

## THIRD DIVISION

[ G.R. No. 211214, March 20, 2019 ]

**LARRY SABUCO MANIBOG, PETITIONER, V. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

For a "stop and frisk" search to be valid, the totality of suspicious circumstances, as personally observed by the arresting officer, must lead to a genuine reason to suspect that a person is committing an illicit act. Consequently, a warrantless arrest not based on this constitutes an infringement of a person's basic right to privacy.

This resolves a Petition for Review on Certiorari<sup>[1]</sup> filed by Larry Sabuco Manibog (Manibog) assailing the Court of Appeals July 31, 2013 Decision<sup>[2]</sup> and January 29, 2014 Resolution<sup>[3]</sup> in CA-G.R. CR No. 34482. The Court of Appeals upheld the Regional Trial Court August 25, 2011 Judgment<sup>[4]</sup> finding him guilty of violating the Omnibus Election Code (Gun Ban).

On March 17, 2010, Manibog was charged with violation of Section 1 of Commission on Elections Resolution No. 8714, in relation to Section 32 of Republic Act No. 7166, and Sections 261(q) and 264 of Batas Pambansa Blg. 881 or the Omnibus Election Code (Gun Ban).<sup>[5]</sup> The accusatory portion of the Information read:

That on or about 10:20 o'clock (*sic*) in the morning of March 17, 2010, at Brgy. Madamba, municipality of Dingras, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, **the above-named accused did then and there willfully, unlawfully and knowingly carry in a public place, and outside of his residence a caliber [.45] pistol ARMSCOR Model 1911 bearing Serial Number 1167503 with one (1) magazine loaded with eight (8) ammunitions during the election period from Jan. 10, 2010 to June 9, 2010 without first securing the written authority or permit from the Commission on Elections, Manila, Philippines.**

CONTRARY TO LAW.<sup>[6]</sup> (Emphasis in the original)

On arraignment, Manibog pleaded not guilty to the crime charged.<sup>[7]</sup>

During pre-trial, the parties stipulated that on March 17, 2010, police officers arrested Manibog and seized his firearm for not having a permit from the Commission on Elections to carry it. The issue was later narrowed down to whether an illegal search and seizure attended Manibog's apprehension and confiscation of his gun.<sup>[8]</sup>

In the morning of March 17, 2010, Police Chief Inspector Randolph Beniat (Chief Inspector Beniat) received information from a police asset that Manibog was standing outside the Municipal Tourism Office of Dingras, Ilocos Norte with a gun tucked in his waistband.<sup>[9]</sup>

To verify this information, Chief Inspector Beniat immediately organized a team. Together, they proceeded to the Municipal Tourism Office located around 20 meters from the police station.<sup>[10]</sup>

About five (5) to eight (8) meters away from the Municipal Tourism Office, Chief Inspector Beniat saw Manibog standing outside the building. The team slowly approached him for fear that he might fight back. As he moved closer, Chief Inspector Beniat saw a bulge on Manibog's waist, which the police officer deduced to be a gun due to its distinct contour.<sup>[11]</sup>

Chief Inspector Beniat went up to Manibog, patted the bulging object on his waist, and confirmed that there was a gun tucked in Manibog's waistband. He disarmed Manibog of the .45 caliber handgun inside a holster, after which he arrested him for violating the election gun ban and brought him to the police station for an inquest proceeding.<sup>[12]</sup>

Police Officer Rodel 2 Caraballa (PO2 Caraballa) testified that he was part of the team organized by Chief Inspector Beniat to verify a tip they received concerning Manibog. He narrated that as he walked up to Manibog with the team during their operation, he noticed what appeared to be a gun-shaped bulge on Manibog's waist.<sup>[13]</sup>

PO2 Caraballa testified that Chief Inspector Beniat handed him the gun after it had been confiscated from Manibog. Later at the police station, he marked the gun with his initials "RC."<sup>[14]</sup>

For the defense, Manibog did not deny that he was carrying a gun when the police officers arrested him. However, he claimed that while Chief Inspector Beniat was frisking him, the police officer whispered an apology, explaining that he had to do it or he would get in trouble with the police provincial director.<sup>[15]</sup>

Manibog further testified that at the police station, Chief Inspector Beniat asked him to relay his apologies to Dingras Mayor Marinette Gamboa<sup>[16]</sup> (Mayor Gamboa) since Manibog had worked closely with her. He also stated that he did not hold a grudge against Chief Inspector Beniat.<sup>[17]</sup>

In its August 25, 2011 Judgment,<sup>[18]</sup> the Regional Trial Court found Manibog guilty beyond reasonable doubt of the election offense with which he was charged. It ruled that the warrantless search on Manibog was incidental to a lawful arrest because there was probable cause for the police officers to frisk and arrest him.<sup>[19]</sup>

The Regional Trial Court also noted that *People v. Tudit*,<sup>[20]</sup> which reversed *People v. Ayangao*,<sup>[21]</sup> instructed that to justify a warrantless arrest, it was not enough that the police officers were armed with reliable information. Such reliable information must be combined with an accused's overt act indicating that he or she has committed, is committing, or is about to commit a crime.<sup>[22]</sup> Here, the trial court found that the police officers arrested Manibog not only because of "a very

specific"<sup>[23]</sup> tip, but also because they personally observed a distinct bulge on his waistline, which they suspected to be a gun due to its contour and their experience as police officers.<sup>[24]</sup>

The Regional Trial Court likewise brushed off the defense's assertions that the police officers' failure to obtain a warrant invalidated Manibog's search and arrest. It declared that the police officers merely acted befitting the urgency of the situation; they would have been remiss in their duty if they did not immediately act on the information they had received.<sup>[25]</sup>

The dispositive portion of the Regional Trial Court Judgment read:

WHEREFORE, the accused LARRY MANIBOG y SABUCO is found GUILTY beyond reasonable doubt of the election offense of violation of Section 32 of Republic Act No. 7166 in relation to Comelec Resolution No. 8714 and is hereby sentenced to an indeterminate penalty of imprisonment ranging from one (1) year and six (6) months as minimum to two (2) years as maximum. He shall also suffer DISQUALIFICATION to hold public office and DEPRIVATION of the right to suffrage. The subject firearm is CONFISCATED and FORFEITED in favor of the Government.

SO ORDERED.<sup>[26]</sup>

Manibog appealed<sup>[27]</sup> the Judgment, but it was denied by the Court of Appeals in its July 31, 2013 Decision.<sup>[28]</sup>

The Court of Appeals upheld the trial court's finding that the warrantless search made on Manibog was incidental to a lawful arrest, since the police officers had probable cause to believe that he was committing a crime when he was arrested. It noted that Manibog had been caught *in flagrante delicto* and failed to show a permit allowing him to carry his firearm.<sup>[29]</sup> The dispositive portion of the Court of Appeals July 31, 2013 Decision read:

**FOR THE STATED REASONS, the appeal is DENIED.**

**SO ORDERED.**<sup>[30]</sup> (Emphasis in the original)

Manibog moved for reconsideration, but his Motion was denied in the Court of Appeals January 29, 2014 Resolution.<sup>[31]</sup>

In his Petition for Review on Certiorari,<sup>[32]</sup> Manibog urges this Court to reverse the Court of Appeals Decision validating the police officers' warrantless search and arrest.<sup>[33]</sup>

Petitioner claims that he was not arrested *in flagrante delicto* because he was only standing in front of the Municipal Tourism Office when the police officers descended upon and searched him. He maintains that the search came prior to his arrest, rendering any evidence obtained from him tainted and inadmissible.<sup>[34]</sup>

Petitioner asserts that at the time of his arrest, the police officers could not have seen the contour or bulge of his gun, as it was tucked in his waistband below his navel and could not be seen from a distance. He emphasizes that the police officer

who frisked him first patted his back before finding the gun in his waist. This indicates that the police officer was unsure if he actually had a gun on him.<sup>[35]</sup>

Petitioner also imputes malice on the police officers, who had earlier received orders to dismantle Mayor Gamboa's private army. As part of her security, he claims that he was singled out and illegally searched and arrested despite merely standing outside a building at that time.<sup>[36]</sup>

In its Comment,<sup>[37]</sup> respondent People of the Philippines, through the Office of the Solicitor General, insists that the Court of Appeals did not err in affirming petitioner's conviction.<sup>[38]</sup> It posits that the warrantless search was done incidental to a lawful arrest as petitioner was arrested while he was committing a crime.<sup>[39]</sup>

Respondent maintains that the police officers had probable cause to arrest petitioner. It explains that aside from the tip that petitioner was carrying a gun outside the Municipal Tourism Office, the police officers' simple visual inspection confirmed that he had a gun tucked in his waist, which suitably fell under the plain view doctrine.<sup>[40]</sup>

In his Comment and Opposition,<sup>[41]</sup> petitioner insists that there was no probable cause for his warrantless arrest, as he was not committing a crime at that time.<sup>[42]</sup> He also refutes respondent's assertion that the gun seized from him fell under the plain view doctrine.<sup>[43]</sup>

The lone issue for this Court's resolution is whether or not the warrantless search made upon petitioner Larry Sabuco Manibog was unlawful, and, consequently, whether the gun confiscated from him is inadmissible in evidence.

The Petition must fail.

Article III, Section 2 of the Constitution provides for the inviolability of a person's right against unreasonable searches and seizures:

SECTION 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.

The general rule is that a search and seizure must be carried out through a judicial warrant; otherwise, such search and seizure violates the Constitution. Any evidence resulting from it "shall be inadmissible for any purpose in any proceeding."<sup>[44]</sup>

However, the constitutional proscription only covers *unreasonable* searches and seizures. Jurisprudence has recognized instances of reasonable warrantless searches and seizures, which are:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:

- (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
  - (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
  - (c) the evidence must be immediately apparent, and
  - (d) "plain view" justified mere seizure of evidence without further search;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
  4. *Consented* warrantless search;
  5. Customs search;
  6. *Stop and Frisk*; and
  7. *Exigent and Emergency Circumstances*.<sup>[45]</sup> (Emphasis in the original, citations omitted)

Two (2) of these exceptions to a search warrant—a warrantless search incidental to a lawful arrest and "stop and frisk"—are often confused with each other. *Malacat v. Court of Appeals*<sup>[46]</sup> explained that they "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope."<sup>[47]</sup>

For an arrest to be lawful, a warrant of arrest must have been judicially issued or there was a lawful warrantless arrest as provided for in Rule 113, Section 5 of the Rules of Court:

SECTION 5. Arrest without warrant; when lawful. — A peace officer or a 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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

For valid warrantless arrests under Section 5(a) and (b), the arresting officer must have personal knowledge of the offense. The difference is that under Section 5(a), the arresting officer must have personally witnessed the crime; meanwhile, under Section 5(b), the arresting officer must have had probable cause to believe that the person to be arrested committed an offense.<sup>[48]</sup> Nonetheless, whether under Section 5(a) or (b), the lawful arrest generally precedes,<sup>[49]</sup> or is substantially contemporaneous,<sup>[50]</sup> with the search.