

ORLANDO PRIMERO, PETITIONER, VS. HON. COURT OF APPEALS AND HON. SOLICITOR GENERAL, RESPONDENTS.

G.R. Nos. 48468-69. November 22, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before the then Court of First Instance of Tarlac, Orlando Primero was charged with the crimes of Acts of Lasciviousness and Illegal Possession of Deadly Weapon.

The complaint for Acts of Lasciviousness reads:

"That on or about 5:30 P.M., November 12, 1975 in the municipality of Camiling, Province of Tarlac, the abovenamed accused, did then and there willfully, unlawfully and feloniously, while armed with a deadly weapon (bayonet) and by means of force and intimidation and with lewd designs committed lascivious acts upon the person of the undersigned complainant at Brgy. Pindangan 2nd, Camiling, Tarlac by then and there embracing, touching and fondling the breast and private parts of the undersigned against the complainants' will.

"CONTRARY TO LAW."

"Camiling Tarlac." (Decision, pp. 28?29, Rollo)

While the Provincial Fiscal filed an Information for Illegal Possession of Deadly Weapon, to wit:

"That on or about November 12, 1975, at about 5:30 in the afternoon, at Barangay Pindangan 2nd, in the Municipality of Camiling, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said Orlando Primero did then and there willfully, unlawfully and feloniously carry outside of his residence a deadly weapon, to wit: a bayonet, 19 - 1/2" long, which was not then being used as a necessary tool or implement to earn a living or being used in connection therewith, but was used in the commission of the crime of Acts of Lasciviousness for which he was charged in Crim. Case No. 1184 of this Honorable Court.

"Contrary to Law.

"Tarlac, Tarlac, February 19, 1976." (p. 29, Rollo)

The aforementioned offenses were jointly tried for having been committed on the same occasion.

The evidence for the prosecution, as found by the respondent appellate Court is as follows:

"During the time material to this case Angelita Maycong was about 24 years old, single and a resident of Pindangan II, Camiling, Tarlac (p. 16, tsn., August 5, 1976).

"On or about November 12, 1975, on their way home from Tarlac where they joined a parade (p. 30, tsn., August 30, 1976), Angelita Maycong and one Elena Garcia saw Orlando Primero emerge suddenly from the talahib along their path, brandishing a bayonet at them (p. 17, tsn., August 5, 1976). Elena Garcia ran away (p. 6, tsn., August 30, 1976). Angelita Maycong descended on the 'pilapil' to her left side and also tried to run

away (p. 18, tsn., August 5, 1976). Unfortunately, Angelita stumbled, as a result of which, Orlando grabbed her and pinned her down on the ground (Ibid). He held her neck with his right hand and held her breasts with the left hand and kissed her right cheek (pp. 19, 20, tsn., August 5, 1976). Fighting back, she kicked Orlando near his organ and struck him with left hand (p. 20, Ibid.; p. 27, tsn., August 5, 1976). In the struggle, Angelita was able to get the bayonet (p. 2, Ibid).

"In the meantime, Elena Garcia shouted for help (p. 20, tsn., August 5, 1976). Angelita also shouted for help (p. 20, Ibid).

"Upon seeing the bayonet in the possession of Angelita, Orlando Primero ran away (p. 23, tsn., August 5, 1976). Not long after, the father of Angelita Maycong, who was then tending his farm from where he heard the shouts for help, arrived (Ibid). Having learned of the attempt made on the honor of her daughter, father and daughter reported the matter to the Barrio Captain (Ibid). The bayonet was surrendered to the police force of Camiling, Tarlac." (pp. 3-5, Solicitor's Brief) (Decision, p. 10, Rollo).

The defendant, in turn, claims that the filing of these two (2) criminal accusations was motivated by revenge. He testified that he and the complainant were sweethearts who were engaged to get married. He lived in the house of the complainant for three (3) months where he was practically treated by the father of the complainant, Florentino Maycong, as a son-in-law helping in the farm work and in the daily chores in the house. However, the planned marriage did not take place because the complainant's family wanted an ostentations ceremony which he (defendant) could not afford. As an alternative, defendant suggested to complainant that they elope but the latter refused. Subsequently, the defendant left the complainant and married another woman, a decision which was allegedly resented by the complainant.

Furthermore, defendant raises the defense of alibi. It is argued that at the time the incident was allegedly committed, he was in Paniqui, Tarlac harvesting palay with some other farm laborers. He maintained that he worked there from 6 o'clock in the morning to past 6 o'clock in the evening of November 12, 1975. The foregoing testimony of the defendant was corroborated by Cipriano Sudaria and Teodoro Cayabyab.

After trial, the lower court convicted the defendant of the two (2) offenses charged in the two (2) separate informations and sentenced him as follows:

"WHEREFORE, finding the accused Orlando Primero guilty beyond reasonable doubt in Crim. Case No. 1184 of the offense of Acts of Lasciviousness punishable under Article 336 of the Revised Penal Code, he is hereby sentenced to a term of TWO (2) YEARS, FOUR (4) MONTHS, and ONE (1) DAY to FOUR (4) YEARS and TWO (2) MONTHS of prision correctional, medium period, and in Crim. Case No. 1195 on the charge of Illegal Possession of a Deadly Weapon, punishable under PD 9, he is further sentenced to a prison term of TEN (10) YEARS which is the maximum term imposed by the law, with costs.

"The bayonet, Exh. A, is ordered confiscated and once this decision becomes final, the same shall be forwarded to the 184th PC Company, Paniqui, Tarlac for disposition according to law." (p. 12, Rollo)

On appeal, the respondent Court rendered a decision,* the dispositive portion of which reads:

"WHEREFORE, affirming the judgment of conviction in both offenses but modifying the penalty imposed by the lower court, We hereby sentence the defendant to the following:

"1. As regards to the accusation of acts of lasciviousness the defendant is hereby sentenced to a penalty of Six (6) Months of Arresto Mayor to Four (4) Years of Prision Correccional; and

"2. As regards the violation of Presidential Decree No. 9 the defendant is hereby sentenced to an indeterminate penalty of Five (5) Years as minimum to Ten (10) Years as maximum. The bayonet, Exhibit A is ordered confiscated in favor of the government." (pp. 15-16, Rollo)

Hence, this petition raising the following issues:

I

The respondent Court erred in giving credence to the testimonies of the prosecution witnesses.

II

The respondent Court failed to pass upon the contention that bayonet is not one of the weapons the carrying of which outside one's residence is punished under Section 3 of Presidential Decree No. 9.

III

The respondent Court erred in its non--consideration of the defense of alibi interposed by the defendant.

After a careful perusal of the entire record of this case, We find no cogent reason to disturb the findings of the respondent Court.

With regard to the issue of credibility, We cannot acquiesce with the argument raised by the petitioner that the testimonies of the prosecution witnesses, being close relatives (father and niece) of the complainant, should not be given weight and should be considered biased and self-serving. Be it remembered that mere relations cannot militate against the credibility of a witness. Neither could it distort the testimony due from such witnesses. In point is the ruling in the case of *People v. Libed* reported in 14 SCRA 410:

"The fact alone of relationship to the victim does not destroy a witness' credibility. It is not to be lightly supposed that the relatives of the deceased would callously violate their conscience xxx by blaming it on persons whom they know to be innocent thereof."

In this regard, it is relevant to restate herein that the trial court, which had the opportunity of observing the demeanor and deportment of the witnesses, found the testimonies of the prosecution witnesses to have the hallmarks of truth and credibility. Thus, the trial court pertinently observed:

"The Court is inclined to believe the claim of the complainant. Angelita Maycong, her father Florentino Maycong, and her companion Elena Garcia, appear to be credible witnesses. They impressed the Court as being innocent farm folks, and while appearance may be deceiving, their story is not incredible and was entirely believable. Being an unmarried woman and in the prime of her maidenhood (she was 25 years of age when she testified on August 5, 1976), what reason would Angelita have for unnecessarily exposing herself if indeed the story of the accused violating her honor was not true. Her story was corroborated in material aspects by the two other witnesses, her companion Elena Garcia and her father Florentino Maycong." (Decision, p. 12, Rollo)

Accordingly, it need not be emphasized that the trial court's finding that the testimonies of the witnesses were reliable, being supported by evidence of record, should be given credence. Thus, on matters of credibility the findings of the trial court are accorded the highest respect (*People v. Cabanit*, 139 SCRA 94; *People v. Jones*, 137 SCRA 166; *People v. Canamo*, 138 SCRA 141; *People v. Pasco, Jr.*, 137 SCRA, *Guita v. CA*, 139 SCRA 576).

Anent the second issue, We regret to say that the same is bereft of merit. It is worth noting that the dispositive portion of the respondent Court's decision makes mention of violation by the petitioner of P.D. No. 9 for which he was sentenced to an indeterminate penalty of five (5) years as minimum to ten (10) years as maximum, and wherein the bayonet was ordered confiscated in favor of the government. It goes without saying that the Court of Appeals would not have sustained the trial court's finding of petitioner's guilt as to the charge of illegal possession of deadly weapon were it not convinced that a bayonet is a "bladed, pointed or blunt weapon" decreed unlawful

under P.D. No. 9.

It can not be disputed that, ordinarily, the enumeration of specified matters in a statute is construed as an exclusion of matters not enumerated unless a different intention appears. However, the maxim *expressio unius est exclusio alterius* is only an auxiliary rule of statutory construction. It is not of universal application - neither is it conclusive. It should be applied only as a means of discovering legislative intent which is not otherwise manifest and should not be permitted to defeat the plainly indicated purpose of the legislature (Statutory Construction, Martin, sixth edition, 1984, pp. 71-72). Where a statute appears on its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other xxx things not so enumerated should not have been included, and manifest injustice will follow by not so including them, the maxim *expressio unius est exclusio alterius* should not be invoked (Ibid, p. 79). Applying the same in the instant case, it cannot be convincingly argued that a bayonet is not a bladed, pointed or blunt weapon, possession of which outside of one's residence is decreed by P.D. No. 9 to be illegal. True enough, if the carrying outside one's residence of such weapons as fan knife, "balisong" or club, which are less deadly than the bayonet, are prohibited under the law, there is no logical reason why the bayonet should be exempted from the prohibition.

Finally, as regards the defense of alibi, not only is it a weak defense but also it cannot prevail over the positive identification of the accused and by credible prosecution witnesses (People v. Obenque, 147 SCRA 448; People v. Pacada, Jr., 142 SCRA 427, People v. Canturia, 139 SCRA 280). Moreover, defendant failed to prove that it was physically impossible for him to be at the scene of the incident.

WHEREFORE, premises considered, the decision appealed from is AFFIRMED in toto. Costs against petitioner.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

* Penned by Justice Vicente G. Ericta concurred in by Justices Conrado M. Vasquez and Jose B. Jimenez.

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