

THIRD DIVISION

[G.R. No. 118806, July 10, 1998]

**SANTIAGO ARGONCILLO, RICHARDO BALBONA AND
POLICARPIO UMITEN, PETITIONERS, VS. COURT OF APPEALS
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

This is a petition to review the decision^[1] of the Court of Appeals which affirmed in toto the decision of the Regional Trial Court of Roxas City, Branch 15,^[2] finding petitioners herein guilty of "illegal fishing with the use of an explosive," the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, Policarpio Umiten, Santiago Argoncillo and Richard Balbona, guilty beyond reasonable doubt for the crime of illegal fishing with the use of an explosive punishable under Section 33 in relation to Section 38 of Presidential Decree No. 704 dated May 16, 1975 as amended by Presidential Decree No. 1058 dated December 1, 1976 and each shall suffer a straight penalty of twenty (20) years imprisonment.

However, accused, Johnson Sucgang, Elvis Villar and Efren Alvaro, are acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt.

The fish sample is forfeited in favor of the government.

Considering the penalty imposed upon the accused, Policarpio Umiten, Santiago Argoncillo and Richard Balbona, the bail bond for their provisional liberty is increased to Twenty Thousand (P20,000.00) Pesos each effective immediately upon promulgation. They shall not be released from detention until they put up an appropriate bail bond for their provisional liberty.

The property bond of accused, Johnson Sucgang, Elvis Villar and Efren Alvaro, are deemed cancelled.

Costs against the convicted accused.

SO ORDERED.^[3]

On August 1, 1990, an Information was filed by the Provincial Fiscal of Capiz charging Johnson Sucgang, Policarpio Umiten, Elvis Villar, Santiago Argoncillo,

Richardo Balbona and Efren Alvaro with illegal fishing (with the use of dynamite), as follows:

That at or about 6:30 o'clock [sic] in the evening of May 7, 1990, in the sea water of Barangay Basiao, Ivisan, Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, wilfully, unlawfully and feloniously catch, take, gather and have in their possession and control different species of fish with the use of explosives.^[4]

Upon arraignment on September 11, 1990, the accused, with the assistance of counsel, pleaded "not guilty" to the offense charged. Trial ensued thereafter.

The lower court synthesized the evidence presented by the prosecution as follows:^[5]

Due to reports of rampant illegal fishing at Barangay Basiao, Ivisan, Capiz, personnel from the Department of Agriculture and Natural Resources specifically from the Bureau of Fisheries as well as the Barangay Captain of said place assisted by the local policemen created a team to conduct surveillance within the Ivisan Bay. Thus, around 5:30 in the afternoon of May 7, 1990, a team riding in two (2) pumpboats from the Barangay Basiao wharf proceeded along the waters of Ivisan Bay. Riding in one pumpboat were Persinefles U. Oabe, the Barangay Captain of said place; Rolando Amoroso, an employee of the Bureau of Fisheries; Pat. Rafael Tupaz, a member of the local Integrated National Police and Remegio Unasin, a barangay councilman who acted as the pilot. In the other pumpboat were Joey de la Cruz, a co-employee of Rolando Amoroso; Pat. Reggie Uadan and Enido Baldesimo. Now and then, the team had to stop and listen for possible occurrences of illegal fishing within their vicinity. Around 6:30 of the same evening while standing by with their engines off, in a place facing Barangay Culasi, they heard an explosion. Sensing it was caused by dynamite, they proceeded to the area around five hundred meters (500 m.) away from them.

After ten minutes of navigation, the team arrived at the scene in question which was near an islet. They surrounded the area. At a distance of around ten meters, Joey de la Cruz, an employee of the Bureau of Fisheries and Aquatic Resources, saw three persons diving into the water. Thereafter, they would surface and throw their catch of fish to the unmotorized banca around four meters long nearby. In the seashore of said islet, around three to four meters away from these three persons floating in the water, were three other persons standing in the rocky portions around three meters apart. These six persons tried to escape but Rolando Amoroso, the co-employee of Joey de la Cruz, advised them not to do so and introduced themselves as law enforcers. The team found out that the fishes they caught were deep sea fish of four kinds locally known as "vulgan," "bulawis," "pacol," and "bag-angan." Joey de la Cruz gathered seven fish samples from their banca while Rolando Amoroso went down from the pumpboat and proceeded to the islet. However, upon inspection, he failed to find any explosive (dynamite) either on the seashore or on the banca. No paraphernalia used in dynamite fishing were found. Both Joey de la Cruz and Rolando Amoroso recognized the six persons as the herein accused by their faces.

Persinefles U. Oabe, barangay captain of Barangay Basiao, who was with the team riding in a pumpboat with Rolando Amoroso identified the three persons retrieving

fish from the water as Policarpio Umiten, Santiago Argoncillo and Richard Balbona while the other three persons standing on the rocky portions of the islet as Johnson Sucgang, Elvis Umiten and Efren Alvaro.

The team apprehended the six accused and brought them to the fish cage of the barangay captain located within the same barangay. While on their way, Joey de la Cruz externally examined the fish samples.

Upon their arrival at the fish cage, another external examination was conducted by Joey de la Cruz and Rolando Amoroso. In both external examinations, the two found out that the fishes were caught with the use of explosives because blood was oozing from their operculums and their eyes were protruding.

An on-the-spot investigation was conducted but the accused denied any culpability. They were then released on the strength of their promise to report to the local police the following day.

The fish samples were then placed in a plastic bag filled with ice at the house of Barangay Captain Persinefles U. Oabe that evening. In the morning, Joey de la Cruz and Rolando Amoroso brought the fish samples to their office in Roxas City where they conducted an internal examination. The examination revealed that the fish samples were caught with the use of explosives because their air bladders were ruptured and deeply stained with blood; the vertebral columns were broken but with bloodstains; their ribs were broken; and there were blood clots in their abdomens. Joey de la Cruz and Rolando Amoroso rendered a written report of their internal examination to the Provincial Agricultural Officer.

The testimonies of Joey de la Cruz, Rolando Amoroso, and Persinefles U. Oabe above were corroborated by Pat. Rafael Tupaz, one of the police escorts of the team.

Sgt. Sergio Ordales, a member of the local police of the municipality of Ivisan testified that while on duty in the morning of May 8, 1990, herein six accused arrived at their station. He asked why they were there and they answered that they were told to report to the police station. He learned from them that they were arrested for illegal fishing with the use of explosives.

On the other hand, the lower court portrayed the evidence presented by the version of the defense, thus:

All the accused denied the imputation of the prosecution.

Policarpio Umiten, Santiago Argoncillo, Richard O. Balbona were uniform in alleging that around 4:00 in the afternoon of May 7, 1990, they dropped a fishnet about two hundred (200) armslength and one (1) meter in width at the scene where they were apprehended. This method they locally call "patuloy" requires that the fishnet be retrieved every hour to collect its catch. The trio went back to the place near the islet in question around 6:30 in the evening for the purpose of collecting their catch from the fishnet. They had not been able to collect all their catch from the net when the team of law enforcers, prosecution witnesses herein, arrived. They were asked whether they heard an explosion. After they denied having heard any, Barangay Captain Persinefles U. Oabe, told the accused to go with them. The team got seven pieces of fish samples. The accused left around one and one-half kilos of fish they

had gathered at the time the team of law enforcers arrived. They were then brought to the fish cage owned by Persinefls U. Oabe at Barangay Basiao.

Above three accused would like the Court to believe that the seven pieces of fish samples taken by the team of fishing law enforcers were the catch of their fishnet they locally called "patuloy."

On the other hand, Elvis Villar testified that he and Efren Alvaro were together in going to the islet in question, riding in an unmotorized banca to gather shells locally called "suso" and "butlogan" for viand. Both started gathering shells under the stones in the islet around 5:30 in the afternoon. While they were preparing to go home at around 6:30 in the evening, the team of law enforcers riding in motorized pumpboats arrived. The barangay captain and the personnel from the Bureau of Fisheries and Aquatic Resources asked them whether they heard an explosion. After they denied having heard any, they were told by the barangay captain to board their pumpboats. They obliged, leaving the shells they had gathered. They were then brought to the fish cage of the barangay captain.

Although accused Johnson Suggang admitted his presence in the islet in question, he offered a different explanation. He testified that he went to said place to look for "pulutan" requested by his customer, Wilfredo Arcangeles. Being an operator and manager of Virgen Beach Resort located at Sitio Manangkalan, he obliged. Thus, between 5:00 to 5:30 in the afternoon of May 7, 1990, he left his resort riding in a banca. He paddled his way towards the islet where he saw two persons at the bank while the other three were on the water. He went ashore. Later, the barangay captain and his companions riding in two pumpboats arrived. Like his co-accused, he was asked if he heard an explosion. After he denied hearing any, the barangay captain told him to go with them. They were all brought to the fish cage of the barangay captain for questioning.

Wilfredo Arcangeles corroborated the claim of Johnson Suggang. He confirmed that he requested the latter to look for "pulutan" since he had visitors from Bacolod City prompting Johnson Suggang to look for some. He saw the accused leave in a banca and affirmed that he had no dynamite with him.^[6]

On September 30, 1991, the trial court rendered its decision which, as stated at the beginning, was affirmed by the Court of Appeals.

Hence, this petition.

Petitioners point out that the fact that neither explosives nor related paraphernalia were found in their possession is an indication of their innocence.

We do not agree. First, it is quite probable that petitioners dumped these materials into the sea while the raiding party was approaching. Moreover, Section 33, Presidential Decree No. 704, as amended by Presidential Decree No. 1058, provides:

Sec. 33. Illegal fishing; xxx -- It shall be unlawful for any person to catch, take or gather, or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substance, or by the use of electricity as defined in paragraphs (l),^[7] (m)^[8] and (d),^[9] respectively, of Sec. 3 hereof xxx.

xxx.

The discovery of dynamite, other explosives and chemical compounds containing combustible elements, or obnoxious or poisonous substance, or equipment or device for electric fishing in any fishing boat or in the possession of a fisherman shall constitute a presumption that the same were used for fishing in violation of this Decree, the discovery in any fishing boat of fish caught or killed by the use of explosives, obnoxious or poisonous substance or by electricity shall constitute a presumption that the owner, operator or fisherman were fishing with the use of explosives, obnoxious or poisonous substance or electricity.

In Hizon vs. Court of Appeals,^[10] this Court held that the law, as contained in the last paragraph of Section 33, creates a presumption that illegal fishing has been committed when fish caught or killed with the use of explosives, obnoxious or poisonous substances or by electricity are found in a fishing boat. In this case, it cannot be denied that the fishes found in petitioners' banca were caught or killed by the use of explosives.

The Report^[11] of Bureau of Fisheries employees Joey de la Cruz and Rolando Amoroso states:

Republic of the Philippines
Department of Agriculture
Roxas City

1990-05-08

The Provincial Agricultural Officer
Department of Agriculture
Roxas City

Sir:

I have the honor to submit to this office the result of the scientific fish examination conducted on the fish samples taken from the possession of Mr. Johnson Umiten Sucgang, 38 years old, married and resident of Barangay Basiao, Ivisan, Capiz and company on May 7, 1990, 6:30 PM by combined elements of the Department of Agriculture, PC/INP Unit of Ivisan, Capiz and Barangay officials of Basiao, Ivisan, Capiz conducting sea borne patrol on illegal fishing.

Source of fish samples : Sea water of Brgy., Basiao,
Ivisan, Capiz

Fish samples taken from : Johnson U. Sucgang, 38 years
old, married, of Brgy., Basiao, Ivisan,
Capiz, et. al.