

THIRD DIVISION

[G.R. No. 158788, April 30, 2008]

**ELY AGUSTIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to annul the Decision^[1] of the Court of Appeals (CA) dated January 22, 2003, affirming the Decision of the Regional Trial Court, Branch 24 of Cabugao, Ilocos Sur (RTC) convicting Ely Agustin (petitioner) of the crime of Illegal Possession of Firearms under Presidential Decree (P.D.) No. 1866, and the CA Resolution^[2] dated June 23, 2003, denying petitioner's Motion for Reconsideration.

The records reveal that on October 1, 1995, at 7:20 in the evening, armed men robbed the house of spouses George and Rosemarie Gante in Barangay Pug-os, Cabugao, Ilocos Sur, forcibly taking with them several valuables, including cash amounting to P600,000.00.^[3] Forthwith, the spouses reported the matter to the police, who, in turn, immediately applied for a search warrant with the Municipal Trial Court (MTC) of Cabugao, Ilocos Sur.^[4] The MTC issued Search Warrant No. 5-95,^[5] directing a search of the items stolen from the victims, as well as the firearms used by the perpetrators. One of the target premises was the residence of petitioner, named as one of the several suspects in the crime.

On October 6, 1995, armed with the warrant, policemen searched the premises of petitioner's house located in Sitio Padual, Barangay Pug-os, Cabugao, Ilocos Sur. The search resulted in the recovery of a firearm and ammunitions which had no license nor authority to possess such weapon, and, consequently, the filing of a criminal case, docketed as Criminal Case No. 1651-K, for violation of P.D. No. 1866 or Illegal Possession of Firearms, against petitioner before the RTC. The Information against petitioner reads as follows:

That on or about the 6th day of October 1995, in the municipality of Cabugao, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) revolver caliber .38 (Cebu Made) with Serial No. 439575 with five (5) live ammunitions, without the necessary license or authority to possess and carry the same being usual instrument in the commission of crimes or acts of violence.

Contrary to law.^[6]

Thereafter, trial ensued. The prosecution presented eight witnesses namely: (1) P/Insp. Anselmo Baldovino^[7] (P/Insp. Baldovino), a police investigator and the applicant for the search warrant; (2) Rosemarie Gante (Gante), the victim of the robbery and private complainant; (3) Ignacio Yabes (Yabes), a Municipal Local Government Operations Officer of the Department of Interior and Local Government who was the civilian witness to the search; (4) P/Supt. Bonifacio Abian^[8] (P/Supt. Abian), Deputy Provincial Director of the Philippine National Police and part of the search team; (5) SPO4 Marino Peneyra (SPO4 Peneyra); (6) SPO1 Franklin Cabaya (SPO1 Cabaya); (7) SPO1 James Jara (SPO1 Jara); and (8) SPO2 Florentino Renon (SPO2 Renon).

For his defense, petitioner and his wife Lorna Agustin (Lorna) testified.

The prosecution's case centered mainly on evidence that during the enforcement of the search warrant against petitioner, a .38 caliber revolver firearm was found in the latter's house.^[9] In particular, SPO1 Cabaya testified that while poking at a closed rattan cabinet near the door, he saw a firearm on the lower shelf.^[10] The gun is a .38 caliber revolver^[11] with five live ammunitions,^[12] which he immediately turned over to his superior, P/Insp. Baldovino.^[13]

Petitioner anchored his defense on denial and frame-up. The petitioner and his wife Lorna assert that petitioner does not own a gun.^[14] Lorna testified that she saw a "military" man planting the gun.^[15]

After trial, the RTC rendered its Decision^[16] dated July 7, 1999, finding petitioner guilty beyond reasonable doubt, as follows:

WHEREFORE, finding the accused, Ely Agustin @ "Belleng" GUILTY beyond reasonable doubt of Illegal Possession of Firearm, he is hereby sentenced to a prison term ranging from FOUR (4) YEARS and TWO (2) MONTHS, as minimum, to SIX (6) YEARS, as maximum, both of *prision correccional*, with the accessories of the law [sic], to pay a fine of P15,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The gun (Exh. "G") is confiscated and forfeited in favor of the Government.

SO ORDERED.^[17]

Petitioner filed an appeal with the CA, docketed as CA-G.R. CR No. 25452.

The CA rendered herein assailed Decision^[18] dated January 22, 2003, affirming with modification the decision of the trial court, thus:

WHEREFORE, except for the MODIFICATION reducing and changing the maximum of the prison term imposed to Five (5) Years Four (4) Months and Twenty (20) Days, the appealed Decision is otherwise AFFIRMED.

SO ORDERED.^[19]

Hence, the instant Petition for Review, on the principal ground that the CA gravely erred in finding that the guilt of petitioner has been proven beyond reasonable

doubt; and more specifically, in giving weight and credence to the testimonies of the police officers who searched the house of the petitioner which are replete with material and irreconcilable contradictions and in giving SPO1 Cabaya the presumption of regularity in the performance of duty despite the claim of Lorna that the .38 caliber revolver was planted.

Petitioner insists that the trial court and the CA committed reversible error in giving little credence to his defense that the firearm found in his residence was planted by the policemen. He also alleges material inconsistencies in the testimonies of the policemen as witnesses for the prosecution, which amounted to failure by the prosecution to prove his guilt beyond reasonable doubt.

The petition has merit.

The paramount issue in the present case is whether the prosecution established the guilt of petitioner beyond reasonable doubt; and in the determination thereof, a factual issue, that is, whether a gun was found in the house of petitioner, must necessarily be resolved.

It is a well-entrenched rule that appeal in criminal cases opens the whole case wide open for review.^[20]

In convicting petitioner, the RTC relied heavily on the testimony of SPO1 Cabaya, who testified that he discovered the subject firearm in a closed cabinet inside the former's house. The trial court brushed aside petitioner's defense of denial and protestations of frame-up. The RTC justified giving full credence to Cabaya's testimony on the principles that the latter is presumed to have performed his official duties regularly; that he had no ill motive to frame-up petitioner; and that his affirmative testimony is stronger than petitioner's negative testimony.^[21]

For its part, the CA justified its affirmation of the trial court's decision on the basis of long-standing principles that denials, such as the one made by petitioner, "cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters," and reiterated that "absent evidence x x x that the prosecution witness was moved by improper motive, the presumption is that no such ill motive exists, and his testimony is entitled to full faith and credit."^[22] The CA upheld the trial court's findings of presumption of regular performance of duty on the part of the searching policemen and the weakness of the petitioner's defense of frame-up.^[23]

Weighing these findings of the lower courts against the petitioner's claim that the prosecution failed to prove its case beyond reasonable doubt due to the material inconsistencies in the testimonies of its witnesses, the Court finds, after a meticulous examination of the records that the lower courts, indeed, committed a reversible error in finding petitioner guilty beyond reasonable doubt of the crime he was charged with. The RTC and the CA have overlooked certain facts and circumstances that would have interjected serious apprehensions absolutely impairing the credibility of the witnesses for the prosecution.

The conflicting testimonies of the prosecution witnesses as to who actually entered the house and conducted the search, who "discovered" the gun, and who witnessed

the "discovery" are material matters because they relate directly to a fact in issue; in the present case, whether a gun has been found in the house of petitioner; or to a fact to which, by the process of logic, an inference may be made as to the existence or non-existence of a fact in issue.^[24] As held in *United States v. Estraña*,^[25] a material matter is the main fact which is the subject of inquiry **or any circumstance which tends to prove that fact or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry or which legitimately affects the credit of any witness who testifies.**

The evidence of prosecution is severely weakened by several contradictions in the testimonies of its witnesses. Especially damaged is the credibility of SPO1 Cabaya, none of whose declarations on material points jibes with those of the other prosecution witnesses. In the face of the vehement and consistent protestations of frame-up by petitioner and his wife, the trial court and the CA erred in overlooking or misappreciating these inconsistencies. To repeat, the inconsistencies are material as they delve into the very bottom of the question of whether or not SPO1 Cabaya really found a firearm in the house of petitioner.

***First material inconsistency:
On SPO1 Cabaya's companions
and the circumstances of his
discovery of the subject firearm***

SPO1 Cabaya testified that he entered the house with four other policemen, among whom were SPO1 Jara, SPO4 Peneyra, SPO3 Bernabe Ocado (SPO3 Ocado) and another one whose name he does not remember.^[26] While searching, he discovered the firearm in the kitchen, inside a closed cabinet near the door.^[27] He said that SPO1 Jara was standing right behind him, at a distance of just one meter, when he (Cabaya) saw the firearm,^[28] and that he picked up the gun, held it and showed it to SPO1 Jara.^[29] He asserted that SPO2 Renon was not one of those who went inside the house.^[30] The following is the testimony of SPO1 Cabaya on direct examination:

Q. You mentioned that you were able to recover a firearm from the house of Ely Agustin. Who actually recovered the firearm?

A. I was the one, sir.

Q. In what particular place in the house of Ely Agustin were you able to recover the firearm?

A. Inside a cabinet, sir.

Q. Where is that cabinet located in relation to the main house?

A. At the door of the house, sir.

Court

Q. Before or after the door?

A. Inside the house already, Your Honor.

Court

Q. Continue, Fiscal.

APP Gascon

Q. Will you describe that cabinet?

A. It is made of rattan, sir.

Q. Does it have covers and doors of its own?

A. Yes, sir.

Q. What part of the cabinet did you discover the firearm?

A. On the lower shelf, sir.

Q. That **lower shelf**, was it closed or opened when you discovered the firearm?

A. It was **closed**, sir.

Q. How far was that cabinet to the door?

A. About 70 centimeters, sir.

Q. How many police officers including you entered the house of Ely Agustin to conduct the search?

A. Five (5), sir.

Q. When you discovered that firearm, do you remember who was or were the persons near you?

A. SPO1 James Jara, sir.

Q. Who else, if any, aside from SPO1 James Jara?

A. SPO4 Marino Peneyra, sir.

Q. Who else?

A. SPO3 Bernabe Ocado, sir.

Q. Were those the only police officers who were with you when you discovered the firearm?

A. Yes, sir.

x x x x

Q. So, who were with you then inside the house when you discovered the firearm?

A. SPO4 Peneyra, SPO3 Ocado and SPO1 Jara, sir.

Q. You mentioned a while ago that there were five (5) of you who conducted the search?

A. I cannot recall the other one, sir.

Q. Do you know SPO2 Florentino Renon?

A. Yes, sir, but he was not there at the time.

x x x x

Q. Not even any one of your companions who were inside the house actually witnessed the taking of the gun