

## SECOND DIVISION

[ G.R. No. 234196, November 21, 2018 ]

**JONATHAN MENDOZA Y ESGUERRA, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**A. REYES, JR., J.:**

Before this Court is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>[2]</sup> dated June 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38156 and its Resolution<sup>[3]</sup> dated August 24, 2017, denying the motion for reconsideration thereof. The assailed decision affirmed albeit with modification as to penalty the Decision<sup>[4]</sup> dated August 26, 2015 of the Regional Trial Court (RTC) of Tanauan, Batangas, Branch 6, finding Jonathan Mendoza y Esguerra (petitioner) guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunitions as defined and penalized by Presidential Decree (P.D.) No. 1866, as amended by Republic Act (R.A.) No. 8294.

An Information was filed before the RTC of Tanauan City, Batangas, Branch 6, charging the petitioner for violation of P.D. No. 1866, as amended by R.A. No. 8294, to wit:

That on or about the 31<sup>st</sup> day of August 2006, at about 11:45 o'clock in the evening at Barangay 5, Poblacion, City of Tanauan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously has in his possession, custody and control one (1) Ranger caliber 45 pistol (Imperial Defense Service) with Serial No. C02009, two (2) magazines with nine (9) pieces of live ammunitions and three (3) pieces of empty shells of the same caliber without having secured the necessary license and/or permit from the proper authorities to possess the same.

CONTRARY TO LAW.<sup>[5]</sup>

On December 13, 2006, assisted by the counsel, the petitioner was arraigned and pleaded not guilty to the crime charged.<sup>[6]</sup> Trial on the merits ensued thereafter.

The evidence for the prosecution tend to establish that on August 31, 2006, at about 11:45 p.m., during a checkpoint, Police Officer 1 Ryan Pagcaliwagan (PO1 Pagcaliwagan), PO1 Celso Torres, and PO1 Fheljun Calalo flagged down a motorcycle as it had no license plate and its three occupants were not wearing a helmet. The occupants were later identified as Julius Opeña (Opeña), the owner of the motorcycle, Jeffrey Coral (Coral), and herein petitioner who was then driving the motorcycle.<sup>[7]</sup>

As they were approaching the motorcycle, PO1 Pagcaliwagan saw the petitioner take a firearm and cover it with a bag. The former then alerted his co-police officers, took the firearm and arrested the petitioner who denied ownership of the gun, but at the same time claimed the same was licensed.<sup>[8]</sup>

Confiscated from the petitioner were one (1) gray Ranger caliber .45 pistol with Serial No. CO2009, one (1) stainless magazine with four (4) pieces of live ammunition, one (1) black magazine, five (5) live ammunition, and three (3) pieces of empty shells for caliber .45. The items were brought to the police station and turned over to PO1 Charlie Bermejo and marked by PO1 Pagcaliwagan.<sup>[9]</sup>

For their part, the defense presented as witnesses the petitioner, Opena, and Anthony Carpio (Carpio).<sup>[10]</sup>

The petitioner denied any criminal liability and by way of defense claimed that the firearm, magazines, and live ammunition were the product of an illegal search and thus were illegally obtained in his possession.<sup>[11]</sup>

The petitioner testified that on the alleged date of the incident, he went to a drinking spree with his friends at Barangay Santol. Thereafter, the petitioner submitted that he went to buy more beer with his friends Opeña and Coral. While on their way and as they were passing Bank of the Philippine Islands, they were stopped by police officers. As ordered, they stopped and alighted from the motorcycle. They were frisked and the motorcycle was searched. As a result of which, the firearm, magazines, and ammunitions were recovered under the seat of the motorcycle.<sup>[12]</sup>

Opeña and Carpio corroborated the petitioner's testimony. Carpio, in his testimony, likewise admitted that the firearm and ammunition are registered under his name, and that he placed the same under the seat of the motorcycle without the knowledge of the petitioner. Carpio submitted that he brought the said firearm as he intends to sell the same to a friend but later forgot to retrieve the same from the motorcycle. Carpio averred that the day after, after having learned of the petitioner's arrest, he immediately went to the police station and presented his license to the chief of police his license to possess the said firearm.<sup>[13]</sup>

On August 26, 2015, the lower court rendered its Decision,<sup>[14]</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, and finding [petitioner] GUILTY beyond reasonable doubt of the crime charged, the court hereby sentences him to suffer the penalty of imprisonment from six (6) years and one (1) day to eight (8) years of *prision mayor* and to pay a fine of Thirty Thousand Pesos (Php 30,000.00).

Without pronouncement as to costs.

SO ORDERED.<sup>[15]</sup>

In so ruling, the RTC held that the prosecution established the elements of the crime charged. In so doing, the RTC relied heavily on the testimony of PO1 Pagcaliwagan that the subject firearms and ammunitions were retrieved from the petitioner. Further, and similarly relying on the testimony of PO1 Pagcaliwagan, the RTC found

untenable the petitioner's defense of illegal search and seizure as well as lack of knowledge as to his possession of the seized items, concluding the search was incidental to a lawful arrest. The RTC held that PO1 Pagcaliwagan was correct in flagging down, arresting, searching, and seizing the subject items from the petitioner after seeing the latter withdrew a gun and hid it under his bag.

Aggrieved, the petitioner appealed to the CA. On June 21, 2017, the CA rendered its Decision<sup>[16]</sup> affirming the lower court's decision, as follows:

WHEREFORE, in view of the foregoing, we AFFIRMED with Modification the Decision of the [RTC] dated August 26, 2015 in Criminal Case No. 06-09-3144. As modified, [the petitioner] is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from SIX (6) YEARS of *prision correccional* in its maximum period, as minimum, to SIX (6) YEARS, EIGHT MONTHS and ONE DAY of *prision mayor* minimum in its medium period, as maximum and to pay a fine of P30,000.00.

SO ORDERED.<sup>[17]</sup>

The CA affirmed the finding of the RTC that there was a valid search and seizure of the subject item, which is done pursuant to a lawful arrest. Contrary however to the RTC's determination, the CA held that it was the initial violation for the absence of license plate and helmet that justified the search and seizure in this case. Anent the penalty, the CA modified the imposition by the RTC which it found to be contrary to the indeterminate sentence law.

The petitioner filed a motion for reconsideration, which the CA denied in its Resolution<sup>[18]</sup> dated August 24, 2017.

Hence, this petition for review on *certiorari* whereby the petitioner submits the following issues for the Court's resolution, *viz.*:

- 1.) Whether or not police officers have the legal authority to search the body of the driver and/or his motorcycle because he violated traffic rules and regulations?
- 2.) Whether or not the police officers in this case had validly conducted a search incident to a lawful arrest as governed by Section 12, Rule 126 of the Revised Rules of Criminal Procedure.

In its Comment, the respondent argues that PO1 Pagcaliwagan and his fellow police officers "had a valid and legal reason to seize the firearm from the petitioner, who, in their presence, tried to hide said firearm, a clear indication that at that time, he had committed or was committing an offense."<sup>[19]</sup> Further, the respondent justifies the act of the police officer in flagging down the motorcycle driven by the petitioner by the fact that it appears to have no plate number.

After a careful scrutiny of the records of the instant case, the Court finds that the rise or fall of the instant petition depends upon the appreciation of the testimony of the parties. Particularly, whether the testimony of PO1 Pagcaliwagan is sufficient to produce a conviction beyond reasonable doubt.

### **Ruling of the Court**

The Court rules in the **negative**.

The issue of credibility is a factual issue that is generally beyond the province of a petition for review on *certiorari* in accordance with the principle that the Court is not a trier of facts. Thus, as a rule, the assessment of the credibility of witnesses is generally left to be determined by the trial court which had the opportunity to observe the witnesses and evaluate their credibility through their demeanor on the stand. Likewise, the factual findings by the trial court when affirmed by the CA, are accorded respect by the Court and not disturbed on appeal. However, jurisprudence provided exceptions to the said rule. Thus, the Court may pass upon questions of fact: where there is an "ostensible incongruence" in the findings of the said courts, [20] or in criminal cases where the testimony upon which the conviction is based is "riddled with patent inconsistencies and improbabilities on material points."<sup>[21]</sup> The Court, in *Medina v. Mayor Asistio, Jr.*,<sup>[22]</sup> summarized the recognized exceptions to the rule, thus under the following instances, the Court, acting on a petition for review for *certiorari* may rule upon factual questions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>[23]</sup> (Citations omitted)

In this controversy, a review of the records reveals that there are improbabilities in the testimony of PO1 Pagcaliwagan, upon which the conviction is based, thus warranting that the Court re-examine the relevant facts and circumstances. Primarily, while the same relies heavily on the credibility of the testimony of PO1 Pagcaliwagan, a matter that is generally left for the trial court to determine, finding that the appreciation of the same is erroneous, the Court decides to make its own evaluation of the evidence on record. In this light, the Court concludes that the warrantless arrest of the petitioner is invalid, which thus renders the search conducted thereafter illegal.

The prosecution and the defense vary as to their narration of what happened on the day the alleged crime was committed.

Based on the testimony of PO1 Pagcaliwagan, they flagged down the motorcycle ridden by the petitioner, and the latter's two (2) male companions after noticing that the vehicle bore no license plate and its occupants were not wearing a helmet. Thereafter, PO1 Pagcaliwagan allegedly saw the petitioner took out a gun and hid it under his bag. This is what prompted the officers to arrest the petitioner and conduct a search as an incident thereto.