

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIANDANE L. BLAS, ACCUSED-APPELLANT.

Ponente: BORJA, J.

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BORJA, J.:

On appeal under Rule 124 of the Rules of Court is the Decision[1] dated July 14, 2011 of the Regional Trial Court (RTC), 11th Judicial Region, Branch No. 34, Panabo City, in Criminal Case No. CRC 287 – 2009 for Violation of P.D. No. 1866.

The Facts of the Case

The criminal action was based on an Information dated August 26, 2009 which accuses Riandane Blas as follows –

That on or about August 25, 2009, in the City of Panabo, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without first obtaining a license as required by law, unlawfully, willfully and knowingly had in his possession, control and custody, one (1) caliber .45 pistol bearing serial number 124772 with holster and one magazine loaded with one (1) live ammunition.

CONTRARY TO LAW.[2]

On September 3, 2009, Blas was arraigned; he pleaded “not guilty” to the charge.[3]

At the preliminary conference set on September 15, 2009, neither the prosecution nor the defense entered any admission or stipulation of facts.[4] No admission or stipulation of facts was likewise made by the parties during the pre-trial on October 22, 2009.[5]

Trial ensued. The RTC summarized the facts as follows:

Two witnesses, PO1 Dale O. Villar and PO3 Rosalito Ceniza, were presented by the prosecution. Its other evidences consist of the subject firearm, magazine, live ammunition, holster and extract of Police Blotter.

Culled from these evidences, it would appear that at around 9:40 p.m. of 25 October 2009, the police received a call that someone fired a gun at Cagangohan, Panabo City.

To verify the report, two police patrol cars went to the sawmill area of the said barangay. The first to arrive was PO1 Villar on board Mobile 1 followed shortly by PO3 Ceniza riding Mobile 5.

Immediately, PO1 Villar saw the accused, pointed out by a concerned citizen as the one firing the gun, fle[e] the area on board a motorcycle upon seeing them.

They followed the motorcycle and saw it f[a]ll down due to excessive speed when making a turn. Accused however was able to get up and run away. He was chased by PO1 Villar. The latter initially lost him upon reaching the highway, only to see accused reappear and forthwith surrende[r]. After frisking him and finding nothing, he brought him inside the mobile patrol.

PO1 Villar saw the gun only at the police station as according to him PO3 Ceniza was the one who recovered it from the U-box of the motorcycle 25 meters away from the mobile patrol.

On his part, PO3 Ceniza related that after seeing PO1 Villar chasing the accused, he just waited near the place where the motorcycle fell. When PO1 Villar returned together with the accused, he asked him if he recovered the gun. Since the latter replied in [the] negative, they asked the accused to open the U-box of the motorcycle. When he did, they saw inside the subject .45 caliber handgun with one live bullet, magazine and holster.

The only evidences presented by the defense, during its turn, are the testimonies of the accused and Ms. Carfel G. Magnanao.

Accused testified that he had a drinking spree at Pad's Resto Bar before heading home at around 7:30 p.m. of the aforesaid day. When he arrived, he had a quarrel with his wife because of jealousy prompting him to leave the conjugal abode on board a black Honda XRM motorcycle intending to go to his mother's house at Via Vida Subdivision.

While driving the motorcycle, he noticed somebody following him. Believing that the one following are the siblings of his wife and fearing that they will maul him, he drove his motorcycle faster. Due to the speed coupled with his frequent glancing at his back, his motorcycle fell down at a curve[d] portion of the road.

He got up and ran across the highway traversing 150 meters before he was apprehended by the policeman. He was brought to the police station where he was frisked and [the police officer] recovered from his possession his [Blas's] motorcycle key and cellphone.

He does not know who opened the U-box of his motorcycle as he was immediately brought to the police station. As far as he can recall, what was inside the u-box was one wallet, one cellphone and the tools of his motorcycle.

Ms. Carfel G. Magnanao, on the other hand, said that she saw in the evening of that day a motorcycle f[a]ll down three houses away from her house; that the driver ran away and was apprehended by the police; and that he was brought to the patrol car while the policemen opened the u-box of the motorcycle and thereafter drove it away.[6]

On July 14, 2011, the RTC rendered the assailed Decision. The RTC found that the prosecution "clearly established" the two essential elements of illegal possession of firearms and explosives under Presidential Decree No. 1866 --- "the existence of the subject firearm and its possession by the accused". The court said that the accused admitted during the hearing on July 23, 2010 that he "had no license to possess the subject firearm." The court also declared that the "fact that the firearm was recovered from the motorcycle" was "unchallenged" by contrary evidence or by evidence that "it was fabricated by the arresting officers who were motivated by ill-will." From this, the RTC concluded that that "the variance in the testimonies [of the prosecution's witnesses] as to who were present when [the firearm] was recovered is of no moment." [7]

The RTC's Decision disposed as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Riadane L. Blas guilty beyond reasonable doubt of illegal possession of high[-]powered firearm defined and penalized under Section 1, paragraph 2 of Presidential Decree No. 1866 as amended.

Accordingly, accused is sentence[d] to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional maximum as minimum period to seven (7) years of prision mayor minimum as maximum period and fine in the amount of Thirty Thousand Pesos (Php 30,000.00) together with the accessory penalties attached thereto.

The subject one (1) caliber .45 pistol bearing Serial Number 124772 with holster and one magazine loaded

with one (1) live ammunition is ordered forfeited in favor of the state and turn[ed] over to the Firearms and Explosive Division of PNP to be disposed by the latter in accordance with applicable rules and regulations.

Accused shall serve his sentence at the Davao Farm and Prison Colony, B.E. Dujali, Davao del Norte.

SO ORDERED.[8]

On August 5, 2011, Blas filed a Notice of Appeal[9] (from the said Decision) which was “given due course” by the RTC in an Order dated August 9, 2011.[10]

The Issues

In this recourse, Blas asserts that:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[11]

Blas points out that “(a) the arrest of the appellant and the subsequent seizure of the confiscated items was illegal, (b) the court a quo failed to appreciate that the prosecution did not in fact establish the elements of the crime of illegal possession of firearm, (c) the required unbroken chain of custody necessary to prove the integrity and source of the subject firearm suffered from serious gap, (d) Villar and Ceniza offered irreconcilable and inconsistent testimonies, thereby tainting their credibility, and (e) appellant cannot be prosecuted for illegal possession of firearms, even if he concedes without admitting that he possessed the .45 caliber pistol.”[12]

Is Blas guilty beyond reasonable doubt of illegal possession of a high-powered firearm penalized under Section 1, paragraph 2 of P.D. 1866, as amended?

The Ruling of the Court

On the validity of arrest

Blas did not question early on his warrantless arrest - before his arraignment. Neither did he take steps to quash the Information on such ground.[13] In his testimony, Blas admitted that he did not protest his arrest by the police officers and “because they were policemen[,] x x x [he] just [went] with them.”[14] Even in his Memorandum before the lower court, Blas did not challenge the validity of his arrest.[15] Verily, Blas raised the issue of warrantless arrest for the first time on appeal before this Court. By such omissions, he is deemed to have waived any objections on the legality of his arrest.[16]

Nevertheless, “a waiver of an illegal warrantless arrest does not x x x mean a waiver of the inadmissibility of evidence seized” during the illegal warrantless arrest.[17] To determine the admissibility of the subject firearm, therefore, the Court will rule on the validity of Blas’s arrest.

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure states:

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.

“For the warrantless arrest under this Rule to be valid, two requisites must concur: (1) the offender has just committed an offense; and (2) the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested has committed it.”[18]

“Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.”[19]

“Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes.”[20] PO1 Villar, while “on a roving patrol along Cagangohan,” Panabo City, received a radio call that someone fired a gun somewhere in Cagangohan. PO1 Villar went to the area to investigate the report and there, someone pointed to Blas as the one who fired the gun. Upon seeing the police, Blas sped up on board his motorcycle, prompting PO1 Villar and his driver to give chase. Blas drove too fast that the motorcycle toppled down. Blas ran on foot and PO1 Villar ran after him until the latter lost Blas. After a few minutes, Blas reappeared and surrendered to PO1 Villar.[21] Blas admitted that he sped up and when he fell from the motorcycle, he ran across the highway. A few moments later, he surrendered to PO1 Villar.[22]

Blas’s “act of trying to get away, coupled with the incident report which they investigated, is enough to raise a reasonable suspicion on the part of the police authorities as to the existence of probable cause” for arresting him.[23] It must also be stressed that Blas did not impute any credible motive why the police officers would falsely charge him. He testified that he and the police officers - PO1 Villar and PO3 Ceniza – had neither personal grudge against each other nor altercation previous to the incident. Blas also testified that he did not file any case against the police officers because he did not want “to cause trouble to [an]other person.”[24] “Absent any proof of motive to falsely accuse” Blas of the offense, the presumption of regularity in the performance of official duty stands.[25]

The circumstances of Blas’s arrest, thus, were sufficiently strong enough “to create the probable cause of guilt of the person to be arrested.” His warrantless arrest was therefore valid under Sec. 5(b), Rule 113 of the 1985 Rules on Criminal Procedure.[26]

On the validity of search and seizure

Unquestionably, the subject firearm was seized without a warrant.

The rule is that a search and seizure must be carried out through or with a judicial warrant; otherwise, such search and seizure becomes unreasonable”[27] within the meaning of Article III, Section 2 of the Constitution, which states:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

“Complementing this provision is the exclusionary rule embodied in Section 3(2) of the same article”[28] -

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

“There are, however, several well-recognized exceptions to the foregoing rule. Thus, evidence obtained through a warrantless search and seizure may be admissible under any of the following circumstances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of custom laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures;”[29] and (6) in “stop and frisk” operations.[30]

Section 13, Rule 126 of the Rules of Court states:

SEC.13. Search incident to lawful arrest. -- A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

“In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter’s reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase ‘within the area of his immediate control’ means the area from within which he might gain possession of a weapon or destructible evidence.”[31] “The rationale for such search and seizure is to prevent the person arrested either from destroying evidence or from using the weapon against his captor.”[32]

PO1 Villar testified that when Blas was arrested, the latter was 25 meters away from the motorcycle where the subject firearm was recovered. More striking is his testimony that Blas was already secured “inside the mobile”, which was 25 meters away from the motorcycle, when PO3 Ceniza opened the motorcycle’s utility box (u-box) and therein recovered the subject firearm.[33] Ceniza, in turn, testified that Blas was “very near the motorcycle” when the police officers “asked” Blas to open the u-box where they recovered the subject firearm.[34] The Court gives credence to Villar’s testimony. Defense witness, Carfel Magnanao, consistently testified that “[t]he U-box was opened after the driver of the motorcycle was apprehended” and when “the policeman” opened the u-box, “the person apprehended was no longer there anymore[;] he was already brought to the patrol car.”[35]

The motorcycle, therefore, was no longer within Blas’s reach or immediate control. Since Blas was already inside the patrol car which was about 25 meters away from the motorcycle, Blas was no longer in the position to destroy the subject firearm or use it against his captors. It is clear that warrantless search in this case cannot be justified under Sec. 13, Rule 126.

In the same vein, the search of the subject firearm cannot come under the “stop and frisk” rule. “While the rule normally applies when a police officer observes suspicious or unusual conduct, which may lead him to believe that a criminal act may be afoot, the stop and frisk is merely a limited protective search of outer clothing for weapons.”[36] To reiterate, the subject firearm was recovered from the u-box of a motorcycle situated 25 meters away from the accused.

The seizure of the subject forearm cannot also be justified under the “plain view” doctrine. Under this 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.”[37] The subject firearm was “not immediately apparent;” it was concealed inside the u-box of

Blas's motorcycle.[38]

Neither was there a consented warrantless search. "Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. x x x It is the State that has the burden of proving, by clear and positive testimony, that the necessary consent was obtained, and was freely and voluntarily given.[39] While PO3 Ceniza testified that he "asked" Blas to open the u-box, he made no categorical statement on how Blas specifically responded to Ceniza's request. Casting further doubt on Ceniza's claim are the testimonies of Villar and Magnanao that Blas was already in the patrol car -- situated 25 meters away from the motorcycle -- when the u-box was opened. To stress, Villar testified that it was only he who ran after and arrested the accused while it was Ceniza who recovered the subject firearm from the motorcycle which was 25 meters away from where Blas was arrested.[40] Ceniza himself confirmed that it was Villar who ran after Blas while he stayed near the motorcycle.[41] Thus, Ceniza's testimony that he "asked" Blas to open the u-box "does not suffice to prove valid and intelligent consent." [42] The above-mentioned statements, taken together, "weigh heavily against a finding of valid consent to a warrantless search." [43]

Further, this case does not involve a violation of custom laws.

Is the seizure of the subject firearm justified as search of a moving motor vehicle?

On this score, *People v. Bagista*, [44] explains --

x x x

With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.

This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched. [Emphasis added]

"This exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted on a mobile ship, on an aircraft, or in other motor vehicles since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought." [45]

Here, the search involved a moving vehicle, an instance where a warrantless search and seizure may be conducted by peace officers. The only issue we should determine is whether there was probable cause to justify such warrantless search and seizure.

Recall that Villar and Ceniza received information that someone fired a gun at Cagangohan, Panabo City. In the area, someone pointed to Blas as the person responsible. Upon seeing the police, Blas sped up on board his motorcycle. Blas knew that he was being chased; instead of stopping, he drove his motorcycle so fast until it toppled down. Blas ran on foot and Villar continued the pursuit.

The information received, the identification of Blas as the one who fired the gun, Blas's speeding up after seeing the police, and the chase are sufficient to prove the existence of probable cause which justified the extensive search of Blas's motorcycle even without a warrant. These circumstances gave the police officers "probable cause to believe, before the search, that either the motorist is a law-offender or they will find the instrumentality

or evidence pertaining to a crime in the vehicle to be searched.”[46] Specifically, the police had reasonable ground to believe that Blas was the one who fired the shot and that the firearm used was in the motorcycle he had been driving. When Blas sped up upon seeing the police, Villar and Ceniza “had to make a quick decision and act fast. It would be unreasonable to require [them] to procure a warrant before conducting the search under the circumstances. Time was of the essence in this case. The searching officer had no time to obtain a warrant.”[47]

In *People v. Vinecarao*,[48] the Supreme Court ruled that “where a vehicle sped away after noticing a checkpoint and even after having been flagged down by police officers, in an apparent attempt to dissuade the police from proceeding with their inspection, there exists probable cause to justify a reasonable belief on the part of the law enforcers that the persons on board said vehicle were off[ender]s of the law or that the vehicle contained objects which were instruments of some offense.”[49]

In *Posadas vs. Court of Appeals*,[50] the accused was seen acting suspiciously, and when accosted by two members of the Davao INP who identified themselves as lawmen, he suddenly fled, but was pursued, subdued and placed in custody. The buri bag he was carrying yielded an unlicensed revolver, live ammunition and a tear gas grenade. The Supreme Court upheld his conviction for illegal possession of firearms, holding that there was under the circumstances sufficient probable cause for a warrantless search.[51]

In many cases, “there were facts which were found by the [Supreme] Court to provide probable cause justifying warrantless arrests and searches, i.e., distinct odor of marijuana, reports about drug transporting or positive identification by informers, suspicious behaviour, attempt to flee, failure to produce identification papers, and so on. Too, urgency attended the arrests and searches because each of the x x x cases involved the use of motor vehicles and the great likelihood that the accused would get away long before a warrant can be procured. And, lest it be overlooked, x x x the law enforcers in the aforementioned cases acted immediately on the information received, suspicions raised, and probable causes established, and effected the arrests and searches without any delay.”[52]

This Court is convinced that the warrantless search here is valid and the firearm and ammunition seized are admissible in evidence against Blas.

On the charge of Illegal Possession of Firearms

P.D. 1866, as amended by RA 8294 (the law governing Illegal Possession of Firearms), provides:

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition Instruments Used or intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of prison correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

The penalty of prison mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high-powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter, such as caliber .40, .41, .44, .45 and also lesser-calibered firearms but considered powerful, such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm 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 or insurrection, sedition, or attempted coup d'état, such violation shall be absorbed as an element of the crime of rebellion or insurrection, sedition, or attempted coup d'état.

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 firearms 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 or willfully or knowingly allow any of them to use, unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

The *corpus delicti* in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the *corpus delicti*, the prosecution has the burden of proving that the firearm exists and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.[53]

Here, Villar's testimony established the existence of the subject firearm and ammunition. The defense did not question the presentation of said evidence before the lower court. The defense also stipulated on the fact that Blas "is not a holder of a license of any firearm of any caliber".[54]

Was Blas in possession of the subject firearm which was found in the motorcycle he was driving?

People v. De Gracia[55] instructs –

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management. This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law the proprietary concept of the possession can have no bearing whatsoever.

x x x

Blas stated that he owned the motorcycle he was driving as he repeatedly referred to it as "my motorcycle." [56] It was also unquestionable that the subject firearm was found in the u-box of the motorcycle he was driving. While the subject firearm was not found on his person, the motorcycle where the firearm was found was under his control. Blas had constructive possession of the subject firearm.

The prosecution, thus, proved beyond reasonable doubt the elements of the crime.

On the penalty

It was established that the subject firearm is a "1 caliber .45-pistol with Serial No. 124772"[57] P.D. 1866, as amended by R.A. 8294, qualifies this firearm as a high-powered firearm, the possession of which is penalized with "*prision mayor* in its minimum period and a fine of Thirty thousand pesos (P30,000.00)."[58]

Section 1 of the Indeterminate Sentence Law, as amended, provides:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the

said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and 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. (Emphasis supplied)

While illegal possession of firearms is penalized under a special law, the Court will apply the first clause of Section 1 because “prison mayor in its minimum period” is “derived from, and defined in, the Revised Penal Code.”[59]

In *Sanchez v. People*,[60] the Supreme Court elaborated -

Although R.A. No. 7610 is a special law, the rules in the Revised Penal Code for graduating penalties by degrees or determining the proper period should be applied. Thus, where the special law adopted penalties from the Revised Penal Code, the Indeterminate Sentence Law will apply just as it would in felonies.[61] In *People v. Simon*,[62] the Court applied the first clause of Section 1 of the Indeterminate Sentence Law to cases of illegal drugs. In *Cadua v. Court of Appeals*,[63] the Court applied the same principle to cases involving illegal possession of firearms. In those instances, the offenses were also penalized under special laws. Finally, in *Dulla v. Court of Appeals*,[64] a case involving sexual abuse of a child as penalized under Section 5(b), Article III of R.A. No. 7610, the Court likewise applied the same first clause of the Indeterminate Sentence Law. This case should be no exception.

The lower court correctly applied the foregoing rule in imposing upon Blas the “indeterminate penalty of four (4) years, two (2) months and one (1) day of prison correccional maximum as minimum period to seven (7) years of prison mayor minimum as maximum period” of imprisonment.

ACCORDINGLY, the appeal is DENIED. The July 14, 2011 Decision of the RTC, 11th Judicial Region, Branch No. 34, Panabo City, in Criminal Case No. CRC 287 – 2009 for Violation of P.D. No. 1866, is AFFIRMED in toto.

SO ORDERED.

Francisco and Badelles, JJ., concur.

[1] Penned by Presiding Judge Dax Gonzaga Xenos, Rollo, pp. 33-41.

[2] Records, p. 1.

[3] Order dated September 3, 2009; Records, p. 18.

[4] Minutes of Preliminary Conference; Records, pp. 22-23.

[5] Order dated October 22, 2009; Records, p. 28.

[6] Assailed Decision; Records, pp. 33-35.

[7] Records, pp. 36-40.

[8] Records, pp. 40-41.

[9] Id., p. 105.

[10] Id., p. 106.

[11] Appellant’s Brief, Rollo, p. 16.

- [12] *Id.*, p. 20.
- [13] Records, pp. 1-18.
- [14] TSN, December. 17, 2010, pp. 31-33.
- [15] Records, pp. 63-71.
- [16] *Romines v. People*, G.R. No. 182010, August 25, 2010 citing *People v. Kimura*, G.R. No. 130805, April 27, 2004; *People v. Lagarto*, 326 SCRA 693, 749 (2000); and *People v. Timon*, 281 SCRA 579, 597 (1997).
- [17] *Ong v. People*, G.R. No. 197788, February 29, 2012 citing *People v. Lapitaje*, 445 Phil. 729 (2003).
- [18] *Abelita v. Doria*, G.R. No. 170672, August 14, 2009 citing *People v. Cubcubin, Jr.*, 413 Phil. 249 (2001).
- [19] Emphases added. *Abelita v. Doria*, G.R. No. 170672, August 14, 2009 citing *People v. Cubcubin, Jr.*, 413 Phil. 249 (2001); *Umil v. Ramos*, G.R. No. 81567, 3 October 1991, 202 SCRA 251; *People v. Lozada*, 454 Phil. 241 (2003).
- [20] *Ibid.*
- [21] TSN, July 23, 2010, pp. 4-6.
- [22] TSN, Dec. 17, 2010, pp. 7-8.
- [23] See *Abelita v. Doria*, *supra*.
- [24] TSN, Dec. 17, 2010, pp. 16-18.
- [25] See *Romines v. People*, G.R. No. 182010 citing *People v. Teodoro*, G.R. No. 185164, June 22, 2009.
- [26] *Abelita v. Doria*, *supra*.
- [27] *People v. Tudtud*, G.R. No. 144037, September 26, 2003.
- [28] *Fajardo v. People*, G.R. No. 190889, January 10, 2011.
- [29] *Id.*, citing *People v. Go*, 457 Phil. 885, 926 (2003); and *People v. Doria*, G.R. No. 125299, January 22, 1999.
- [30] *Romines v. People*, G.R. No. 182010, August 25, 2010.
- [31] *People v. Uyboco*, G.R. No. 178039, January 19, 2011 citing *Valeroso v. Court of Appeals*, G.R. No. 164815, 3 September 2009; *People v. Cueno*, 359 Phil. 151, 163 (1998); *People v. Cubcubin, Jr.*, *id.* at 271; and *People v. Estella*, 443 Phil. 669, 683 (2003).
- [32] *People v. Cubcubin*, G.R. No. 136267, July 10, 2001.
- [33] TSN, July 23, 2010, pp. 6-10.
- [34] TSN, November 26, 2010, p. 9.
- [35] TSN, March 18, 2011, pp. 5-6 & 12-19.
- [36] *Ong v. People*, G.R. No. 197788, February 29, 2012 citing *People v. Sy Chua*, 444 Phil. 757 (2003).
- [37] *People v. Salanguit*, G.R. No. 133254-55, April 19, 2000 citing *People v. Musa*, 217 SCRA 597 (1993) ; *Harris v. United States*, 390 U.S. 234, 19 L.Ed. 2d 1067 (1968); and *Coolidge v. New Hampshire*, 403 U.S. 433,

29 L. Ed. 2d 564 (1971).

[38] Ong v. People, supra., citing People v. Macalaba, 443 Phil. 565 (2003).

[39] Id., citing Caballes v. Court of Appeals, 424 Phil. 263 (2002).

[40] TSN, July 23, 2010, pp. 6 and 7.

[41] TSN, November 26, 2010, pp. 7 and 8.

[42] See Ong v. People, supra.

[43] Ibid.

[44] G.R. No. 86218, September 18, 1992.

[45] People v. Mariacos, G.R. No. 188611, June 16, 2010 citing Salvador v. People, 502 Phil. 60, 72 (2005).

[46] Caballes v. CA, G.R. No. 136292, January 15, 2002 citing Obra, et al. vs. CA, et al., 317 SCRA 594 (1999); and People vs. Bagista, 214 SCRA 63 (1992).

[47] People v. Mariacos, G.R. No. 188611, June 16, 2010.

[48] G.R. No. 141137, January 30, 2004

[49] Epie v. Ulat-Marredo, G.R. No. 148117, March 22, 2007.

[50] 188 SCRA 288 (August 2, 1990).

[51] People v. Cuizon, G.R. No. 109287, April 18, 1996.

[52] Emphases added; People v. Cuizon, G.R. No. 109287, April 18, 1996.

[53] Sayco v. People, G.R. No. 159703, March 3, 2008 citing Capangpangan v. People of the Philippines, G.R. No. 150251, November 23, 2007 and Abenes v. People of the Philippines, G.R. No. 156320, February 14, 2007

[54] TSN, July 23, 2010, pp. 11-14.

[55] Sayco v. People, supra.

[56] TSN, December 17, 2010, pp. 7,9,11,27. & 30.

[57] TSN, July 23, 2010, pp. 11-12.

[58] Paragraph 2, Section 1 of P.D. 1866 as amended by R.A. 8294.

[59] Sanchez v. People, G.R. No. 179090, June 5, 2009.

[60] Ibid.

[61] REGALADO, Criminal Law Conspectus, First Edition, p. 205.

[62] G.R. No. 93028, July 29, 1994.

[63] 371 Phil. 627 (1999).

[64] 382 Phil. 791 (2000).

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