

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO MENGOTE Y TEJAS, ACCUSED-APPELLANT.

G.R. No. 87059. June 22, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Accused-appellant Rogelio Mengote was convicted of illegal possession of firearms on the strength mainly of the stolen pistol found on his person at the moment of his warrantless arrest. In this appeal, he pleads that the weapon was not admissible as evidence against him because it had been illegally seized and was therefore the fruit of the poisonous tree. The Government disagrees. It insists that the revolver was validly received in evidence by the trial judge because its seizure was incidental to an arrest that was doubtless lawful even if admittedly without warrant.

The incident occurred shortly before noon of August 8, 1987, after the Western Police District received a telephone call from an informer that there were three suspicious-looking persons at the corner of Juan Luna and North Bay Boulevard in Tondo, Manila. A surveillance team of plainclothesmen was forthwith dispatched to the place. As later narrated at the trial by Patrolmen Rolando Mercado and Alberto Juan,[1] they there saw two men "looking from side to side," one of whom was holding his abdomen. They approached these persons and identified themselves as policemen, whereupon the two tried to run away but were unable to escape because the other lawmen had surrounded them. The suspects were then searched. One of them, who turned out to be the accused-appellant, was found with a .38 caliber Smith and Wesson revolver with six live bullets in the chamber. His companion, later identified as Nicanor Morellos, had a fan knife secreted in his front right pants pocket. The weapons were taken from them. Mengote and Morellos were then turned over to police headquarters for investigation by the Intelligence Division.

On August 11, 1987, the following information was filed against the accused-appellant before the Regional Trial Court of Manila:

The undersigned accuses ROGELIO MENGOTE y TEJAS of a violation of Presidential Decree No. 1866, committed as follows:

That on or about August 8, 1987, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control a firearm, to wit:

one (1) cal. 38 "S & W" bearing Serial No. 8720-T

without first having secured the necessary license or permit therefor from the proper authorities.

Besides the police officers, one other witness presented by the prosecution was Rigoberto Danganan, who identified the subject weapon as among the articles stolen from him during the robbery in his house in Malabon on June 13, 1987. He pointed to Mengote as one of the robbers. He had duly reported the robbery to the police, indicating the articles stolen from him, including the revolver.[2] For his part, Mengote made no effort to prove that he owned the firearm or that he was licensed to possess it and claimed instead that the weapon had been

"planted" on him at the time of his arrest.[3]

The gun, together with the live bullets and its holster, were offered as Exhibits A, B and C and admitted over the objection of the defense. As previously stated, the weapon was the principal evidence that led to Mengote's conviction for violation of P.D. 1866. He was sentenced to reclusion perpetua.[4]

It is submitted in the Appellant's Brief that the revolver should not have been admitted in evidence because of its illegal seizure, no warrant therefor having been previously obtained. Neither could it have been seized as an incident of a lawful arrest because the arrest of Mengote was itself unlawful, having been also effected without a warrant. The defense also contends that the testimony regarding the alleged robbery in Danganan's house was irrelevant and should also have been disregarded by the trial court.

The following are the pertinent provision of the Bill of Rights:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3 (1). The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

There is no question that evidence obtained as a result of an illegal search or seizure is inadmissible in any proceeding for any purpose. That is the absolute prohibition of Article III, Section 3(2), of the Constitution. This is the celebrated exclusionary rule based on the justification given by Judge Learned Hand that "only in case the prosecution, which itself controls the seizing officials, knows that it cannot profit by their wrong will the wrong be repressed."

The Solicitor General, while conceding the rule, maintains that it is not applicable in the case at bar. His reason is that the arrest and search of Mengote and the seizure of the revolver from him were lawful under Rule 113, Section 5, of the Rules of Court reading as follows:

Sec. 5. Arrest without warrant; when lawful. - A peace officer or private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7.

We have carefully examined the wording of this rule and cannot see how we can agree with the prosecution.

Par. (c) of Section 5 is obviously inapplicable as Mengote was not an escapee from a penal institution when he was arrested. We therefore confine ourselves to determining the lawfulness of his arrest under either Par. (a) or Par. (b) of this section.

Par. (a) requires that the person be arrested (1) after he has committed or while he is actually committing or is at least attempting to commit an offense, (2) in the presence of the arresting officer.

These requirements have not been established in the case at bar. At the time of the arrest in question, the accused-appellant was merely "looking from side to side" and "holding his abdomen," according to the arresting officers themselves. There was apparently no offense that had just been committed or was being actually committed or at least being attempted by Mengote in their presence.

The Solicitor General submits that the actual existence of an offense was not necessary as long as Mengote's acts "created a reasonable suspicion on the part of the arresting officers and induced in them the belief that an offense had been committed and that the accused-appellant had committed it." The question is, What offense? What offense could possibly have been suggested by a person "looking from side to side" and "holding his abdomen" and in a place not exactly forsaken?

These are certainly not sinister acts. And the setting of the arrest made them less so, if at all. It might have been different if Mengote had been apprehended at an ungodly hour and in a place where he had no reason to be, like a darkened alley at 3 o'clock in the morning. But he was arrested at 11:30 in the morning and in a crowded street shortly after alighting from a passenger jeep with his companion. He was not skulking in the shadows but walking in the clear light of day. There was nothing clandestine about his being on that street at that busy hour in the blaze of the noonday sun.

On the other hand, there could have been a number of reasons, all of them innocent, why his eyes were darting from side to side and he was holding his abdomen. If they excited suspicion in the minds of the arresting officers, as the prosecution suggests, it has nevertheless not been shown what their suspicion was all about. In fact, the policemen themselves testified that they were dispatched to that place only because of the telephone call from the informer that there were "suspicious-looking" persons in that vicinity who were about to commit a robbery at North Bay Boulevard. The caller did not explain why he thought the men looked suspicious nor did he elaborate on the impending crime.

In the recent case of *People v. Malmstedt*,^[5] the Court sustained the warrantless arrest of the accused because there was a bulge in his waist that excited the suspicion of the arresting officer and, upon inspection, turned out to be a pouch containing hashish. In *People v. Claudio*,^[6] the accused boarded a bus and placed the bag she was carrying behind the seat of the arresting officer while she herself sat in the seat before him. His suspicion aroused, he surreptitiously examined the bag, which he found to contain marijuana. He then and there made the warrantless arrest and seizure that we subsequently upheld on the ground that probable cause had been sufficiently established.

The case before us is different because there was nothing to support the arresting officers' suspicion other than Mengote's darting eyes and his hand on his abdomen. By no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in their presence.

This case is similar to *People v. Aminnudin*,^[7] where the Court held that the warrantless arrest of the accused was unconstitutional. This was effected while he was coming down a vessel, to all appearances no less innocent than the other disembarking passengers. He had not committed nor was he actually committing or attempting to

commit an offense in the presence of the arresting officers. He was not even acting suspiciously. In short, there was no probable cause that, as the prosecution incorrectly suggested, dispensed with the constitutional requirement of a warrant.

Par. (b) is no less applicable because its no less stringent requirements have also not been satisfied. The prosecution has not shown that at the time of Mengote's arrest an offense had in fact just been committed and that the arresting officers had personal knowledge of facts indicating that Mengote had committed it. All they had was hearsay information from the telephone caller, and about a crime that had yet to be committed.

The truth is that they did not know then what offense, if at all, had been committed and neither were they aware of the participation therein of the accused-appellant. It was only later, after Danganan had appeared at the police headquarters, that they learned of the robbery in his house and of Mengote's supposed involvement therein.[8] As for the illegal possession of the firearm found on Mengote's person, the policemen discovered this only after he had been searched and the investigation conducted later revealed that he was not its owners nor was he licensed to possess it.

Before these events, the peace officers had no knowledge even of Mengote's identity, let alone the fact (or suspicion) that he was unlawfully carrying a firearm or that he was involved in the robbery of Danganan's house.

In the landmark case of *People v. Burgos*,[9] this Court declared:

Under Section 6(a) of Rule 113, the officer arresting a person who has just committed, is committing, or is about to commit an offense must have personal knowledge of the fact. The offense must also be committed in his presence or within his view. (*Sayo v. Chief of Police*, 80 Phil. 859). (Underscoring supplied)

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In arrests without a warrant under Section 6 (b), however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or actually have been committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed. The test of reasonable ground applies only to the identity of the perpetrator. (Underscoring supplied)

This doctrine was affirmed in *Alih v. Castro*,[10] thus:

If the arrest was made under Rule 113, Section 5, of the Rules of Court in connection with a crime about to be committed, being committed, or just committed, what was that crime? There is no allegation in the record of such a justification. Parenthetically, it may be observed that under the Revised Rule 113, Section 5(b), the officer making the arrest must have personal knowledge of the ground therefor as stressed in the recent case of *People v. Burgos*. (Underscoring supplied)

It would be a sad day, indeed, if any person could be summarily arrested and searched just because he is holding his abdomen, even if it be possibly because of a stomach-ache, or if a peace officer could clamp handcuffs on any person with a shifty look on suspicion that he may have committed a criminal act or is actually committing or attempting it. This simply cannot be done in a free society. This is not a police state where order is exalted over liberty or, worse, personal malice on the part of the arresting officer may be justified in the name of security.

There is no need to discuss the other issues raised by the accused-appellant as the ruling we here make is sufficient to sustain his exoneration. Without the evidence of the firearm taken from him at the time of his illegal arrest, the prosecution has lost its most important exhibit and must therefore fail. The testimonial evidence against Mengote (which is based on the said firearm) is not sufficient to prove his guilt beyond reasonable doubt of the crime imputed to him.

We commend Atty. Violeta Calvo-Drilon for her able and spirited defense of the accused-appellant not only in the brief but also in the reply brief, which she did not have to file but did so just the same to stress the constitutional rights of her client. The fact that she was acting only as a counsel de oficio with no expectation of material reward makes her representation even more commendable.

The Court feels that if the peace officers had been more mindful of the provisions of the Bill of Rights, the prosecution of the accused-appellant might have succeeded. As it happened, they allowed their over-zealousness to get the better of them, resulting in their disregard of the requirements of a valid search and seizure that rendered inadmissible the vital evidence they had invalidly seized.

This should be a lesson to other peace officers. Their impulsiveness may be the very cause of the acquittal of persons who deserve to be convicted, escaping the clutches of the law because, ironically enough, it has not been observed by those who are supposed to enforce it.

WHEREFORE, the appealed decision is REVERSED and SET ASIDE. The accused-appellant is ACQUITTED and ordered released immediately unless he is validly detained for other offenses. No costs.

SO ORDERED.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] TSN, September 21, 1987, October 21, 1987.

[2] Records, p. 54.

[3] TSN, October 26, 1987, p. 11.

[4] Through Judge Romeo J. Callejo.

[5] 198 SCRA 401.

[6] 160 SCRA 646.

[7] 163 SCRA 402.

[8] TSN, September 23, 1987, p. 10.

[9] 144 SCRA 1.

[10] 151 SCRA 279.

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