

RENE BOTONA, PETITIONER VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 120650. February 21, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for certiorari, prohibition and injunction assailing the Decision of the Court of Appeals in CA-G.R. No. 14416[1] promulgated on November 9, 1994 and the Resolution dated May 24, 1995 denying petitioner's Motion for Reconsideration.

The facts of the case as found by the lower court are as follows:

On February 20, 1991 at about 9:00 in the evening, Rito Bautista was at the waiting shed near the public market at Poblacion Barobo, Surigao del Sur talking with his friends, Mayolito Cuizon and Bonifacio Fructuso. Suddenly, Rene Botona came and pointed a .38 cal. paltik revolver at them and threatened to shoot them. Bautista grappled with Botona for the possession of the gun and succeeded in wresting it from Botona. Thereafter, Bautista rushed to the police station where he reported the incident and turned over said firearm.[2]

Botona rushed back to his house, took an M-16 Armalite rifle, and strafed the house where Bautista lives with his parents.[3]

Mayolito Cuizon corroborated the testimony of Bautista while SPO3 Leo Asuncion confirmed the fact that the paltik firearm was turned over to him by Bautista.[4]

Botona was charged with two counts of Illegal Possession of Firearms under P.D. No. 1866[5] under Informations which read as follows:

“Criminal Case No. L-1112:

“That on or about the 20[th] day of February, 1991, at 10:00 o'clock in the evening, more or less, in the boundary of Purok 3 and Purok 5 of Poblacion Barobo, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously had in his possession, custody and control one (1) armalite rifle M-16 bearing serial number 9037940, and two (2) pieces of long magazines loaded with 32 rounds of live ammunitions, 27 from one magazine and 5 from the other magazine, without first securing the necessary license or permit from the Director General of the Philippine National Police or competent authority therefore.

“CONTRARY TO LAW. (Violation of P.D. 1866)”[6]

“Criminal Case No. L-1129:

“That on or about the 20[th] day of February, 1991, at 9:00 o'clock in the evening more or less at the waiting shed in Purok 3, of poblacion Barobo, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously had in his

possession, custody and control one (1) homemade revolver caliber 38, marked Smith and Wesson, two (2) pieces live ammunitions, and three (3) pieces empty shells, without first securing the necessary license or permit from the Director General of the Philippine National Police or competent authority therefor.

“CONTRARY TO LAW. (Violation of PD 1866).”[7]

to both of which he pleaded not guilty.

After trial, the Regional Trial Court of Lianga, Surigao del Sur exonerated accused Rene Botona in the first case but found him guilty in the second, thus:

“I.- IN CRIMINAL CASE NO. L-1112:-

“On the basis of reasonable doubt and for failure of the prosecution to establish beyond reasonable doubt the guilt of the accused Rene Botona y Ubos, 25 years of age, single, a driver by occupation and resident of Barobo, Surigao del Sur, is hereby adjudged not guilty of the crime of Illegal Possession of Firearm & Ammunitions, as penalized under Section 1, Presidential Decree No. 1866, as charged in the information, and therefore, the criminal indictment against him is dismissed, with costs de oficio. As the M-16 Armalite Rifle with SN 9037940 is covered by a memorandum receipt issued by PNP (formerly PC) authorities, the Court leaves the matter as to said firearm to the sound disposition of the nearest local PNP Unit. The property Bail Bond posted for the provisional release of said accused is ordered cancelled.

“II.- IN CRIMINAL CASE NO. L-1129:-

“The Court finds the accused, Rene Botona y Ubos, 25 years of age, single, a driver and a resident of Barobo, Surigao del Sur, GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunitions, penalized under Section 1, Presidential Decree No.1866, as charged in the information, and is hereby accordingly sentenced to suffer the penalty of Eighteen (18) years, Eight (8) Months, and One (1) Day of reclusion temporal, as minimum, to Twenty (20) Years of reclusion temporal, as maximum, with costs. The .38 Cal. Paltik Danao-made Revolver (Smith & Wesson) is ordered forfeited in favor of the Government and should be turned over to the nearest PNP Command for proper disposition.

“IT IS SO ORDERED.” [8]

Assailing his conviction in Criminal Case No. L-1129, the accused went to the Court of Appeals which affirmed the decision of the trial court in toto.[9]

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner alleges that the appellate court acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction when:

- “...IT FAILED TO CONSIDER THE TWO CONFLICTING FACTS AND CIRCUMSTANCES ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE PETITIONER HEREIN AND THE OTHER CONSISTENT WITH PETITIONER’S GUILT IN AFFIRMING THE DECISION OF THE LOWER COURT.
- “...IT RULED THAT THE BURDEN OF PROVING THE NEGATIVE ALLEGATIONS IN THE INFORMATION LIES WITH THE ACCUSED AND NOT WITH THE PROSECUTION, THUS, VIOLATING THE PROVISIONS OF SEC. 2, RULE 133 OF THE RULES OF COURT AND THE RULINGS ON THE CASE OF PEOPLE VERSUS SAYAT, 222 SCRA 285 AND PEOPLE VERSUS PAJENADO, 31 SCRA 812.
- “...IT AFFIRMED THE JUDGMENT OF THE LOWER COURT CONVICTING PETITIONER HEREIN OF ILLEGAL POSSESSION OF FIREARM WHEN THE ELEMENTS OF ILLEGAL POSSESSION AS SHOWN IN P.D. 1866 WERE NOT ESTABLISHED.

- "...IT FAILED TO CONSIDER THAT THERE WAS INCRIMINATION ON THE PART OF PETITIONER WHICH IS STRICTLY PROHIBITED BY LAW."[10]

The Solicitor General asserts that petitioner resorted to the wrong mode of appeal; that the special civil action under Rule 65 is inappropriate because herein petition seeks to review errors of judgment and not of jurisdiction; that petitioner could not resort to Certiorari under Rule 65 when there is a plain, speedy and adequate remedy in the ordinary course of law which is by way of petition for review on certiorari under Rule 45 of the Rules of Court; that the instant petition was filed beyond the fifteen (15) day period to appeal from the order of denial, evincing that this petition was resorted to as a substitute for the lost or lapsed remedy of appeal;[11] that therefore the instant petition should be outrightly dismissed under SC Circular No. 2-90, to wit:

`SC Circular 2-90 provides :

"Subject: Guidelines to be observed in appeals to the Court of Appeals and to the Supreme Court

xxx xxx xxx

(4) Erroneous Appeal – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

(d)

No transfer of appeals erroneously taken. – No transfers of appeals erroneously taken to the Supreme Court or Court of Appeals to whichever of these tribunals has appropriate jurisdiction will be allowed; continued ignorance or willful disregard of law on appeals will not be tolerated.

Under ordinary circumstances, and pursuant to the above-quoted Circular, we would have upheld the position of the Solicitor General. However, considering that the present case involves the right to life and liberty of petitioner as enshrined in our Constitution and the assailed decision of the Court of Appeals violates existing jurisprudence, we shall consider this case as an exception to the rules herein invoked by the Solicitor General. We held in *Chua vs. Court of Appeals*:

"Certiorari is an extraordinary remedy available only when there is no appeal, nor any plain, speedy or adequate remedy in the ordinary course of law. While ordinarily, certiorari is unavailing where the appeal period has lapsed, there are exceptions. Among them are (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority. As early as *Crisostomo vs. Endencia*, we held:

` . . . The remedy by certiorari may be successfully invoked both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy."'[12]

In the case of *Republic vs. PCGG*, we added another exception to the rule, thus:

"Indeed, grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. In one case, this Court ruled that the lower court's resolution was "tantamount to overruling a judicial pronouncement of the highest Court . . . and unmistakably a very grave abuse of discretion."'[13]

In resolving the present petition, the only question that really needs to be answered is: Whether or not the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming in toto the decision of the trial court.

Herein petition is based on the following grounds: (1) the prosecution failed to prove the elements of the crime of Illegal Possession of Firearms because it did not present evidence that the paltik, subject of the charge, is not licensed by the Firearms and Explosives Unit (FEU) of the Philippine National Police (PNP); (2) applying the equipoise doctrine, petitioner's version of the story should be given credence for it is the version favorable to the accused; (3) placing on the accused the burden of proving that he has license for the firearm is a violation of the constitutional presumption of innocence; and (4) since prosecution witness Rito Bautista was the one found with the paltik, he should be presumed to be the owner of the same applying Rule 131, Section 3(j) of the Rules of Court, and should be barred from incriminating herein accused.

As to ground (2) – that the lower courts should have applied the equipoise rule – it is not within the jurisdiction of the Court to resolve as it involves questions of fact.[14]

As to ground (4) - that under Sec. 3(j) Rule 131 of the Rules of Court, the person found in possession of the thing taken in the doing of a recent wrongful act is the taker and doer of the whole act – the rule is a mere disputable presumption which was successfully refuted by the prosecution. Its evidence established the fact that Bautista merely turned over the paltik to the police authorities after he wrested it from appellant.

Nevertheless, we find the petition meritorious on grounds (1) and (3) above.

The Solicitor General claims that mere possession of the paltik revolver without any serial number is illegal per se; that said firearm bears no serial number and therefore it could not have been registered with the PNP (FEU); that it is very logical to conclude that this paltik revolver was not covered by any license or permit, and mere possession of it is deemed illegal per se; that the prosecution need not present any document or witness from the FEU in order to prove that petitioner was not allowed by law to possess a firearm; and that the fact that petitioner was in possession of an unregistered paltik revolver and his subsequent failure to present his authority or permit to possess the same constitute sufficient evidence to hold him liable for illegal possession of firearm.[15]

We find the position of the Solicitor General utterly devoid of merit. The prosecution failed to prove that the subject “paltik” is not duly licensed by the PNP (FEU).

In the recent case of *People vs. Liad*, [16] we enunciated that:

“In cases involving illegal possession of firearm, the requisite elements are: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess. The latter is a negative fact that 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.xxx

“xxx xxx xxx

“We do not agree with the contention of the Solicitor General that since a paltik is a homemade gun, is illegally manufactured 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 a permit, and that proof that a firearm is a paltik dispenses with proof that it is unlicensed.”[17]

For failure of the prosecution to present evidence that the paltik was unlicensed, we acquitted the accused in said case for insufficiency of evidence.

In *Mallari vs. Court of Appeals*, [18] we specifically ruled:

“xxx In the case at bench, the testimony of a representative of, or 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.

The absence of the foregoing is fatal to the prosecution's case and renders petitioner's conviction erroneous.”[19]

In the present case, the prosecution only presented the following as witnesses: Rito Bautista, Mayolito Cuizon and SPO3 Leo Asuncion.[20] Bautista and Cuizon testified that accused pointed a paltik at them on the night in question and Bautista was able to grab the gun from the accused. SPO3 Asuncion meanwhile merely testified that he was on duty at the police station that night when Bautista turned over to him said paltik.[21] He even admitted that he was not an expert on firearms.[22]

In *People vs. Dorimon*, [23] we reiterated:

“xxx While no license or permit may be issued for a ‘paltik,’ we have already ruled that this mere fact alone does not dispense with proof that it is unlicensed. Indeed, the prosecution failed to present this vital piece of evidence and the trial court overlooked such requirement and proceeded to convict the accused.”[24]

The Solicitor General did not refute the failure of the prosecution to present a representative from the PNP (FEU) so as to prove the lack of license of the accused. It merely stood its ground that such requisite is not necessary.[25]

Thus, we uphold the arguments of petitioner that the Court of Appeals acted with grave abuse of discretion when it ruled that the burden of proving the negative allegations in the Information lies with the accused and not with the prosecution. It is the duty of the prosecution, in charges of illegal possession of firearm, to prove that the possession is illegal, that is, to present a witness from the PNP (FEU) to show that the firearm in question has never been licensed to any person particularly to the accused.[26] Absent such proof, the prosecution has not established its case against petitioner, hence he is entitled to an acquittal.[27]

As we have held in *Republic vs. PCGG*,[28] the decision of the lower court overruled a judicial pronouncement of this Tribunal which obviously constitutes grave abuse of discretion correctible by the present petition for certiorari.

WHEREFORE, the petition is GRANTED. For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the decision of the Regional Trial Court of Lianga, Surigao del Sur (Branch 28) in Criminal Case No. L-1129 is REVERSED and SET ASIDE. Petitioner Rene Botona is ACQUITTED of the charge of Illegal Possession of Firearm.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[1] Entitled: “*People of the Philippines vs. Rene Botona @ Tiktik*.”

[2] Rollo, p. 23.

[3] *Id.*, at p. 25.

[4] *Id.*, at p. 23.

[5] “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” as amended by Republic Act No. 8249, which took effect on July 6, 1997.

[6] CA Rollo, pp. 10-11.

[7] CA Rollo, p. 4.

[8] Per RTC Decision dated January 20, 1993; Rollo, p. 58.

[9] Id., at p. 30.

[10] Rollo, p. 6.

[11] Id., at pp. 82-83.

[12] 344 SCRA 136, 147-148 (2000).

[13] G.R. No. 147062-64, December 14, 2001.

[14] Arriola vs. Mahilum, 337 SCRA 464 (2000).

[15] Rollo, pp. 93.

[16] 355 SCRA 11(2001).

[17] Id. at pp. 27-28.

[18] 265 SCRA 456 (1996).

[19] Id. at p. 465.

[20] TSN June 17, 1992, p. 35.

[21] Id., at p. 24.

[22] Id., at p. 31.

[23] 321 SCRA 43 (1999).

[24] Id. at p. 50.

[25] Rollo, p. 94.

[26] Id., at p. 10-11.

[27] Petitioner is out on bail.

[28] G.R. No. 147062-64, December 14, 2001.

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