

MARK CLEMENTE Y MARTINEZ @ EMMANUEL DINO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 194367. June 15, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the March 29, 2010 Decision[1] of the Court of Appeals (CA) which denied petitioner's appeal and affirmed the November 3, 2008 Judgment[2] of the Regional Trial Court (RTC) of Manila, Branch 7, convicting petitioner of illegal possession and use of false bank notes under Article 168[3] of the Revised Penal Code (RPC), as amended. Also assailed is the CA Resolution dated October 14, 2010[4] denying petitioner's motion for reconsideration.

Petitioner was charged before the RTC with violation of Article 168 of the RPC under an Information[5] which reads:

That on or about August 5, 2007, in the City of Manila, Philippines, the said accused, with intent to use, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and under his custody and control twenty[-]four (24) pcs. [of] P500.00 bill with Markings ["IIB-1" to "IIB-24", respectively and specifically enumerated, to wit:

SERIAL NO.

PCS.

AMOUNT

SERIAL NO.

PCS.

AMOUNT

PX626388

1

P500.00

CC077337

1

P500.00

CC077337

1

500.00

CC077337

1

500.00

CC077337

1

500.00

CC077337

1

500.00

BR666774

1

500.00

CC077337

1

500.00

CC077337

1

500.00

BR666774

1

500.00

BB020523

1

500.00

BR666774

1

500.00

PX626388

1

500.00

CC077337

1

500.00

BR666774

1

500.00

WW164152

1

500.00

PX626388

1

500.00

WW164152

1

500.00

BR666774

1

500.00

BR666774

1

500.00

UU710062

1

500.00

PX626388

1

500.00

CC077337

1

500.00

PX626388

1

500.00

Which are false and falsified.

Contrary to law.

Upon arraignment, petitioner entered a plea of not guilty. Trial thereafter ensued.

The version of the prosecution and the defense, as summarized by the CA, are as follows:[6]

The prosecution presented three (3) witnesses, namely: Jail Officer 1 (JO1) Michael Michelle Passilan, the Investigator of the Manila City Jail; JO1 Domingo David, Jr.; and Loida Marcega Cruz, the Assistant Manager of the Cash Department of the Bangko Sentral ng Pilipinas.

[Their testimonies established the following:]

Appellant is a detainee at the Manila City Jail. On August 7, 2007, at around 3:30 pm, an informant in the person of inmate Francis dela Cruz approached JO1s Domingo David, Jr. and Michael Passilan. The informant narrated that he received a counterfeit P500.00 bill from appellant with orders to buy a bottle of soft drink from the Manila City Jail Bakery. The bakery employee, however, recognized the bill as a fake and refused to accept the same. Consequently, JO1s David and Passilan, along with the informant, proceeded to appellant's cell for a surprise inspection. Pursuant to their agreement, the informant entered the cubicle first and found appellant therein, lying in bed. The informant returned to appellant the latter's P500.00 bill. The jail guards then entered the cell and announced a surprise inspection. JO1 Passilan frisked appellant and recovered a black wallet from his back pocket. Inside the wallet were twenty-three (23) pieces of P500.00, all of which were suspected to be counterfeit. They confiscated the same and marked them sequentially with "IIB-2" to "II-B24". They likewise marked the P500.00 bill that was returned by informant to appellant with "IIB-1". Appellant was consequently arrested and brought out of his cell into the office of the Intelligence and Investigation Branch (IIB) of the Manila City jail for interrogation.

Meanwhile, the twenty-four (24) P500.00 bills confiscated from appellant were turned over to the Bangko Sentral ng Pilipinas for analysis. Pursuant to a Certification dated August 7, 2007, Acting Assistant Manager Loida Marcega Cruz of the Bangko Sentral ng Pilipinas examined and found the following bills as counterfeit, viz: one (1) P500.00 bill with Serial Number BB020523; six (6) P500.00 bills with Serial Number BR666774; nine (9) P500.00 bills with Serial Number CC077337; five (5) P500.00 bills with Serial Number PX626388; one (1) P500.00 bill with Serial Number UU710062; and two (2) P500.00 bills with Serial Number WW164152.

For the defense, appellant was the lone witness presented on the stand.

Appellant simply raised the defense of frame-up. He testified that in the afternoon of August 5, 2007, he was inside his room located at Dorm 1 of the Manila City Jail. At around 3:00 pm, JO1 Michael Passilan entered appellant's room while JO1 Domingo David, Jr. posted himself outside. Without any warning, JO1 Passilan frisked appellant and confiscated his wallet containing one (1) P1,000.00 bill. JO1s David and Passilan left immediately thereafter. Appellant was left with no other choice but to follow them in order to get back his wallet. Appellant followed the jail officers to the Intelligence Office of the Manila City Jail where he saw JO1 Passilan place the P500.00 bills inside the confiscated black wallet. Appellant was then told that the P500.00 bills were counterfeit and that he was being charged with illegal possession and use thereof. Appellant also added that JO1 Passilan bore a grudge against him. This was because appellant refused to extend a loan [to] JO1 Passilan because the latter cannot offer any collateral therefor. Since then, JO1 Passilan treated him

severely, threatening him and, at times, putting him in isolation.

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged. The RTC gave credence to the prosecution's witnesses in finding that the counterfeit money were discovered in petitioner's possession during a surprise inspection, and that the possibility that the counterfeit money were planted to incriminate petitioner was almost nil considering the number of pieces involved.[7] The RTC also did not find that the jail officers were motivated by improper motive in arresting petitioner,[8] and applied in their favor the presumption of regularity in the performance of official duties considering the absence of contrary evidence. As to petitioner's defense of frame-up, the RTC held that the purported frame-up allegedly staged by JO1 Passilan would not affect the prosecution's evidence since the testimony of JO1 David could stand by itself. The RTC likewise found that it was strange that petitioner did not remonstrate despite the fact that he was allegedly being framed.[9]

As to the elements of the crime, the RTC held that the fact that the P500.00 bills found in petitioner's possession were forgeries was confirmed by the certification issued by the Cash Department of the Bangko Sentral ng Pilipinas, which was testified into by Acting Assistant Manager Loida A. Cruz.[10] The RTC also ruled that petitioner knew the bills were counterfeit as shown by his conduct during the surprise search and his possession of the bills. As to the element of intention to use the false bank notes, the RTC ruled that the fact that petitioner intended to use the bills was confirmed by the information received by the jail officers from another inmate.[11]

Aggrieved, petitioner sought reconsideration of the judgment. Petitioner argued that the evidence used against him was obtained in violation of his constitutional right against unreasonable searches and seizures. Petitioner also argued that the prosecution failed to prove his guilt beyond reasonable doubt because of the non-presentation of the informant-inmate, Francis dela Cruz, who could have corroborated the testimonies of the jail officers.

Unconvinced, the RTC denied petitioner's motion for reconsideration. The RTC, however, only ruled that there was no violation of petitioner's constitutional right against unreasonable searches and seizures because the seizure was done pursuant to a valid arrest for violation of Article 168 of the RPC. The trial court pointed out that prior to the search, a crime was committed and the criminal responsibility pointed to petitioner.[12]

On appeal before the CA, petitioner argued that the RTC erred in finding him guilty beyond reasonable doubt for violating Article 168 of the RPC. Petitioner contended that one of the elements of the crime which is intent to use the counterfeit bills was not established because the informant Francis dela Cruz did not take the witness stand.[13]

The CA, however, found the appeal unmeritorious and denied petitioner's appeal.[14] The appellate court found that the fact the petitioner was caught in possession of twenty-four (24) pieces of fake P500.00 bills already casts doubt on his allegation that he was merely framed by the jail guards. The CA agreed with the RTC that even without the testimony of JO1 Passilan, the testimony of JO1 David was already sufficient to establish petitioner's guilt since petitioner did not impute any ill motive on the latter except to point out that JO1 David was JO1 Passilan's friend.[15]

Regarding the element of intent to use, the CA found that there are several circumstances which, if taken together, lead to the logical conclusion that petitioner intended to use the counterfeit bills in his possession. The CA pointed out that jail officers were informed by inmate Francis dela Cruz that he received a fake P500.00 bill from petitioner who told him to buy soft drinks from the Manila City jail bakery. After Francis dela Cruz identified petitioner as the person who gave him the fake money, the jail officers conducted a surprise inspection. Said inspection yielded twenty-three (23) pieces of counterfeit P500.00 bills inside petitioner's black wallet, which was taken from his back pocket. The CA further held that the non-presentation of Francis dela Cruz would not affect

the prosecution's case because even without his testimony, petitioner's intent to use the counterfeit bills was established. The CA added that the matter of which witnesses to present is a matter best left to the discretion of the prosecution.[16]

Petitioner sought reconsideration of the above ruling, but the CA denied petitioner's motion for reconsideration in the assailed Resolution dated October 14, 2010.[17] Hence, the present appeal.

Petitioner raises the following assignment of errors, to wit:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT, CONVICTING PETITIONER OF THE CRIME CHARGED, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE AN ELEMENT OF THE OFFENSE.

II.

THE COURT OF APPEALS ERRED IN NOT EXCLUDING THE COUNTERFEIT BILLS SINCE THEY WERE DERIVED FROM UNREASONABLE SEARCH AND SEIZURE.[18]

The petition is meritorious.

Generally, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court has overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. The exception applies when it is established that the trial court has ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.[19]

Here, the Court finds that the RTC and the CA had overlooked certain substantial facts of value to warrant a reversal of its factual assessments. While petitioner's denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credence, said defense must be given credence in this case as the prosecution failed to meet its burden of proof.

Article 168 of the RPC, under which petitioner was charged, provides:

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. [Emphasis supplied.]

The elements of the crime charged for violation of said law 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.[20] As held in *People v. Digoro*,[21] possession of false treasury or bank notes alone, without anything more, is not a criminal offense. For it to constitute an offense under Article 168 of the RPC, the possession must be with intent to use said false treasury or bank notes.[22]

In this case, the prosecution failed to show that petitioner used the counterfeit money or that he intended to use the counterfeit bills. Francis dela Cruz, to whom petitioner supposedly gave the fake P500.00 bill to buy soft drinks, was not presented in court. According to the jail officers, they were only informed by Francis dela Cruz that petitioner asked the latter to buy soft drinks at the Manila City jail bakery using a fake P500.00 bill. In short, the

jail officers did not have personal knowledge that petitioner asked Francis dela Cruz use the P500.00 bill.[23] Their account, however, is hearsay and not based on the personal knowledge.[24]

This Court, of course, is not unaware of its rulings that the matter of presentation of prosecution witnesses is not for the accused or, except in a limited sense, for the trial court to dictate. Discretion belongs to the city or provincial prosecutor as to how the prosecution should present its case.[25] However, in this case, the non-presentation of the informant as witness weakens the prosecution's evidence since he was the only one who had knowledge of the act which manifested petitioner's intent to use a counterfeit bill. The prosecution had every opportunity to present Francis dela Cruz as its witness, if in fact such person existed, but it did not present him. Hence, the trial court did not have before it evidence of an essential element of the crime. The twenty-three (23) pieces of counterfeit bills allegedly seized on petitioner is not sufficient to show intent, which is a state of mind, for there must be an overt act to manifest such intent.

WHEREFORE, the petition for review on certiorari is GRANTED. The Decision dated March 29, 2010 and Resolution dated October 14, 2010 of the Court of Appeals in CA-G.R. CR No. 32365 are REVERSED and SET-ASIDE. Petitioner Mark Clemente y Martinez alias Emmanuel Dino is hereby ACQUITTED of the crime of Illegal possession and use of false bank notes defined and penalized under Article 168 of the Revised Penal Code, as amended.

With costs de oficio.

SO ORDERED.

Brion, (Acting Chairperson), Bersamin, Mendoza,[*] and Sereno, JJ., concur.

[*] Designated additional member per Raffle dated December 6, 2010 in lieu of Associate Justice Conchita Carpio Morales who took no part.

[1] Rollo, pp. 27-43. Penned by Justice Ramon R. Garcia with Justices Rosalinda Asuncion-Vicente and Elihu A. Ybanez concurring.

[2] Id. at 47-58. Penned by Judge Ma. Theresa Dolores C. Gomez-Estoesta. The dispositive portion of the RTC decision reads:

WHEREFORE, this Court finds accused Mark Clemente y Martinez a.k.a. Emmanuel Dino GUILTY beyond reasonable doubt of a violation of Article 168 of the Revised Penal Code for Illegal Possession and Use of False Bank Notes which is penalized under Article 168 of the same Code.

There being neither mitigating nor aggravating circumstance alleged nor proven, pursuant to the provisions of the Indeterminate Sentence Law, this Court imposes upon said Mark Clemente y Martinez a.k.a. Emmanuel Dino an indeterminate penalty of 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 and to pay a FINE OF FIVE THOUSAND PESOS (P5,000.00).

The preventive imprisonment accused has undertaken shall be CREDITED to the service of his sentence.

In contemplation of Circular No. 61, Series of 1995, issued by the Bangko Sentral ng Pilipinas, the Branch Sheriff of this Court is directed to TRANSMIT the twenty[-four] (24) pieces of P500.00 bills found to be counterfeit to the Cash Department of the Bangko Sentral ng Pilipinas for proper disposition.

With costs de oficio against the accused.

SO ORDERED.

[3] Article 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.

[4] Rollo, pp. 45-46.

[5] Id. at 27 and 47-48.

[6] Id. at 29-32.

[7] Id. at 53-54.

[8] Id. at 54.

[9] Id. at 55.

[10] Id. at 55-56.

[11] Id. at 56.

[12] Id. at 59-60.

[13] Id. at 35-36.

[14] The dispositive portion reads as follows:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated November 3, 2008 of the Regional Trial Court, Branch 7, Manila is AFFIRMED.

SO ORDERED.

[15] Id. at 38-39.

[16] Id. at 39-40.

[17] Id. at 45-46.

[18] Id. at 13.

[19] Ortega v. People, G.R. No. 177944, December 24, 2008, 575 SCRA 519, 529.

[20] Tecson v. Court of Appeals, G.R. No. 113218, November 22, 2001, 370 SCRA 181, 188.

[21] G.R. No. L-22032, March 4, 1966, 16 SCRA 376, 378.

[22] People v. Digoro, G.R. No. L-22032, March 4, 1966, 16 SCRA 376, 378.

[23] Rule 130, Section 36. Testimony generally confined to personal knowledge; hearsay excluded. -- A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these Rules. (30a)

[24] PNOC Shipping & Transport Corp. v. CA, 358 Phil. 38, 56 (1998); Phil. Home Assurance Corp. v. CA, 327 Phil. 255, 267-268 (1996); Valencia v. Atty. Cabanting, Adm. Cases Nos. 1302, 1391 and 1543, April 26, 1991, 196 SCRA 302, 310.

[25] People v. Sariol, G.R. No. 83809, June 22, 1989, 174 SCRA 237, 242.

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