

## THIRD DIVISION

[ G.R. NO. 156320, February 14, 2007 ]

**RODOLFO ABENES Y GACUTAN, PETITIONER, VS. THE HON.  
COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

For review before the Court is the Decision<sup>[1]</sup> dated November 29, 2002 of the Court of Appeals (CA) which affirmed the Joint Decision of the Regional Trial Court (RTC) of Pagadian City, Branch 19, dated June 5, 2000, finding Rodolfo Abenes y Gacutan (petitioner) guilty beyond reasonable doubt of Illegal Possession of High Powered Firearm and Ammunition under Presidential Decree No. 1866 (P.D. No. 1866) in Criminal Case No. 4559-98, and of violating Section 261(q) of *Batas Pambansa Blg. 881* (*B.P. Blg. 881*), otherwise known as the Omnibus Election Code, vis-à-vis COMELEC Resolution No. 2958 (Gun Ban) in Criminal Case No. 4563-98.

Petitioner was charged under the following Informations:

In Criminal Case No. 4559-98 —

The undersigned Assistant City Prosecutor hereby accuses RODOLFO ABENES Y GACUTAN of the offense of ILLEGAL POSSESSION OF HIGH POWERED FIREARM & ITS AMMUNITIONS (Violation of P.D. No. 1866, as amended by R.A. No. 8294), committed as follows:

On May 8, 1998, at about 10:30 a.m., in Danlogan, Pagadian City, Philippines, within the jurisdiction of this Honorable Court, said RODOLFO ABENES Y GACUTAN did, then and there, willfully, unlawfully, and without any prior authority, license or permit to possess or carry the firearm hereunder described, have in his possession and control the following firearm classified as high powered, with its corresponding ammunitions and accessory, viz:

- one (1) cal. 45 pistol (NORINCO) bearing SN 906347;
- one (1) magazine for pistol cal. 45
- seven (7) rounds live ammunitions for cal. 45,

in gross violation of P.D. No. 1866 as amended by R.A. No. 8294.

CONTRARY TO LAW.<sup>[2]</sup>

In Criminal Case No. 4563-98 —

The undersigned Assistant City Prosecutor hereby accuses RODOLFO ABENES Y GACUTAN of Election Offense in violation of Sec. 261 (9)<sup>[3]</sup>, BP 881 (OMNIBUS ELECTION CODE), vis-à-vis COMELEC RESOLUTION # 1958 (GUN BAN), committed as follows:

On May 8, 1998, at about 10:30 a.m. within the Election period which is from January 11, 1998 to June 30, 1998, in Danlujan, Pagadian City, Philippines, within the jurisdiction of this Honorable Court, said RODOLFO ABENES Y GACUTAN did, then and there, willfully, and unlawfully, carry in his person a cal. .45 (NORINCO) pistol, bearing serial number 906347, and loaded with seven (7) rounds of live ammunitions, without any prior authority from the COMELEC in gross violation of Sec. 261 (9) of BP 881 (OMNIBUS ELECTION CODE) in relation to COMELEC RESOLUTION No. 2958 (GUN BAN).

CONTRARY TO LAW.<sup>[4]</sup>

Upon arraignment, the petitioner pleaded not guilty. Trial ensued.

The facts, as found by the RTC and summarized by the CA, are as follows:

The prosecution showed that three days prior to the May 11, 1998 national and local elections, the Philippine National Police (PNP) of Pagadian City, through its Company Commander Major Pedronisto Quano, created a team composed of seven policemen with a directive to establish and man a checkpoint in Barangay Danlujan at said city, for the purpose of enforcing the Gun Ban which was then being implemented by the COMELEC. SPO3 Cipriano Q. Pascua was the designated team leader.

The team proceeded to Barangay Danlujan, arriving thereat at 8:15 in the morning of May 8, 1998. Team leader SPO3 Pascua coordinated with the Barangay Chairman of Danlujan, and the team put up a road block with the marking "COMELEC GUN BAN". Vehicles passing through the road block were required by the team to stop and their occupants were then politely requested to alight in order to allow routine inspection and checking of their vehicles. Motorists who refused the request were not forced to do so.

At about 10:30 in the morning of the same day, a red Tamaraw FX trying to pass through the check point was stopped by the team and directed to park at the side of the road. As the occupants within the vehicle could not be seen through its tinted windows, SPO1 Eliezer Requejo, a member of the team, knocked on the vehicle's window and requested the occupants to step down for a routine inspection. The eight occupants, which included the accused-appellant Rodolfo Abenes who is the Barangay Chairman of Tawagan Norte, Labangan, Zamboanga Del Sur, alighted from the vehicle. At this juncture, SPO1 Requejo and SPO3 Pascua noticed that a holstered firearm was tucked at the right waist of Abenes. The firearm was readily visible to the policemen; it was not covered by the shirt worn by Abenes. Abenes was then asked by SPO3 Pascua whether he had a license and authority to carry the firearm, and whether his possession was exempted from the Gun Ban being enforced

by the COMELEC. Accused answered in the affirmative. The policemen then demanded for the pertinent documents to be shown to support Abenes' claim. He could not show any. Hence, SPO1 Requejo confiscated Abenes' firearm, which was later identified as a Norinco .45 caliber pistol bearing Serial No. 906347, including its magazine containing seven live ammunitions.

Subsequently SPO3 Pascua, using his privately owned jeep, brought Abenes to the PNP Headquarters at Camp Abelon in Pagadian City. Upon reaching the Headquarters, SPO3 Pascua indorsed Abenes to Major Quano who in turn referred Abenes to a certain SPO2 Benvienido Albon for further investigation (TSN, August 24, 1998 [SPO3 Cipriano Q. Pascua] pp. 5-27, [SPO1 Eliezer Requejo] pp. 29-50).

A certification dated May 18, 1998 from the Firearms and Explosives License Processing Section of the PNP, Pagadian City disclosed that Abenes is not a registered nor a licensed firearm holder (Record of Criminal Case No. 4559-98, p. 56).

After the prosecution presented its evidence, [the] accused filed a Demurrer to Evidence with Motion to Dismiss (*supra*, pp. 72-79), which was denied by the trial court in a Resolution dated March 5, 1999 (*supra*, pp. 80-82).

In his defense, accused-appellant tried to establish that the firearm did not belong to and was not recovered from him; that the firearm was recovered by the policemen from the floor of the vehicle inside a clutch bag which was allegedly left by an unidentified person who hitched a ride somewhere along the national highway of Tawagan Norte Zamboanga Del Sur and alighted near the Mabuhay Bazaar in Pagadian City (TSN, July 12, 1999 [Noel Rivera], pp. 7-13; September 15, 1999 [Rodolfo Abenes], pp. 11-15; September 27, 1999 [Manuel Sabado Gengania], pp. 9-16).

[5]

On June 5, 2000, the RTC rendered its Joint Decision convicting the petitioner on both charges, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing discussion, this Court hereby finds accused Rodolfo Abenes y Gacutan GUILTY beyond reasonable doubt for Violation of P.D. No. 1866, as amended by Republic Act No. 8294, having been found in possession without license/permit of a Norinco .45 caliber pistol bearing Serial No. 906347 and 7 rounds of ammunitions and sentences him to imprisonment ranging from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL in its MEDIUM PERIOD, as MINIMUM, to EIGHT (8) YEARS of PRISION MAYOR in its MINIMUM, as MAXIMUM and a FINE of THIRTY THOUSAND PESOS (P30,000.00), Philippine currency. Insofar as Criminal Case No. 4559-98 is concerned. The .45 Caliber Pistol aforementioned and the seven (7) rounds of ammunitions are hereby forfeited in favor of the government the same being effects of the Violation of P.D. 1866, amended.

As regards Criminal Case No. 4563-98, this Court also finds herein accused Rodolfo Abenes y Gacutan GUILTY of Violation of Section 264, in relation to Section 261, paragraphs (p) and (q) of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code and sentences him to imprisonment for a period of ONE (1) YEAR, and in addition thereto, herein accused is disqualified to hold any public office and deprived [of] the right of suffrage. It shall be understood that the sentence herein imposed shall be served simultaneously with the sentence imposed in Criminal Case No. 4559-98.

SO ORDERED.<sup>[6]</sup>

The RTC found that, as between the positive and categorical assertions of facts by the two policemen – the witnesses for the prosecution – and the mere denial of the accused and his witnesses, the former must prevail over the latter; that the prosecution successfully proved that the petitioner had no license or permit to carry the firearm through the officer-in-charge of the firearms and explosives office who testified that, based on his records, the petitioner had not been issued a license, and whose testimony had not been impugned by the defense; and that the testimonies of the accused and his two witnesses to the effect that while aboard their private vehicle and on their way to attend an election campaign meeting, they simply stopped and allowed a complete stranger to hitch a ride who was carrying a clutch bag, left the same in the vehicle when he alighted, and which later turned out to contain the subject firearm, were flimsy and unbelievable. The RTC ruled that the defense of alibi or denial cannot prevail over the positive identification by eyewitnesses who have no improper motive to falsely testify against the petitioner, especially where the policemen and the petitioner do not know each other; and, that the petitioner failed to show any license or any other document to justify his lawful possession of the firearm.

The petitioner appealed to the CA claiming that the checkpoint was not shown to have been legally set up, and/or that the frisking of the petitioner who was ordered to alight from the Tamaraw FX, along with his companions in the vehicle, violated his constitutional right against unlawful search and seizure; and, that the trial court erred in believing the version of the incident as testified to by the policemen instead of the version presented by the defense's witness which is more consistent with truth and human experience.<sup>[7]</sup>

On November 29, 2002, the CA rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Joint Decision appealed from is AFFIRMED with the MODIFICATION that with respect to Criminal Case No. 4559-98, accused-appellant is sentenced to an indeterminate penalty of 4 years, 2 months and 1 day of prision correccional as minimum to 7 years and 4 months of prision mayor as maximum.

SO ORDERED.<sup>[8]</sup>

With respect to the validity of the checkpoint, the CA found that not only do the police officers have in their favor the presumption that official duties have been

regularly performed, but also that the proximity of the day the checkpoint had been set up, to the day of the May 11, 1998 elections, specifically for the purpose of enforcing the COMELEC gun ban, gives a strong badge of the legitimacy of the checkpoint; that after a review of the records, the evidence adduced by the prosecution prevails over the self-serving and uncorroborated claim of the petitioner that he had been “framed”; and, that with respect to the admissibility of the firearm as evidence, the prosecution witnesses convincingly established that the .45 caliber pistol, tucked into the right waist of the petitioner when he alighted from the vehicle, was readily visible, and, therefore, could be seized without a search warrant under the “plain view” doctrine.

The petitioner is now before this Court, raising the following issues:

I.

GIVEN THE CIRCUMSTANCES, AND THE EVIDENCE ADDUCED, WAS THE CHECK-POINT VALIDLY ESTABLISHED?

II.

GIVEN THE CIRCUMSTANCES, AND THE EVIDENCE ADDUCED, WAS THE PETITIONER’S CONSTITUTIONAL RIGHT AGAINST UNLAWFUL SEARCH AND SEIZURE VIOLATED?

III.

GIVEN THE CIRCUMSTANCES, AND THE EVIDENCE ADDUCED, DID NOT THE HONORABLE COURT OF APPEALS COMMIT A GRAVE ABUSE OF DISCRETION FOR ADOPTING THE TRIAL COURT’S UNSUBSTANTIATED FINDINGS OF FACT?

IV.

GIVEN THE CIRCUMSTANCES, AND THE EVIDENCE ADDUCED, IS NOT THE PETITIONER ENTITLED TO AN ACQUITTAL, IF NOT ON THE GROUND THAT THE PROSECUTION FAILED TO PROVE GUILT BEYOND REASONABLE DOUBT, ON THE GROUND OF REASONABLE DOUBT ITSELF . . . AS TO WHERE THE GUN WAS TAKEN: FROM THE FLOOR OF THE VEHICLE OR FROM THE WAIST OF PETITIONER?<sup>[9]</sup>

The appeal is partly meritorious. The Court reverses the CA’s finding of his conviction in Criminal Case No. 4559-98.

After a thorough review of the records, this Court is of the view that the courts *a quo* – except for a notable exception with respect to the negative allegation in the Information – are correct in their findings of fact. Indeed, the version of the defense, as found by the lower courts, is implausible and belies the common experience of mankind. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.<sup>[10]</sup> In addition, the question of credibility of witnesses is primarily for the trial court to determine.<sup>[11]</sup> For this reason, its observations and conclusions