner. Verily, the testimony of Sgt. Legaspi that petitioner was with 10 others conducting a survey of their land when they came upon petitioner in Paliamon, Tagoloan cannot be logically reconciled with petitioner's testimony that he was with the two Fernandez brothers who were plowing his field. Aside from being self-serving in his testimony, we have found no reason why we should depart from the familiar and fundamental presumption that officials have performed their tasks with regularity.

We likewise note the other discrepancies pointed out by the trial court which greatly put in suspect the testimonies of the defense. Indeed, we agree with the court a quo in finding highly unusual that the soldiers who fetched petitioner, and allegedly found the contraband in an uninhabited hut would, without even asking for a receipt, turn

the arms and ammunition over to the NBI agents whom they did not know and had only met by chance. We find it likewise illogical and incredulous that the soldiers, particularly Sgt. Legaspi who was ordered to fetch petitioner and Guevara, did not report to their commanding officer upon their return. These discrepancies are not minor as they go against prudence and human nature. We will not belabor the matter further. We are not convinced that the trial court has overlooked, misunderstood, or misinterpreted some substantial fact or circumstance that could materially affect the disposition of the case. Besides, petitioner has not shown that the trial court has gravely abused its discretion or that the decision was clearly arbitrary or unfounded.

Omission of documentary evidence not fatal

Anent the issue that the prosecution did not present testimonial and documentary evidence. Suffice it to say that these are not necessary. Certainly, the documentary pieces of evidence presented by the prosecution clearly show the legal basis for the search—the clear inventory of the seized contraband, and the signatures of the persons present when the search was made. That the photograph mentioned in the testimony of NBI agent Gadia was not presented will not detract from the eyewitness testimonies nor other documentary evidence. Petitioner could have, through a subpoena duces tecum, asked for these photographs, but he did not. The mere allegation of petitioner of suppression of evidence, therefore, has no factual basis.

Presentation of witness sole prerogative of prosecution

Moreover, the non-presentation of some witnesses does not necessarily give rise to an adverse presumption, as these persons are equally at the disposal of the defense,[18] who definitely have the constitutional guaranteed right “to have compulsory process to secure the attendance of witnesses.”[19] If the prosecution deems it fit not to present the barangay kagawads who were present in the search and who duly signed the inventory, it is their call and prerogative. Besides, the defense could have proven that said barangay kagawads were not there at his house by summoning them as his witnesses. Again, he did not. He cannot now assail that their failure to testify in the rebuttal is due to the fact that they were not there. Verily, with the overwhelming evidence presented by the prosecution, it has convincingly proven beyond reasonable doubt the guilt of petitioner.

WHEREFORE, we DENY the petition for lack of merit, and AFFIRM the July 12, 2001 Decision and September 13, 2001 Resolution in CA-G.R. CR No. 23655. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 12-36.

[2] Id. at 38-45. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Hilarion L. Aquino and Ma. Alicia Austria-Martinez (Chairperson, now a member of this Court) of the Second Division.

[3] “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” (1983).

[4] Rollo, p. 57.

[5] Id. at 47-48.

[6] Id. at 55.

[7] *People v. Campos*, G.R. Nos. 133373-77, September 18, 2000, 340 SCRA 517, 521.

[8] Supra note 2, at 44-45.

[9] Supra note 4.

[10] Rollo, p. 14.

[11] People v. Casela, G.R. No. 173243, March 23, 2007, 519 SCRA 30, 39.

[12] People v. Mejeca, G.R. No. 146425, November 21, 2002, 392 SCRA 420, 433.

[13] Rollo, p. 50, August 5, 1999 RTC Decision.

[14] Id.

[15] United States v. Adyuba, 42 Phil. 17, 20 (1921); citing United States v. Tria, 17 Phil. 303 (1910).

[16] 29 Am Jur 2d, Evidence § 153, p. 184; citations omitted.

[17] Melecio v. Tan, A.M. No. MTJ-04-1566, August 22, 2005, 467 SCRA 474, 480.

[18] People v. Cristobal, No. L-13062, January 28, 1961, 1 SCRA 151, 155.

[19] Constitution, Art. III, Sec. 14 (2).

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