

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO FERNANDEZ, ACCUSED-APPELLANT.*G.R. No. 113474. December 13, 1994*

Ponente: PUNO, J.

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The fiesta of Barangay Tanabag, Puerto Princesa City, on June 24, 1988, was marred by the death of Marianito Merced. He died of internal hemorrhage caused by multiple gunshot wounds inflicted by accused-appellant Alfredo Fernandez. Accused-appellant Fernandez was found guilty of the crimes of Homicide[1] and for violation of Presidential Decree (P.D.) 1866 (Illegal Possession of Firearm).[2] For the homicide charge, he was sentenced by the trial court to an indeterminate penalty of EIGHT (8) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prison mayor in its medium period as minimum to FOURTEEN (14) YEARS, and TWO (2) MONTHS of reclusion temporal, in its medium period, as maximum, with the accessory penalty of civil interdiction and absolute disqualification for the duration of the penalty. For violation of P.D. 1866, he was sentenced to an indeterminate penalty of TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal in its minimum period as minimum, to EIGHTEEN (18) YEARS and NINE (9) MONTHS of reclusion temporal in its maximum period as maximum. He was also ordered to pay the heirs of deceased Marianito Merced, Jr., as civil indemnity the sum of THIRTY THOUSAND PESOS (P30,000.00) and the costs.[3]

The prosecution evidence shows that on June 24, 1988, Isagani Merced, his younger brother Marianito Merced, Nonoy Stag, Barangay Tanod Melchor Nollan, Santiago Abrina, Carlito Radam, and Moises Radam were among the house guests of Barrio Captain Ruben Asebuque of Barangay Tanabag, Puerto Princesa City. They had a drinking spree. Arlando Fernandez, son of accused-appellant Alfredo Fernandez, came and earnestly invited them to their house. He bragged that his father had butchered a dog for "pulutan."

At 3:00 o'clock in the afternoon of that same day, the group left and proceeded to the house of accused-appellant.[4] There they found the group of Antonio Alcantara, Julio Josol, Sonny Gallego, Norto Dalabajan, and Arlando Fernandez. The two (2) groups then joined each other and continued drinking.

The guests were imbibing hard drinks at the lawn. It was Isagani Merced[5] who saw accused-appellant descend from his room. He went behind his brother, Marianito Merced with a gun concealed in his jacket.[6] He swiftly aimed his gun at Marianito Merced's shoulder and pulled its trigger. Marianito slumped on the ground. The loud shot caused the guests to scamper away. Isagani froze as he was only two (2) meters away from accused-appellant.[7] He then heard a clicking sound and accused-appellant faced him. Gripped by fear, he ran away, hid in the bushes of the highway, and reported the shooting incident to Barangay Captain Ruben Asebuque.[8]

Barangay Tanod Nollan[9] arrived just in time to witness the shooting. He vividly saw accused-appellant pull the trigger and then removed the cartridge. "Ano ba yan," he shouted.[10] Startled, accused-appellant chased him but later gave up.

Marianito Merced had no chance to survive the assault. In his autopsy report, Dr. Rudolph V. Baladad, Sr., certified that the deceased sustained twenty-one (21) gunshot wounds over the right arm and over the anterior right chest wall below the right nipple.[11]

Immediately after the incident, accused-appellant fled and hid in the forest of Barangay Concepcion. After three (3) days in the mountains, he paddled his way to Barangay Tagburos then proceeded to Abanico, Puerto Princesa City. There he stayed at his sister-in-law's house.

Four (4) days thereafter, or at around 8:00 o'clock in the evening of June 28, 1988, Patrolman Roberto Pamintuan of the Investigation and Follow-up Section of the Integrated National Police, Puerto Princesa Station, received a confidential report on the hiding place of accused-appellant.[12] Acting on that information, Pat. Roberto Pamintuan, Pat. Servando Alonzo, and Pat. Golifardo rushed to the house indicated, cordoned the area, and identified themselves as police authorities. Accused-appellant gave himself up. The owner of the house then turned over accused-appellant's suitcase to the police officers. They inspected the suitcase without any objection from accused-appellant. The suitcase yielded a homemade twelve (12) gauge shotgun, one (1) empty shell, and one (1) live ammunition. Accused-appellant had no license to carry the said shotgun.[13] He was arrested and taken to the police headquarters.

Accused-appellant Fernandez[14] denied shooting the victim. He declared that on June 24, 1988, he was gravely ill with malaria. Allegedly, his wife, Magdalena Fernandez, was massaging him in their bedroom to arrest his chill.[15]

It was then raining and six (6) men took shelter in their house. Minutes later, a group of eight (8) men led by Isagani Merced and Marianito Merced arrived and started drinking gin.[16] The night was pierced by a loud blast of gunshot. His Wife looked downstairs and saw a dead body in their yard. Terrified, she fled with their youngest son leaving him and their three (3) other sons.[17]

Fear that he would be implicated in the crime gripped accused-appellant. He also left home and hid in the highlands of Barangay Concepcion.[18] After three (3) days of hiding, he trekked down to Sitio Abanico where he was apprehended.

His wife returned home three (3) days after the incident. He was nowhere to be found. It was only then that she reported the killing and her missing husband to the Police Station of Puerto Princesa City.

After trial, the court in a Joint Decision found accused-appellant guilty of Homicide and Illegal Possession of Firearm and imposed the penalties adverted to earlier.

Accused-appellant thus appealed to the Court of Appeals. In his Brief, he assigned the following errors:

I

THE TRIAL COURT ACTED WITHOUT JURISDICTION IN CONVICTING APPELLANT OF HOMICIDE AND ILLEGAL POSSESSION OF FIREARM, IN DENIAL OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND AGAINST DOUBLE JEOPARDY.

II

THE TRIAL COURT ACTED WITHOUT JURISDICTION IN ADMITTING EVIDENCE THAT WERE CONSTITUTIONALLY INADMISSIBLE.

II

THE TRIAL COURT ACTED WITHOUT JURISDICTION IN DENYING APPELLANT HIS CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT UNLESS PROVEN GUILTY BEYOND REASONABLE DOUBT.

On January 31, 1994, the Fourteenth Division of the Court of Appeals rendered judgment modifying the assailed Decision, viz:

"WHEREFORE, in Criminal Case No. 7517, the Court finds accused Alfredo Fernandez GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, described and penalized under Article 248 of the Revised Penal Code. The penalty for murder under said provision is reclusion temporal in its maximum period to death. In view, however, of the provision of the 1987 Constitution, banning death sentences, and there being no aggravating nor mitigating circumstances attending the offense, said accused is hereby sentenced to RECLUSION PERPETUA (People vs. Deslate, 192 SCRA 644, 648). Accused is further sentenced to pay the heirs of the deceased the amount of P50,000.00 as indemnity for death. Pursuant to Section 13, Rule 124 of the 1985 rules on Criminal Procedure, the Court hereby ELEVATES the case and record to the Hon. Supreme Court.

As to Criminal Case No. 7518, for Illegal Possession of Firearm and Ammunition, the Court finds accused Alfredo Fernandez GUILTY BEYOND REASONABLE DOUBT of said crime, described and penalized under P.D. 1866, as amended, which is reclusion temporal in its maximum period to reclusion perpetua. There being no modifying circumstances attending the offense, and applying the Indeterminate Sentence Law, said accused is hereby sentenced to the penalty of TEN (10) years and One (1) day of prison mayor, as minimum, to EIGHTEEN (18) years, EIGHT (8) months and ONE (1) day of reclusion temporal, as maximum. Accordingly, the penalty imposed by the lower court in said case is hereby MODIFIED.

The shotgun, the empty shell and the live ammunition (Exhibits A, B, B-1) are FORFEITED in favor of the Government.

IT IS SO ORDERED."[19]

Considering the modification of the penalty to reclusion perpetua in Criminal Case No. 7517 and conformably with Article VIII, section 5, paragraph 2(d) of the Constitution, the Court of Appeals certified and elevated the entire records of the case to us for review.

We affirm the judgment of conviction.

Accused-appellant Fernandez invokes the rule of double jeopardy and procedural due process. He urges that the right against double jeopardy proscribes simultaneous prosecution for several offenses made out of the same act.

We reject the submission of accused-appellant. The two (2) Informations against accused-appellant charged him with two (2) distinct offenses, i.e., murder and illegal possession of firearm. The first crime is punished by Article 248 of the Revised Penal Code while the second crime is punished by a special law, P.D. 1866. The charge for Illegal Possession of Firearm is not necessarily included in the charge for Murder. Accused-appellant cannot therefore complain that he has been charged with two (2) offenses on the basis of the same act.

The second assignment of error hardly deserves any consideration. The rule that searches and seizure must be supported by a valid warrant is not absolute. Jurisprudence recognizes five (5) generally accepted exceptions to the warrant requirement.[20] They are: (1) search incidental to a lawful arrest,[21] (2) search of moving vehicles,[22] (3) seizure in plain view,[23] (4) customs searches,[24] and (5) when the accused himself waives his right against unreasonable search and seizure.[25]

The evidence reveals that on June 28, 1988, Pat. Pamintuan, Pat. Alonzo, and Pat. Golifardo cordoned the house where accused-appellant sought refuge at Sitio Abanico. They were not armed with a warrant of arrest. Without any protest, however, accused-appellant came out of the house and gave himself up to the police officers. The owner of the house then turned over his luggage to said police authorities. With the acquiescence of accused-appellant, his suitcase was searched and it yielded the subject firearm and ammunition. He then signed and acknowledged a Receipt certifying that one home-made shotgun with one (1) live ammunition and one (1) empty shell was confiscated from him.[26] In his cross-examination, he stated:

"Q : You said that on June 28, 1988, several persons requested you to go down the house of the sister of your wife in Sitio Abanico, Puerto Princesa City?

A : Yes, ma'am.

Q : And they identified themselves as Policemen, is that correct?

A : Yes, ma'am.

Q : And you knew for a fact that they were Policemen before you went down, is that correct?

A : Yes, ma'am.

Q : And that you likewise stated a while ago your purpose in going to Puerto Princesa coming from Barangay Concepcion was to report the dead person near your house on June 24, 1988, is that correct?

A : Yes, ma'am.

Q : And considering Mr. Witness, that before you went down you knew for a fact that they were Policemen near the house of your sister-in-law, did you not take advantage the opportunity and reported the matter?

A : No, ma'am."[27]

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"Q : After you were apprehended by the Police on June 28, 1988, a certain document has been signed by you is that correct?

A : Yes, ma'am. "[28]

Under this special circumstance, it cannot be held that accused-appellant was subjected to a search which may be stigmatized as a violation of his constitutional right against unreasonable search and seizure.[29] He waived his constitutional right against unreasonable search and seizure by his acquiescence. In the recent case of *People vs. Felimon Ramos*,[30] we ruled, viz:

"When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof (Cooley, *Constitutional Limitations*, 8th ed., vol. I, page 631.) The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly."

And, the product of such a lawful search is admissible in evidence.[31]

Since accused-appellant was found in *flagrante delicto* with possession of an unlicensed firearm and ammunition, his arrest without warrant was proper. Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure provides that a peace officer may, without a warrant, arrest a person who is actually committing an offense in his presence.

Lastly, accused-appellant insists that his guilt was not proven beyond reasonable doubt. He anchored his defense on alibi. We have ruled, time and again, that alibi cannot prevail over the positive testimony of prosecution

witnesses and their clear identification of the accused as the perpetrator of the crime. In the case at bench, prosecution witness Isagani Merced unequivocally identified accused-appellant as his brother's assailant. In his direct examination, he testified:

"Q : For what purpose did you run away?

A : Because I already saw my brother already dead, my purpose is to save my life.

Q : Who killed your brother?

A : Alfredo Fernandez.

Q : How did he kill your brother?

A : He shot him."[32]

x x x x x x x x

"Q : In that occasion when you were just two meters away from the accused did you do anything to your brother?

A : Because I was shock of the incident, I just stared at him."[33]

Barangay Tanod Nollan corroborated Isagani Merced in the identification of accused-appellant. He testified:

"Q : And while you were near the house of Alfredo Fernandez, what else transpired if any?

A : I saw Alfredo Fernandez went down his house bringing a gun x x x .

Q : Do you know where Alfredo Fernandez was proceeding to when he went out the house wearing a jacket and having a gun?

A : He is going to Marlanito Merced.

"Q : Will you kindly demonstrate before the Court how Alfredo Fernandez was carrying that gun which you said he was according to you hiding in his jacket?

A : Yes, sir.

Q : Demonstrate before this Court.

(Witness demonstrating holding the gun with his right hand and on a 45 degrees position and the left hand holding the barrel pointing the tip of the barrel to Merced on his right shoulder)

Q : How far were you when you saw Alfredo Fernandez doing what you have just demonstrated?

A : About 2 meters more or less."[34]

In checkered contrast, the testimonies of accused-appellant and his wife do not inspire credence. They are contrary to human nature and general experience of man. It defies imagination how Magdalena Fernandez could have left their house with her youngest son unmindful of her gravely sick husband and other children. Also, despite accused-appellant's ailment, he allegedly intentionally exposed himself to a higher risk of aggravation by spending three (3) days in the forest. This flight from the locus criminis is a strong indication of a guilty mind.[35] If accused-appellant was innocent of the crimes charged, he could have helped the fallen Marianito Merced who was shot in his own yard. He could have taken him to the nearest hospital. Or, he could have reported the incident to Barangay Captain Ruben Asebuque whose house is only two hundred (200) meters away. But he did neither of these Good Samaritan acts. Instead, he unabashedly confronted Isagani Merced and Barangay Tanod Nollan.

The Court of Appeals correctly ruled that the killing is qualified by treachery. The victim was accused-appellant's guest. He was unarmed and unsuspecting. He was merrily drinking with friends when accused-appellant surreptitiously came from his back and shot him at pointblank. There is no doubt, the victim was not in any position to defend himself from the unreasonable and unexpected attack of accused appellant.[36] The wounds sustained by Marianito Merced bespeak of his unpreparedness to defend himself. Clearly, accused-appellant employed means, methods, or forms in the execution of the crime which tend directly and specially to insure its success without risk to himself arising from the defense which the offended party might take.[37]

We also agree with the Court of Appeals in modifying the penalty in Criminal Case No. 7518. As aptly noted by the Court of Appeals, viz:

"The Acting Solicitor General is of the opinion that in respect to Criminal Case No. 7518, the penalty under P.D. 1866 should be reclusion perpetua, citing Section 1 thereof, which provides for a graver penalty if and when 'homicide or murder is committed with the use of an unlicensed firearm.'

It should be observed that the information for illegal possession of firearm did not allege that the firearm was used in the commission of murder. The information for illegal possession of firearm was separate from the information for murder. Under Section 1 of Rule 115, an accused, as one of his rights, is entitled 'To be informed of the nature and cause of accusation against him.' In one case, it was held that an accused charged with simple theft cannot be validly convicted under P.D. 133 which imposes a higher penalty and refers to theft of items the accused is 'working on, using or producing (Matilde vs. Jabson L-38392, Dec. 29, 1975, cited p. 293, Regalado, Remedial Law Compendium, Vol. II, 6th Edition). In the same manner, we hold that accused in the present case cannot be validly convicted for possession of an unlicensed firearm used in the commission of murder, when such circumstance is not specifically alleged in the information, otherwise accused's right to be informed of the nature of the offense charged will be violated. 'All that this constitutional right signifies is that an accused should be given the necessary data as to why he is being prosecuted against' (People vs. Mencias, 147 Phil. 78, 89.)"[38]

IN VIEW WHEREOF, the appealed Decision of the Court of Appeals dated January 31, 1994 is AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Criminal Case No. 7517

The Information which was for Murder reads:

"That on or about the 24th day of June, 1988, at Barangay Tanabag, City of Puerto Princesa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, and while armed with a homemade gun, locally known as 'pogakang,' did then and there willfully, unlawfully and feloniously assault, attack and shoot therewith one MARIANITO MERCED, Jr., thereby inflicting upon him gunshot wounds on the different parts of his body, which wounds were the direct and immediate cause of his death.

CONTRARY TO LAW." Original Records, p. 1.

[2] Criminal Case No. 7518.

The Information reads:

"That on or about the 24th day of June, 1988, at Barangay Tanabag, City of Puerto Princesa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) homemade gun, locally known as 'pogakang,' together with twelve (12) gauge live ammunitions and one (1) (sic) empty shell, without first securing the necessary permit and/or license from proper authorities to possess the same.

CONTRARY TO LAW." Original records, p. 1.

[3] Regional Trial Court, Fourth Judicial Region, Branch 51, Puerto Princesa City, Judge Filomeno A. Vergara, Presiding Judge.

[4] T.S.N. October 26, 1988, p. 4.

[5] Older brother of Marianito Merced, 33 years old, married, farmer, and a resident of Barangay San Rafael, Puerto Princesa City, Id., p. 2

[6] Id., p. 4.

[7] Id., p. 13.

[8] Id., p. 7.

[9] Thirty (30) years old, married, farmer, and a resident of Barangay Tanabag, Puerto Princesa City. T.S.N. February 2, 1989, p. 1.

[10] Id., p. 5.

[11] Exhibit "D."

[12] Twenty-nine (29) years old, married, Member INP, and a resident of San Pedro, Puerto Princesa City. T.S.N. January 12, 1989, pp. 2-3.

[13] Exhibit "E."

[14] Forty-eight (48) years old, married, farmer, and a resident of Barangay Tanabag, Puerto Princesa City, T.S.N. June 20, 1990, p. 15.

[15] Id., p. 16.

[16] Id., p. 4.

[17] Id., p. 9.

[18] Id., p. 20.

[19] Lantin, Jaime M., J. Ponente, Gutierrez, Angelina S., and Pardo, Bernardo, P., JJ. concurring.

[20] Bernas, Joaquin G., S.J., The Constitution of the Republic of the Philippines A Commentary, Vol. I, 1987 Edition, p. 104.

Exigent circumstances may be the 6th exception. This exception is a general catch-all category that encompasses a number of diverse situations. What they have in common is some kind of emergency that makes obtaining a search warrant impractical, useless, dangerous, or unnecessary. Among these situations are danger to physical harm to the officer or destruction of evidence, danger to a third person, driving while intoxicated, and searches in hot pursuit. Del Carmen, Rolando, V., Criminal Procedure for Law Enforcement Personnel 1987 Edition, p. 150.

- [21] Posadas vs. Court of Appeals, G.R. No. 89139, August 2, 1990, 188 SCRA 288.
- [22] People vs. CFI of Rizal, No. L-41686, November 17, 1980, 101 SCRA 86.
- [23] People vs. Musa, G.R. No. 96177, January 27, 1993, 217 SCRA 597.
- [24] Papa vs. Mago, No. L-27360, February 28, 1968, 22 SCRA 857.
- [25] People vs. Felimon Ramos, G.R. Nos. 101804-07, May 25, 1993, 222 SCRA 557.
- [26] Exhibit "C."
- [27] T.S.N. June 20, 1990, pp. 24-25.
- [28] Id., p. 25.
- [29] Section 2, Article III, 1987 Constitution.
- [30] Supra., at p. 575.
- [31] See People vs. Caco, G.R. Nos. 94994-95, May 14, 1993, 222 SCRA 49.
- [32] T.S.N. October 26, 1988, p. 6.
- [33] Id., p. 13.
- [34] T.S.N. February 2, 1989, pp. 3-4.
- [35] See People vs. Vengco, No. L-31657, January 31, 1984, 127 SCRA 242.
- [36] See People vs. Angelito Lualhati, G.R. Nos. 105289-90, July 21, 1994.
- [37] People vs. Maguikay, G.R. Nos. 103226-28, October 14, 1994.
- [38] Court of Appeals Decision, pp. 12-13.

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