

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUISITO GO Y KO ALIAS "KING LOUIE", ACCUSED-APPELLANT.*G.R. No. 116001. March 14, 2001*

Ponente: YNARES-SANTIAGO, J.

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On October 22, 1992, at around 10:00 o'clock in the evening, SPO1 Mauro Piamonte and SPO3 Candido Liquido, members of the Intelligence and Follow-up Unit of the Calamba Police, went to the police outpost at Crossing, Calamba, Laguna, to follow up an intelligence report that methamphetamine hydrochloride, or shabu, a regulated drug, was being supplied there. Police civilian agent Ronnie Panuringan arrived and reported to them that he saw accused-appellant Luisito Go, also known as "King Louie", enter the Flamingo Disco House with two women. Panuringan said that he spotted a gun tucked in accused-appellant's waist. Together, the three policemen proceeded to the Flamingo, which was located about a hundred meters away from the outpost.

When they arrived at the Flamingo, the police officers informed the owner that they were conducting an "Operation Bakal," whereby they search for illegally possessed firearms. The owner allowed them in and told a waiter to accompany them. They went up to the second floor of the disco. The waiter turned on the lights, and the police officers saw accused-appellant and his lady companions seated at a table. They identified themselves and asked accused-appellant to stand up. When the latter did so, the policemen saw the gun tucked in his waist. SPO1 Piamonte asked for the license of the gun, but accused-appellant was unable to produce any. Instead, accused-appellant brought out the driver's license of a certain Tan Antonio Lerios. SPO1 Piamonte confiscated the gun, which was later identified as a 9mm Walther P88, Serial Number 006784, with a magazine containing ten (10) rounds of live ammunition. Accused-appellant was invited to the police precinct for questioning.

On the way out of the disco, accused-appellant asked permission to bring his car, which was parked outside. The police officers accompanied accused-appellant to his car, a Honda Civic with license plate number TCM-789. Through the windshield, SPO3 Liquido noticed a Philippine National Police identification card hanging from the rearview mirror. He asked accused-appellant if he was a member of the PNP, and he said no. The police officers asked accused-appellant for his driver's license and the registration papers of the vehicle, but he was unable to produce them. When accused-appellant opened the door, SPO3 Liquido took the ID card and found that the same belonged to SPO4 Zenaida Bagadiong. The police officers saw pieces of glass tooters and tin foils on the backseat and floor of the car. They asked accused-appellant why he had these items, but he did not say anything. Instead, accused-appellant suggested that they talk the matter over, and intimated that he had money. SPO3 Liquido replied that they should talk at the police headquarters. Accused-appellant took out an attaché case from the car and opened it. There were two black clutch bags inside. Accused-appellant opened the first bag, which contained shiny white substance wrapped in cellophane. The second bag contained P120,000.00 in cash.

The police officers brought accused-appellant to the police station. When they arrived at the precinct, they turned over the attaché case together with the two black clutch bags to the investigator. The investigator found eight cellophane bags containing granules suspected to be shabu in one of the clutch bags. When the attaché case was

opened, the police officers found that it also contained three glass tooters, tin foils, an improvised burner, magazines and newspapers.[1]

Consequently, two Informations were filed against accused-appellant before the Regional Trial Court of Calamba, Laguna, Branch 34. The first Information, which was docketed as Criminal Case No. 3308-92-C, charged accused-appellant with violation of Article III of R.A. 6452 (Dangerous Drugs Act), committed as follows:

That on or about October 22, 1992 at Brgy. I, Crossing, Municipality of Calamba, province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized/permitted by law, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody 750 grams of methamphetamine hydrochloride known as "SHABU", a regulated drug, in violation of the above-stated law.[2]

The other Information, docketed as Criminal Case No. 3309-92-C, charged accused-appellant with violation of P.D. 1866, committed as follows:

That on or about October 22, 1992, at Flamingo Beerhouse, Crossing, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named not being licensed or authorized by law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) caliber .9mm marked "WALTHER" with serial number 006784 with one (1) magazine loaded with ten (10) live ammunitions of same caliber, in violation of the aforementioned law.[3]

After a joint trial, the lower court rendered judgment convicting accused-appellant in the two criminal cases, to wit:

WHEREFORE, judgment is hereby rendered finding the accused in Criminal Case No. 3308-92-C, to be GUILTY beyond reasonable doubt of having in his possession of 750.39 grams of methamphetamine hydrochloride, a regulated drug. He is hereby sentenced to a penalty of imprisonment of six (6) years and one (1) day to twelve (12) years and a fine of TWELVE THOUSAND (P12,000.00) PESOS; and in Criminal Case No. 3309-92-C, the accused is also found GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm, and is hereby sentenced to suffer an imprisonment of reclusion perpetua.

Considering that the accused appears to be detained at the Makati Police Station, jailer, Makati Police Station is hereby ordered to commit the accused to the New Bilibid Prison, Bureau of Correction, Muntinlupa, Metro Manila. The bond posted by the accused in Criminal Cases No. 3308-92-C & 3309-92-C, are hereby ordered cancelled.[4]

Accused-appellant appealed his conviction in Criminal Case No. 3309-92-C directly to this Court, considering that the penalty imposed was reclusion perpetua, which appeal was docketed as G.R. No. 116001.

On the other hand, accused-appellant brought his appeal of the judgment in Criminal Case No. 3308-92-C before the Court of Appeals.[5] In an Amended Decision dated February 21, 1996, the Court of Appeals affirmed accused-appellant's conviction but modified the penalty imposed by the trial court by sentencing him, in addition to imprisonment of six (6) years and one (1) day to twelve (12) years, to pay a fine of six thousand pesos (P6,000.00), citing Section 8 of R.A. 6425, with subsidiary imprisonment in case of insolvency.[6] Hence, this petition for review, docketed as G.R. No. 123943.

The two cases were consolidated.[7]

Accused-appellant assails the validity of his arrest and his subsequent convictions for the two crimes. Both the trial court and the Court of Appeals found that the arrest and subsequent seizure were legal. A review of the records at bar shows no reason to depart therefrom.

The constitutional proscription, that no person shall be arrested without any warrant of arrest having been issued prior thereto,[8] is not a hard-and-fast rule. The Rules of Court and jurisprudence recognize exceptional cases where an arrest may be effected without a warrant.[9] Among these are when, in the presence of a peace officer, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; or when an offense has in fact just been committed, and the arresting officer has personal knowledge of facts indicating that the person to be arrested has committed it.

In the cases at bar, the police saw the gun tucked in appellant's waist when he stood up. The gun was plainly visible. No search was conducted as none was necessary. Accused-appellant could not show any license for the firearm, whether at the time of his arrest or thereafter. Thus, he was in effect committing a crime in the presence of the police officers. No warrant of arrest was necessary in such a situation, it being one of the recognized exceptions under the Rules.

As a consequence of appellant's valid warrantless arrest, he may be lawfully searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant, as provided in Rule 126, Section 12. This is a valid search incidental to the lawful arrest.[10] The subsequent discovery in his car of drug paraphernalia and the crystalline substance, which was later identified as shabu, though in a distant place from where the illegal possession of firearm was committed, cannot be said to have been made during an illegal search. As such, the seized items do not fall within the exclusionary clause, which states that any evidence obtained in violation of the right against warrantless arrest cannot be used for any purposes in any proceeding.[11] Hence, not being fruits of the poisonous tree, so to speak, the objects found at the scene of the crime, such as the firearm, the shabu and the drug paraphernalia, can be used as evidence against appellant. Besides, it has been held that drugs discovered as a result of a consented search is admissible in evidence.[12]

Under P.D. 1866, the essence of the crime is the accused's lack of license or permit to carry or possess firearm, ammunition, or explosive. Possession by itself is not prohibited by law.[13] In prosecutions for illegal possession of firearm, the element of absence of license to possess the firearm may be established through the testimony of or a certification from a representative of the Firearms and Explosives Bureau[14] of the Philippine National Police (FEB-PNP), attesting that a person is not a licensee of any firearm.[15] In this case, a representative of the FEB-PNP testified that accused-appellant was not a holder of any gun license.[16] Moreover, a certification[17] to that effect was presented to corroborate his testimony. These pieces of evidence suffice to establish the second element of the offense of possession of unlicensed firearms.[18] However, in a vain attempt to exculpate himself, accused-appellant presented for the first time an alleged firearm license, which was described as "Annex 2" of his petition. Accused-appellant's counsel admitted that said document was not presented below "for some reason." [19] Whatever those reasons are, he did not specify. The document, however, is dubious. It is too late in the day for accused-appellant to proffer this very vital piece of evidence which might exculpate him. First, the reception of evidence is best addressed to the trial court because it entails questions of fact. It should be emphasized that this Court is not a trier of facts.[20] Second, the document marked as "Annex 2" of the petition in G.R. No. 123943 is not the license referred to, but an order of the trial court resetting the date of arraignment.[21] Third, there is attached to the petition a firearm license[22] which is a mere photocopy and, as such, cannot be appreciated by this Court. Indeed, considering that this was the one piece of evidence which could spell accused-appellant's acquittal of the unlicensed firearm charge, and assuming that, as shown in the face of the license, it was issued on October 7, 1992, there should be no reason for its non-production during the trial. Fourth, and most importantly, the genuineness of the purported license becomes all the more suspect in view of the Certification issued by the FEB-PNP that accused-appellant was not a licensed firearm holder.

Anent the certification issued by the FEB-PNP to the effect that Luisito Go y Ko was not a licensed gun holder,

accused-appellant claims that he was not the person alluded to therein because the correct spelling of his middle name is not "Ko" but "Co." Whatever the correct spelling of his name is, the fact remains that he had no license on the day the gun was found in his possession. All that he could present then was a photocopy of his application for gun license,[23] which is not the equivalent of a license. Appellant testified that he presented a firearm license to the police,[24] but he could not produce that alleged license in court. If appellant was indeed a licensed gun holder and if that license existed on October 22, 1992, he could have easily presented it to the police when he was asked for his papers inside the disco, or if the alleged license was in his car, he could have easily shown it to them when they went to his car. Otherwise, he could have easily asked his lawyer or relative to bring the license to the police precinct when he was being investigated. Despite several opportunities to produce a license, he failed to do so. In fact, during trial, he never presented any such license. And on appeal, he could only submit for the first time and for unknown reasons an alleged photocopy of a purported license. The only plausible conclusion that can be drawn is that there was no such license in the first place. Hence, his guilt of illegal possession of firearm was duly established.

Accused-appellant's guilt for illegal possession of shabu has likewise been proven beyond reasonable doubt. The white crystalline substance found in his possession, upon laboratory examination, were positively identified as methamphetamine hydrochloride or shabu, a regulated drug.[25]

The bulk of accused-appellant's defense revolves around the factual findings of the trial court. It should be recalled that factual findings of the trial court, if supported by evidence on record, and particularly when affirmed by the appellate court, are binding on this Court.[26] As discussed above, the records substantiate the trial court's and the appellate court's findings as to accused-appellant's culpability. There is no reason to depart from these findings as no significant facts and circumstances were shown to have been overlooked or disregarded which, if considered, would have altered the outcome of the case.[27] Moreover, questions as to credibility of witness are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.[28]

In the case at bar, the trial court found:

The narration of the incident by the police is far more worthy of belief coming as it does from law enforcers who are presumed to have regularly performed their duties and were not demonstrated to have been unduly biased against the accused.[29]

Similarly, the Court of Appeals held that:

(T)he findings of fact of the trial court are generally respected by the appellate court, unless they are found to be clearly biased or arbitrary. We do not find any in these cases.[30]

The crime of illegal possession of firearm, committed in 1992, regardless of whether the firearm is low powered or high powered, was punished with the penalty of reclusion perpetua to death, as provided in P.D. 1866. However, under R.A. No. 8294, which took effect on July 6, 1997,[31] the penalty was lowered to prision correccional in its maximum period and a fine of P30,000.00, if the firearm[32] is classified as low powered. In this case, the unlicensed firearm found in appellant's possession was a 9mm Walther pistol, which under the amendatory law, is considered as low powered. Inasmuch as the new law imposes a reduced penalty and is, thus, more favorable to accused-appellant, the same may be given retroactive effect.[33] Therefore, accused-appellant is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to four (4) years, two (2) months and one (1) day of prision correccional, as maximum, and a fine of P30,000.00.

On the other hand, the crime of illegal possession of regulated drug, under the law in force at the time of the commission of the offense in this case, was punished by imprisonment of from six (6) years and one (1) day to twelve (12) years and a fine ranging from P6,000.00 to P12,000.00,[34] regardless of the amount of drugs involved. Hence, accused-appellant is sentenced to an indeterminate penalty of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P12,000.00.

WHEREFORE, the decision of the trial court finding accused-appellant guilty beyond reasonable doubt of illegal possession of firearm is AFFIRMED, with the MODIFICATION that he is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to four (4) years, two (2) months and one (1) day of prision correccional, as maximum, and a fine of P30,000.00. The decision of the trial court finding accused-appellant guilty beyond reasonable doubt of illegal possession of 750.39 grams of shabu and drug paraphernalia, is likewise AFFIRMED with the MODIFICATION that he is sentenced to an indeterminate penalty of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P12,000.00. The shabu and subject drug paraphernalia seized from appellant shall be destroyed as provided by law.

SO ORDERED.

Davide, Jr., C.J. Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, G.R. No. 123943, pp. 194-197.

[2] Rollo, G.R. No. 116001, p. 18.

[3] Ibid.

[4] Decision dated April 15, 1994; penned by Judge Francisco Ma. Guerrero; RTC Records, p. 81.

[5] CA-G.R. CR No. 16163.

[6] Rollo, G.R. No. 123943, p. 214.

[7] Rollo, G.R. No. 116001, p. 121.

[8] 1987 Constitution, Article III, Section 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.

[9] Rule 113, 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.

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7.

[10] *People v. Lua*, 256 SCRA 539 (1996).

[11] Constitution, Article III, Section 3(2) - Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[12] *People v. Cuizon*, 326 Phil. 345.

[13] *People v. Cortez*, G.R. No. 131619-20, February 1, 2000.

[14] Formerly Firearms and Explosives Office (FEO).

[15] *Cadua v. CA and People*, G.R. No. 123123, August 19, 1999; *People v. Tobias*, 334 Phil. 881; *Rosales v. CA*, 255 SCRA 123 (1996); *People v. Orehuela*, 232 SCRA 82 (1994); *Mallari v. CA and People*, 265 SCRA 456 (1996) citing *People v. Solayao*, 262 SCRA 255 (1996).

[16] TSN, June 22, 1993, p. 16.

[17] Exhibit "A", Folder of Exhibits.

[18] *Padilla v. Court of Appeals*, 269 SCRA 402 (1997); *Rosales v. CA*, 255 SCRA 123 (1996); *People v. Orehuela*, 232 SCRA 82 (1994).

[19] Footnote 16 of the Petition for Certiorari, G.R. No. 123943, p. 17; Rollo, p. 25, 171.

[20] *Ceremionia v. CA*, G.R. No. 103453, September 21, 1999.

[21] Rollo, G.R. No. 123943, pp. 136-138.

[22] *Ibid.*, p. 187.

[23] TSN, August 10, 1993, pp. 15-16.

[24] TSN, August 10, 1993, p. 25.

[25] Chemistry Report No. D-472-92 of the Crime laboratory Service of the PNP in Camp Vicente Lim, Laguna - Exhibit "B", Folder of Exhibits.

[26] *Romago Electric v. CA*, G.R. No. 125947, June 8, 2000. See also - *People v. Gayomma*, G.R. No. 128129, September 30, 1999.

[27] *Dizon v. CA*, 311 SCRA 1 (1999); *People v. Auxtero*, 351 Phil. 1001.

[28] *People v. Silvano*, 309 SCRA 362 (1999); *People v. Dizon*, 309 SCRA 669 (1999).

[29] RTC Decision, p. 21.

[30] CA Decision, p. 12; Rollo in G.R. No. 123943, p. 204.

[31] *People v. Macoy, Jr.*, G.R. No. 126253, August 16, 2000; *People v. Lazaro*, G.R. No. 112090, October 26, 1999.

[32] In case of explosives, the penalty is higher as provided in Section 3, R.A. 8294.

[33] *People v. Reynaldo Langit*, G.R. No. 134757-58, August 4, 2000; *People v. Castillo*, G.R. No. 131592,

February 15, 2000.

[34] Section 16, R.A. 6425, as amended by B.P. Blg. 179.

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