

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY PAKIDAO PESPES, ACCUSED-APPELLANT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

The present appeal assails the Judgment dated July 9, 2012[1] in Criminal Case No. 10-CR-7988 of Branch 10, Regional Trial Court, La Trinidad, Benguet, finding accused-appellant Jimmy Pakidao Pespes guilty beyond reasonable doubt of Illegal Possession of Explosives as defined and penalized under Section 3,[2] Presidential Decree (PD) No. 1866,[3] as amended by Republic Act (RA) No. 8294.[4]

THE ANTECEDENTS

On January 23, 2010, around 2:00 P.M., private complainant Cindy Ham was at home with some relatives celebrating the birthday of her brother, when a loud blasting sound was heard coming from the roof deck. When private complainant checked the roof deck, she saw stone debris all over the place. She also saw accused-appellant, brother of her deceased husband, rolling an electrical wire and heaping stone debris into sacks. Private complainant's live-in-partner, a policeman, reported the incident to the Operations Office at Camp Bado Dangwa when accused-appellant ignored private complainant's inquiries regarding the stone blasting.[5]

Around 3:30 P.M. that same day, Police Community Precinct I (PCPI) stationed at Pines Park, Balili, La Trinidad, Benguet received calls from the La Trinidad Municipal Police Station concerning the request in behalf of private complainant for police assistance at LC 113 Rocky Side II, Lubas, La Trinidad, Benguet. Senior Police Officer II (SPO2) Orlando Eugenio, who received the second call, was dispatched to the place.[6]

SPO2 Orlando Eugenio was met by private complainant who showed him the scattered stone debris and pointed to accused-appellant as the person responsible for the stone blasting. SPO2 Orlando Eugenio approached accused-appellant, who was standing near private complainant and several other people, and asked if he had permit to conduct stone blasting and if there were unused explosives materials. Accused-appellant denied having been issued a permit and then voluntarily surrendered to SPO2 Orlando Eugenio a yellow plastic "sando" bag. Upon seeing that the plastic bag contained blasting cap and small amount of granular substance suspected to be ammonium nitrate, SPO2 Orlando Eugenio apprised accused-appellant of his constitutional rights and told him that he would be brought to the La Trinidad Municipal Police Station for investigation for illegal blasting.[7]

SPO2 Orlando Eugenio, accompanied by private complainant, brought accused-appellant and the suspected explosive materials to the La Trinidad Municipal Police Station. Police Officer III (PO3) Mario Pol-oacan of the Investigation Section took the statement of the private complainant. He also marked the packages containing the suspected explosive materials with the initials of SPO2 Orlando Eugenio and the turn-over date and prepared the request for chemical examination. Prior to turn-over of the suspected explosive materials to the evidence custodian, PO3 Mario Pol-oacan photographed the same with the marked packages.[8]

On January 25, 2010, a certain Police Officer III (PO3) De Guzman delivered the packages containing the

suspected explosive materials to the Regional Crime Laboratory Office in Camp Bado Dangwa. The packages were received by a certain Police Officer I (PO1) Delos Reyes around 11:10 A.M. that same day.[9]

In Chemistry Report No. C-101-2010 dated January 26, 2010, Police Senior Inspector (PSI) Alex Biadang, Jr. concluded that the pink colored granular substance, weighing 112.70 grams, “contains ammonium nitrates, an explosive ingredients.” However, PSI Alex Biadang, Jr. was not able to examine the chemical contents of the blasting cap since the Explosive Ordinance Division (EOD) did not act on the request for extraction of the chemical content because of the possible injury said procedure may cause the EOD technician.[10]

However, accused-appellant claims that (i) he was just standing at his veranda when two (2) policemen accosted and brought him, together with private complainant and her live-in-partner, to the La Trinidad Municipal Police Station; (ii) it was private complainant who ordered the blasting of the pathway between their houses a week before she filed the complaint; (iii) he was not the source of the explosive materials presented in court; and, (iv) private complainant filed the instant case because she wanted to own the portion between their respective houses.[11]

The respective factual versions of the parties, as summarized by the trial court in its Judgment dated July 9, 2012, are as follows:

“Version of the prosecution.

Cindy Ham, the sister-in-law of the accused, testified that she resides in Rocky Side II, Lubas, La Trinidad, Benguet. Her deceased husband and the accused are brothers. Her house is adjacent to that of the accused and both houses are built on a steep side of a mountain such that the rooftop of her three-storey house can be accessed from the top of the mountain.

In the afternoon of January 23, 2010, while she was inside her house having a party with some family members, she heard a loud sound coming from outside the house. She went out to investigate and as she stepped out of the rooftop she saw debris of scattered stones and rocks strewn on her rooftop. She also noticed that the accused was rolling an electrical wire. She then asked the accused: “Why did you use explosive and you did not even inform us?” The accused did not respond and proceeded to gather the scattered debris and put them in a sack. As she pressed for an answer, the accused responded: “You call a policeman.” Apparently irked by the retort of her brother-in-law, she and her live-in-partner who is also a policeman called Camp Dangwa. They reported the incident and asked that it be investigated.

Responding to a dispatch from their headquarters, Police Officer Eugenio went to the site of the incident. There he was met by Cindy Ham who showed him the scattered stones caused by the blasting activities of the accused.

Officer Eugenio then approached the accused – who was just standing on the rooftop at that time – and asked the accused if he has a permit for blasting to which the accused answered in the negative. He also asked the accused if he had more of the explosive that he used. The accused then “voluntarily” surrendered a yellow plastic sando bag that was placed on a make shift table near the rooftop. When Officer Eugenio examined the contents of the bag, he discovered what he suspected was a small amount of ammonium nitrate and a piece of blasting cap. Officer Eugenio immediately confiscated the plastic bag and its contents and arrested the accused. Officer Eugenio thereafter brought the accused to the La Trinidad Municipal Police Headquarters and turned-over the custody of the accused to the investigator on duty.

The accused was detained from that day on until he posted bail on April 27, 2010. The items “surrendered” by the accused were submitted to the Regional Crime Laboratory in Camp Dangwa, La Trinidad, Benguet for chemicals analysis. Police Officer Alex Biadang, a chemical engineer, testified that he conducted a physical, chemical and confirmatory examination of the confiscated items from the accused. He explained that the

blasting cap is an incendiary device and that the granular substance was positive for the presence of explosive ingredients. His report was marked as Exhibit "C".

Version of the accused.

The accused testified to deny the allegations of the prosecution witnesses. He protested that his constitutional rights were violated when he was searched without a warrant and was not informed of his constitutional rights when he was arrested. He also presented Pranin Kiwang to corroborate his defense of denial.

Jimmy Pespes testified that he is a carpenter by profession and was working on the pathway of his house at No. LC 112, Lubas, La Trinidad, Benguet. At about two o'clock in the afternoon of January 23, 2010, he was standing in the front of his house which is at the same time the rooftop of Cindy Ham's house. Two uniformed policemen then arrived and investigated him regarding an alleged dynamite blasting as complained of by his sister-in-law Cindy Ham. The policemen later invited him to the police station for further investigation. Despite his protest, the policemen simply told him that he will explain at the police station. Cindy Ham, together with her new husband, – whose name was not mentioned and was described only as a policeman – rode with him and the arresting officers to the police station where he was him (sic) further investigated without the assistance of a lawyer.

At the police station, his protests on his detention were not heeded because Cindy Ham executed a Sworn Statement (x x x) accusing him of blasting her pathway. Despite his declaration that he has Atty. Kiwang as lawyer, the police investigators told him that they have a lawyer at the police station and that they (policemen) are recommending that lawyer for him. Even though he did not agree to retain the police-recommended lawyer, the accused was still brought by the police to a lady lawyer in Cruz, La Trinidad, Benguet for the signing of a document prepared by the police. Despite the lady lawyer's explanation that the document is for his benefit, he did not sign the document. He was then brought by the police back to the police station where he was forced to sign the document then detained for a night before being transferred to the Benguet Provincial Jail.

In Court, the accused denied blasting the pathway he owns but which his sister-in-law (Cindy Ham Pespes) wanted to claim as hers. He countered that it was Cindy who hired one of their neighbors to blast the rock on that pathway. This pathway is the same as what Cindy Ham testified to as the one she caused to be fixed by a hired laborer in December 2009. He further testified that Officer Eugenio was not the only police officer present when the latter arrested him. The accused also claimed that Officer Eugenio did not advise him of his constitutional rights immediately after his arrest.”[12]

In an information dated March 10, 2010, accused-appellant was charged with Violation of Section 3 (Illegal Possession of Explosives), PD No. 1866, as amended by RA No. 8294, the accusatory portion of which states:

“That on or about the 23[rd] day of January 2010 at Lubas, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority or license to possess, did then and there willfully, unlawfully and knowingly have in his possession a blasting cap and ammonium nitrate which are considered incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person, in violation of said law.

CONTRARY TO LAW.”[13]

When arraigned on April 12, 2010, accused-appellant pleaded “not guilty” to the charge.[14]

Acting on accused-appellant's Motion for Reduction of Bail Bond,[15] the trial court, in an Order dated April 27, 2010, reduced the recommended bail bond for his provisional liberty to P50,000.00.[16] After accused-appellant posted a cash bond of P50,000.00,[17] the trial court issued on that same day an Order directing his release from the Benguet Provincial Jail.[18]

During the pre-trial,[19] the parties made factual stipulations as follows:

“IV. Stipulation of facts:

1. The Honorable Court has jurisdiction over the subject matter of the instant case;
2. Accused is resident of Lubas, La Trinidad, Benguet at the time of the incident subject matter of this case;
- 4.(sic) The identity of the accused is admitted; and
5. The accused was not issued any permit or authority to possess or use any blasting cap and ammonium nitrate by the proper agency of the government.”[20]

Trial ensued. The witnesses for the prosecution were (i) SPO2 Orlando Eugenio, PCPI, Pines Park, Balili, La Trinidad, Benguet;[21] (ii) PSI Alex Biadang, Jr., Forensic Chemical Officer, Regional Crime Laboratory Office-Cordillera, Camp Bado Dangwa, La Trinidad, Benguet;[22] (iii) PO3 Mario Pol-oacan, Investigation Section, La Trinidad Municipal Police Station;[23] and, (iv) private complainant and accused-appellant's sister-in-law Cindy Ham.[24] During the hearing on August 4, 2010, the parties stipulated on the testimony of Police Officer II (PO2) Edgar Bandao, EOD Technician, Baguio City Police Office, and the existence of the Memorandum he issued on February 3, 2010, previously marked as Exhibit “F.”[25] Accused-appellant[26] and accused-appellant's friend and neighbor Pranin Kiwang[27] were the witnesses for the defense.

The trial court, without objection from the parties, opted not to retain the explosive materials subject of the case considering the possible danger thereof. Thus, the explosive materials presented in court as evidence were returned to the Regional Crime Laboratory Office in Camp Bado Dangwa for safekeeping and proper handling.[28]

In a Judgment dated July 9, 2012, the trial court convicted accused-appellant of Illegal Possession of Explosives and sentenced him as follows:

“WHEREFORE, premises considered, the court finds accused JIMMY PAKIDAO PESPE GUILTY beyond reasonable doubt of violation of Section 3 (Illegal Possession of Explosives) of Presidential Decree No. 1866, as amended by Republic Act No. 8294, and sentences him to suffer an indeterminate sentence of from Two (2) Years, Four (4) Months, and One (1) Day of Prison Correccional, as minimum, to Thirteen (13) Years, Four (4) Months and One (1) Day of Reclusion Temporal, as maximum, AND to pay a fine of FIFTY THOUSAND (P50,000.00) PESOS to the government of the Republic of the Philippines.

The court recommends to the Chief Executive through the Department of Justice that the accused be granted executive clemency.

The blasting cap and ammonium nitrate subject matter of this case are hereby forfeited in favor of the government to be turned over to the Philippine National Police and disposed of in accordance with law.

SO ORDERED.”[29]

In an Order dated July 9, 2012, the trial court granted accused-appellant's counsel's oral motion that he be allowed to continue enjoying provisional liberty under the same bond because he would be filing either a motion for reconsideration or an appeal. Thus:

“Premises considered, the motion is granted. The accused can still enjoy his provisional liberty under the same bond. The accused is directed to file his intended motion or notice within the reglementary period.

SO ORDERED.”[30]

Thereupon, accused-appellant filed the present appeal[31] which raises the following issues:

I -

Whether or not the Regional Trial Court of La Trinidad, Benguet Branch 10 erred in finding that the arrest of

the accused-appellant is valid;

II -

Whether or not the Regional Trial Court of La Trinidad, Benguet Branch 10 erred in finding that the subject explosives (blasting cap and ammonium nitrate) were NOT obtained by the Police Officers in violation of the Accused-Appellant's Constitutional Rights against Illegal Search and Seizure and should have been excluded from the evidence for the Prosecution being the Fruit of the Poisonous Tree;

III -

Whether or not the Regional Trial Court erred when it found that the prosecution has proven the guilt of the accused-appellant BEYOND REASONABLE doubt.[32]

ISSUE

Whether the trial court erred in convicting accused-appellant of violation of Section 3, PD No. 1866, as amended (Illegal Possession of Explosives).

THE COURT'S RULING

In convicting accused-appellant of Illegal Possession of Explosives, the trial court noted that the prosecution was able to establish all the elements of the crime. The trial court also ruled that the seizure of the explosives materials and the consequent warrantless arrest of accused-appellant were valid.[33]

Accused-appellant faults the trial court in so ruling. Allegedly, (i) “the arrest of accused-appellant without warrant is illegal”[34] since “mere intelligence information that the suspect committed the crime will not suffice”[35] and accused-appellant “was just standing and resting after a hard work of making a pathway when he was arrested,”[36] and (ii) the explosive materials, even if actually confiscated from accused-appellant, “should not have been admitted as evidence by the Honorable Regional Trial Court x x x because the arrest and search against the accused is in violation of the latter's Constitutional rights against illegal search and seizure.”[37]

The asseverations are unfounded.

Accused-appellant was charged with and convicted of Illegal Possession of Explosives, defined and penalized under Section 3, PD No. 1866, as amended, which provides:

SEC. 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives. — The penalty of prisión mayor in its maximum period to reclusión temporal and a fine of not less than Fifty thousand pesos (P50,000) shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess hand-grenade(s), rifle grenade(s), and other explosives, including but not limited to 'pillbox,' 'molotov cocktail bombs,' 'firebombs,' or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person.

When a person commits any of the crimes defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crime of rebellion, insurrection, sedition or attempted coup d'etat, such violation shall be absorbed as an element of the crimes of

rebellion, insurrection, sedition or attempted coup d'etat.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the explosives owned by such firm, company, corporation or entity, to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs."

To convict an accused for illegal possession of firearms and explosive under PD No. 1866, as amended, two (2) essential elements must be indubitably established, viz: (a) the existence of the subject firearm or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the negative fact that the accused had no license or permit to own or possess the firearm or explosive which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive.[38]

The first element, which is the explosive materials in accused-appellant's custody, is present in this case. The small amount of granular substance was found to contain ammonium nitrate, which is highly explosive.[39] Chemistry Report No. C-010-2010 dated January 26, 2010 reads:

"SPECIMEN SUBMITTED:

A – One (1) transparent plastic bag containing 112.70 grams of pink colored ammonium nitrate placed inside a white "Tionsan Harrison Dept Store" plastic bag marked "OFE 01-23-2010" and further placed inside a brown paper bag with markings "OFE 01-23-2010-A"

x x x

x x x

x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimens (A) gave POSITIVE result to the tests for the presence of explosives and/or explosive ingredients.

x x x

x x x

x x x

CONCLUSIONS:

Specimens "A" contains ammonium nitrate, an explosive ingredients."[40]

The foregoing report was identified before the trial court by PSI Alex Biadang, who further explained the examination performed. Thus:

"PROS. MARANES:

x x x

x x x

x x x

Q

What did you do with the granular substance delivered to you by the member of the La Trinidad Police Station?

A

I conducted physical examination on the submitted specimen, sir.

Q

How long did this examination took you?

A

It takes me more than than a day, sir, because of some chemicals we have to set on so that it will become stable, sir.

Q

What is supposed to be the purpose of this examination that you will be conducting in the substance, Mr. Witness?

A

To determine the presence of explosive ingredients.

Q

When you said you conducted an examination, how did you conduct this examination?

A

First is the physical, chemical and confirmatory examinations of the subject specimen submitted, sir.

Q

In the physical examination, what did you do?

A

I checked on the markings, the physical appearance of the specimen submitted and the weight of the specimen submitted.

Q

How about the next thing that you did, the chemical test?

A

The chemical test, we have color test on the chemical submitted. We added the chemicals to determine the presence of explosive ingredients on the specimen, sir.

Q

And after doing this, what are your findings?

A

After the confirmatory test, sir, we specifically submitted findings on the specimen contains ammonium nitrates which is highly explosive.”[41]

Although PSI Alex Biadang was not able to examine the chemical contents of the blasting cap, this was due to the fact that the Explosive Ordinance Division (EOD) rejected the request for extraction of the chemical content of said blasting cap because of the possible injury that the procedure may cause the EOD technician. Said PSI Alex Biadang,

"PROS. MARANES:

Q

And what are you supposed to do with this item you described as a blasting cap as we see it a metal tube contained in a plastic?

A

Supposedly, there should be an examination to be conducted on this small metal but due to danger that it would cause, the examination was not conducted.

Q

Who is supposed to conduct that examination?

A

Our office, sir.

Q

Your office?

A

Yes, sir. But we requested for the extraction of the explosive contents of this blasting cap but the EOD explains the danger it would cost to them because they have no equipments for the extraction of the of the explosive

contents.

Q

So you are saying that if those items could not be carefully handled it will explode, Mr. Witness?

A

Yes, sir. That is sensitive to friction and heat.

COURT

Q

What will trigger friction?

A

Heat or shock, Your Honor.

Q

So the crime lab of Camp Dangwa is not equipped to analyze this substance?

A

we are equipped, Your Honor, but we have to request for the extraction of the explosive contents of the blasting cap.

Q

To whom you request this?

A

Explosive Ordinance Division of Camp Dangwa. But they cannot extract because they have no equipment for the extraction, Your Honor, and the handling also is very dangerous.”[42]

Notably, while there was no testimony or certification from the PNP Firearms and Explosives Unit that accused-appellant was not a licensee or a bona fide holder of explosives, among the factual stipulation during the pre-trial[43] was the admission that “[T]he accused was not issued any permit or authority to possess or use any blasting cap and ammonium nitrate by the proper agency of the government.”[44] Such statement is binding upon accused-appellant. Under Section 4,[45] Rule 129, Revised Rules on Evidence, “[A]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made,” which was not shown in this case.[46] As held in *Bayas vs. Sandiganbayan*: [47]

“Once validly entered into, stipulations will not be set aside unless for good cause. They should be enforced especially when they are not false, unreasonable or against good morals and sound public policy. When made before the court, they are conclusive. And the party who validly made them can be relieved therefrom only

upon a showing of collusion, duress, fraud, misrepresentation as to facts, and undue influence; or upon a showing of sufficient cause on such terms as will serve justice in a particular case. Moreover, the power to relieve a party from a stipulation validly made lies in the court's sound discretion which, unless exercised with grave abuse, will not be disturbed on appeal."

Accordingly, the trial court is correct in holding that all the elements of the crime of illegal possession of explosives are present. As the trial court noted:

"The existence of the "explosives" was proven by the production of the blasting cap and ammonium nitrate confiscated from the accused. Police Officer Alex Biadang, a chemical engineer, assigned at the Regional Crime Laboratory in Camp Dangwa, La Trinidad, Benguet testified that he conducted a chemical analysis of said objects and stated that they are considered incendiary devices capable of producing destructive effect on contiguous objects or causing injury to any person. His findings are contained in his Chemistry Report No. C-010-2010 (Exhibit "C"). The blasting cap and the ammonium nitrate seized from the accused were likewise presented and identified by the prosecution witnesses as Exhibit "G".

x x x

x x x

x x x

The second element of the crime is that the possession by the accused of the blasting cap and ammonium nitrates was without any authority or license from the government. Mere possession of a blasting cap or ammonium nitrates is not punishable by law as there are people that may be authorized to possess them. It is the lack of authority that makes the possession punishable. Being an element of the crime, the lack of authority must be proven by the prosecution beyond reasonable doubt. This is what the Supreme Court said in *People vs. Villanueva* (G.R. NO. 118078, July 15, 1997) thus: "As we have previously held, the testimony of a representative of, or a certification from the PNP Firearms and Explosives Unit that the accused-appellant was not a licensee of the said firearm would have sufficient to prove beyond reasonable doubt the second element of the crime of illegal possession. The foregoing cannot be dispensed with and its absence renders the accused-appellant's conviction erroneous."

While it is true that the prosecution failed to present a witness or a certification from the PNP Firearms and Explosives Unit that the accused was not a licensee or a bona fide holder of explosives, the accused and his legal counsel admitted during pre-trial that: "The accused was not issued any permit or authority to possess or use any blasting cap and ammonium nitrate by the proper agency of the government." Such statement is binding upon the admitting party. (See Pre-trial Order dated 26 April 2010 on page 52, record that was signed by the accused and his counsel). The prosecution therefore had been relieved of the duty to prove the same as all agreements or admissions made or entered during the pre-trial conference and signed by them as contained in the Pre-trial Order shall bind the parties (see Rules on Criminal Procedure, Rule 118 sec. 2 and 4)."[48]

With respect to accused-appellant's claim that his warrantless arrest was illegal and the confiscated explosive materials should not be admitted as evidence against him, the same deserves scant consideration.

It is basic that no arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority.[49] This constitutional prohibition against unreasonable arrests, searches and seizures is, however, not absolute, but admits of exceptions.

An arrest without warrant is valid when said arrest is effected pursuant to Section 5,[50] Rule 113, Rules of Criminal Procedure. A warrantless arrest under the circumstances contemplated under Section 5(a) has been denominated as one "in flagrante delicto," while that under Section 5(b) has been described as a "hot pursuit" arrest.[51]

On the other hand, valid searches are limited to the following: (1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and, (8) "stop and frisk" operations.[52]52

In the present case, accused-appellant's warrantless arrest was found valid by the trial court under the doctrine of "seizure of evidence in plain view." Said the trial court:

"The accused however argues that these objects were unlawfully obtained by the arresting officers. As such, the accused invoked his constitutional right against unlawful searches and seizure and posits as a consequence that the blasting cap and the ammonium nitrate confiscated from him are inadmissible in court.

This court is therefore tasked to determine whether the blasting cap and ammonium nitrates were lawfully obtained by the police officers. Officer Eugenio testified that he responded to a report of illegal blasting at Lubas, La Trinidad, Benguet. When he arrived at that place, Cindy Ham approached him and showed him the scattered debris allegedly caused by blasting. She then pointed to the accused standing nearby as the perpetrator of the blasting. Officer Eugenio then approached Jimmy Pespes and started asking questions about the blasting incident. x x x

x x x

x x x

x x x

Upon the court's clarificatory questioning, Officer Eugenio stated that the explosives inside the yellow sando bag was placed on an "improvised table" near the rooftop of Cindy Ham.

On the other hand, Jimmy Pespes made a blanket denial that the incident even happened. His direct testimony was concentrated and primarily focused on what transpired after the accused was arrested. This prompted the court to ask the following questions:

Court:

Q:

. . .Have you ever handled explosives before?

Jimmy Pespes:

A:

No, sir.

Q:

And these materials which the police officers said that were taken from your house, did the police officers show these items to you before you were brought to the police station?

A:

They showed me but I do not know where they got those.

Q:

When they arrived, were they carrying these items with them?

A:

I did not notice if they were holding those items, sir.

Q:

When was the first time that you saw these materials?

A:

When they showed me at the police station, sir.

Q:

Are you saying that they did not bring anything or they did not hold anything, they did not get anything from your house and the first time that they showed you these things was the police station, is that what you are saying?

A:

They first showed me those things in our house but I do not know where they got these items.

Court:

Put it on record that the accused while answering the questions has always been rubbing his face, looking down and restless. x x x. (TSN, Testimony of Jimmy Pespes on September 14, 2010, p. 17)

The court is not persuaded by the bare denial of the accused. Likewise, it is unconvinced by the accused's contention that the subject explosives were obtained by the police officers in violation of the accused's constitutional right against illegal search and seizure and should be excluded from the evidence for the prosecution. Based on the above cited testimonies, there was no actual search done by the police officers but the explosives contained in the sando bag were voluntarily handed over by the accused to Officer Eugenio.

Furthermore, the arrest of the accused was lawful as it was only after the accused voluntarily handed over the explosives to Officer Eugenio that he was arrested. As stated by the Supreme Court: "Under the "plain view doctrine," unlawful objects within the "plain view" of an officer who has the right to be in the position to have that view are subject to seizure and may be presented in evidence. For this doctrine to apply, there must be: (a) prior justification; (b) inadvertent discovery of the evidence; and (c) immediate apparent illegality of the evidence before the police." These essentials were present before Police Officer Eugenio effected the arrest."[53]

While the Court agrees with the trial court's finding on the validity of the warrantless search and seizure of the plastic bag, the same falls under "consented searches," not under the "plain view doctrine" as ruled by the trial court. Accused-appellant's act of voluntarily surrendering the plastic bag to SPO3 Orlando Eugenio "indicated a waiver of his right against the alleged search and seizure." [54]

Notably, there was absence of any showing that the police officer involved was not properly performing his duty

or was inspired by any improper motive. It is basic that mere allegation is not evidence and it is not equivalent to proof.[55] There is also no cogent reason to depart from the presumption that official duty had been regularly performed, as accused-appellant failed to show any motive for the arresting police officer to falsely impute a serious crime against him.

Considering that the search and seizure were valid, the consequent warrantless arrest of accused-appellant was also valid. It is basic that if there are valid reasons to conduct lawful search and seizure which thereafter shows that the accused is currently committing a crime, the accused may be lawfully arrested in flagrante delicto without need for a warrant of arrest.[56]

Although accused-appellant questioned his warrantless arrest in his counter-affidavit[57] filed with the Office of the Provincial Prosecutor and prior to his arraignment, also questioned the jurisdiction of the trial court over his person, accused-appellant, through his counsel, withdrew said manifestation and the arraignment proceeded as scheduled.[58] Notably, accused-appellant did not file any case against the arresting police officer.

As regards the fine, the trial court correctly imposed upon accused-appellant the amount of P50,000.00. However, the trial court erred in imposing upon accused-appellant an indeterminate sentence of two (2) years, four (4) months, and one (1) day of Prison Correccional, as minimum, to thirteen (13) years, four (4) months and one (1) day of Reclusion Temporal, as maximum.[59]

PD No. 1866, as amended,[60] imposes the penalty of prison mayor in its maximum period to reclusion temporal and a fine of not less than P50,000.00, for illegal possession of explosives. The penalty of prison mayor in its maximum period to reclusion temporal ranges from ten (10) years and one (1) day to twenty (20) years.

Under Section 1,[61] Indeterminate Sentence Law,[62] as applied to an offense punishable by a special law, the court shall sentence the accused to an indeterminate sentence expressed at a range whose maximum term shall not exceed the maximum fixed by the special law, and the minimum term shall not be less than the prescribed minimum.[63] Hence, the trial court should have imposed an indeterminate sentence with a minimum term of not less than ten (10) years and one (1) day of prison mayor, and a maximum term of not exceeding twenty (20) years of reclusion temporal. Accused-appellant is thus hereby sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prison mayor, as minimum, to thirteen (13) years, four (4) months and one (1) day of Reclusion Temporal, as maximum.

WHEREFORE, the trial court's Judgment dated July 9, 2012 is AFFIRMED, subject to the MODIFICATION that accused-appellant Jimmy Pakidao Pespes is sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prison mayor, as minimum, to thirteen (13) years, four (4) months and one (1) day of Reclusion Temporal, as maximum.

SO ORDERED.

Sorongon[*] and Manahan[**], JJ., concur.

[1] pp. 14-20, 21-27 and 57-63, Rollo; pp. 233-239, Record

[2] SEC. 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives.

[3] Codifying the laws on illegal/unlawful possession, manufacture, dealing in, acquisition or disposition, of firearms, ammunition or explosives or instruments used in the manufacture of firearms, ammunition or explosives, and imposing stiffer penalties for certain violations thereof and for relevant purposes; June 29, 1983

- [4] An act amending the provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the laws on illegal/unlawful possession, manufacture, dealing in, acquisition or disposition of firearms, ammunition or explosives or instruments used in the manufacture of firearms, ammunition or explosives, and imposing stiffer penalties for certain violations thereof and for relevant purposes; June 6, 1997
- [5] TSN dated June 16, 2010, pp. 61-63
- [6] TSN dated May 24, 2010, pp. 3-5
- [7] TSN dated May 24, 2010, pp. 7-8; TSN dated June 16, 2010, pp. 63-65
- [8] TSN dated May 24, 2010, pp. 3-5; TSN dated June 7, 2010, pp. 40-43 and 44-53; TSN dated June 16, 2010, p. 70; Exh. "B", pp. 9-10, Record; Exh. "D", p. 14, Record; p. 13, Record
- [9] TSN dated June 7, 2010, pp. 28 and 38; p. 13, Record
- [10] TSN dated June 7, 2010, pp. 28-35; Exh. "C", p. 10, Record; Exh. "E", p. 11, Record; Exh. "F", p. 12, Record
- [11] TSN dated September 14, 2010, pp. 81-95
- [12] pp. 14-16, 21-23 and 57-59, Rollo; pp. 233-235, Record
- [13] pp. 1-2, Record
- [14] Order dated April 12, 2010, p. 29, Id.
- [15] p. 44, Id.
- [16] Order dated April 27, 2010, p. 45, Id.
- [17] p. 46, Id.; Order dated April 27, 2010, p. 48, Id.
- [18] Order dated April 27, 2010, p. 49, Id.
- [19] Pre-Trial Order dated April 26, 2010, pp. 51-54, Id.
- [20] p. 52, Id.
- [21] TSN dated May 24, 2010 and June 7, 2010, pp. 39-43
- [22] TSN dated June 7, 2010, pp. 24-39 and 54-57
- [23] TSN dated June 7, 2010, pp. 44-53
- [24] TSN dated June 16, 2010
- [25] Order dated August 4, 2010, p. 150, Record
- [26] TSN dated September 14, 2010
- [27] TSN dated September 22, 2010
- [28] Order dated June 7, 2010, p. 110, Record; TSN dated June 7, 2010, pp. 55-57
- [29] pp. 19-20, 26-27 and 62-63, Rollo; pp. 238-239, Record
- [30] Order dated July 9, 2012, p. 240, Record

[31] Notice of Appeal, pp. 241-242, Id.

[32] p. 44, Rollo

[33] pp. 16-19, 23-26 and 59-62, Rollo; pp. 235-238, Record

[34] p. 47, Rollo

[35] p. 46, Id.

[36] p. 47, Id.

[37] p. 52, Id.

[38] People vs. Cortez, 324 SCRA 335, February 1, 2000

[39] TSN dated June 7, 2010, p. 29

[40] Exh. "C", p. 10, Record

[41] TSN dated June 7, 2010, pp. 28-29

[42] Id., pp. 31-32

[43] Pre-Trial Order dated April 26, 2010, pp. 51-54, Record

[44] p. 52, Id.

[45] Sec. 4. Judicial admissions. — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[46] Capangpangan vs. People, 538 SCRA 279, November 23, 2007

[47] 391 SCRA 415, November 12, 2002

[48] pp. 16-19, 23-26 and 59-62, Rollo; pp. 235-238, Record

[49] People vs. Belocura, 679 SCRA 318, August 29, 2012

[50] Sec. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[51] Malacat vs. Court of Appeals, 283 SCRA 159, December 12, 1997

[52] Esquillo vs. People, 629 SCRA 370, August 25, 2010

[53] pp. 17-19, 24-26 and 60-62, Rollo; pp. 236-238, Record

[54] Vide: Padilla vs. Court of Appeals, 269 SCRA 402, March 12, 1997

[55] Algodon vs. Zaldivar, 497 SCRA 446, August 3, 2006

[56] People vs. Laguio, Jr., 518 SCRA 393 March 16, 2007

[57] Exh. "1", pp. 6-7, Record

[58] Order dated April 12, 2010, p. 29, Id.

[59] pp. 19, 26 and 62, Rollo; p. 238, Record

[60] The amendment under RA No. 9516 (An Act further amending the Provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the laws on illegal/unlawful possession, manufacture, dealing in, acquisition or disposition, of firearms, ammunition or explosives or instruments used in the manufacture of firearms, ammunition or explosives, and imposing stiffer penalties for certain violations thereof and for relevant purposes") which was approved on December 22, 2008 and provided for stiffer penalty for illegal possession and manufacture of explosives, cannot be considered in the present case as accused appellant was charged in the information with "Violation of Presidential Decree No. 1866, Section 3, as amended by Republic Act No. 8294."

Section 1, RA No. 9516 provides:

Section 1. Section 3 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

"Section 3. Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession of an Explosive or Incendiary Device. - The penalty of reclusion perpetua shall be imposed upon any person who shall willfully and unlawfully manufacture, assemble, deal in, acquire, dispose, import or possess any explosive or incendiary device, with knowledge of its existence and its explosive or incendiary character, where the explosive or incendiary device is capable of producing destructive effect on contiguous objects or causing injury or death to any person, including but not limited to, hand grenade(s), rifle grenade(s), 'pillbox bomb', 'molotov cocktail bomb', 'fire bomb', and other similar explosive and incendiary devices. x x x"

[61] SECTION 1. x x x if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[62] Republic Act No. 4103, as amended; entitled "An Act to provide for an indeterminate sentence and parole for all persons convicted of certain crimes by the courts of the Philippine Islands; to create a Board of Indeterminate Sentence and to provide funds therefor and for other purposes;" December 5, 1933

[63] Andres vs. People, 588 SCRA 830, June 5, 2009

[*] Vice Associate Justice Myra V. Garcia-Fernandez, per Office Order No. 240-14-ABR dated May 23, 2014

[**] Vice Associate Justice Francisco P. Acosta, per Office Order No. 241-14-ABR dated May 23, 2014

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