

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO CRUZ ALIAS RENE HAPON, DEFENDANT-APPELLANT.

G.R. No. 76728. August 30, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. Q-45491 of the Regional Trial Court of Quezon City, Reynaldo Cruz alias Rene Hapon of No. 40 Sto. Cristo, Balintawak, Quezon City, was charged with the crime of Illegal Possession of Firearm and Ammunition committed, as follows:

"That on or about the 8[th] day of May 1986, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there wilfully, unlawfully and feloniously have in his possession and under his custody and control a firearm, to wit: one (1) .38 caliber revolver (paltik) and one grenade, without first having obtained the proper license therefor." [1]

After trial, Judge Willelmo C. Fortun found the accused guilty as charged, and imposed on him the penalty of reclusion perpetua (life imprisonment) and to pay the costs. The firearm and ammunition and the hand grenade, as well as the bag which contained the same, were confiscated and ordered forfeited in favor of the government. [2]

From said judgment, the accused has appealed to this Court. [3]

The incriminatory facts, as stated by the Solicitor General in his Brief, are as follows:

"On May 9, 1986, Lt. Noel Manabat, along with the elements of CRIG stationed at Camp Bagong Diwa, Taguig, Metro Manila, acting on an intelligence information of a reliable informant that about noon of that day a stolen car, coming from Quezon City, was to be sold somewhere in Magallanes, Makati, nabbed Romeo Fernandez and Joey Flores at the intersection of EDSA and Timog Street and brought them to headquarters. After some questioning, these two (2) carnap suspects led the eight-man CRIG team to 61 Mabituan Street, Masambong, Quezon City where they alleged the other members of the carnap gang were waiting for their shares of the proceeds from the sale of a carnaped vehicle (Tsn., June 27, 1986, pp. 2-4). At said address, a sister of appellant, who owned the apartment, opened the door to the CRIG team. Inside the apartment, the team found appellant, sleeping on the floor, and gangmates Herminio Rivera and Lolito Timcang (Ibid. pp. 9 & 17). The team recognized appellant because he was pointed to by Romeo Fernandez and Joey Flores. These two also informed the team that appellant was armed and, sure enough, the team found a clutch bag (Exhibit D) containing a caliber .38 paltik revolver (Exhibit B), one (1) live ammunition (Exhibit B-1) and a hand grenade (Exhibit C) under a bar, located one (1) meter away from the slumbering appellant (Ibid.). After waking him up, Sgt. Reynaldo Cachuela confronted him at once with these exhibits. Appellant, in the presence of all the eight-man CRIG team and gang-mates, admitted ownership of the bag, firearm, bullet and grenade (Ibid., p. 17). The team arrested appellant and the rest of his group, as well as confiscated the items of the crime.

"At headquarters, Lt. Noel Manabat and Sgt. Reynaldo Cachuela narrated under oath the incident (Joint Affidavit-Exhibits E, E-1 and E-2). At the same time, they turned over to Sgt. Jesus Ordinario, police investigator, the appellant and his party as well as Exhibits B, B-1 and C. Sgt. Jesus Ordinario took down the

statement of appellant (Exhibit A) wherein appellant admitted ownership of Exhibits B, B-1, C and D, after informing him of his constitutional rights, such as, he had the right to remain silent the right to get his own counsel, and everything he would state in his statement might be used for or against him (Ibid, p. 10). Appellant was told that the camp had a lawyer who was ready to assist him but he replied that he needed no lawyer and was ready to confess the truth (Ibid, p. 11) And so page two (2) of Exhibit A reflected appellant's answer to a question, thus: 'Bakit ka naman may baril at granada, saan mo gagamitin? Nakuha sa posesyon ko ... at iyon ay ipinabenta ..'. After taking down the statement of appellant and the carnap suspects Herminio Rivera and Lolito Timcang, Sgt. Jesus Ordinario prepared a written referral of the case to the City Fiscal of Quezon City (Exhibit F), which was signed by Major Eduardo S. Amoyo (Ibid, p. 12). Later, appellant subscribed, Exhibit A before Assistant Fiscal Monina Zenarosa (Ibid. pp. 14 and 18).

"On June 25, 1986, Lilian Lauron of the Legal Research Branch of the Firearms and Explosives Unit, Camp Crame, Quezon City, in answer to a police inquiry, made a thorough check of her records and determined that appellant Reynaldo Cruz y Santos of No. 40 Sto. Cristo, Balintawak, Quezon City was not a licensed holder of caliber .38 paltik revolver. As to hand grenades, she declared that only military personnel were authorized to carry them (Ibid, p. 19)."[4]

The accused, upon the other hand, denied ownership or possession of the firearm and hand grenade, as well as the bag which contained the same. According to the accused, the bag and its contents belonged to Joey Flores and was "planted" by PC operatives. His version of the case is, as follows:

In the afternoon of 8 May 1986, between 4:30 and 5:00 o'clock, he was sleeping in the house of his sister at No. 61 Mabituan Street, Masambong, Quezon City, together with Eutiquio Lapinig, Jaime Rivera, and Dionisio Daracin, when PC men barged inside and rudely awakened him. He was confronted with a gun and a hand grenade, but he denied ownership of the same. Then, he and his companions were tied up and brought to Camp Bicutan on board a six-by-six truck. There, he was tortured by PC officers for five days and made to sign a prepared statement wherein he admitted ownership of the gun and hand grenade. He was not allowed to have visitors during the period of his confinement. However, he was able to secure a medical certificate for the injuries inflicted upon him by the PC officers, but it was left with them.[5]

The claim of the accused that the bag containing the firearm and the hand grenade belonged to Joey Flores was corroborated by Romeo Fernandez and Dionisio Daracin.[6]

The appellant maintains that the revolver and hand grenade in question did not belong to him; nor was he in actual possession thereof at the time he was arrested. Ownership, however, is an essential element of the offense charged. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management.[7]

In the instant case, PC Lt. Noel Manabat, leader of the PC team that arrested the accused and his companions for "carnapping", declared that after finding the bag containing the revolver and the hand grenade under the bar in the apartment of the sister of the accused, he asked the "carnapping" suspects to whom the bag belonged and they replied that it belonged to the herein accused Reynaldo Cruz, and when he confronted the accused with the revolver and hand grenade, the accused readily admitted that they belonged to him. His testimony reads, as follows:

"Q Who found the revolver Exh. B and the grenade Exh. C?

A Sgt. Cachuela and I, sir.

Q How about the revolver Exh. B where did you find that?

A Also inside the bag, sir.

Q Upon finding that, did you confront the Accused Reynaldo Cruz as to the ownership?

A We asked who owns the bag, and the group pointed to Reynaldo Cruz, sir.

FISCAL QUERUBIN:

Q How about Reynaldo Cruz, did you ask him if he is the owner of the revolver and the grenade in the bag?

A Yes, sir.

Q What did he tell?

A He admitted, sir.

Q In your presence and before whom?

A Before Sgt. Cachuela, sir.

A Verbally?

A Yes, Sir."[8]

PC Lt. Noel Manabat's above testimony is corroborated by PC Sgt. Reynaldo Cachuela, a member of the PC team that went after the "carnappers." [9]

The appellant assails the trial court for giving credence to the testimony of the prosecution witnesses which he claims to be hearsay, conflicting and biased, but the appellant does not point to specific portions of said testimony which are allegedly conflicting and biased.

The appellant also claims that the firearm and explosive in question cannot be used as evidence against him since the PC officers had no warrant of arrest when they entered the apartment, in violation of his constitutional rights.

The contention is devoid of merit PC Sgt. Reynaldo Cachuela categorically declared - and this is not disputed - that they were allowed by the owner of the apartment to enter. He said:

“Q How did you get inside the apartment?

A With carnappers Romeo Fernandez and Joey Flores, sir, who pinpointed the house of Reynaldo Cruz?

Q After this pinpointing of the house, was the house closed?

A Yes, sir.

Q How did you come to get inside the house?

A We were allowed by the owner of the house to go inside.

Q Who is the owner of the house?

A

I cannot remember the name of the owner, sir, but it was the sister of Reynaldo Cruz.”[10]

Besides, it should be noted that the unlicensed firearm and explosive were found when they arrested the accused and his companions for "carnapping" and not for illegal possession of firearm and ammunition. In *Magoncia vs. Palacio*,[11] the Court ruled that an unlicensed firearm may be seized without the necessity of obtaining a search warrant. As Mr. Justice Perfecto explained it in his concurring opinion in said case:

"x x x The illegality of the search is independent from the illegal possession of prohibited arms. The illegality of the search did not make legal an illegal possession of firearms. When, in pursuing an illegal action or in the commission of a criminal offense, the offending police officers should happen to discover a criminal offense being committed by any person, they are not precluded from performing their duties as police officers for the apprehension of the guilty person and the taking of the corpus delicti."

Finally, the accused, citing the case of *Morales vs. Ponce Enrile*,[12] claims that the extrajudicial confession obtained from him during custodial investigation,[13] is inadmissible in evidence against him for having been obtained in violation of his constitutional rights.

We agree. It would appear that the police officers failed to comply with the strictures laid down by the Court in the cited case of *Morales vs. Ponce Enrile*, for police officers to follow in a custodial investigation in that, while Police Sgt. Jesus Ordinario testified that he had informed the accused of his constitutional rights to remain silent and to be represented by counsel and that the accused waived such rights,[14] the waiver of constitutional rights was not made with the assistance or even in the presence of counsel.

However, the conviction of the appellant is not based upon his extra-judicial confession alone. The evidence

pre-sented by the prosecution, even without said extrajudicial confession, is abundant, to support a finding of guilt.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with costs against the accused-appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Original Record, p. 1

[2] Id., p. 33

[3] Id., p. 40

[4] Appelle's Brief, pp. 3-6

[5] t.s.n. of July 16, 1986, pp. 2-6

[6] t.s.n. of July 25, 1986, pp. 2-6

[7] U.S. vs. Juan, 23 Phil. 105; People vs. Soyang, 110 Phil. 565

[8] t.s.n. of June 27, 1986, pp. 5-6

[9] Id., pp. 16, 17

[10] Id., p. 17

[11] G.R. No. L-1486, April 26, 1948, 80 Phil. 771

[12] G.R. Nos. 61016-17, April 26, 1983, 121 SCRA 538, reiterated in People vs. Galit, G.R. No. 51770, March 20, 1985, 135 SCRA 465

[13] Exhibit A

[14] t.s.n. of June 27, 1986, pp. 10-11

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