

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO B. MONTON, DEFENDANT-APPELLANT.***G.R. No. L-48112. February 29, 1988*

Ponente: GANCAYCO, J.

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Mariano Monton was then the Barrio Captain of Bacao, General Trias, Cavite, when on the morning of October 29, 1966 a PC team led by Sgt. Cagalpin raided his house and found one automatic carbine with one long magazine containing several rounds of ammunition hidden under a pillow covered with a mat. Thus he was charged with the crime of illegal possession of firearm in an information that was filed in the Court of First Instance of Cavite. After arraignment and trial on the merits a decision was rendered on September 26, 1968 finding him guilty of the offense charged and imposing on him the penalty of imprisonment of five (5) years and to pay the costs. The firearm and magazine and 27 rounds of ammunitions were confiscated in favor of the government.[1]

The accused interposed an appeal to the Court of Appeals. However, in a decision of January 12, 1978 the records of the case were elevated to this Court as the legal issue determinative of the guilt or innocence of the accused of whether a barrio captain is a peace officer within the purview of Section 879 of the Revised Administrative Code exempting certain peace officers from securing a firearm license, is within the exclusive jurisdiction of this Court.

Sections 878 and 879 of the Revised Administrative Code provides -

"Sec. 878. Unlawful manufacture, dealing in acquisition, disposition, or possession of firearms, parts of firearms, or ammunition therefor, or instruments or implements used or intended to be used in the manufacture of firearms or ammunition.- Save as allowable under this article it shall be unlawful for any person to import, manufacture, deal in, receive, acquire, buy, sell, dispose of, or possess any firearm, detached parts of firearms or ammunition therefor, or any instrument or implement used or intended to be used in the manufacture of firearms, parts of firearms, or ammunition.

"Sec. 879. Exemption as to firearms and ammunition used by military and naval forces or by peace officers. This article shall not apply to firearms and ammunition regularly and lawfully issued to officers, soldiers, sailors, or marines of the United States Army and Navy, the Philippine Constabulary, guards in the employment of the Bureau of Prisons, municipal police, provincial governors, lieutenant governors, provincial treasurers, municipal treasurers, municipal mayors, and guards of provincial prisoners and jails, when such firearms are in possession of such officials and public servants for use in the performance of their official duties.

From the aforecited provisions of the Revised Administrative Code, it is clear that the peace officers covered by the exemption as to firearms regularly and lawfully issued are the "Philippine Constabulary, guards in the employment of the Bureau of Prisons, municipal police, provincial governors, lieutenant governors, provincial treasurers, municipal treasurers, municipal mayors and guards of provincial prisoners and jails". Barrio captains are not included in the enumeration. Hence what is not included is and should be deemed excluded.[2]

There can be no question therefor that at the time of apprehension of the appellant in the possession of the firearm and ammunitions the act was punishable under Section 878 of the Revised Administrative Code.

However, under Section 88(3) of the Local Government Code, Batas Pambansa Blg. 337 which was approved on February 10, 1983 it is specifically provided as follows:

"In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearms within his territorial jurisdiction subject to existing rules and regulations on the possession and carrying of firearms."

From the foregoing it is clear that a barrio captain or punong barangay is now entitled to possess and carry the necessary firearms within his territorial jurisdiction without incurring any criminal liability thereby. What before was penalized by the old law is no longer punishable under the present law.

The rule in this jurisdiction is that when the new law repeals the existing law so that the act which was penalized under the old law is no longer punishable, the crime is obliterated. A new statute dealing with crimes which establishes conditions more lenient or favorable to the accused can be given a retroactive effect.[3]

In the present case, appellant presented Barrio Resolution No. 6[4] showing that the firearm and ammunitions were bought by the barrio out of barrio funds because of the rampant cattle rustling and robbery in the area. No doubt the same was issued to appellant by the people of the barrio as their barrio captain to be utilized in the performance of his peace and order functions.

WHEREFORE, the decision appealed from is Reversed and set aside and another judgment is hereby rendered Acquitting accused-appellant of the offense charged with costs de officio.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Grino-Aquino, JJ., concur.

[1] Exhibits B, B-1 and B-2).

[2] People vs. Mapa, G.R. L-22301, August 30, 1967.

[3] U.S. vs. Tamayo, 61 Phil. 225; Pp. 13-14, Bk. I Revised Penal Code by Justice Luis B. Reyes, 12th Ed.

[4] Exhibit 3.

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