571 Phil. 472

SECOND DIVISION

[G.R. No. 170308, March 07, 2008]

GALO MONGE, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

R E S O L U T I O N

TINGA, J,:

This is a Petition for Review[1] under Rule 45 of the Rules of Court whereby petitioner Galo Monge (petitioner) assails the Decision[2] of the Court of Appeals dated 28 June 2005 which affirmed his conviction as well as the discharge of accused Edgar Potencio (Potencio) as a state witness.

The factual antecedents follow. On 20 July 1994, petitioner and Potencio were found by barangay tanods Serdan and Molina in possession of and transporting three (3) pieces of mahogany lumber in Barangay Santo Domingo, Iriga City. Right there and then, the tanods demanded that they be shown the requisite permit and/or authority from the Department of Environment and Natural Resources (DENR) but neither petitioner nor Potencio was able to produce any.[3] Petitioner fled the scene in that instant whereas Potencio was brought to the police station for interrogation, and thereafter, to the DENR-Community Environment and Natural Resources Office (DENR-CENRO).[4] The DENR-CENRO issued a seizure receipt for the three pieces of lumber indicating that the items, totaling 77 board feet of mahogany valued at P1,925.00, had been seized from Potencio.[5] Later on, petitioner was arrested, but Potencio's whereabouts had been unknown since the time of the seizure[6] until he surfaced on 3 January 1998.[7]

An information was filed with the Regional Trial Court of Iriga City, Branch 35 charging petitioner and Potencio with violation of Section 68[8] of Presidential Decree (P.D.) No. 705,[9] as amended by Executive Order (E.O.) No. 277, series of 1997. The inculpatory portion of the information reads:

> That on or about the 20th day of [July 1994], at about 9:30 o'clock in the morning, in Barangay Sto. Domingo, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with each other, without any authority of law, nor armed with necessary permit/license or other documents, with intent to gain, did then and there willfully, unlawfully and feloniously, transport and have in their possession three (3) pieces of Mahogany of assorted [dimension] with a[n] appropriate volume of seventy-seven (77) board feet or point eighteen (0.18) cubic meter with a total market value of P1,925.00, Philippine currency, to the damage and prejudice of the DENR in the aforesaid amount.

CONTRARY TO LAW.[10]

At the 26 November 1996 arraignment, petitioner entered a negative plea. [11]

Trial ensued. On 17 June 1997, Serdan testified on the circumstances of the apprehension but for failing to appear in court for cross examination, his testimony was stricken out.[12] On 16 January 1998, Potencio was discharged to be used as a state witness on motion of the prosecutor.[13] Accordingly, he testified on the circumstances of the arrest but claimed that for a promised fee he was merely requested by petitioner, the owner of the log, to assist him in hauling the same down from the mountain. Potencio's testimony was materially corroborated by Molina.[14] Petitioner did not contest the allegations, except that it was not he but Potencio who owned the lumber. He lamented that contrary to what Potencio had stated in court, it was the latter who hired him to bring the log from the site to the sawmill where the same was to be sawn into pieces.[15]

The trial court found petitioner guilty as charged. Petitioner was imposed nine (9) years, four (4) months and one (1) day to ten (10) years and eight (8) months of *prision mayor* in its medium and maximum periods and ordered to pay the costs.[16]

Aggrieved, petitioner elevated the case to the Court of Appeals where he challenged the discharge of Potencio as a state witness on the ground that the latter was not the least guilty of the offense and that there was no absolute necessity for his testimony.[17] The appellate court dismissed this challenge and affirmed the findings of the trial court. However, it modified the penalty to an indeterminate prison sentence of six (6) years of *prision correccional* as minimum to ten (10) years and eight (8) months of *prision mayor* as maximum.[18] His motion for reconsideration was denied, hence the present appeal whereby petitioner reiterates his challenge against the discharge of Potencio.

The petition is utterly unmeritorious.

Petitioner and Potencio were caught *in flagrante delicto* transporting, and thus in possession of, processed mahogany lumber without proper authority from the DENR. Petitioner has never denied this fact. But in his attempt to exonerate himself from liability, he claims that it was Potencio, the owner of the lumber, who requested his assistance in hauling the log down from the mountain and in transporting the same to the sawmill for processing. The contention is unavailing.

Section 68 of P.D. No. 705, as amended by E.O. No. 277, criminalizes two distinct and separate offenses, namely: (a) the cutting, gathering, collecting and removing of timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (b) the possession of timber or other forest products without the legal documents required under existing laws and regulations.[19] DENR Administrative Order No. 59 series of 1993 specifies the documents required for the transport of timber and other forest products. Section 3 thereof materially requires that the transport of lumber be accompanied by a certificate of lumber origin duly issued by the DENR-CENRO. In the first offense, the legality of the acts of cutting, gathering, collecting or removing

timber or other forest products may be proven by the authorization duly issued by the DENR. In the second offense, however, it is immaterial whether or not the cutting, gathering, collecting and removal of forest products are legal precisely because mere possession of forest products without the requisite documents consummates the crime.[20]

It is thus clear that the fact of possession by petitioner and Potencio of the subject mahogany lumber and their subsequent failure to produce the requisite legal documents, taken together, has already given rise to criminal liability under Section 68 of P.D. No. 705, particularly the second act punished thereunder. The direct and affirmative testimony of Molina and Potencio as a state witness on the circumstances surrounding the apprehension well establishes petitioner's liability. Petitioner cannot take refuge in his denial of ownership over the pieces of lumber found in his possession nor in his claim that his help was merely solicited by Potencio to provide the latter assistance in transporting the said lumber. P.D. No. 705 is a special penal statute that punishes acts essentially *malum prohibitum*. As such, in prosecutions under its provisions, claims of good faith are by no means reliable as defenses because the offense is complete and criminal liability attaches once the prohibited acts are committed.[21] In other words, mere possession of timber or other forest products without the proper legal documents, even absent malice or criminal intent, is illegal.[22] It would therefore make no difference at all whether it was petitioner himself or Potencio who owned the subject pieces of lumber.

Considering the overwhelming body of evidence pointing to nothing less than petitioner's guilt of the offense charged, there is no cogent reason to reverse his conviction.

Petitioner's challenge against Potencio's discharge as a state witness must also fail. Not a few cases established the doctrine that the discharge of an accused so he may turn state witness is left to the

exercise of the trial court's sound discretion[23] limited only by

the requirements set forth in Section 17,[24] Rule 119 of the Rules of Court. Thus, whether the accused offered to be discharged appears to be the least guilty and whether there is objectively an absolute necessity for his testimony are questions that lie within the domain of the trial court, it being competent to resolve issues of fact. The discretionary judgment of the trial court with respect this highly factual issue is not to be interfered with by the appellate courts except in case of grave abuse of discretion.[25] No such grave abuse is present in this case. Suffice it to say that issues relative to the discharge of an accused must be raised in the trial court as they cannot be addressed for the first time on appeal.[26]

Moreover and more importantly, an order discharging an accused from the information in order that he may testify for the prosecution has the effect of an acquittal.[27] Once the discharge is ordered by the trial court, any future development showing that any or all of the conditions provided in Section 17, Rule 119 have not actually been fulfilled will not affect the legal consequence of an acquittal.[28] Any witting or unwitting error of the prosecution, therefore, in moving