

SECOND DIVISION

[G.R. No. 225709, February 14, 2018]

**JASPER GONZALEZ[*] Y DOLEND, PETITIONER, V. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*^[1] assailing the Decision^[2] dated August 7, 2015 and the Resolution^[3] dated June 22, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 36523, affirming the conviction of petitioner Jasper Gonzalez y Dolendo (Gonzalez) for violation of Section 261 (q) of the Omnibus Election Code, as amended by Section 32 of Republic Act (RA) No. 7166.

The Facts

This case stemmed from two (2) separate Informations^[4] filed before the Regional Trial Court of Valenzuela City, Branch 269 (RTC) accusing Gonzalez of violating: (1) Section 261(p) (q)^[5] of the Omnibus Election Code (OEC),^[6] as amended by Section 32^[7] of RA 7166;^[8] and (2) Section 11, Article II^[9] of RA 9165 or the "Comprehensive Dangerous Drugs Act of 2002,"^[10] to wit:

Criminal Case No. 173-V-12

That on or about February 23, 2012 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) Kitchen Knife, without securing an exemption from the COMELEC pursuant to Sec. 261 (p)(q) OEC as amended by Sec. 32, of R.A. 7166.

Contrary to Law.^[11]

Criminal Case No. 174-V-12

That on or about February 23, 2012, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) heat-sealed transparent plastic sachet containing zero point eight (0.80) gram, found to be *methylamphetamine hydrochloride* [sic] (shabu), knowing the same to be dangerous drugs.

Contrary to Law.^[12]

The prosecution alleged^[13] that in the early morning of February 23, 2012, an operative of the Station Anti-Illegal Drugs (SAID), Special Operation Task Group (SOTG), Valenzuela City, was informed of the rampant selling of illegal drugs at a wake in Tamaraw Hills, Barangay Marulas, Valenzuela City, which thus led to the conduct of an anti-illegal drug operation. At about 3:30 a.m., certain Police Officer (PO) 2 Lim, PO2 Recto, and PO1 Raya, together with PO1 Julius R. Congson (PO1 Congson), proceeded to surveil the area near No. 75 Tamaraw Hills Street. While in the area, PO2 Recto and PO1 Congson saw a person coming out of an alley about four (4) meters away, with a fan knife in his right hand. Since there was a ban issued by the Commission on Elections^[14] (COMELEC) on the carrying of deadly weapons at that time, PO2 Recto and PO1 Congson approached the person and introduced themselves as police officers. The person, who they later identified as Gonzalez, immediately ran away, prompting the police officers to chase and eventually, arrest him. PO1 Congson recovered the knife from Gonzalez, frisked the latter, and ordered him to bring out the contents of his pocket, which revealed one heat-sealed transparent plastic sachet containing what PO1 Congson believed to be shabu. PO1 Congson further recovered another heat-sealed transparent plastic pack, labeled "Calypso", containing several plastic sachets. Thereafter, Gonzalez started shouting, causing several persons from the wake (including Gonzalez' mother) to approach him. The police officers then decided to bring Gonzalez to the nearby barangay hall, where the seized items were inventoried^[15] and turned over.^[16] After duly receiving the submitted specimen, the forensic chemist examined^[17] the same which tested positive for methamphetamine hydrochloride.^[18]

In his defense,^[19] Gonzalez denied the charges against him and instead, claimed that on February 23, 2012, at around 3:00 a.m., he was just at their house in No. 75 Tamaraw Hills Street. He was about to go to sleep when four (4) male persons arrived and arrested him. The men then tied his hands with his wife's brassiere, and thereafter, showed him a sachet of shabu and took the knife that was on top of the table. They then dragged him down from their house, bringing with them his child, while he shouted for someone to call his mother. Many of his neighbors who heard or were awakened by his shouts and the crying of his child came out of their houses and saw his arrest. At the ground floor, he was photographed with the knife placed on the top of a small table. Thereafter, the arresting persons boarded him on a vehicle. They drove around Ugong for thirty (30) minutes, fetched Senior Police Officer 3 Ronald C. Sanchez (SPO3 Sanchez) at his office at the third floor of the city hall, and then proceeded to the Manilas Barangay Hall to wait for the barangay kagawad. When the kagawad arrived, he just signed a paper about the seized evidence. Gonzalez was then brought to Camp Crame for drug testing, and afterwards to the detention cell at the new city hall.^[20]

The RTC Ruling

In a Decision^[21] dated January 6, 2014, the RTC found Gonzalez guilty beyond reasonable doubt of violation of Section 261 (q) of the OEC,^[22] holding that all the necessary elements thereof have been proven, namely: (1) Gonzalez was found holding the fan knife with his right hand; (2) such possession occurred during the prohibited period; and (3) he was carrying the knife while casually walking towards Tamaraw Hills Street from an alley - a public place.^[23] The RTC gave no credence to Gonzalez' version of his arrest in light of his positive identification as the culprit, as well as the presumption of regularity accorded to the police officers in the

performance of their duties.^[24] It also brushed aside the testimonies of Gonzalez' three (3) witnesses for their failure to actually see what had transpired immediately preceding his arrest.^[25]

As regard the charge of violation of Section 11 of RA 9165, the RTC found Gonzalez not guilty due to insufficiency of evidence.^[26]

Aggrieved, Gonzalez elevated his conviction to the CA.^[27] Pending his appeal, Gonzalez renewed his Surety Bond^[28] posted in this case, and thereafter, applied for bail,^[29] which the RTC granted in an Order^[30] dated January 24, 2014.

The CA Ruling

In a Decision^[31] dated August 7, 2015, the CA affirmed the RTC Decision,^[32] finding that the prosecution had established beyond reasonable doubt that Gonzalez was "found in possession of a fan knife at the time he was apprehended by the police officers during [the ban] enforced by the COMELEC."^[33] It held that Gonzalez failed to demonstrate by clear and convincing evidence his defense that "he uses [the fan knife] as a utensil in cooking."^[34]

Undaunted, Gonzalez moved for reconsideration,^[35] which was denied in a Resolution^[36] dated June 22, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not Gonzalez' conviction for violation of Section 261 (q) of the OEC, as amended by Section 32 of RA 7166, should be upheld.

The Court's Ruling

The petition is meritorious.

At the outset, it must be emphasized that "[t]he constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt, that is, that degree of proof that produces conviction in an unprejudiced mind. Hence, where the court entertains a reasonable doubt as to the guilt of the accused, it is not only the right of the accused to be freed; it is the court's constitutional duty to acquit them."^[37]

In this light, the Court is convinced that Gonzalez' conviction must be set aside.^[38]

Gonzalez was charged under Section 261 (p) (q) of the OEC, as amended by Section 32 of RA 7166. Section 261 (p) (q) of the OEC, as originally worded, provides:

Section 261. *Prohibited Acts.* - The following shall be guilty of an election offense:

x x x x

(p) *Deadly weapons.* - Any person who carries any deadly weapon in the polling place and within a radius of one hundred meters thereof during the days and hours fixed by law for the registration of voters in the

polling place, voting, counting of votes, or preparation of the election returns. However, in cases of affray, turmoil, or disorder, any peace officer or public officer authorized by the Commission to supervise the election is entitled to carry firearms or any other weapon for the purpose of preserving order and enforcing the law.

(q) *Carrying firearms outside residence or place of business.* -Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided, That* a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

while Section 32 of RA 7166, pertinently reads:

Section 32. Who May Bear Firearms. - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

x x x x (Emphasis and underscoring supplied)

COMELEC Resolution No. 9357, implementing Section 32 of RA 7166 for the conduct of a plebiscite in Valenzuela City on March 3, 2012, defines "deadly weapon" as:

Section 2. *Firearm; Deadly weapon.* - x x x.

Deadly weapon includes bladed instrument, hand grenades or other explosives, except pyrotechnics.

A bladed instrument is not covered by the prohibition when possession of the bladed instrument is necessary to the occupation of the possessor or when it is used as a tool for legitimate activity.

In order to secure a conviction of an accused based on these provisions, the prosecution must prove that: (a) the person is bearing, carrying, or transporting firearms or other deadly weapons; (b) such possession occurs during the election period; and (c) the weapon is carried in a public place. Notably, it is essential that **possession of the deadly weapon in a public place** be established beyond reasonable doubt. In his petition, Gonzalez prayed for his acquittal in view of the serious doubts on the prosecution's evidence. Particularly, he claims that PO1 Congson's narration of events was uncorroborated and in fact contradicted by the physical evidence submitted in court, as well as by the testimonies of his witnesses, corroborating his version of the events, which thereby puts into question PO1 Congson's credibility.^[39]

The Court agrees, as the prosecution failed to dispel all reasonable doubts surrounding Gonzalez' arrest.

In particular, the prosecution failed to establish its allegation that, immediately before and at the time of his arrest, Gonzalez was *holding a knife in a public place* - the critical elements of the crime of violation of Section 261 (p) (q) of the OEC, as amended by Section 32 of RA 7166. Records show that aside from the testimony of PO1 Congson, the prosecution did not present any other evidence that would corroborate his version leading to Gonzalez' arrest. PO1 Congson claimed that at around 4:00 a.m., he and the other police officers saw Gonzalez holding a fan knife in his right hand as he was walking out of an alley where they eventually arrested him after a chase.^[40] Gonzalez, on the other hand, presented three (3) witnesses^[41] - neighbors who lived below and across his house where he was arrested and who were there at the time of his arrest. All these witnesses corroborated Gonzalez' version, particularly on five (5) critical points, namely: (a) Gonzalez and his child were brought downstairs from his house located at the second floor by the arresting persons; (b) his hands were tied behind his back as he was being dragged downstairs; (c) his photograph was taken soon after the arrest took place at around 3:00 a.m.; and (d) there were a total of four (4) male persons who conducted the arrest.^[42] One of the witnesses even confirmed that Gonzalez' hands were tied by a brassiere.^[43] In other words, all three (3) witnesses rendered more credible the defense's claim that Gonzalez was arrested at his home; at the very least, their testimonies rendered doubtful the prosecution's claim that police officers arrested Gonzalez on the street in the regular performance of their duties. Unfortunately, the RTC simply brushed these aside, thus leading to the erroneous conclusion that "[n]o one actually saw the factual circumstances immediately preceding his arrest."^[44]

Moreover, while the information and the physical evidence^[45] presented before the lower court both revealed a kitchen knife, PO1 Congson categorically testified that he saw a fan knife.^[46] A fan knife, locally known as "*balisong*"^[47] or "*Batangas*",^[48] is a folding pocket knife with two handles counter-rotating around the tang so that, when the knife is closed, the blade resides concealed inside the grooved handles.^[49] In contrast, a kitchen knife has one handle that does not fold, with its blade clearly visible. Obviously, a fan knife is far from being the same as a kitchen knife. To the Court's mind, there is doubt as to whether PO1 Congson had actually seen Gonzalez come out of an alley holding a fan knife.

Given the difference in the prosecution and defense's versions of Gonzalez' arrest, including the variance regarding the physical evidence presented in court, it behooved the lower court to examine and calibrate more carefully the evidence presented by both sides. As it was, the defense's evidence weighed more than the prosecution's evidence. At the very least, their evidence were evenly balanced such that the appreciation of such evidence called for the tilting of the scales in favor of Gonzalez.^[50] After all, the burden is on the prosecution to overcome the presumption of innocence of the accused.^[51]

In fine, the Court finds that the prosecution failed to prove beyond reasonable doubt that Gonzalez committed the crime charged.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 7, 2015 and the Resolution dated June 22, 2016 of the Court of Appeals in CA-G.R. CR No. 36523 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jasper Gonzalez y Dolendo is **ACQUITTED** of the crime charged.