

## **DIOSDADO MALLARI, PETITIONER, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

*G.R. No. 110569. December 09, 1996*

Ponente: FRANCISCO, J.

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### **FRANCISCO, J.:**

Given credence by respondent Court of Appeals is the following narration of the factual antecedents of this case by the People.

"Sometime on December 27, 1990, at around 2:30 p.m., Pat Manipon and Pfc. Esguerra, who were both then assigned at the Capas Police Station, received reliable information that appellant Diosdado Mallari, who has a standing warrant of arrest in connection with Criminal Case No. 471 for homicide in 1989, was seen at Sitio 14, Sta. Rita, Capas, Tarlac (tsn, April 18, 1991, pp. 3-4; June 27, 1991, p.3).

'Immediately upon receipt of such information, Pfc. Manipon, accompanied by Pat. Esguerra and Pat. Narciso Simbulan, with personal knowledge of the existence of a standing warrant of arrest against appellant in connection with Criminal Case No. 471 for Homicide, immediately proceeded to Sitio 14, Sta. Rita, Capas, Tarlac. Upon reaching the place, the arresting officers surrounded the house of appellant, arrested him and told him to remain stationary. Thereupon, the arresting officers searched him and found a homemade gun (paltik) with one M-16 live ammunition (tsn, April 18, 1991, pp. 5-6, 8; June 27, 1991, pp. 3-5, 7).

'Appellant was handcuffed and brought to the Capas Police Station where he was endorsed to the chief investigator while the homemade gun and live ammunition were endorsed to the property custodian. The incident was then entered in the police blotter after which the spot and investigation reports were prepared (tsn, June, April 18, 1991, p. 5, 10; June 27, 1991, p. 6)."[1]

After investigation, the petitioner was charged with the crime of Illegal Possession of Firearms and Ammunition, and pleaded not guilty on arraignment. Trial on the merits ensued, after which, the Regional Trial Court of Capas, Tarlac convicted petitioner of the crime charged, as follows:

"WHEREFORE, accused Diosdado Mallari is hereby found guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunitions and hereby sentences him to suffer an indeterminate penalty of seventeen years, four months and one day as minimum to eighteen years and eight months as maximum.

"Accused, who is a detention prisoner is given full credit for the period of his preventive imprisonment, after compliance with Article 29 of the Revised penal Code.

"SO ORDERED."[2]

Assailed in this petition for review on certiorari is the decision of respondent Court of Appeals affirming in toto the abovequoted decision of the trial court. In its decision, the Court of Appeals held that the testimonies of the prosecution witnesses, Pfc. Manipon and Pat Esguerra "unequivocally proved that the handgun (paltik) and the live M-16 ammunition were recovered from the person of the appellant (herein petitioner)".[3] The Court of Appeals further held that the search conducted on the petitioner and the seizure of the subject firearm and

ammunition were done on the occasion of a lawful arrest as there was then an outstanding warrant for petitioner's arrest in Criminal Case No. 471.[4] It likewise found that petitioner was arrested while committing the crime of illegal possession of firearms in the presence of the police authorities. Thus, anent petitioner's insistence that there was no standing warrant for his arrest, thereby making the search and seizure invalid, the Court of Appeals stated that, "under the prevailing factual milieu, even in the absence of a warrant, still appellant's arrest would fall squarely within the context of Rule 113, Sec. 5 (b), Rules of Court x x x"[5] which cites the instances when a warrantless arrest may be valid.

In seeking the reversal of his conviction, petitioner questions the factual finding of the Court of Appeals that at the time of his arrest, there was a standing warrant against him in Criminal Case No. 471. Petitioner posits that the absence of the requisite warrant is fatal and renders the search and seizure unlawful. Corrolarily, the handgun and ammunition seized from him are inadmissible in evidence. Petitioner also contends that it was error for the Court of Appeals to conclude that the search and seizure could be validly effected as it was done on the occasion of a lawful warrantless arrest, particularly, while in the act of committing the crime of illegal possession of firearms in the presence of the arresting officers. Finally, petitioner claims that even assuming that the handgun and ammunition had in fact been found in his possession, the prosecution failed to prove that he had no license therefor and absent this essential element of the crime of illegal possession of firearms, it was manifest error for the Court of Appeals to uphold his conviction.

The threshold issue is factual: whether or not there indeed existed a standing warrant for the arrest of the petitioner. At the outset, this Court reiterates the general rule that when supported by substantial evidence, factual findings of the Court of Appeals are final and conclusive and may not be reviewed on appeal.[6] A careful scrutiny of the records of the case at bench leads this Court to concur with the Court of Appeals in its finding that when the petitioner was arrested, there was then a standing warrant of arrest against him in connection with Criminal Case No. 471. This fact is manifest from the testimonies of the arresting officers which the defense failed to rebut during trial.

Pfc. Danilo Manipon:

"Q

When you arrested Diosdado Mallari Mr. Witness, were you carrying a warrant of arrest then?

A

No, sir.

Q

Neither you did not have with you a seize and search warrant and despite the fact that you have no search and seize warrant you have still pursued in getting the ammunition you have just mentioned, the home made gun and the live bullet?

A

Yes, sir.

COURT:

You are referring to what case?

A

Homicide, ma'am, Criminal Case No. 471.

COURT:

Alright.

Q

Was the seizure of the home made gun related to the warrant of arrest being issued by this honorable court with respect to criminal case No. 471?

COURT:

Will you clarify, I heard him saying that he did not have a warrant of arrest, is that correct?

A

Yes, ma'am.

COURT:

What about with respect to Criminal Case No. 471 you do not have a warrant of arrest issued by this court?

A

There was, ma'am, I know that there was a warrant of arrest issued, that is why we proceeded to Sitio 14, ma'am.

COURT:

Alright you proceeded to Sitio 14 because of the warrant of arrest issued by this court to to apprehend Diosdado Mallari in Criminal Case No. 471, is that correct?

A

Yes, ma'am.[7] [Underscoring supplied]

Pat. Jose Esguerra:

"Q

Do you have with you at the time when you arrested or when you seized the gun and the live ammunition, a search and seize warrant?

A

None, your honor.

COURT:

Q

Did you have with you the warrant of arrest you mentioned with respect to CR. No. 471?

A

When we went to him, we did not have a warrant of arrest because we were in a hurry but when we returned, we reached the warrant officer, you honor.

Q

Where did you return?

A

When we returned to the Capas Police Station there was the warrant officer already, your Honor.

Proceed.

ATTY. DULDULAO:

Q

You said you did not bring the warrant of arrest when you arrested the the accused how did you come to know that Diosdado Mallari was indeed the accused despite the fact that you did not bring with you the warrant of arrest then?

A

When we went there, sir, we did not have a warrant of arrest because we were in a hurry if we will wait our warrant officer, we may not reach Diosdado Mallari, but we know that he has a standing warrant of arrest."[8][Underscoring provided]

Further bolstering the arresting officers' testimonies is the absence of any motive on their part to falsely testify against the petitioner. And it has been repeatedly held that without proof of such motive, law enforcers are presumed to have regularly performed their duties.[9] Thus, absent strong and convincing proof to the contrary, this Court is bound by the presumption that the arresting officers were aware of the legal mandates in effecting an arrest and strictly complied with the same.

At this juncture, the Court would like to stress that this is not a case of a warrantless arrest but merely an instance of an arrest effected by the police authorities without having the warrant in their possession at that precise moment. Finding as it does, this Court deems it unnecessary to delve into the applicability of Section 5, Rule 113 of the Rules of Court and on the merits of both the petitioner's and the Office of the Solicitor General's arguments with respect thereto. The applicable provision is not Section 5, Rule 118 of the Rules of Court on warrantless arrests, but Section 7, Rule 113 which provides as follows:

"Sec. 8. Method of Arrest by officer by virtue of warrant. -- When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity so to inform him or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable." [Underscoring supplied]

The abovequoted rule clearly allows a police officer to effect arrest without the warrant in his possession at the time of the arrest. Thus, appellant's arrest being lawful, the search and seizure made incidental thereto is likewise valid, albeit conducted without a warrant.[10] In the case of *People v. Acol*,[11] where the unlicensed firearms were found when the police team apprehended the accused for robbery and not for illegal possession of firearms and ammunition, this Court held that the unlicensed firearms may be seized without the necessity of obtaining a search warrant. Expounding thereon, it stated that:

"` x x x The illegality of the search is independent from the illegal possession of prohibited arms. The illegality of the search did not make legal an illegal possession of firearms. When, in pursuing an illegal action or in the commission of a criminal offense, the offending police officers should happen to discover a criminal offense being committed by any person, they are not precluded from performing their duties as police officers for the apprehension of the guilty and the taking of the corpus delicti."'[12]

Finally, petitioner contends that the prosecution failed to discharge its burden of proving that he did not have the requisite license for the firearm and ammunition found in his possession. Anent this contention, the Office of the Solicitor General does not even attempt to point out any evidence on record of petitioner's non-possession of a license or permit for there really is no such evidence. It relies on the theory that as the firearm involved is a homemade gun or "paltik" and is illegal per se, it could not have been the subject of license.[13] This, according to the Solicitor General, dispenses with the necessity of proving that petitioner had no license to possess the firearm. This is where the prosecution's case fails and miserably so. This Court has ruled that:

"We do not agree with the contention of the Solicitor General that since a paltik is a homemade gun, is illegally manufactures as recognized in *People vs. Fajardo*, and cannot be issued a license or permit, it is no longer necessary to prove that it is unlicensed. This appears to be at first blush, a very logical proposition. We cannot, however, yield to it because *Fajardo* did not say that paltiks can in no case be issued a license or permit and that proof that a firearm is a paltik with proof that it is unlicensed.[14]

In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the corresponding license or permit to possess the same.[15] The latter is a negative fact which constitutes an essential ingredient of the offense of illegal possession, and it is the duty of the prosecution not only to allege it but also to prove it beyond reasonable doubt.[16] In the case at bench, the testimony of a representative of, a certification from the PNP (FEU) that petitioner was not a licensee of the said firearm would have sufficed for the prosecution to prove beyond reasonable doubt the second element of the crime of illegal possession.[17] The absence of the foregoing is fatal to the prosecution's case and renders petitioner's conviction erroneous.

True that in the case of *People vs. Mesal*[18], this Court dispensed with a certification from the Firearms and Explosives Unit (FEU) of the Philippine National Police (PNP) to establish the alleged lack of license or permit on the part of the accused-appellant to possess the M-14 rifle found in his possession. This was, however, premised on the fact that:

"The records reveal that the allegation was successfully substantiated by other evidence which firmly and undisputably established that accused-appellant did not have and could not possibly have, the requisite license or authority to possess the M-14 rifle concerned. Technical Sgt. Alfredo Romasanta, Supply Officer of the PC-INP 253rd PC Company, testified that the rifle concerned is the type of weapon which only military men are authorized to possess x x x."[19]

The above enunciated doctrine is not applicable to this case. The records are bereft of any evidence similar to that offered by the prosecution in *Mesal* to prove that the petitioner "did not have and could not possibly have" the requisite license or authority to possess the "paltik" and the M-16 live ammunition.

In view of the foregoing, the petition is hereby GRANTED and the assailed decision is REVERSED and SET ASIDE. Petitioner Diosdado Mallari is hereby ACQUITTED for insufficiency of evidence and ordered immediately released unless there are other legal grounds for his continued detention.

### **SO ORDERED.**

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

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[1] DECISION dated February 15, 1993 in CA-GR CR No. 12481, pp. 1-2 citing the Appellant's Brief, pp. 3-4; Rollo, pp. 23-24.

[2] DECISION dated August 20, 1991 of Br. 66 of the RTC of Capas, Tarlac in Crim Case No. 531.

[3] Supra, p. 3; Rollo, p. 25.

[4] Supra, p. 4; Rollo, p. 26.

[5] Supra.

[6] Guinsatao vs. Court of Appeals, 218 SCRA 708, 712 [1993]; Bustamante vs. Court of Appeals, 193 SCRA 603 [1991]; Industrial Textile Manufacturing Company of the Philippines, Inc. vs. LPJ Enterprises, Inc., 217 SCRA 322 [1993]; Guevarra vs. Court of Appeals, 217 SCRA 550 [1993].

[7] TSN, Pfc. Danilo Manipon, April 18, 1991, pp. 7-9.

[8] TSN, Pat Jose Esguerra, June 27, 1991, pp. 6-7.

[9] People vs. Solon, 244 SCRA 554 [1995]; People vs. Adaya, 245 SCRA 14 [1995]; People vs. Morico, 246 SCRA 214 [1995]

[10] Section 12, Rule 126 of the Rules of Court.

**[11] 232 SCRA 406.**

[12] Id., at p. 413 citing People vs. Cruz, 165 SCRA 135; Magoncia vs. Palacio, 90 Phil 771 [1948].

[13] Appellee's Brief citing Bumadilla vs. Court of Appeals, December 3, 1990, Minute Resolution, pp. 15-16; Rollo, pp. 169-170.

[14] People vs. Ramos, 222 SCRA 557, 578 [1993].

[15] People vs. Solayao, G.R. No. 119220, September 20, 1996.

[16] Id., People vs. Tiozon, 198 SCRA 368 [1991].

[17] People vs. Solayao, id.

**[18] 244 SCRA 166 [1995].**

[19] Id., at p. 169.

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