

## EN BANC

[ G.R. No. 215305, April 03, 2018 ]

**MARCELO G. SALUDAY, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CARPIO, ACTING C.J.:** \*\*

#### The Case

Before the Court is a Petition for Review on Certiorari assailing the Decision dated 26 June 2014<sup>[1]</sup> and the Resolution dated. 15 October 2014<sup>[2]</sup> of the Court of Appeals in CA-G.R. CR No. 01099, The Court of Appeals affirmed with modification the Sentence dated 15 September 2011<sup>[3]</sup> rendered by the Regional Trial Court, Branch 11, Davao City in Criminal Case No. 65,734-09, finding petitioner Marcelo G. Saluday (petitioner) guilty beyond reasonable doubt of illegal possession of high-powered firearm, ammunition, and explosive under Presidential Decree No. 1866,<sup>[4]</sup> as amended (PD 1866).

#### The Antecedent Facts

On 5 May 2009, Bus No. 66 of Davao Metro Shuttle was flagged down by Task Force Davao of the Philippine Army at a checkpoint near the Tefasco Wharf in Ilang, Davao City. SCAA Junbert M. Buco (Buco), a member of the Task Force, requested all male passengers to disembark from the vehicle while allowing the female passengers to remain inside. He then boarded the bus to check the presence and intercept the entry of any contraband, illegal firearms or explosives, and suspicious individuals.

SCAA Buco checked all the baggage and personal effects of the passengers, but a small, gray-black pack bag on the seat at the rear of the bus caught his attention. He lifted the bag and found it too heavy for its small size. SCAA Buco then looked at the male passengers lined outside and noticed that a man in a white shirt (later identified as petitioner) kept peeping through the window towards the direction of the bag. Afterwards, SCAA Buco asked who the owner of the bag was, to which the bus conductor answered that petitioner and his brother were the ones seated at the back. SCAA Buco then requested petitioner to board the bus and open the bag. Petitioner obliged and the bag revealed the following contents: (1) an improvised .30 caliber carbine bearing serial number 64702; (2) one magazine with three live ammunitions; (3) one cacao-type hand grenade; and (4) a ten-inch hunting knife. SCAA Buco then asked petitioner to produce proof of his authority to carry firearms and explosives. Unable to show any, petitioner was immediately arrested and informed of his rights by SCAA Buco.

Petitioner was then brought for inquest before the Office of the City Prosecutor for

Davao City. In its Resolution dated 7 May 2009,<sup>[5]</sup> the latter found probable cause to charge him with illegal possession of high-powered firearm, ammunition, and explosive under PD 1866. The Information dated 8 May 2009 thus reads:

That on or about May 5, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and knowingly, with intent to possess, had in his possession and under his custody an improvised high powered firearm caliber .30 carbine bearing Serial No. 64702 (made in Spain) with one (1) magazine loaded with three (3) live ammunitions and one (1) "cacao" type hand grenade explosive; without first securing the necessary license to possess the same.

CONTRARY TO LAW.<sup>[6]</sup>

When arraigned, petitioner pleaded not guilty.

During the trial, the prosecution presented two witnesses namely, NUP Daniel Tabura (Tabura), a representative of the Firearms and Explosives Division of the Philippine National Police, and SCAA Buco. NUP Tabura identified the Certification dated 5 November 2009<sup>[7]</sup> attesting that petitioner was "not a licensed/registered holder of any kind and caliber per verification from records." Meanwhile, SCAA Buco identified petitioner and the items seized from the bag, and testified on the details of the routine inspection leading to the immediate arrest of petitioner. On cross-examination, SCAA Buco further elaborated on the search conducted:

Atty. Mamburam

Q And that check point, which was conducted along Ilang [R]oad, Davao City, was by virtue of a memorandum?

A Yes, Your Honor.

x x x x

Q Now, you said that at around 5:00 of said date, you were able to intercept a Metro Shuttle passenger bus and you requested all passengers to alight?

A Yes.

Q All female passengers were left inside?

A Yes. Your Honor.

Q And, after all passengers were able to alight, you checked all cargoes of the passengers in the bus?

A Yes.

x x x x

Q And, you testified that one of those things inside the bus was a black gray colored pack bag which was placed at the back portion of the bus?

A Yes.

Q You said that the bag was heavy?

A Yes.

Q And you picked up or carried also the other belongings or cargo[e]s inside the bus and that was the only thing or item inside the bus which was heavy. Is that correct?

A There were many bags and they were heavy. When I asked who is the owner of the bag because **it was heavy but the bag was small**, when I asked, he said the content of the bag was a cellphone. But I noticed that it was heavy.

x x x x

Q And you said that somebody admitted ownership of the bag. Is that correct?

A Yes.

Q Who admitted ownership of the bag?

A (WITNESS POINTS TO THE ACCUSED)

Q Now, you said that while you are looking at the bag, you noticed that one male passenger you pointed as the **accused kept looking at you?**

A **Yes.**

Q And, aside from the accused, all the other male passengers were not looking at you?

A The other passengers were on the ground but he was in front of [the] window looking towards his bag.

x x x x

Q **And the accused admitted that he owned the bag, you requested him to open the bag?**

A **Not yet. I let him board the bus and asked him if he can open it.**

Q And, when he opened it?

A I saw the handle of the firearm.<sup>[8]</sup> (Emphasis supplied)

On the other hand, the defense presented petitioner as sole witness. On direct examination, petitioner denied ownership of the bag. However, he also admitted to answering SCAA Buco when asked about its contents and allowing SCAA Buco to open it after the latter sought for his permission:

ATTY. MAMBURAM

Q x x x [A]fter the conductor of the bus told the member of the task force that you and your brother were seated at the back of the bus, can you please tell us what happened next?

A A The member of the task force asked who is the owner of the bag and what were the contents of the bag.

Q To whom did the member of the task force address that question?

A To me because I was pointed to by the conductor.

Q And what was your reply to the question of the member of the task force?

A I told him it was only a cellphone.

Q By the way, Mr. Witness, who owned that bag?

A My elder brother.

Q And why did you make a reply to the question of the member of the task force when, in fact, you were not the owner of the bag?

A Because I was pointed to by the conductor that it was me and my brother who were seated at the back.

x x x x

Q **Now, after you told the member of the task force that probably the content of the bag was cellphone, what happened next?**

A **He asked if he can open it.**

Q **And what was your reply?**

A **I told him yes, just open it.**

x x x x

Q Now, you said that the owner of the bag and the one who carried that bag was your brother, what is the name of your brother?

A Roger Saluday.

Q Where is your brother Roger now?

A Roger is already dead. He died in September 2009.<sup>[9]</sup>  
(Emphasis supplied)

On cross-examination, petitioner clarified that only he was pointed at by the conductor when the latter was asked who owned the bag. Petitioner also admitted that he never disclosed he was with his brother when he boarded the bus:

PROS. VELASCO

Q You said that you panicked because they pulled you but as a way of suving yourself considering you don't own the bag, did you not volunteer to inform them that [the] bag was owned by your brother?

A I told them I have a companion but I did not tell them that it was my brother because I was also afraid of my brother.

Q So, in short, **Mr. Witness, you did not actually inform them that you had a brother at that time when you were boarding that bus, correct?**

A No, sir, **I did not.**

x x x x

- Q So, you were answering all questions by saying it is not your bag but you confirm now that it was the conductor of that bus who pointed you as the owner of the bag, correct?
- A Yes, sir, the **conductor pointed at me** as the one who [sic] seated at the back.<sup>[10]</sup> (Emphasis supplied)

The defense subsequently rested its case and the prosecution waived the right to present rebuttal evidence. Upon order from the trial court, the parties submitted their respective memoranda.

### **The Decision of the Trial Court**

Finding the denials of petitioner as self-serving and weak, the trial court declared him to be in actual or constructive possession of firearm and explosive without authority or license. Consequently, in the dispositive portion of the Sentence dated 15 September 2011, petitioner was adjudged guilty beyond reasonable doubt of illegal possession of firearm, ammunition, and explosive under PD 1866:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding Marcelo Gigbalen Saluday GUILTY of illegal possession of high powered firearm, ammunition and explosive. For the offense of illegal possession of high powered firearm and ammunition, he is hereby sentenced to suffer an imprisonment of *prision mayor* in its minimum period. He is likewise ordered to pay a fine of P30,000.00. For the offense of illegal possession of explosive, he is hereby sentenced to suffer an imprisonment of *prision mayor* in its maximum period to *reclusion temporal*. He is likewise ordered to pay a fine of P50,000.00.

x x x x

SO ORDERED.<sup>[11]</sup>

On 12 October 2011, petitioner timely filed his Notice of Appeal.<sup>[12]</sup>

### **The Decision of the Court of Appeals**

On appeal, petitioner challenged his conviction raising as grounds the alleged misappreciation of evidence by the trial court and the supposed illegality of the search.<sup>[13]</sup> On the other hand, the Office of the Solicitor General (OSG) argued that the warrantless search was valid being a consented search, and that the factual findings of the trial court can no longer be disturbed.<sup>[14]</sup>

In its Decision dated 26 June 2014, the Court of Appeals sustained the conviction of petitioner and affirmed the ruling of the trial court with modification:

WHEREFORE, the instant appeal is DISMISSED. The Sentence dated September 15, 2011 of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 11, Davao City, in Criminal Case No. 65,734-09, finding Marcelo Gigbalen Saluday guilty beyond reasonable doubt of illegal possession of high powered firearm, ammunition and explosive is AFFIRMED with the MODIFICATION that: