

[CA-G.R. CR No. 35414, March 31, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENMOR DORNEO Y ABULENCIA, ACCUSED-APPELLANT.

D E C I S I O N

CARANDANG, J.:

This appeal seeks to annul and set aside the Decision^[1] dated 8 November 2012 issued by the Regional Trial Court Branch 65 of Infanta, Quezon (RTC) in Criminal Case No. 1538-1 which found the appellant Glenmor Dorneo y Abulencia (appellant) guilty of violation of Commission on Elections (COMELEC) Resolution No. 3328 (Gun Ban) pursuant to Section 32 of Republic Act No. 7166 (R.A. 7166) in relation with Section 264 of Batas Pambansa Blg. 881 (B.P. 881), otherwise known as the "Omnibus Election Code of the Philippines".

The instant case stemmed from the Information that was filed with the RTC against the appellant and his co-accused Sarah Astrera y Cuerdo (Astrera). It reads:

"The undersigned accuses Sarah Astrera y Cuerdo (on bail) and Glenmor Dorneo y Abulencia (on bail) of Violation of Comelec Resolution No. 3328 (Gunban), committed as follows:

That on or about 15th day of March 2001, in the Municipality of Infanta, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, without any authority of law, did then, and there willfully, unlawfully, and feloniously have in their possession, custody and control one (1) improvised caliber .22 pistol with serial number MAG 9307, Model 4506, colt brand, with one (1) live ammunition, which is not being used as a necessary tool or implement to earn a livelihood or in pursuit of a lawfully activity.

Contrary to law."^[2]

Upon arraignment, both accused pleaded not guilty to the charge. Trial on the merits ensued thereafter.

The Version of the Prosecution

Around 6:35 in the morning of March 15, 2001, PO3 Alfredo Gurango and SPO2 Norberto Resplandor both members of the Infanta, Quezon PNP Patrol Division, were standing outside the Municipal Building at Poblacion 38, Infanta, Quezon, when they saw two (2) women later identified as Sarah Astrera and Angelita Amante, quarreling in front of the PAGASA Building, and being pacified by appellant Dorneo.

^[3]

Thereafter, the police officers approached the parties to break-up the fight, but before they could reach them, PO3 Gurango and SPO2 Resplandor saw Sarah Astrera take out a gun from the clutch bag held by appellant, and immediately pointed the gun towards Angelita.^[4]

The police officers immediately arrested the warring parties, recovered the gun from Sarah Astrera's possession, and brought them to the police headquarters.^[5]

At the time of the incident, the COMELEC Gun Ban was already in effect, from January 2001 up to June 2001, in preparation for the May 14, 2001, general election.^[6]

Upon reaching the police station, PO3 Gurango and SPO2 Resplandor entered the incident in the police blotter and prepared the complaint for violation of the COMELEC Gun Ban in relation to RA 7166.^[7]

The gun recovered from appellant and Sarah Astrera's possession was a toy gun which was retrofitted with a firing pin and was converted to a caliber .22 pistol, with serial number MAG 9307 Model 4506 Colt Brand.^[8]

At the police station, apart from the improvised firearm, the police officers also recovered from appellant's bag one (1) live ammunition, and the said items were deposited at the Municipal Circuit Trial Court of Infanta-General Nakar, Quezon.^[9]

Appellant and his companion Sarah Astrera failed to present any document or proof to show that they were granted the exemption to carry said firearm under the gun ban issued by the COMELEC.^[10]

Version of the Defense

On March 15, 2001, at about 7:00 o'clock in the morning, accused Glenmor Doroneo and his co-accused Sarah were at St. Mark Cathedral Church near the municipal building located at Poblacion 38, Infanta, Quezon. When they were about to go home, Sarah and his wife, Angelita Dorneo, engaged in a fight. Sarah hit Angelita with the use of a toy gun which the former retrieved from his backpack bag. He was about to pacify them, but two (2) policemen arrived and brought them to the municipal hall where they were investigated.^[11]

At the police station, he told the police officer that he did not know the owner of the toy gun. On March 15, 2001 he just happened to see the gun at the side of the "parang" near St. Mark Cathedral and he picked it up for his nephew. He also told them that Sarah was aware of the existence of the toy gun that he picked up at the side of the church.^[12]

He denied the allegation that he violated COMELEC Resolution No. 3328. The toy gun taken from Sarah was, in his own vernacular, "iyon po ay isang plastic na laruan laang."^[13]

Ruling of the RTC

On 28 November 2012, the RTC issued the assailed Decision finding the appellant guilty beyond reasonable doubt of the crime of violation of election gun ban. His co-accused Astrera however was acquitted of the said crime for failure of the prosecution to prove her guilt beyond reasonable doubt. The dispositive portion of the assailed Decision states:

“WHEREFORE, in the light of the foregoing, judgment is hereby rendered against accused Glenmor Dorneo y Abulencia finding him guilty beyond reasonable doubt of the crime of violation of the COMELEC Gun Ban defined under Section 32 of RA 7166 and penalized under Sec. 32 of RA 7166 and penalized under Sec. 264 of the Omnibus Election Code and applying the Indeterminate Sentence Law, this court hereby imposes upon him the penalty of imprisonment of one (1) year as minimum to two (2) years as maximum, not subject to probation; and he shall suffer disqualification to hold public office and deprivation of the right of suffrage, applying the doctrine laid down in the case of Gacutan vs. C.A., et al., (supra).

With respect to accused Sarah Astrera y Cuervo, judgment is hereby rendered in her favor acquitting her of the charge of violation of COMELEC Resolution No. 3328 (Gun Ban) for lack of moral certainty and/or proof beyond reasonable doubt.

The subject firearm and ammunition are confiscated and forfeited in favor of the government to be disposed of according to the applicable provisions of law, rules and regulations.

SO ORDERED.”^[14]

In convicting the appellant, the RTC ratiocinated that all the elements of the crime of violation of election gun ban are present in this case. It ruled that the prosecution was able to prove that the appellant was carrying a firearm without any written authority from the COMELEC on 15 March 2001 which was within the election period (January 2001 to June 2001), and the same was done in front of the PAG-ASA Building, a public place. It further ruled that the burden is on the appellant to prove that he has a written authority from the COMELEC to possess such firearm, which the appellant failed to discharge.

Hence, the present appeal. Appellant assigns the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S WITNESSES TESTIMONIES.

II.

THE TRIAL COURT GRAVELY ERRED IN RULING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.^[15]

Appellant argues that contrary to the findings of the RTC, the supposed firearm that was taken from him by the police officers on 15 March 2001 was not a real firearm