

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON JOSE GUTIERREZ, ACCUSED-APPELLANT.

Ponente: SADANG, J.

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SADANG, J.:

This is an appeal from the Decision,[1] dated December 22, 2010, of the Regional Trial Court of Quezon City, Branch 90, in Criminal Case No. Q-95-63998, finding accused-appellant Ramon Jose Gutierrez (hereafter, appellant) guilty of violation of Presidential Decree (PD) No. 1866.

The Information[2] indicting appellant reads:

That on or about the 29[th] day of September, 1995 in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously have in his possession, control and custody six (6) live ammunitions (sic) for cal. 38 revolver, one (1) live ammunition for M16 Rifle and one (1) black bag, containing holster for cal. 38 without having previously secured the necessary license and permit to possess and carry the same from the proper authorities.

CONTRARY TO LAW.[3]

Appellant entered a not guilty plea with the assistance of counsel de officio at the arraignment[4] on August 2, 2007; thereafter, pretrial and trial ensued.

The prosecution offered the testimonies of then SPO1 Fernando M. Ferrer and then Senior Inspector Romeo C. Ver as well as pertinent real and documentary evidence.

The prosecution's case: On the basis of a report obtained from an informant in the course of a surveillance operation, Senior Inspector Ver applied for a search warrant before Judge Marciano I. Bacalla of the RTC-Quezon City. The search warrant was issued on September 28, 1995.[5] The following day, a team composed of six (6) members of the Special Operations Group of the Police Criminal Investigation Unit (SOG, for brevity) headed by Senior Inspector Ver was organized to enforce the search warrant. The team coordinated with the barangay and two barangay officials were assigned to go with them to appellant's residence at No. 103, Sitio 3, Congressional, Barangay Batasan Hills, Quezon City. Senior Inspector Ver knocked on the door and appellant opened the door. The police officers introduced themselves as members of the SOG and, after explaining to appellant the purpose of their visit, searched the house. SPO1 Ferrer found six (6) live ammunition for caliber .38 while SPO1 Ferol found one (1) live ammunition for M16 rifle. The seized items were marked and placed inside a plastic bag and turned over to Senior Inspector Ver who prepared and signed a Receipt/Inventory of Property Seized (receipt)[6] on September 29, 1995. Ver also put the marking "RV-9-29-95" on the seized items.[7] A Certification Re Conduct of Search[8] was also prepared and appellant signed the document together with the Purok leaders as witnesses. Appellant was apprised of his constitutional rights, including the right to counsel. After the Booking and Info Report[9] was prepared, appellant was brought to Camp Crame Station Hospital for medical check-up. Thereafter, Senior Inspector Ver filed with the court a Return of Search Warrant (return).[10] The prosecution offered in evidence a Certification[11] issued by the Firearms and Explosive Office (FEO) that appellant is not a

licensed or registered firearm holder.

Denying the accusation, appellant testified that: on September 29, 1995, he was asleep with his wife when armed men wearing civilian clothes came to his house and introduced themselves as police officers; he opened the door and allowed the armed men to enter the house but they pinned him on the floor and handcuffed him; although the armed men told him that they had a search warrant, they never showed it to him; he was asked to sign a document so that he could be released from custody; he was not asked to sign an inventory of property and the signature appearing thereon is not his; the barangay officials or purok leaders came fifteen (15) minutes later; he was brought to Camp Crame and showed the bullets that allegedly belong to him and thereafter he was detained. Appellant claimed that he was neither informed of the nature of the accusation nor assisted by a competent counsel of his choice.

In a Decision,[12] dated December 22, 2010, the trial court found appellant guilty as charged. The fallo reads:

IN VIEW OF THE FOREGOING, this Court finds the accused Ramon Jose Gutierrez guilty beyond reasonable doubt of committing the crime charged in the information in this case without any aggravating or mitigating circumstance as principal by direct participation, and this Court sentences said accused to suffer imprisonment of an indeterminate penalty of SIX (6) YEARS AND ONE (1) DAY of prision correccional as minimum, to TWELVE (12) YEARS AND ONE (1) DAY of reclusion temporal as maximum and to pay the costs.

SO ORDERED.[13]

Hence, this appeal[14] with this assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL POSSESSION OF FIREARMS NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

RULING

We affirm the judgment of conviction.

In prosecutions for illegal possession of firearm and ammunition, two requisites must be established, viz.: (1) the existence of the subject firearm or ammunition and, (2) the fact that the accused who owned or possessed the firearm or ammunition does not have the corresponding license or permit to possess.[15] The prosecution evidence proved these elements.

It was shown that the ammunition subject of this case, namely, six (6) live ammunition for caliber .38 and one (1) live ammunition for M16 Rifle,[16] were found and seized in the house of appellant during a search conducted pursuant to Search Warrant No. 1021-95[17] issued by Judge Bacalla of the RTC of Quezon City. SPO1 Ferrer testified that he found the six (6) live ammunition for caliber .38 while SPO1 Ferol discovered the one (1) live ammunition for M16 rifle and a black bag containing the holster for a .38 caliber firearm in the house of appellant.[18] The marking "RV-9-29-95"[19] was inscribed on the seized items which were subsequently identified and offered in evidence at the trial. There can be no doubt that the first element of the offense was established.

The prosecution also offered the certification from the FEO that appellant does not have a license to possess any firearm or ammunition. Considering that the existence of a valid license is peculiarly within his knowledge, appellant should have established such fact, otherwise, he shall suffer conviction.[20] Unfortunately, appellant did not even attempt to discharge that burden. The essence of the crime of violation of PD 1866 is the offender's lack of license to possess the firearm or ammunition. The lack or absence of license constitutes an essential ingredient

of the offense of illegal possession of firearm or ammunition.[21]

Appellant insists that his version is the true version. He contends that even assuming that the version of the prosecution is true, the receipt is inadmissible in evidence because he was not assisted by counsel when he allegedly signed the document. The contention is untenable.

A person under custodial investigation is entitled to the following rights under Section 2, Article III (Bill of Rights) of the 1987 Constitution: 1) right to remain silent; 2) right to counsel; and 3) right to be informed of such rights. Custodial investigation has been explained in *People v. Marra*[22] thus:

Custodial investigation involves any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogations that lends itself to eliciting incriminating statements that the rule begins to operate. (Emphasis in the original. Citation omitted.)

There can be no question that appellant was under custodial investigation when the receipt was executed. He was being held in custody after the search in his house yielded positive results and the proceedings conducted by the police officers lent itself to eliciting incriminating statements from appellant. Appellant was therefore entitled to the rights of a person under custodial investigation. However, contrary to the contention of appellant, the receipt is admissible in evidence. The receipt reads:

RECEIPT/INVENTORY OF PROPERTY SEIZED

This is to certify that the undersigned had seized and taken possession of the property herein described below from Ramon Gutierrez at his residence located at #103, Sitio 3, Congressional, Batasan Hills, Quezon City on or about 6:30 A.M. of 29th September 1995 to wit:

Items

Quantity

Description

1

Six (6)

Live ammunition for cal. 38 Rev

2

One (1)

Black bag with inside holster for cal. 38

3

One (1)

Live Ammo for M16 Rifle

----- NOTHING FOLLOWS -----

Witnessed To Seizure Inventory:

(Signed)

1. Ramon Gutierrez

(Signed)

2. Anecita Timbal - Purok Leader

(Signed)

3. Alfredo Escala - Purok Leader

(Signed)

P/SR INSP. ROMEO C. VER PNP

(Seizing Officer)

Perusal of the receipt shows that it was prepared and signed by Senior Inspector Ver who certified that the listed items were seized and taken from appellant at the latter's residence. This is the proper procedure. As held in *People v. Policarpio*,^[23] the police officer who confiscated the items should be the one to sign the receipt, not the suspect. While appellant signed the receipt, his signature merely signified that he witnessed the execution of the receipt. The receipt cannot be considered as an extrajudicial confession during custodial investigation that necessitates the strict observance of the right to counsel enshrined in the Constitution. It is, however, admissible as evidence of the facts stated therein.

There is no merit in the contention of appellant that his version of the incident must prevail over that of the prosecution. It is well-settled that the determination of credibility of witnesses is properly within the domain of the trial court. The investigating judge is in the best position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.^[24]

In this case, the findings of the trial court are supported by the documentary evidence. There is nothing in the version of the prosecution that is contrary to human experience and the natural course of things. Appellant was simply found in possession of ammunition as a result of the implementation of a valid search warrant. The procedure followed by the police officers also conforms with the law. Considering that there is no showing that they were animated by ill motives in imputing to appellant a serious offense the police officers must be deemed to have regularly performed their duties and are therefore credible witnesses.^[25]

Appellant imputes irregularity in the performance of duty by the police officers. He alludes to the notation in the return that the seized items were not delivered to the court. It is true that Section 2, Rule 126^[26] of the Rules of Court requires the officer who makes the return to deliver to the court the seized items. The record does not show, however, that the court had called the attention of Ver to that omission and that Ver ignored the order of the court. Ostensibly, Ver was allowed to keep custody of the seized items because the court subsequently issued to Ver a subpoena duces tecum^[27] therefor. Considering that Ver was the seizing officer there is nothing irregular if he is allowed to keep custody of the evidence. What is important is that there is no showing that the integrity of the evidence had been compromised.

On the other hand, the defense of appellant is a denial. Time and again, it has been held that denial is an inherently weak defense and has always been viewed with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial crumbles in the light of positive identification. It cannot be given greater evidentiary weight than the testimony of the prosecution witnesses on affirmative matters.^[28]

The non-presentation of the Purok leaders does not weaken the case of the prosecution as urged by appellant because their testimonies would have been, at best, corroborative in nature. It bears to stress, that the prosecution has the exclusive prerogative to determine whom to present as witnesses. The prosecution need not present each

and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of other witnesses may be dispensed with if they are merely corroborative in nature. The non-presentation of corroborative witnesses does not constitute suppression of evidence and is not fatal to the prosecution's case.[29]

Finally, the penalty imposed by the trial court must be modified. At the time of the commission of the crime, the prevailing law was P.D. 1866[30] which provided for an imposable penalty of reclusion temporal in its maximum period to reclusion perpetua. Thus, the trial court sentenced appellant to suffer the indeterminate penalty of six (6) years and one (1) day of prision correccional as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum. However, P.D. 1866 has since been amended by P.D. 1878-A,[31] R.A. 8294,[32] R.A. 9516,[33] and R.A. 10591.[34] The latest amendatory law, R.A. 10591, provides an imposable penalty of prision mayor in its minimum period for possession of ammunition for "small arm or Class-A light weapon." Class-A light weapon refers to "self-loading pistols, rifles and carbines, submachine guns, assault rifles and light machine guns not exceeding caliber 7.62 MM which have fully automatic mode." [35] The penalty of prision mayor in its minimum period has a range of six (6) years and one (1) day to eight (8) years.

Considering that the penalty for the crime charged has been reduced under the present law, the lower penalty should apply to appellant. Article 22 of the Revised Penal Code mandates the retroactive application of penal laws that are favorable to the accused, even to those already convicted and serving sentence. Indeed, the Supreme Court has invariably applied the lower penalty retroactively even if the crimes had been consummated, or the prosecution had been initiated, or a decision had in fact already been rendered by the trial courts while the higher penalties were still imposable.[36]

Further, although P.D. 1866 is a special law yet it adopted the nomenclature of penalties provided in the Revised Penal Code. Pursuant to the leading case of *People v. Simon*, [37] in determining the penalty to be imposed in this case the offense charged shall be treated as one under the Revised Penal Code and the Indeterminate Sentence Law (ISL) shall be applied on that basis. Applying the ISL, the minimum of the penalty shall be within the range of the penalty next lower in degree than the prescribed penalty, [38] in this case, prision correccional maximum which has a range of four (4) years, two (2) months, and one (1) day to six (6) years. On the other hand, the maximum of the penalty shall be that which could be imposed in view of the attending circumstances. Inasmuch as there are neither mitigating nor aggravating circumstances in this case, the maximum of the penalty shall be taken from the medium period of the prescribed penalty.

WHEREFORE, the appeal is DENIED. The Decision of the Regional Trial Court of Quezon City, Branch 90, in Criminal Case No. Q-95-63998 finding accused-appellant Ramon Jose Gutierrez guilty beyond reasonable doubt of violation of P.D. No. 1866 is AFFIRMED; however, the penalty is MODIFIED such that accused-appellant shall instead suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to six (6) years, eight (8) months and one (1) day of prision mayor, as maximum.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Penned by Judge Reynaldo B. Daway, rollo, pp. 13-15.

[2] RTC Records, pp. 1-2.

[3] Id. at 1.

[4] Certificate of Arraignment, id. at 29.

[5] Per Presiding Judge Marciano I. Bacalla, Regional Trial Court of Quezon City, Branch 16; Exh. A, id. at 212.

[6] Exh. C, id. at 214; Exh. 3, id. at 16.

[7] Exhs. E and E-1, attached to the RTC Records in a sealed envelope.

[8] Exh. B, id. at 213; Exh. 1, id. at 15.

[9] Exh. F, id. at 217.

[10] Exh. 2, id. at 150.

[11] Exh. D, id. at 215.

[12] Supra note 1.

[13] Rollo, pp. 29-30.

[14] Appellant filed a Notice of Appeal on March 1, 2011, rollo, p. 16-17. The RTC Order, dated March 17, 2011, granted the appellant's Notice of Appeal and directed that the entire records of the case be forwarded to the Court of Appeals, id. at 18.

[15] Evangelista v. People, G.R. No. 163267, May 5, 2010.

[16] Exhs. E and E-1, attached to the RTC Records in a sealed envelope.

[17] Exh. A and Exh. 1, RTC Records, p. 17.

[18] TSN (P/Insp. Fernando Ferrer), September 24, 2004, RTC Records, pp. 299-303; TSN (P/Supt. Romeo C. Ver), January 27, 2005, RTC Records, pp. 319-321.

[19] TSN (P/Insp. Fernando Ferrer), July 28, 2005, RTC Records, p. 353; TSN (P/Supt. Romeo C. Ver), January 27, 2005, RTC Records, p. 329.

[20] Capangpangan v. People, G.R. No. 150251, November 23, 2007.

[21] Evangelista v. People, supra.

[22] 236 SCRA 565, 573.

[23] L-69844, 158 SCRA 85, 89-90.

[24] People v. Pareja, G.R. No. 202122, January 15, 2014.

[25] People v. Salvador, G.R. No. 190621, February 10, 2014; People v. Macatingag, G.R. No. 181037, January 19, 2009.

[26] Section 12. Delivery of property and inventory thereof to court; return and proceedings thereon. – (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

(b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been

complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

(c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result and other actions of the judge.

A violation of this section shall constitute contempt of court.

[27] RTC Records, p. 106.

[28] *People v. Rom*, G.R. No. 198452, February 19, 2014.

[29] *People v. Tuan*, G.R. No. 176066, August 11, 2010 citing *People v. Pidoy*, 453 Phil. 221, 228 (2003).

[30] Took effect on June 29, 1983.

[31] Entitled "Amending Presidential Decree Number 1866 Dated June 29, 1983." (Issued on July 23, 1983.)

[32] Entitled "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.'" (Approved on June 6, 1997.)

[33] Entitled "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.'" (Approved on December 22, 2008.)

[34] Entitled "An Act Providing For A Comprehensive Law On Firearms And Ammunition And Providing Penalties For Violations Thereof." (Approved on May 29, 2013.)

[35] Section 3 (t), R.A. 10591.

Section 28. Unlawful Acquisition or Possession of Firearms and Ammunition. – The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

xxx xxx xxx

(g) The penalty of prision mayor in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. xxxx

[36] *Evangelista v. People*, supra; *People v. Lara*, G.R. No. 171449, October 23, 2006; *People v. Lacson*, G.R. No. 149453, October 7, 2003; *People v. Zervoulakos*, G.R. No. 103975, February 23, 1995.

[37] G.R. No. 93028, July 29, 1994, 234 SCRA 555, 580-582.

[38] *People v. Feloteo*, G.R. No. 124212, June 5, 1998; *Padilla v. Court of Appeals*, G.R. No. 121917, March 12, 1997; *People v. Lian*, G.R. No. 115988, March 29, 1996.

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