

FOURTEENTH DIVISION

[CA-G.R. CR No. 35607, May 12, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LOUMEL SANTOS Y DELOS REYES, ACCUSED-APPELLANT.**

D E C I S I O N

LIBREA-LEAGOGO, J.:

Before this Court is an appeal from the Decision^[1] dated 14 December 2012 of the Regional Trial Court, National Capital Judicial Region, Branch 263, Marikina City in the case entitled "People of the Philippines v. Loumel Santos y Delos Reyes," docketed as Crim. Case No. 10-11627-MK, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing(,) accused, LOUMEL SANTOS y DELOS REYES is hereby found GUILTY BEYOND REASONABLE DOUBT of Violation of Section 261 par (q) of the Omnibus Election Code in relation to COMELEC (R)esolution (N)o. 8714 and is sentenced to an indeterminate penalty of one year of imprisonment as minimum to three years of imprisonment as maximum, not subject to probation; and he shall suffer **DISQUALIFICATION** to hold public office and DEPRIVATION of the right of suffrage. The subject firearm is **CONFISCATED** and **FORFEITED** in favor of the government.

SO ORDERED."^[2]

Accused-appellant filed his Brief^[3] dated 22 October 2013. Plaintiff-appellee also filed its Brief^[4] dated 24 February 2014. Accused-appellant then filed a Manifestation in lieu of Reply Brief^[5] dated 12 March 2014 to the effect that he would no longer file a reply brief. Thus, the appeal is submitted for decision.

FACTUAL ANTECEDENTS

Accused Loumel Santos y Delos Reyes was charged with violation of Section 261 paragraph (q) of the Omnibus Election Code in relation to COMELEC Resolution No. 8714, in an Information^[6] dated 18 January 2010 filed with the Regional Trial Court of Marikina City, docketed as *Crim. Case No. 2010-11627-MK*, the accusatory portion of which reads:

"That on or about the 14th day of January 2010, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without written authority from the COMELEC, did then and there willfully, unlawfully and feloniously carry (sic) firearm (improvised pen gun with .38 caliber live ammunition outside his residence during the election period.

Considering that the accused had already been detained, the trial court issued an Order^[8] dated 25 January 2010, setting his arraignment. When arraigned on 18 February 2010, accused entered a plea of not guilty to the crime charged.^[9] Pre-trial conference was held and a Pre-trial Order^[10] dated 06 May 2010 was issued, which stated, *inter alia*, that the accused who was then present is the same accused named in the Information and that the incident happened within the jurisdiction of the trial court.

Trial ensued.

The prosecution presented its evidence. The testimonies of PO1 Rey Cabarles ("PO1 Cabarles," for brevity), Police Chief Inspector Russel G. Leysa ("P/CI Leysa," for brevity), Barangay Tanod Luisito Cruz ("B/T Cruz," for brevity) and Barangay Tanod Romeo San Pedro ("B/T San Pedro," for brevity) were summarized by the trial court, *viz*:

"PO1 Rey Cabarles, a police officer of the Eastern Police District (EPD). He testified that on January 14, 2010 at around 8:00 in the evening while they were at their office they decided to go on patrol. At that time he was with B/T San Pedro and B/T Cruz on board a tricycle patrol along Sitaw Street. It was B/T Luisito Cruz who was driving the tricycle and he was seated inside the side car. Upon reaching Sitaw Street, they saw a group of persons along the street creating noise. They told the group to stop creating noise and to go home. B/T San Pedro saw one of the persons urinating at the alley. The crowd dispersed and went inside their respective houses already. He saw B/T San Pedro and Cruz holding a male person and they told him that they caught him urinating at the alley. Upon approaching the person who was accosted by the barangay tanod(,) he noticed something bulging at his back. He immediately frisked the accused and upon lifting his shirt he saw an improvised gun made out of tube and black rubber around seven (7) inches in length. He noticed that there is live ammunition cocked inside the barrel of the improvised gun. He marked the gun and the ammunition at the scene of the crime with the accused (sic) nickname as 'Ogie POSS-14-01-10'. PO1 Cabarles identified the accused in open court and when asked his name, he replied 'Loumel Santos'. He submitted the evidence at the SOCO crime laboratory for examination in order to determine whether the firearm is serviceable or not. They brought the accused at (sic) the hospital for medical examination. They executed a Pinagsamang Sinumpaang Salaysay consisting of two pages dated January 15, 2010 signed by him and B/T San Pedro and B/T Cruz. The prosecution moved for continuance considering that the witness is not in possession of the object evidence and it is still with the crime laboratory.

The second witness for the prosecution is P/C Insp. Russel Leyza (sic), from the Eastern Police District (EPD) Crime Laboratory Office, Marikina City whose testimony was the subject of stipulation by the prosecution and the defense and was accordingly dispensed with by the parties.

The prosecution and the defense stipulated and agreed that the witness is an expert witness, that the crime laboratory received a request for

verification as to whether or not (the) improvised hand gun is serviceable with markings 'OGIE POSS 14-01-10', that the improvised handgun was received by their office along with one live ammunition of cal.38 with markings 'OGIE POSS 14-01-10', that P/CI Leyza (sic) conducted the examination of the specimen and found the improvised handgun with marking 'OGIE POSS 14-01-10' was serviceable and that the examination was reduced to (sic) writing.

PO1 Rey Cabarles was again called to the witness stand for additional direct examination. He testified that he was the one who put the markings 'OGIE POSS 14-01-10' on the evidence confiscated from the accused.

On cross-examination, he testified that he cannot recall his other companions when he arrested the accused but he knew that B/T San Pedro and B/T Cruz were with him when he arrested the accused. He did not see the accused urinating but it was either B/T San Pedro or B/T Cruz who saw the accused urinating at the alley. He noticed that something was tucked in his waist when the accused struggled to free himself when he was being arrested by Barangay Tanods San Pedro and Cruz. He saw the improvised handgun tucked at the back right portion of the waist of the accused.

On re-direct examination of the witness, he testified that he was the one who prepared the Pinagsamang Sinumpaang Salaysay dated January 15, 2010. It was B/T San Pedro and B/T Cruz who joined him in executing the Salaysay since their other companions are not authorized to do so since they are civilian personnel(s) and volunteer(s) of the community. When he was assigned at barangay Tumana(,) B/T Luisito Cruz was no longer a barangay tanod.

The third witness for the prosecution is B/T Luisito Cruz. He testified that he is the same B/T Luisito Cruz who executed a Pinagsamang Sinumpaang Salaysay together with B/T San Pedro and PO1 Rey Cabarles. He confirmed the truthfulness of the contents of their Salaysay in so far as the time they were on patrol. The Public Prosecutor moved that the witness be considered as hostile witness and the same was granted by the court. B/T Cruz testified that he is no longer a barangay tanod since December 1, 2010. He has no knowledge as to the reason why the accused has been arrested and B/T San Pedro just told him that the accused was involved in a case of robbery-hold up of an Indian national. He was the driver of the patrol that brought the accused to the police station. He signed the Pinagsamang Sinumpaang Salaysay and also participated in the inquest proceedings of the accused.

On cross-examination(,) he testified that he just finished grade three. He testified that he did not read the Pinagsamang sinumpaang salaysay before he signed it because PO1 Cabarles was in a hurry to proceed to the fiscal's office for inquest. On January 14, 2010 he did not see a gun or bullet recovered from the accused when he was arrested by B/T San Pedro.

On re-direct examination he testified that he is not changing his answer only because he is no longer connected with the Barangay.

The fourth witness for the prosecution is B/T Romeo Francisco (sic). The prosecution and the defense agreed that his testimony will only be corroborative with the statements given by B/T Luisito Cruz (sic) hence, his testimony was dispensed with.”^[11]

The prosecution filed its Formal Offer of Evidence^[12] dated 18 January 2012, to which the accused filed its Comments/Objections etc.^[13] dated 31 January 2012. In the Order^{xiv} dated 29 February 2012, the trial court admitted Exhibits “A” - “C”, inclusive of submarkings.

The defense presented its evidence. The testimony of the accused was summarized by the trial court, viz:

“On the part of the defense, it presented the accused, Loumel Santos. He testified that on January 14, 2010 at around 10:30 in the evening he was attending a birthday party of his friend along Sitaw Street. Suddenly, some members of the Barangay Security including B/T San Pedro and B/T Lacara came to the place and called him. He approached them and he was informed that he was involved in a robbery-hold up of an Indian national. He told them that he is not involved in the said incident to which B/T Kimpoy replied, 'if you are not involved you must go with us at the Barangay office'. After he was brought to the barangay, they proceeded to the police station and that was the only time he knew that he was charged with illegal possession. When he was invited by the barangay tanods to go with them at the barangay they did not confiscate anything from him. The pen gun and the ammunition that was allegedly confiscated from him belong to Kimpoy. He saw Kimpoy got the pen gun from his jacket when he was brought at (sic) the CID Office.

On cross-examination he testified that his alias is Ogie and on January 14, 2010 he and some of his friends were at Sitaw Street, Tumana, Marikina City attending the birthday party of Angelo Daligdig. After he was arrested he was brought to the Prosecutor's Office for investigation and subsequently charged of the present offense.”^[15]

The assailed Decision^[16] dated 14 December 2012 was promulgated on 17 December 2012,^[17] finding the accused guilty beyond reasonable doubt for violation of Section 261 paragraph (q) of the Omnibus Election Code in relation to COMELEC Resolution No. 8714, the decretal portion of which was earlier quoted.^[18]

On 18 December 2012, the accused filed a Motion for Reconsideration.^[19] A Motion to Release the Accused and for Early Resolution^[20] dated 10 February 2013 was also filed, on the ground that the accused has served the maximum penalty imposed by the trial court which can be gleaned from the Order of Commitment^[21] dated 25 January 2010 issued by the trial court.

In the Order^[22] dated 14 February 2013, the trial court denied the Motion for Reconsideration for lack of merit, and ordered the Jail Warden of the Metro Manila District Jail, Bicutan, Taguig City to release the accused, unless he was detained for

some other lawful causes. The accused filed a Notice of Appeal^[23] dated 11 March 2013. In an Order^[24] dated 12 March 2013, the trial court ordered the records of the case to be forwarded to this Court.

Hence, this appeal.

R U L I N G

Accused-appellant assigns the following errors, viz:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THAT HIS WARRANTLESS ARREST WAS JUSTIFIED UNDER SECTION 5 (a), RULE 113 OF THE RULES OF COURT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THAT THE CIRCUMSTANCES OF THE CASE JUSTIFIED A WARRANTLESS SEARCH OF HIS PERSON.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM.^[25]

Accused-appellant contends, *inter alia*, that: to convict him of the crime charged, it is necessary to determine: 1) whether his arrest without a warrant was valid, 2) whether the warrantless search of his person was justified, and 3) whether the evidence obtained as a result of the said search is admissible in court; the Constitution and jurisprudence provide that no arrest may be made except by virtue of a warrant issued by a judge after examining the complainant and the witnesses he may produce and after finding probable cause to believe that the person to be arrested has committed the crime; this rule, however is with exceptions as provided for in Section 5, Rule 113 of the Rules of Court; he was arrested for allegedly urinating in public, a violation of a city ordinance, and that the arrest was effected without a warrant; as testified to by PO1 Cabarles, it was San Pedro and Cruz who saw him urinating in an alley; when PO1 Cabarles approached him, he was already being held by both barangay tanods; there is no question that the attendant circumstances do not fall under the exceptions provided for in Section 5, Rule 113 of the Rules of Court; to determine the validity of his arrest, the arresting officer must prove that in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; while San Pedro and Cruz were the ones who supposedly saw him urinating in the alley, it was only San Pedro who arrested the latter; to uphold the validity of the warrantless arrest, the prosecution must prove that he, in the presence of San Pedro, committed, was actually committing, or was attempting to commit an offense upon his arrest; the prosecution utterly failed to do so, as the testimony of San Pedro merely corroborated the testimony of PO1 Cabarles and was dispensed with by both parties; only the testimonies of PO1 Cabarles and Cruz remain for proper