

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. OSCAR B. PIMENTEL, AS JUDGE, RTC OF MAKATI, METRO MANILA, BRANCH 148 AND ANTONIO A. TUJAN, RESPONDENTS.

G.R. No. 100210. April 01, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Is the Court of Appeals, in affirming the order of the Regional Trial Court, correct in ruling that Subversion is the “main offense” in a charge of Illegal Possession of Firearm and Ammunition in Furtherance of Subversion under P.D. No. 1866, as amended, and that, therefore, the said charge should be quashed in view of a previous charge of Subversion under R.A. No. 1700, as amended by P.D. No. 885, against the same accused pending in another court?

Stated differently, is the accused charged with the same offense in both cases, which would justify the dismissal of the second charge on the ground of double jeopardy?

This is the pith issue presented before us in this appeal by certiorari interposed by the People under Rule 45 of the Revised Rules of Court, seeking a review of the decision^[1] of the Court of Appeals (Sixteenth Division) dated May 27, 1991, in CA-G.R. SP No. 24273, entitled “THE PEOPLE OF THE PHILIPPINES, Petitioner, versus HON. OSCAR B. PIMENTEL, as Judge, RTC of Makati, Metro Manila, Branch 148 and ANTONIO A. TUJAN, Respondents.”

The record discloses the following antecedent facts:

As early as 1983, private respondent Antonio Tujan was charged with Subversion under Republic Act No. 1700 (the Anti-Subversion Law), as amended, before the Regional Trial Court of Manila (Branch 45), National Capital Region, docketed as Criminal Case No. 64079.^[2] As a consequence thereof, a warrant for his arrest was issued on July 29, 1983,^[3] but it remained unserved as he could not be found.

Almost seven (7) years thereafter, or on June 5, 1990, Antonio Tujan was arrested on the basis of the warrant of arrest in the subversion case.^[4] When arrested, an unlicensed .38 caliber special revolver and six (6) rounds of live ammunition were found in his possession.^[5]

Consequently, on June 14, 1990, Antonio Tujan was charged with Illegal Possession of Firearm and Ammunition in Furtherance of Subversion under Presidential Decree No. 1866, as amended, before the Regional Trial Court of Makati (Branch 148), docketed as Criminal Case No. 1789. The Information reads:

“That on or about the 5^[th] day of June, 1990, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a member of a communist party of the Philippines, and its front organization, did then and there willfully, unlawfully and feloniously have in his possession, control and custody, in furtherance of or incident to, or in connection with the crime of subversion, a special edition ARMSCOR PHILS. caliber .38 special revolver with Serial No. 1026387 and with six (6) live ammunitions, without first securing the necessary license or permit thereof from competent

government authority.”[6]

The above Information recommended no bail for Antonio Tujan, which recommendation was approved by the trial court in an Order dated June 19, 1990.[7] The same order also directed the continued detention of Antonio Tujan at MIG 15 of the Intelligence Service of the Armed Forces of the Philippines (ISAFP), Bago Bantay, Quezon City, while his case is pending.

On June 26, 1990, Antonio Tujan, through counsel, filed a motion[8] invoking his right to a preliminary investigation pursuant to Section 7, Rule 112 of the Revised Rules of Court and praying that his arraignment be held in abeyance until the preliminary investigation is terminated.

However, on June 27, 1990, during the hearing of Antonio Tujan’s motion for preliminary investigation, his counsel withdrew the motion since he would file a motion to quash the Information, for which reason counsel requested a period of twenty (20) days to do so. This was granted by the trial court on that same day.[9]

On July 16, 1990, Antonio Tujan did file the motion to quash[10] the Information in Criminal Case No. 1789 on the ground that he “has been previously in jeopardy of being convicted of the offense charged” in Criminal Case No. 64079 (for subversion) of the Regional Trial Court of Manila (Branch 45). The said ground is based on Sections 3 (h) and 7, Rule 117 of the 1985 Rules on Criminal Procedure. In support of the motion, Antonio Tujan contends that “common crimes such as illegal possession of firearms and ammunition should actually be deemed absorbed in subversion,”[11] citing the cases of *Misolas vs. Panga, et al.* (G. R. No. 83341, January 30, 1990, 181 SCRA 648) and *Enrile vs. Salazar, et al.* (G. R. No. 92163, June 5, 1990, 186 SCRA 217). Antonio Tujan then avers that “the present case is the twin prosecution” of “the earlier subversion case” and, therefore, he “is entitled to invoke the constitutional protection against double jeopardy.”[12]

The petitioner opposed[13] the motion to quash, arguing that Antonio Tujan does not stand in jeopardy of being convicted a second time because: (a) he has not even been arraigned in the subversion case, and (b) the offense charged against him in Criminal Case No. 64079 is for Subversion, punishable under Republic Act No. 1700; while the present case is for Illegal Possession of Firearm and Ammunition in Furtherance of Subversion, punishable under a different law (Presidential Decree No. 1866). Moreover, petitioner contends that Antonio Tujan’s reliance on the *Misolas* and *Enrile* cases “is misplaced.”[14] Tujan merely relies on the dissenting opinions in the *Misolas* case. Also, the *Enrile* case which involved a complex crime of rebellion with murder is inapplicable to the instant case which is not a complex offense. Thus, the “absorption rule” as held applicable in the *Enrile* ruling “has no room for application in the present case because (illegal) possession of firearm and ammunition is not a necessary means of committing the offense of subversion, nor is subversion a necessary means of committing the crime of illegal possession of firearm and ammunition.”[15]

The trial court, in an order dated October 12, 1990, granted the motion to quash the Information in Criminal Case No. 1789, the dispositive portion of the order reading:

“WHEREFORE, the motion to quash the information is hereby GRANTED, but only in so far as the accused may be placed in jeopardy or in danger of being convicted or acquitted of the crime of Subversion and as a consequence the Information is hereby quashed and the case dismissed without prejudice to the filing of Illegal Possession of Firearm.

“SO ORDERED.”[16]

It is best to quote the disquisition of the respondent court in quashing the information and dismissing the case:

“x x x x x x x x

“In other words, the main offense the accused is being charged in this case is also Subversion considering that the alleged Illegal Possession of the Firearm and Ammunition is only in furtherance thereof.

“Now, subversion being a continuing offense as has been previously held by the Supreme Court, the fact that the accused has been previously charged of Subversion before another court before the institution of this instant case is just a continuing offense of his former charge or that his acts constituting subversion is a continuation of the acts he committed before.

“The court therefore cannot subscribe to the position taken by the prosecution that this case is very different from the other case and that double jeopardy will attach in this particular case.

“This court agrees with the position taken by the defense that double jeopardy will attach to the accusation of subversion, punishable now under Republic Act 1700, as Rule 117 of the Rules of Court particularly Section 1 thereof, provides:

‘Time to move to quash- At any time before entering his plea, the accused may move to quash the complaint or information.(1a)’

“In other words, there is no necessity that the accused should be arraigned first before he can move to quash the information. It is before he pleads which the accused did in this case.

“On the other submissions by the prosecution, that the possession of firearms and ammunitions is not a necessary means of committing the offense of subversion or vice versa, then if the court follows such argument, there could be no offense of Illegal Possession of Firearm and Ammunition in furtherance of Subversion, for even the prosecution admits also that in subversion which is an offense involving propaganda, counter propaganda, a battle of the hearts and mind of the people does not need the possession or use of firearms and ammunitions.

“The prosecution even admits and to quote:

‘The defense of double jeopardy, while unquestionably available to the accused, had not been clearly shown to be invokable(sic) at this point in time.’

“But the rule says otherwise as previously stated as provided for under Section 1 of Rule 117 of the Rules of Court.

“Thus, if ever the accused is caught in possession of a firearm and ammunition which is separate and distinct from the crime of subversion and is not a necessary ingredient thereof and the court believed so, the prosecution will have to file another information as they may wish. The court therefore has to grant the motion to quash on the aforesaid grounds, subject to Section 5 of Rule 117, considering that the only offense to which the accused in this case may be placed in jeopardy is Subversion and not Illegal Possession of Firearms and Ammunitions.

“The prosecution may file any information as warranted within ten (10) days from receipt of this order otherwise the court will order the release of the accused, unless he is in custody for some other offense.”[17] (Emphasis ours)

Petitioner’s motion for reconsideration[18] was also denied in an order dated December 28, 1990.[19]

The petitioner elevated the case to the Court of Appeals through a petition for certiorari, docketed as CA-G.R. SP No. 24273. However, the appellate court found that the trial court did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in quashing the questioned Information. In dismissing the petition, the appellate court, in its decision dated May 27, 1991, basically reiterated the aforequoted ruling of the trial court.

Petitioner now comes to this Court, claiming that: (1) the decision of the Court of Appeals is not in accord with

the law and applicable jurisprudence; and (2) it was deprived of due process to prosecute and prove its case against private respondent Antonio Tujan in Criminal Case No. 1789.

We agree with the petitioner.

The Court of Appeals considered as duplicitous the Information for violation of P.D. No. 1866 filed against private respondent Antonio Tujan. It ruled:

“The foregoing information (for Illegal Possession of Firearm and Ammunition in Furtherance of Subversion) filed before the Makati court shows that the main case is subversion considering that there is an allegation that the alleged illegal possession of firearms was made ‘in furtherance of or incident to, or in connection with the crime of subversion.’ Also, the information alleged likewise that the accused is a member of a communist party of the Philippines and its front organization. Basically, the information refers to the crime of Subversion qualified by Illegal Possession of Firearms. x x x.”[20]

The ruling of the Court of Appeals is erroneous.

Section 1 of Presidential Decree No. 1866, under which Antonio Tujan is charged in Criminal Case No. 1789 before the Regional Trial Court of Makati (Branch 148), provides as follows:

“Section 1. Unlawful Manufacture, Sales, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. – The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

“If homicide or murder is committed with the use of an unlicensed firearms, the penalty of death shall be imposed.

“If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

“The penalty of reclusion temporal in its maximum period to reclusion perpetua 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.

“The penalty of prision mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.” (Emphasis ours)

The above-quoted provisions of P.D. No. 1866 are plain and simple. Under the first paragraph of Section 1, the mere possession of an unlicensed firearm or ammunition is the crime itself which carries the penalty of reclusion temporal in its maximum period to reclusion perpetua. The third paragraph of the same Section makes the use of said firearm and ammunition “in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion” a circumstance to increase the penalty to death. Thus, the allegation in the Information in Criminal Case No. 1789 that the unlicensed firearm found in the possession of Antonio Tujan, “a member of the communist party of the Philippines and its front organization,” was used “in furtherance of or incident to, or in connection with the crime of subversion” does not charge him with the separate and distinct crime of Subversion in the same Information, but simply describes the mode or manner by which the violation of Section 1 of P.D. No. 1866 was committed[21] so as to qualify the penalty to death.

There is, therefore, only one offense charged in the questioned information, that is, the illegal possession of

firearm and ammunition, qualified by its being used in furtherance of subversion.[22] There is nothing in P.D. No. 1866, specifically Section 1 thereof, which decrees categorically or by implication that the crimes of rebellion, insurrection or subversion are the very acts that are being penalized. This is clear from the title of the law itself which boldly indicates the specific acts penalized under it:

“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.” (Emphasis ours)

On the other hand, the previous subversion charge against Antonio Tujan in Criminal Case No. 64079, before the Regional Trial Court of Manila (Branch 45), is based on a different law, that is, Republic Act No. 1700, as amended. Section 3 thereof penalizes any person who “knowingly, wilfully and by overt act affiliates with, becomes or remains a member of a subversive association or organization x x x.” Section 4 of said law further penalizes “such member [of the Communist Party of the Philippines and/or its successor or of any subversive association] (who) takes up arms against the Government.” Thus, in the present case, private respondent Antonio Tujan could be charged either under P.D. No. 1866 or R.A. No. 1700,[23] or both.

This leads us to the issue of whether or not private respondent Antonio Tujan was placed in double jeopardy with the filing of the second Information for Illegal Possession of Firearm and Ammunition in Furtherance of Subversion.

We rule in the negative.

Article III of the Constitution provides:

“Sec. 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.” (Emphasis ours)

Complementing the above constitutional provision, Rule 117 of the Revised Rules of Court states:

“SEC. 7. Former conviction or acquittal; double jeopardy. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

x x x x x x x x.”

The right of an accused against double jeopardy is a matter which he may raise in a motion to quash to defeat a subsequent prosecution for the same offense. The pertinent provision of Rule 117 of the Revised Rules of Court provides:

“SEC. 3. Grounds. – The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x

(h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the

offense charged. (2a)” (Emphasis ours)

In order that the protection against double jeopardy may inure to the benefit of an accused, the following requisites must have obtained in the first criminal action: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge;^[24] and (d) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his express consent.^[25]

Suffice it to say that in the present case, private respondent’s motion to quash filed in the trial court did not actually raise the issue of double jeopardy simply because it had not arisen yet. It is noteworthy that the private respondent has not even been arraigned in the first criminal action for subversion. Besides, as earlier discussed, the two criminal charges against private respondent are not of the same offense as required by Section 21, Article III of the Constitution.

It is clear from the foregoing, that the assailed decision of the Court of Appeals is not in accordance with the law and jurisprudence and thus should be reversed.

While we hold that both the subversion charge under R.A. No. 1700, as amended, and the one for illegal possession of firearm and ammunition in furtherance of subversion under P.D. No. 1866, as amended, can co-exist, the subsequent enactment of Republic Act No. 7636 on September 22, 1992, totally repealing R.A. No. 1700, as amended, has substantially changed the complexion of the present case, inasmuch as the said repealing law being favorable to the accused-private respondent, who is not a habitual delinquent, should be given retroactive effect.^[26]

Although this legal effect of R.A. No. 7636 on private-respondent’s case has never been raised as an issue by the parties – obviously because the said law came out only several months after the questioned decision of the Court of Appeals was promulgated and while the present petition is pending with this Court – we should nonetheless fulfill our duty as a court of justice by applying the law to whomsoever is benefited by it regardless of whether or not the accused or any party has sought the application of the beneficent provisions of the repealing law.^[27]

That R.A. No. 7636 should apply retroactively to accused-private respondent is beyond question. The repeal by said law of R.A. No. 1700, as amended, was categorical, definite and absolute. There was no saving clause in the repeal. The legislative intent of totally abrogating the old anti-subversion law is clear. Thus, it would be illogical for the trial courts to try and sentence the accused-private respondent for an offense that no longer exists.^[28]

As early as 1935, we ruled in *People vs. Tamayo*:^[29]

“There is no question that at common law and in America a much more favorable attitude towards the accused exists relative to statutes that have been repealed than has been adopted here. Our rule is more in conformity with the Spanish doctrine, but even in Spain, where the offense ceases to be criminal, prosecution cannot be had. (1 Pacheco Commentaries, 296)” (Emphasis ours)

Where, as here, the repeal of a penal law is total and absolute and the act which was penalized by a prior law ceases to be criminal under the new law, the previous offense is obliterated.^[30] It is a recognized rule in this jurisdiction that a total repeal deprives the courts of jurisdiction to try, convict and sentence persons charged with violation of the old law prior to the repeal.^[31]

With the enactment of R.A. No. 7636, the charge of subversion against the accused-private respondent has no more legal basis and should be dismissed.

As regards the other charge of illegal possession of firearm and ammunition, qualified by subversion, this charge should be amended to simple illegal possession of firearm and ammunition since, as earlier discussed, subversion

is no longer a crime.

Moreover, the offense of simple illegal possession of firearm and ammunition is now bailable under Republic Act No. 8294 which was enacted on June 6, 1997. R.A. No. 8294 has amended Presidential Decree No. 1866, as amended, by eliminating the provision in said P.D. that if the unlicensed firearm is used in furtherance of subversion, the penalty of death shall be imposed.[32] Under the new law (R.A. No. 8294), the penalty prescribed for simple illegal possession of firearm (.38 caliber) is now reduced to prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000.00).[33] The reduced penalty of imprisonment - which is four (4) years, two (2) months and one (1) day to six (6) years - entitles the accused-private respondent to bail. Considering, however, that the accused-private respondent has been detained since his arrest on June 5, 1990 up to the present (as far as our record has shown), or more than seven (7) years now, his immediate release is in order. This is so because even if he were convicted for illegal possession of firearm and ammunition, the length of his detention while his case is pending has already exceeded the penalty prescribed by the new law.

WHEREFORE, the assailed decision of the Court of Appeals dated May 27, 1991, in CA-G.R. SP No. 24273, including the orders dated October 12, 1990 and December 28, 1990 of the Regional Trial Court of Makati (Branch 148), National Capital Region, in Criminal Case No. 1789, are hereby REVERSED and SET ASIDE.

The subversion charge against accused-private respondent Antonio A. Tujan in Criminal Case No. 64079 of the Regional Trial Court of Manila, Branch 45, is hereby DISMISSED.

The other Information for illegal possession of firearm and ammunition in furtherance of subversion against the same accused in Criminal Case No. 1789 of the Regional Trial Court of Makati, Branch 148, is DEEMED AMENDED to Simple Illegal Possession of Firearm and Ammunition. The accused-appellant is hereby ordered RELEASED IMMEDIATELY from detention for the reason stated above, unless he is being detained for any other offense.

This decision is IMMEDIATELY EXECUTORY.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, and Purisima, JJ., concur.

[1] Penned by then Associate Justice Justo P. Torres, Jr. and concurred in by then Associate Justice Ricardo J. Francisco and Associate Justice Consuelo Ynares-Santiago, Annex "N," Petition; Rollo, pp. 95-106.

[2] Annexes "E" & "E-1," Petition; Rollo, pp. 32, 38.

[3] Rollo, p. 39.

[4] Annexes "E" & "E-1," supra.

[5] Ibid.

[6] Annex "N," Petition; Rollo, pp. 98-99.

[7] Annex "B," Petition; Rollo, p. 27.

[8] Annex "C," Petition; Rollo, p. 28.

- [9] Annex “D,” Petition; Rollo, p. 31.
- [10] Annex “E,” Petition; Rollo, p. 32.
- [11] Rollo, p. 33.
- [12] Ibid., p. 34.
- [13] Annex “G,” Petition; Rollo, p. 41.
- [14] Rollo, p. 43.
- [15] Rollo, p. 43.
- [16] Annex “H,” Petition; Rollo, p. 45.
- [17] Annex “H,” Petition; Rollo, pp. 48-50.
- [18] Annex “I,” Petition; Rollo, p. 51.
- [19] Annex “J,” Petition; Rollo, p. 55.
- [20] Rollo, p. 99.
- [21] See *Tangan vs. People, et al.*, No. L-73963, November 5, 1987, 155 SCRA 435, 444.
- [22] See *Misolas vs. Panga, et al.*, G.R. No. 83341 [En Banc], January 30, 1990, 181 SCRA 648.
- [23] Ibid., p. 655.
- [24] *Gaspar vs. Sandiganbayan*, 144 SCRA 416.
- [25] *People vs. Obsania*, 132 Phil. 782, 788; *People vs. Santiago*, 174 SCRA 143; *Ada vs. Virola*, 172 SCRA 336; *People vs. Pineda*, 219 SCRA 1; *People vs. Vergara*, 221 SCRA 560; *Paulin vs. Gimenez*, 217 SCRA 386.
- [26] Article 22, Revised Penal Code.
- [27] See *People vs. Simon*, G.R. No. 93028, July 29, 1994 (En Banc); 234 SCRA 555, 570-571, citing *People vs. Moran, et al.*, 44 Phil. 387 [1923].
- [28] *People vs. Tamayo*, 61 Phil. 225, 227 [1935].
- [29] Ibid.
- [30] Ibid.
- [31] *People vs. Sindiong, et al.*, 77 Phil. 1000; *People vs. Jacinto, O.G.*, November 17, 1958, p. 7585, 7587.
- [32] Section 1, par. 3, P.D. No. 1866, as amended.
- [33] Section 1, par. 1, R.A. No. 8294.

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