

## SECOND DIVISION

[ G.R. No. 231787, August 19, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL VELASCO Y LUZON, ACCUSED-APPELLANT.**

### DECISION

**CAGUIOA, J:**

Before the Court is an ordinary appeal<sup>[1]</sup> filed by the accused-appellant Rodel Velasco y Luzon (accused-appellant Velasco) assailing the Decision<sup>[2]</sup> dated October 21, 2016 (assailed Decision) of the Court of Appeals<sup>[3]</sup> (CA) in CA-G.R. CR-HC No. 07365, which affirmed the Decision<sup>[4]</sup> dated October 20, 2014 of the Regional Trial Court of Quezon City, Branch 87 (RTC) in Criminal Case No. Q-12-175282, finding accused-appellant Velasco guilty beyond reasonable doubt of violating Section 3 of Presidential Decree (P.D.) No. 1866,<sup>[5]</sup> as amended by Republic Act (R.A.) No. 9516.<sup>[6]</sup>

#### **The Facts and Antecedent Proceedings**

As narrated by the CA in the assailed Decision, the essential facts of the instant case are as follows:<sup>[7]</sup>

Accused-appellant was charged by the prosecution with the crime of violation of P.D. No. 1866, as amended by R.A. No. 9516, as follows:

That on or about the 20<sup>th</sup> day of March 2012, in Quezon City, Philippines, the above-named accused, did then and there willfully, unlawfully and knowingly have in possession and under his custody and control, One (1) MK-2 Fragmentation Hand Grenade, without first having secured the necessary license/permit issued by the proper authorities.

CONTRARY TO LAW.

x x x x

The facts as found by the RTC in its Decision dated October 20, 2014 arising from the divergent versions of the prosecution and the defense were summarized as follows by the trial court:

The evidence for the prosecution tends to establish that PO3 Jason A. Taguba [(PO3 Taguba)] and PO1 Romualdo C. Bacani [(PO1 Bacani)] are police officers assigned at the La Loma Police Station, Mobile Patrol Unit. On March 20, 2012 at around 1:40 in the morning, they were with their supervisor,

P/CINSP Joseph Garcia De Vera [(De Vera)] and other police officers conducting "OPLAN SITA" along G. Araneta Avenue, corner Maria Clara Street, Brgy. Sto. Domingo, Quezon City. According to PO[1] Bacani and PO[3] Taguba, "OPLAN SITA" is similar to a checkpoint and they just receive a radio message from their director.

In the course of "OPLAN SITA", they noticed a Daewoo Racer car without any plate number attached in front. So what they did was to signal the driver of the Daewoo Racer car to stop. Hence, as signaled by them, the driver of the Daewoo Racer to stopped (sic) the car. It was at this time that [PO1 Bacani] noticed in plain view a gun tucked at the waistline of one of the passengers by the name of Roberto Alegre y Apat [(Alegre)]. This prompted them to order the three passengers to alight therefrom. PO3 Taguba then frisked the accused and found in his possession one (1) MK2 fragmentation grenade. Hence, they arrested the accused and his companions and brought them to the police station where they executed a Joint Affidavit of Arrest<sup>[8]</sup> (Exhibit "B").

PO3 Robert F. Rodillas [(PO3 Rodillas)] of the Explosives Ordinance Disposal Division of the Quezon City Police District [(QCPD)] testified that upon receipt of a request for a Certification<sup>[9]</sup> from Police Station 1, QCPD of one (1) fragmentation hand grenade with markings "RD" and "JT", he immediately conducted an examination and found out that it is a live fragmentation grenade capable of exploding within a ten meter radius and could cause casualties. He also found out that the three (3) main parts of the grenade are present namely, the fuse assembly, the explosive filter which contain TNT flakes and the body. After that examination he made, he issued a Certification dated March 20, 2012 (Exhibit "C").

On the other hand, the evidence of the defense tends to show that on March 20, 2012, at night time, he was just inside his house located in Malabon City when his friends by the name of Jerry Lapena [(Lapena)] and [Alegre] arrived and invited him to attend the birthday party of their friend in Blumentritt. They rode on board a car which he remembers (sic) to have a plate number. They were not able to reach Blumentritt, however, because a mobile car stopped them and were asked to alight therefrom. They were asked to lie face down while they were frisking them and no hand grenade was found in his possession. Thereafter, he and [Lapena] were asked to board the mobile car where the police officers by the names of [PO3] Taguba and [PO1] Bacani asked money from them. When they were not able to give them any amount, they brought them to the La Loma Police Station and it was only during the inquest proceedings when he learned that he was being charged of illegal possession of explosives.<sup>[10]</sup>

## **The Ruling of the RTC**

After trial on the merits, the RTC convicted accused-appellant Velasco of violating Section 3 of P.D. No. 1866, as amended by R.A. No. 9516, and sentenced him to suffer the penalty of *reclusion perpetua*. The dispositive portion of the RTC's Decision reads as follows:

WHEREFORE, viewed in the light of the foregoing, the Court finds accused RODEL VELASCO y LUZON guilty beyond reasonable doubt of the crime of Violation of Section 3, Presidential Decree No. 1866 as amended by Republic Act 9516. Accordingly, he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.

SO ORDERED.<sup>[11]</sup>

In sum, the RTC held that based on the evidence on record, the prosecution was able to prove the guilt of accused-appellant Velasco beyond reasonable doubt.

Feeling aggrieved, accused-appellant Velasco appealed to the CA.

## **The Ruling of the CA**

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Velasco, holding that the prosecution was able to prove beyond reasonable doubt the elements of the crime charged.

The dispositive portion of the assailed Decision reads:

**WHEREFORE**, the instant appeal is **DENIED**. The assailed Decision dated October 20, 2014 of the Regional Trial Court, Branch 87 of Quezon City in Criminal Case No. Q-12-175282 is **AFFIRMED**.

**SO ORDERED.**<sup>[12]</sup>

Hence, the instant appeal.

## **The Issue**

For resolution of the Court is the sole issue of whether the RTC and CA erred in convicting accused-appellant Velasco of violating Section 3 of P.D. No. 1866, as amended by R.A. No. 9516.

## **The Court's Ruling**

The appeal is meritorious. The Court reverses the conviction of accused-appellant Velasco as the prosecution failed to establish the guilt of accused-appellant Velasco beyond reasonable doubt.

Accused-appellant Velasco, who was allegedly caught by the authorities possessing one MK-2 fragmentation hand grenade, is charged with violating Section 3 of P.D. No. 1866, as amended by R.A. No. 9516, which provides:

SEC. 3. *Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession of an Explosive or Incendiary Device.* - The penalty of *reclusion perpetua* shall be imposed upon any person who shall willfully and unlawfully manufacture, assemble, deal in, acquire, dispose, import or possess any explosive or incendiary device, with knowledge of its existence and its explosive or incendiary character, where the explosive or incendiary device is capable of producing destructive effect on contiguous objects or causing injury or death to any person, including but not limited to, hand grenade(s), rifle grenade(s), 'pillbox bomb', 'molotov cocktail bomb', 'fire bomb', and other similar explosive and incendiary devices.

To convict an accused for illegal possession of an explosive device under P.D. No. 1866, as amended, jurisprudence has held that two (2) essential elements must be indubitably established: (a) the existence of the subject firearm or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the negative fact that the accused had no license or permit to own or possess the firearm or explosive which fact may be established by the testimony or certification of a representative of the Philippine National Police Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive.<sup>[13]</sup>

While it is beyond serious dispute that accused-appellant Velasco had no license or permit to possess a fragmentation hand grenade, thus satisfying the second requisite stated above, a close examination of the evidence on record reveals that **the evidence presented by the prosecution failed to establish that the MK-2 fragmentation hand grenade identified and admitted into evidence during the trial was the same object allegedly retrieved from the person of accused-appellant Velasco.**

Simply stated, the prosecution was clearly unsuccessful in establishing an **unbroken chain of custody** of the allegedly confiscated fragmentation hand grenade, creating serious doubt as to the *corpus delicti* of the crime charged.

Jurisprudence explains that the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.<sup>[14]</sup>

Applying the foregoing in the instant case, the prosecution's witness, PO1 Bacani testified that after the apprehension of accused-appellant Velasco, the fragmentation hand grenade was turned over to the investigator.<sup>[15]</sup> However, the testimonies of the prosecution's witnesses and the documentary evidence presented by the

prosecution are *completely silent* as to how the investigator handled and stored the evidence, and the precautions taken to ensure that there had been no change in the condition of the item.

In connection with the foregoing, striking is the testimony of PO3 Taguba, who readily admitted on cross-examination that the authorities failed to execute a chain of custody form when the grenade was turned over to the investigator:

Q Did you execute a chain of custody form when you turned - over the grenade to the Investigator?

A No, sir.<sup>[16]</sup>

The prosecution then manifested in open court that the custody of the fragmentation hand grenade allegedly retrieved from accused-appellant Velasco found its way to PO3 Rodillas of the Explosives Ordinance Disposal Division of the Quezon City Police District (QCPD).<sup>[17]</sup> According to the prosecution's evidence, the fragmentation hand grenade was turned over by Police Station 1 of the QCPD to PO3 Rodillas for examination.

However, the evidence on record, including the testimony of PO3 Rodillas, is silent as to how the fragmentation hand grenade was exactly transferred to him. The latter merely testified that he received a request from Police Station 1 of the QCPD for the issuance of a certification.<sup>[18]</sup> In other words, the chain of custody of the evidence is unclear.

Further, PO3 Taguba likewise admitted on cross-examination that **an inventory of the allegedly seized item was not conducted** and that **a confiscation or seizure receipt was not executed by the apprehending officers**:

Q Do you have any inventory with regard to this grenade? Do you remember executing an inventory?

A No, sir.<sup>[19]</sup>

In connection with the foregoing incontrovertible facts, the Court has previously held that in the criminal prosecution of violation of P.D. No. 1866, "[r]eceipts for seized items are mandatory on the part of apprehending and seizing police officers."<sup>[20]</sup> To reiterate, such mandatory requirement was not met by the authorities in the instant case.

On this point, the CA held that the prosecution was able to present a seizure receipt, considering that a Letter<sup>[21]</sup> dated March 20, 2012 and a Certification dated March 20, 2012 were admitted into evidence.

The CA's appreciation of the aforesaid documentary evidence is erroneous.

The Letter dated March 20, 2012 was by no means a confiscation, seizure, or inventory receipt of the allegedly seized grenade. The said Letter was merely a referral letter made by one PSI Oliver Magtibay Villanueva addressed to the City Prosecutor recommending the filing of charges against accused-appellant Velasco and his two other companions. In fact, the members of the apprehending team who