

## **TWENTIETH DIVISION**

**[ CA-G.R. CEB-CR. NO. 02094, January 14, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIA ROMA PALMIANO, ACCUSED-APPELLANT.**

### **DECISION**

**HERNANDO, J:**

Before Us is an Appeal from the Decision<sup>[1]</sup> dated January 4, 2013 rendered by the Regional Trial Court (RTC), Branch 28 of Catbalogan City, finding accused-appellant Maria Roma Palmiano, guilty beyond reasonable doubt for Violation of Par. G, Section 2 of Republic Act (R.A.) No. 9287<sup>[2]</sup>. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, this Court finds accused Maria Roma Palmiano guilty beyond reasonable doubt of the crime charged in the Information, and hereby sentences her to suffer the penalty of Six (6) years and One (1) day, as minimum to Seven (7) years as maximum.

Furthermore, the gambling paraphernalia consisting of a bunch of stabs, a red ball pen and cash amounting to Php35.00 representing as bet are ordered confiscated in favor of the government.

SO ORDERED.

### **The Antecedents:**

On May 14, 2009, an Information<sup>[3]</sup> for Violation of Par. G, Section 2, Republic Act No. 9287 was filed against accused Maria Roma Palmiano before the Regional Trial Court, Branch 28 of Catbalogan City, Samar, the accusatory portion of which reads as follows:

That on February 23, 2009, at about 6:00 o'clock in the evening, more or less, at public market site, Barangay 11, Catbalogan City, Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to gain and without being authorized by law, did, then and there, willfully, unlawfully and feloniously engage and directly and indirectly take part as a collector of money bets in an illegal gambling locally known as "swertes"(sic), a variant of illegal numbers game, and collect, receive and accept the bet money from a bettor relative to said swertes, and have in her possession, custody and control of the following illegal gambling paraphernalia, to wit

"a bunch of stubs with different number combination;  
"a piece of red ball pen; and,  
"cash bet money of Php35.00.00(sic)"

which were all confiscated from the accused in an operation conducted by the members of the Catbalogan City Police Station, Catbalogan City in the aforesaid place.

CONTRARY TO LAW.

When arraigned on September 25, 2009, accused, with the assistance of her counsel, Atty. Ritchie B. Reyes of the Public Attorney's Office (PAO), entered a plea of not guilty<sup>[4]</sup> to the crime charged.

After the pre-trial was terminated<sup>[5]</sup>, trial on the merits ensued.

### **Version of the Prosecution**

As narrated by the People in its Brief<sup>[6]</sup>, the version of the prosecution is as follows:

At about six o'clock in the evening of February 23, 2009, P/Insp. Jason Gutierrez, acting upon the order/instruction of his superior, was at the public market of Catbalogan City, Samar to conduct a surveillance on the alleged rampant illegal number game activities in the area. He was wearing civilian attire during the surveillance.

While in the area, P/Insp. Gutierrez noticed the presence of accused on the other side of the street, about three (3) meters from where he was positioned, holding one bundle of stub and a ball pen and talking to a man who was later identified as a bettor. Thereafter, P/Insp. Gutierrez saw the man hand money to accused. Afterwards, accused wrote something on the stub and as soon as the transaction was completed, Inspector Gutierrez approached them, arrested accused while the bettor scampered away.

Inspector Gutierrez brought accused to Catbalogan Police station and subsequently to the Samar Provincial Hospital for medical examination. Appellant was frisked by a lady police officer Magdaso. The frisking yielded several gambling paraphernalia or items consisting of a bunch of stubs, ballpen and money of different denominations. The items confiscated from the possession of appellant were surrendered to the police investigator, PO1 Alfonso Lucero.

During the investigation, PO1 Lucero asked accused if she was the one carrying the confiscated articles. She answered yes. PO1 Lucero then received the confiscated items from accused which he subsequently turned over to the evidence custodian, PO2 Delos Reyes as shown by the Receipt of Object Evidence.

During his testimony, PO2 Delos Reyes presented one transparent plastic cellophane containing the following: written documents, A Receipt of Object Evidence and a list of the items inside the cellophane such as red ballpen, a bunch of stubs, one piece of Php20.00 bill with serial number ZP518647, three pieces Php5.00 coins, a Philippine Lotto 6/42 bet card with number combinations, a Philippine Lotto EZ2 bet card with number combinations, a notebook leaf with written names.

### **Version of the Defense**

On the other hand, the version of the defense as culled from the Brief for Accused-Appellant<sup>[7]</sup>, is as follows:

Accused Maria Roma Palmiana testified in court that she was at the public market of Catbalogan City, Samar at around 6:00 in the evening of February 23, 2009 in order to collect payments from certain Aileen, Manang Auring and other meat vendors for the snacks which she peddled in the morning. Accused declared that she earns a living by peddling food such as spaghetti, pork barbeque, cassava cake and *nilupak* to customers who are mostly meat vendors in the public market. She denied the allegation that she collected payment for *swertres* and that she was engaged in any illegal numbers game at the time that she was arrested. She claimed that she voluntarily went with police officer Jason Gutierrez when the latter informed her that the Chief of Police of Catbalogan City wanted to see her at the police station. According to accused, when they reached the police station, she was no longer allowed to go home. She later learned that she was charged with illegal numbers game only during the initial hearing of the case.

On January 4, 2013, the trial court rendered a Decision convicting accused of the crime charged against her. It rejected accused's defense of denial since her defense of denial is futile when compared to the positive narration of P/Insp. Jason Gutierrez surrounding the illegal acts of accused and her subsequent arrest in connection thereto. According to the trial court, accused never bother to offer or present this Aileen or Manang Auring or any of her customers in the public market if only to corroborate her testimony that indeed she was not engaged in any illegal number games but was merely at the public market to collect payments for the snacks that she supposedly sold to them. The trial court opined that her bare denial, not having been corroborated by an independent evidence, was self-serving and that self-serving negative evidence cannot be accorded greater evidentiary weight than that of a credible witness who testified on affirmative matter. The trial court also considered in favor of police officers the presumption of regularity in the performance of their official duties.

Hence, this appeal by accused-appellant Maria Roma Palmiano anchored on the following assignment of errors, to wit:

**The Assigned Errors<sup>[8]</sup>:**

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED NOTWITHSTANDING THE ABSENCE OF A PENAL LAW PUNISHING THE ACT COMPLAINED OF IN THE INFORMATION.

**The Court's Ruling:**

*We find no reversible error committed by the trial court in ruling for appellant's conviction.*

For being interrelated, the issues raised shall be dealt with jointly.

Gambling is prohibited by the laws of the Philippines as specifically provided in Articles 195 to 199 of the Revised Penal Code, as amended.<sup>[9]</sup> Gambling is an act beyond the pale of good morals, and is thus prohibited and punished to repress an evil that undermines the social, moral, and economic growth of the nation.<sup>[10]</sup> Presidential Decree (P.D) No. 1602<sup>[11]</sup>, which modified Articles 195-199 of the Revised Penal Code and repealed inconsistent provisions<sup>[12]</sup>, prescribed stiffer penalties on illegal gambling.<sup>[13]</sup> Republic Act No. (R.A) 9287<sup>[14]</sup> which amended certain provisions of P.D. 1602, further increased the penalties on illegal gambling.

Appellant is charged with Violation of R.A. No. 9287, particularly Sec. 2, par. g thereof which states:

Sec. 2. *Definition of Terms.* - As used in this Act, the following terms shall mean:

x x x

g) *Collector or Agent ("Cabo", "Cobrador", "Coriador" or variants thereof).* - Any person who collects, solicits or produces bets in behalf of his/her principal for any illegal numbers game who is usually in possession of gambling paraphernalia.

After a careful and judicious re-examination of the evidence on record, We find and so rule that the prosecution was able to duly and more than convincingly establish the guilt of appellant on the crime charged against her.

To recall, Police officer Jason Gutierrez positively testified in court the circumstances surrounding the appellant's commission of the crime charged and the latter's eventual arrest. He narrated, thus:

Q: Can you tell the Court Mr. Witness, where were you on February 23, 2009 at around 6:00 o'clock in the evening?

A: I am at the Market place of Catbalogan City, conducting surveillance regarding the alleged information given to our Chief of Police, P/Supt. Ramil Ramirez for the illegal activities regarding illegal number game.

x x x

x x

x

x x x

Q: When you said illegal activities, what do you mean by that?

A: They are collecting bets.

Q: While you were there, what happened next?

A: At around 6:00 in the evening, I saw one (1) old woman in front or across of the street carrying one (1) stub and having a ballpen writing on the stub.

Q: After seeing the old woman writing something on the stub with ballpen, was she alone?

A: No.

Q: She was with whom?

A: She was with one (1) male bettor.  
 Q: After seeing the elderly woman and one (1) bettor, what did you do, if any?  
 A: I was observing for the reason that the bettor gives money to the woman.  
 Q: Do you know how much money was given by the male bettor to the old woman?  
 A: I could not see.  
 Q: How did you know that it was money given to the woman, when you said that you did not see?  
 A: I did not know the amount given to the old woman.  
 Q: But you were certain that it was money that was given by the bettor?  
 A: Yes, because I am across the road at least three (3) meters away because the public market has only one (1) road.  
 Q: Afterwhich, what happened?  
 A: When I saw that the bettor gave the money, I saw also the woman finished writing on the stub. I approached her but when I got near her, she walked fast to evade but I immediately apprehended her. The bettor was able to scamper away.

x x x  
 x

x x  
 x x x

Q: When you said you apprehended the woman receiving bets from the bettor, how did you do it?  
 A: First when I apprehended her, I told her the nature of her arrest and apprise her of her Constitutional Rights.  
 Q: What was the reaction of the woman when you apprehended her?  
 A: Nothing.  
 Q: Afterwhich, what happened?  
 A: After I arrested her, I brought her to the Police Station for the medical examination.<sup>[15]</sup>

x x x  
 x

x x  
 x x x

The foregoing evidently shows that appellant was caught redhanded in the act of collecting bets for illegal number game, hence, liable as collector or agent defined under Sec. 2, par. g of R.A. 9287 above-quoted.

In her attempt at acquittal, appellant argues that it is contrary to human experience for a person to commit a crime so blatantly in public view, thereby making the testimony of P/Insp. Gutierrez that she committed the crime in a public market just about three meters away from him, unworthy of belief. She also questions why she was the only one charged with the crime while the supposed bettor was excluded when a bettor in an illegal numbers game likewise incurs criminal liability. She further argues that she cannot be convicted as collector of bets since the prosecution failed to prove that the money allegedly received by appellant was intended as a bet for an illegal numbers game and that the prosecution likewise failed to establish by any competent proof how the numbers appearing on a pad of paper could be used in an illegal numbers game. There being no legal presumption under the law, the court cannot make a conclusion that a list of numbers relates to