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EN BANC

[G.R. No. 123595, December 12, 1997]

SAMMY MALACAT Y MANDAR, PETITIONER, VS. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS. D E C I S I O N

DAVIDE, JR., J.:

In an Information[1] filed on 30 August 1990, in Criminal Case No. 90-86748 before the Regional Trial Court (RTC) of Manila, Branch 5, petitioner Sammy Malacat y Mandar was charged with violating Section 3 of Presidential Decree No. 1866,[2] as follows:

> That on or about August 27, 1990, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and knowingly keep, possess and/or acquire a hand grenade, without first securing the necessary license and/or permit therefor from the proper authorities.

At arraignment[3] on 9 October 1990, petitioner, assisted by counsel de oficio, entered a plea of not guilty.

At pre-trial on 11 March 1991, petitioner admitted the existence of Exhibits "A," "A-1," and "A-2,"[4] while the prosecution admitted that the police authorities were not armed with a search warrant nor warrant of arrest at the time they arrested petitioner.[5]

At trial on the merits, the prosecution presented the following police officers as its witnesses: Rodolfo Yu, the arresting officer; Josefino G. Serapio, the investigating officer; and Orlando Ramilo, who examined the grenade.

Rodolfo Yu of the Western Police District, Metropolitan Police Force of the Integrated National Police, Police Station No. 3, Quiapo, Manila, testified that on 27 August 1990, at about 6:30 p.m., in response to bomb threats reported seven days earlier, he was on foot patrol with three other police officers (all of them in uniform) along Quezon Boulevard, Quiapo, Manila, near the Mercury Drug store at Plaza Miranda. They chanced upon two groups of Muslim-looking men, with each group, comprised of three to four men, posted at opposite sides of the corner of Quezon Boulevard near the Mercury Drug Store. These men were acting suspiciously with "[t]heir eyes … moving very fast."[6]

Yu and his companions positioned themselves at strategic points and observed both groups for about thirty minutes. The police officers then approached one group of men, who then fled in different directions. As the policemen gave chase, Yu caught up with and apprehended petitioner. Upon searching petitioner, Yu found a fragmentation grenade tucked inside petitioner's "front waist line."[7] Yu's

companion, police officer Rogelio Malibiran, apprehended Abdul Casan from whom a .38 caliber revolver was recovered. Petitioner and Casan were then brought to Police Station No. 3 where Yu placed an "X" mark at the bottom of the grenade and thereafter gave it to his commander.[8]

On cross-examination, Yu declared that they conducted the foot patrol due to a report that a group of Muslims was going to explode a grenade somewhere in the vicinity of Plaza Miranda. Yu recognized petitioner as the previous Saturday, 25 August 1990, likewise at Plaza Miranda, Yu saw petitioner and 2 others attempt to detonate a grenade. The attempt was aborted when Yu and other policemen chased petitioner and his companions; however, the former were unable to catch any of the latter. Yu further admitted that petitioner and Casan were merely standing on the corner of Quezon Boulevard when Yu saw them on 27 August 1990. Although they were not creating a commotion, since they were supposedly acting suspiciously, Yu and his companions approached them. Yu did not issue any receipt for the grenade he allegedly recovered from petitioner.[9]

Josefino G. Serapio declared that at about 9:00 a.m. of 28 August 1990, petitioner and a certain Abdul Casan were brought in by Sgt. Saquilla[10] for investigation. Forthwith, Serapio conducted the inquest of the two suspects, informing them of their rights to remain silent and to be assisted by competent and independent counsel. Despite Serapio's advice, petitioner and Casan manifested their willingness to answer questions even without the assistance of a lawyer. Serapio then took petitioner's uncounselled confession (Exh. "E"), there being no PAO lawyer available, wherein petitioner admitted possession of the grenade. Thereafter, Serapio prepared the affidavit of arrest and booking sheet of petitioner and Casan. Later, Serapio turned over the grenade to the Intelligence and Special Action Division (ISAD) of the Explosive Ordnance Disposal Unit for examination.[11]

On cross-examination, Serapio admitted that he took petitioner's confession knowing it was inadmissible in evidence.[12]

Orlando Ramilo, a member of the Bomb Disposal Unit, whose principal duties included, among other things, the examination of explosive devices, testified that on 22 March 1991, he received a request dated 19 March 1991 from Lt. Eduardo Cabrera and PO Diosdado Diotoy for examination of a grenade. Ramilo then affixed an orange tag on the subject grenade detailing his name, the date and time he received the specimen. During the preliminary examination of the grenade, he "[f]ound that [the] major components consisting of [a] high filler and fuse assembly [were] all present," and concluded that the grenade was "[l]ive and capable of exploding." On even date, he issued a certification stating his findings, a copy of which he forwarded to Diotoy on 11 August 1991.[13]

Petitioner was the lone defense witness. He declared that he arrived in Manila on 22 July 1990 and resided at the Muslim Center in Quiapo, Manila. At around 6:30 in the evening of 27 August 1990, he went to Plaza Miranda to catch a breath of fresh air. Shortly after, several policemen arrived and ordered all males to stand aside. The policemen searched petitioner and two other men, but found nothing in their possession. However, he was arrested with two others, brought to and detained at Precinct No. 3, where he was accused of having shot a police officer. The officer showed the gunshot wounds he allegedly sustained and shouted at petitioner "[i]to

ang tama mo sa akin." This officer then inserted the muzzle of his gun into petitioner's mouth and said, "[y]ou are the one who shot me." Petitioner denied the charges and explained that he only recently arrived in Manila. However, several other police officers mauled him, hitting him with benches and guns. Petitioner was once again searched, but nothing was found on him. He saw the grenade only in court when it was presented.[14]

The trial court ruled that the warrantless search and seizure of petitioner was akin to a "stop and frisk," where a "warrant and seizure can be effected without necessarily being preceded by an arrest" and "whose object is either to maintain the status quo momentarily while the police officer seeks to obtain more information."[15] Probable cause was not required as it was not certain that a crime had been committed, however, the situation called for an investigation, hence to require probable cause would have been "premature."[16] The RTC emphasized that Yu and his companions were "[c]onfronted with an emergency, in which the delay necessary to obtain a warrant, threatens the destruction of evidence"[17] and the officers "[h]ad to act in haste," as petitioner and his companions were acting suspiciously, considering the time, place and "reported cases of bombing." Further, petitioner's group suddenly ran away in different directions as they saw the arresting officers approach, thus "[i]t is reasonable for an officer to conduct a limited search, the purpose of which is not necessarily to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence."[18]

The trial court then ruled that the seizure of the grenade from petitioner was incidental to a lawful arrest, and since petitioner "[l]ater voluntarily admitted such fact to the police investigator for the purpose of bombing the Mercury Drug Store," concluded that sufficient evidence existed to establish petitioner's guilt beyond reasonable doubt.

In its decision[19] dated 10 February 1994 but promulgated on 15 February 1994, the trial court thus found petitioner guilty of the crime of illegal possession of explosives under Section 3 of P.D. No. 1866, and sentenced him to suffer:

> [T]he penalty of not less than SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL, as minimum, and not more than THIRTY (30) YEARS OF RECLUSION PERPETUA, as maximum.

On 18 February 1994, petitioner filed a notice of appeal[20] indicating that he was appealing to this Court. However, the record of the case was forwarded to the Court of Appeals which docketed it as CA-G.R. CR No. 15988 and issued a notice to file briefs.[21]

In his Appellant's Brief [22] filed with the Court of Appeals, petitioner asserted that:

1. THE LOWER COURT ERRED IN HOLDING THAT THE SEARCH UPON THE PERSON OF ACCUSED-APPELLANT AND THE SEIZURE OF THE ALLEGED HANDGRENADE FROM HIM "WAS AN APPROPRIATE INCIDENT TO HIS ARREST."

2. THE LOWER COURT ERRED IN ADMITTING AS EVIDENCE AGAINST ACCUSED-APPELLANT THE HANDGRENADE ALLEGEDLY SEIZED FROM HIM AS IT WAS A

PRODUCT OF AN UNREASONABLE AND ILLEGAL SEARCH.

In sum, petitioner argued that the warrantless arrest was invalid due to absence of any of the conditions provided for in Section 5 of Rule 113 of the Rules of Court, citing People vs. Mengote.[23] As such, the search was illegal, and the hand grenade seized, inadmissible in evidence.

In its Brief for the Appellee, the Office of the Solicitor General agreed with the trial court and prayed that its decision be affirmed in toto.[24]

In its decision of 24 January 1996,[25] the Court of Appeals affirmed the trial court, noting, first, that petitioner abandoned his original theory before the court a quo that the grenade was "planted" by the police officers; and second, the factual finding of the trial court that the grenade was seized from petitioner's possession was not raised as an issue. Further, respondent court focused on the admissibility in evidence of Exhibit "D," the hand grenade seized from petitioner. Meeting the issue squarely, the Court of Appeals ruled that the arrest was lawful on the ground that there was probable cause for the arrest as petitioner was "attempting to commit an offense," thus:

> We are at a loss to understand how a man, who was in possession of a live grenade and in the company of other suspicious character[s] with unlicensed firearm[s] lurking in Plaza Miranda at a time when political tension ha[d] been enkindling a series of terroristic activities, [can] claim that he was not attempting to commit an offense. We need not mention that Plaza Miranda is historically notorious for being a favorite bomb site especially during times of political upheaval. As the mere possession of an unlicensed grenade is by itself an offense, Malacat's posture is simply too preposterous to inspire belief.

In so doing, the Court of Appeals took into account petitioner's failure to rebut the testimony of the prosecution witnesses that they received intelligence reports of a bomb threat at Plaza Miranda; the fact that PO Yu chased petitioner two days prior to the latter's arrest, or on 27 August 1990; and that petitioner and his companions acted suspiciously, the "accumulation" of which was more than sufficient to convince a reasonable man that an offense was about to be committed. Moreover, the Court of Appeals observed:

> The police officers in such a volatile situation would be guilty of gross negligence and dereliction of duty, not to mention of gross incompetence, if they [would] first wait for Malacat to hurl the grenade, and kill several innocent persons while maiming numerous others, before arriving at what would then be an assured but moot conclusion that there was indeed probable cause for an arrest. We are in agreement with the lower court in saying that the probable cause in such a situation should not be the kind of proof necessary to convict, but rather the practical considerations of everyday life on which a reasonable and prudent mind, and not legal technicians, will ordinarily act.

Finally, the Court of Appeals held that the rule laid down in People v. Mengote,[26] which petitioner relied upon, was inapplicable in light of "[c]rucial differences," to

wit:

> [In Mengote] the police officers never received any intelligence report that someone [at] the corner of a busy street [would] be in possession of a prohibited article. Here the police officers were responding to a [sic] public clamor to put a check on the series of terroristic bombings in the Metropolis, and, after receiving intelligence reports about a bomb threat aimed at the vicinity of the historically notorious Plaza Miranda, they conducted foot patrols for about seven days to observe suspicious movements in the area. Furthermore, in Mengote, the police officers [had] no personal knowledge that the person arrested has committed, is actually committing, or is attempting to commit an offense. Here, PO3 Yu [had] personal knowledge of the fact that he chased Malacat in Plaza Miranda two days before he finally succeeded in apprehending him.

Unable to accept his conviction, petitioner forthwith filed the instant petition and assigns the following errors:

1. THE RESPONDENT COURT ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT THE WARRANTLESS ARREST OF PETITIONER WAS VALID AND LEGAL.

2. THE RESPONDENT COURT ERRED IN HOLDING THAT THE RULING IN PEOPLE VS. MENGOTE DOES NOT FIND APPLICATION IN THE INSTANT CASE.

In support thereof, petitioner merely restates his arguments below regarding the validity of the warrantless arrest and search, then disagrees with the finding of the Court of Appeals that he was "attempting to commit a crime," as the evidence for the prosecution merely disclosed that he was "standing at the corner of Plaza Miranda and Quezon Boulevard" with his eyes "moving very fast" and "looking at every person that come (sic) nearer (sic) to them." Finally, petitioner points out the factual similarities between his case and that of People v. Mengote to demonstrate that the Court of Appeals miscomprehended the latter.

In its Comment, the Office of the Solicitor General prays that we affirm the challenged decision.

For being impressed with merit, we resolved to give due course to the petition.

The challenged decision must immediately fall on jurisdictional grounds. To repeat, the penalty imposed by the trial court was:

> [N]ot less than SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL, as minimum, and not more than THIRTY (30) YEARS OF RECLUSION PERPETUA, as maximum.

The penalty provided by Section 3 of P.D. No. 1866 upon any person who shall unlawfully possess grenades is reclusion temporal in its maximum period to reclusion perpetua.

For purposes of determining appellate jurisdiction in criminal cases, the maximum of the penalty, and not the minimum, is taken into account. Since the maximum of the