

## SECOND DIVISION

[ G.R. No. 111762, July 22, 1999 ]

**ROY A. DIZON, PETITIONER, VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review of the decision of the Court of Appeals<sup>[1]</sup> affirming the ruling of the Regional Trial Court of Manila (Branch 49) which found accused-appellant guilty of illegal possession of pillbox in violation of §3 of Presidential Decree (P.D.) No. 1866.<sup>[2]</sup>

The Information against accused-appellant alleged:

That on or about May 11, 1990, in the City of Manila, Philippines, the said accused, did then and there willfully and unlawfully have in his possession and under his custody and control an explosive with the following description, to wit:

One (1) Pill box bomb wrapped in an aluminum foil with electrical tape and black powder

which he carried outside of his residence not for the purpose of surrendering the same and without first having secured the necessary license or permit therefor from the proper authorities.

The prosecution evidence shows that at around 7:00 in the evening on May 11, 1990, patrolmen Ernesto Marquez and Alfredo Opriasa, of the Western Police District followed a group of rallyist, numbering about 20 to 25, that marched along Recto Avenue then turned left on Nicanor Reyes Street (formerly Morayta Street) and proceeded to España Street.<sup>[3]</sup> The group was protesting the coming exploratory talks between the governments of the Philippines and the United States concerning the extension of the Military Bases Agreement which was due to expire on September 16, 1991. Upon reaching the intersection of España and A. Maceda Streets, the demonstrators stopped to stage a noise barrage.

Marquez, who was driving the patrol car, stopped the vehicle about seven meters from the group. Marquez and Opriasa remained in the car for about ten minutes, observing the rallyists. When some of them started burning tires in the middle of the street, Opriasa alighted and ran towards the students who scampered when they saw him. Marquez followed Opriasa shortly after. Opriasa got hold of accused-appellant who was left behind while trying to light one of the tires on the street. Opriasa frisked accused-appellant and confiscated from him a pillbox. Following standard procedure, they first took accused-appellant to the Jose B. Reyes Memorial Hospital for examination before proceeding to the WPD Station 4 on UN Avenue,

where accused-appellant was booked and detained for illegal possession of pillbox.  
[4]

Opriasa recounted how he was able to seize the pillbox from the accused:[5]

FISCAL CADELIÑA:

And when you were holding this person you apprehended,  
what happened there?

WITNESS:

One of his hands [was] inside his front pocket and I ordered  
him not to pull out his hands because it might be something,  
sir.

FISCAL CADELIÑA:

When you said one hand, which hand and in what pocket in  
front?

WITNESS:

Left hand, sir.

FISCAL CADELIÑA:

And in what pocket in front?

WITNESS:

Left pocket also, sir.

FISCAL CADELIÑA:

When you told him not to pull out that thing because you did  
not know yet what is it, what did this person you arrested do?

WITNESS:

He was not pulling out his hand yet which was placed inside  
his pocket. What I did [was] I pulled out his hand and I saw  
something being held by him so I grabbed that thing, sir.

FISCAL CADELIÑA:

And what was that thing you took from that person?

WITNESS:

It was wrapped in the gift wrap. It looks like an aluminum foil,  
sir, and it was sealed or closed.

Pfc. Edilberto Capacete, a bomb specialist detailed in the Explosive Ordinance Disposal Unit of the WPD, testified that in the evening of May 11, 1990, the sealed object [6] seized by Opriasa from accused-appellant was turned over to him at the WPD station by Pfc. Calingling, in the presence of patrolmen Marquez and Opriasa, for examination. The device, measuring 8.5 cm. x 4 cm., was wrapped in a "Sustagen" tin foil and tied with electrical tape. Inside was a marble rock, two pieces of broken glass, and black powder.[7] He testified that he took a small amount of the powder, ignited it, and found it positive for explosive.[8] He issued a certification to such effect.[9] To further confirm his findings, he requested a chemical examination of the black powder by the police forensic chemist, Marilyn Dequito.

Dequito, for her part, testified that the device was given to her on May 14, 1990, by Pfc. Capacete. She removed the marble rock and two pieces of broken glass and tested the silvery black powder for presence of explosive substances by dissolving it in water and mixing the solution with certain chemicals.<sup>[10]</sup> The liquid product tested positive for potassium, nitrate, aluminum, and carbon, all composite elements of an explosive.<sup>[11]</sup> She opined that the presence of these elements makes the object an explosive so that when thrown on the ground, it will explode upon impact.<sup>[12]</sup> She also issued a report stating these findings.<sup>[13]</sup> She kept the device locked in a cabinet in her office until it was presented to the trial court on July 18, 1990.

Lilia Lauron, property custodian of the records of the firearms and explosives unit of the Philippine Constabulary, issued a certificate (Exh. C) stating that based on the available records of said office, accused-appellant was not a licensed or registered holder of firearms and explosives. She later testified in court and identified the certificate she had issued. She added that their office checked accused-appellant's name both in the personal reference card in the master list and in the computer, but his name was not in either list.<sup>[14]</sup>

Accused-appellant denied the allegations against him. He testified that at the time material to this case, he was a student at the Polytechnic University of the Philippines and a member of the League of Filipino Students, one of the largest student-based activist groups in the country. On May 11, 1990, he and Rowena Carascal, a friend and schoolmate, joined about 200 students from other schools in a march from Recto Avenue to España Street to protest against the coming exploratory talks between the Philippine and the US governments. At about 7:00 in the evening, the rallyists reached the intersection of A. Maceda and España Streets. Accused-appellant was part of the first line of demonstrators and stood near the center island at the northwestern side of España Street (the lane going to Quiapo). Behind him was the intersection of A. Maceda and España Streets. Another group of students was on the opposite lane. The students were marching towards the Welcome Rotonda, chanting and clapping their hands as they blocked vehicular traffic in the area.<sup>[15]</sup>

Accused-appellant claimed that he heard a car coming up behind him, followed by a gunshot. When he turned around, he saw it was a police car of the WPD. He got nervous (*nataranta*) thus he was not able to run immediately. His companions ran towards the direction of Quiapo. He tried to catch up with them, but he was sideswiped by a jeepney and thus fell on his knees. At that point, a policeman, whom he later came to know was Pat. Alfredo Opriasa, grabbed him by the armpit, turned him around, poked a gun at his head and said "*Huwag kang pumalag*" ("Don't resist"). Accused-appellant said he tried to break from the policeman's hold, but the latter proved too strong for him. He then heard a second gunshot. Opriasa dragged him towards the mobile car. On the way, Opriasa allegedly picked up something and said "*Putang ina ninyo, may pillbox pa kayo*" ("You sons of bitches, you even have a pillbox"). Accused-appellant claimed he did not see the object held by Opriasa. He was then pushed inside the patrol car and was told to lie face down. The officer then threw a pair of handcuffs at accused-appellant and told the latter to handcuff himself, which he did. Opriasa and Marquez took accused-appellant to the Jose B. Reyes Memorial Hospital where he was examined. They then proceeded to

the WPD Station on UN Avenue where, for the first time, he was shown the pillbox allegedly taken from him.<sup>[16]</sup>

The defense presented Rowena Carascal to corroborate accused-appellant's testimony. Carascal testified that it was she who invited accused-appellant to join the protest march as she had been left behind by her companions. They were together from Recto Avenue to España Street. She did not notice anything bulging on the left front pocket of accused-appellant's pants.<sup>[17]</sup> She said that shortly before the group reached the intersection of España and Maceda Streets, accused-appellant joined the first line of rallyists while she became part of the second line behind that of accused-appellant's. The latter's group had already crossed the intersection while that of Carascal remained on the other side.<sup>[18]</sup>

Carascal said some rallyists placed three tires in the middle of the street, poured gasoline on them, and lit them. She saw accused-appellant still in the front line, locked in arms with the other students, his back against the burning tires. Three or four other students who were not part of the lines were also exploding pyrotechnics.<sup>[19]</sup> All the while the students were chanting and clapping their hands.<sup>[20]</sup>

Carascal corroborated accused-appellant's testimony that a police patrol car arrived and shortly after, a shot rang out. She said somebody pulled her away, and they both ran towards Quiapo. As they scampered, she saw accused-appellant still locked in arms with other students. She heard a second shot and somebody shouted that someone had been arrested. She and her companions regrouped at the University of Santo Tomas where she learned that it was accused-appellant who had been arrested.<sup>[21]</sup>

On April 19, 1991, the trial court rendered a decision, the dispositive portion of which reads:<sup>[22]</sup>

WHEREFORE, judgment is hereby rendered finding the Accused ROY DIZON guilty beyond reasonable doubt of the crime of violation of Section 3 of Presidential Decree No. 1866, and hereby metes on him an indeterminate penalty of from Seventeen (17) Years, Four (4) Months and One (1) Day of Reclusion Temporal, as Minimum, to Reclusion Perpetua, as Maximum, with all the accessory penalties of the law. Upon the finality of this Decision of the Court, the Branch Clerk of Court of this Court is hereby ordered to cause the delivery of the pillbox, Exhibit "G-1" to the Firearms and Explosives Unit of the Philippine National Police for proper disposition in accordance with law.

SO ORDERED.

On appeal to the Court of Appeals, the trial court's decision was affirmed with modification as to the imposable penalty. Accused-appellant was sentenced to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as minimum to nineteen (19) years of *reclusion temporal* as maximum.<sup>[23]</sup> Hence, this petition.

Accused-appellant contends that<sup>[24]</sup>-

### **FIRST**

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT CONCLUDED THAT THE MERE EXISTENCE OF BLACK POWDER IS SUFFICIENT TO JUSTIFY A FINDING THAT AN "INCENDIARY DEVICE," THE POSSESSION OF WHICH IS PUNISHED BY PRESIDENTIAL DECREE NO. 1866, EXISTS.

### **SECOND**

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO INDULGE THE REASONABLE DOUBT CREATED BY THE ALLEGED PILLBOX'S FAILURE TO EXPLODE, DESPITE THE EXISTENCE OF CONDITIONS UNDER WHICH AN EXPLOSION COULD REASONABLY HAVE BEEN EXPECTED, IN FAVOR OF ACCUSED-APPELLANT.

### **THIRD**

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO INDULGE THE REASONABLE DOUBT CREATED BY THE PROSECUTION'S FAILURE TO ADEQUATELY ESTABLISHED AND ACCOUNT FOR THE CHAIN OF CUSTODY OVER THE ALLEGED PILLBOX IN FAVOR OF ACCUSED-APPELLANT.

### **FOURTH**

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO INDULGE THE REASONABLE DOUBT CREATED BY THE CONFLICTING TESTIMONIES OF THE ARRESTING OFFICERS ON MATERIAL POINTS IN FAVOR OF ACCUSED-APPELLANT.

After reviewing the evidence in the record, we find no reason to reverse the findings of the trial court as affirmed by the Court of Appeals, although the penalty as fixed by the appellate court should be modified in view of the amendment to P.D. No. 1866.

**First.** Accused-appellant assails the findings of fact by the trial court as affirmed by the Court of Appeals, pointing out alleged inconsistencies and contradictions in the testimonies of patrolmen Opriasa and Marquez. Accused-appellant cites Pat. Opriasa's testimony that accused-appellant was trying to light a tire at the intersection of España and A. Maceda Streets when Pat. Opriasa nabbed him, which according to accused-appellant is inconsistent with the following testimony of Pat. Marquez:<sup>[25]</sup>

ATTY. OCAYA:

How many tires were there at the intersection?

WITNESS [MARQUEZ]:

Around three (3) tires, sir.

ATTY. OCAYA:

How many were burning at that time?