

EDWIN CADUA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 123123. August 19, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal by certiorari are the Decision[1] of the Court of Appeals in CA-G.R. No. 16312, promulgated on June 30, 1995, and the subsequent Resolution[2] dated December 15, 1995, denying petitioner's motion for reconsideration.

The appellate court's decision affirmed in toto the judgment of the Regional Trial Court of Quezon City in Criminal Case No. Q-92-27261,[3] which disposed of the case as follows:

"WHEREFORE, in view of the foregoing, this Court finds the accused Edwin Cadua guilty beyond reasonable doubt of the crime charge (sic) against him, and hereby sentences him to suffer an indeterminate penalty of 12 years 5 months and 10 days of Reclusion Temporal as Minimum to 17 years, 4 months and 1 day of Reclusion Temporal as Maximum, and to pay the cost. The accused is entitled to the benefits of the provision of Article 29 of the Revised Penal Code, as amended, provided he does not fall within the exceptions thereof.

SO ORDERED."[4]

This case stemmed from a charge for Illegal Possession of Firearms. The Information reads:

"The undersigned Assistant City Prosecutor accuses EDWIN CADUA Y QUINTAYO ov (sic) violation of PD 1866 (Illegal Possession of Firearms and Ammunitions), committed as follows:

That on or about the 2nd day of January, 1992, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority in law, did then and there wilfully, unlawfully and feloniously have in his possession and under his control and custody one (1) .38 cal. revolver "Smith and Wesson" paltik, brown finished and wooden handle with four (4) live ammunitions, without first having obtained the proper license therefor from the proper authorities.

Contrary to law."[5]

Assisted by counsel de oficio, petitioner was arraigned in open court, waived the reading of the Information, and entered a plea of not guilty.[6]

As culled from the records, the following factual and procedural antecedents are pertinent to this appeal.

In the evening of January 2, 1992, between 6:30 and 7:00 in the evening, PO3 Joselito Burdeos and companions, all assigned with the Central Police District in Quezon City, were aboard mobile unit 118 patrolling the vicinity of Fairview, Quezon City. Their tour of duty was from 3:00 p.m. to 11:00 p.m. While deployed, they received a radio dispatch requesting them to proceed to Lot 10 Block 14, Alden Street, North Fairview. Said dispatch was based on a report concerning an alleged holdup of complainants Lourdes Bulos and her daughter Bernadette, who

were in need of police assistance.[7]

At said address, police officers found both complainants who stated that the alleged holduppers had just fled. PO3 Burdeos asked where the robbery took place. Complainants replied that they were held up by two (2) men at the corner of Archer and Regalado Streets, near their house. The police officers also asked in what direction the alleged holduppers fled and what they were wearing. Then, the police officers requested the complainants to board the patrol unit in order to facilitate the search for the two (2) men.[8] As they were patrolling around the area, complainants informed the police officers that one of the suspects was dressed in jeans and a t-shirt while the other was dressed in a black top and black pants. The police officers then noticed two (2) men walking alongside the street and as the officers slowed down the mobile unit to get a closer look, the complainants identified the men as the alleged holduppers, one of which is the petitioner in this case. The police officers slowed down to a stop, alighted from the vehicle, and called out to the suspects. As Burdeos was approaching the suspects, he noticed that petitioner Cadua was about to pull something which was tucked at the right side of his waist. Burdeos promptly pointed his firearm at Cadua and warned him not to move. He then frisked Cadua and found in his possession a .38 caliber "paltik" revolver. PO3 Reynoso Bacnat then apprehended Cadua's companion, who was later identified as Joselito Aguilar. In Aguilar's possession was found a fan knife.[9]

Verification with the Firearms and Explosives Unit revealed that petitioner-accused Edwin Cadua is not a valid license holder of a .38 caliber "paltik" revolver.[10]

Originally, Chief Inspector Herminigildo Faustino referred to the City Prosecutor's Office for investigation the cases of Robbery, Violation of PD 1866 (Illegal Possession of Firearms) and Violation of PD 5121 (Concealment of a Deadly Weapon).[11] However, Assistant City Prosecutor Edgaro Paragua by resolution dated January 6, 1992, found only the case for Illegal Possession of Firearms warranting the filing of an Information. According to Prosecutor Paragua, during the investigation for robbery, complainants manifested their doubts as to the identity of the respondents, hence he set this matter for further investigation. As to the charge for Violation of City Ordinance 5121 against Aguilar, for concealment of a deadly weapon, it was found that there was sufficient evidence to warrant the filing of an Information against him. But, considering that said violation falls under the Rules of Summary Procedure, it could not be included in the Information[12] for alleged possession of firearms, which concerned only herein petitioner. On the same day that this Resolution by Prosecutor Paragua was released, the Information against petitioner was filed.[13]

On arraignment, petitioner pleaded not guilty. Trial on the merits ensued, resulting in his conviction.[14]

Petitioner seasonably appealed to the Court of Appeals, which affirmed the decision of the trial court. The CA ruled that the warrantless arrest of petitioner was based on probable cause and that the police officers had personal knowledge of the fact which led to his arrest. The subsequent search was therefore an incident to the arrest, making the firearm found in his possession admissible in evidence. Moreover, the CA stated that the positive declaration of prosecution witness Joselito Burdeos, that the .38 "paltik" revolver was found in petitioner's possession, already proved one of the essential elements of the crime of Illegal Possession of Firearms.[15] The CA further held that:

"... As between the positive declaration of prosecution eyewitness and only the negative assertion of accused-appellant, the former deserves more credence and is entitled to greater evidentiary weight. (People vs. Regalario, 220 SCRA 368) Besides, courts generally give full faith and credence to testimony of police officers as they are presumed to have acted in the performance of official duty in a regular manner. (People vs. Cabisada, 226 SCRA 383) Moreover, accused-appellant has not imputed any ill motive on the said prosecution witnesses as to why they would testify against him, except to tell the truth. (People vs. Lizada, 225 SCRA 708)"[16]

Petitioner now comes before us on certiorari under Rule 45 of the Rules of Court, assigning the following errors:

"THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION AND NOT REVERSING THE SAME.

"THE COURT OF APPEALS ERRED IN RULING THAT THE 'PALTIK' WAS RECOVERED IN AN INCIDENTAL SEARCH DURING A WARRANTLESS ARREST MADE BY THE POLICE OFFICERS, HENCE ADMISSIBLE IN EVIDENCE.

"THE COURT OF APPEALS ERRED IN BELIEVING THE TESTIMONY OF THE POLICE OFFICERS WHEN IT IS CLEAR THAT THE APPREHENSION OF THE ACCUSED WAS ILLEGAL AND THAT THE FILING OF THE CHARGES FOR ILLEGAL POSSESSION OF FIREARMS IS BUT AN AFTERTHOUGHT SINCE THE PRIVATE COMPLAINANT ADMITTED THAT THE ACCUSED CADUA WAS NOT THE HOLDUPPER.

"THE COURT OF APPEALS ERRED IN NOT ACQUITTING THE ACCUSED BASED ON REASONABLE DOUBT."[17]

Discussion of petitioner's assignment of errors may first be subsumed into one principal inquiry: whether or not his right to be protected from any unlawful warrantless arrest has been violated. According to petitioner, since his arrest is null and void, the search conducted by the police officers as an incident to his arrest is likewise defective. In support of his claim, petitioner seeks to invoke his constitutional right to be secure against unreasonable searches and seizures,[18] and the corresponding prohibition against admitting into evidence anything obtained in violation of such right.[19]

Petitioner further claims that the police officers incorrectly premised their action on the instances provided for in warrantless arrests. He adds that since the complainants later on disclaimed petitioner's identity as the holdupper and that no case of robbery was filed against him, any probable cause or personal knowledge thereof, alleged by the arresting officers, had been totally negated. Thus, petitioner now posits that, absent probable cause or personal knowledge by the arresting officers, the arrest and the incidental search are illegal; hence, the "paltik" they seized is inadmissible in evidence.[20] According to petitioner, despite lack of probable cause, he was still arrested because "[k]nowing that the police officers committed a blunder they concocted a story that they were able to recover a 'paltik' from the accused, so that even if the accused is freed from the robbery charge they can still keep him for alleged possession of firearms." [21]

"When police officers realized that they caught the wrong persons, they would not [have] to (sic) go home 'empty handed'," [22] petitioner asserts. In order to bolster his claim of innocence, he cites findings on record which showed that he was negative for powder burns, although the "paltik" at the time of its confiscation was positive for gun powder residue.[23]

Respondents, through the Office of the Solicitor General (OSG), maintain that the search was an incident to a lawful arrest. Ergo, they assert that the .38 "paltik" revolver recovered from petitioner is admissible in evidence. They add that petitioner's denials cannot prevail over the positive testimony of PO3 Burdeos. The finding that petitioner was negative for powder burns is immaterial, according to respondents.

Both the trial and appellate courts, according to respondents, found that at the time that petitioner was arrested, the police officers had probable cause to arrest him based on the information which was given by the complainants. Petitioner Cadua and his companion, Aguilar, were positively identified by both complainants (mother and daughter) as the perpetrators of the robbery even before the police officers alighted from the car to approach petitioner and his companion, according to respondents. When the police officers effected the arrest, they already had probable cause and personal knowledge that petitioner was a suspect in an offense just

committed. As a logical consequence, according to respondents, the search incidental to the arrest is valid, and the revolver recovered admissible in evidence.[24]

According to the Solicitor General, apart from the warrantless arrest covered under Section 5 (b), Rule 113 of the Rules of Court, wherein an offense has just been committed and the arresting person has personal knowledge of such offense, warrantless arrest is also provided for under paragraph (a) of the aforementioned section, that is, when in the presence of the arresting officer, the person is actually committing, or is attempting to commit, an offense.

In this case, at the time petitioner was called by PO3 Burdeos, petitioner was actually committing an offense when he made an attempt to pull the revolver which was tucked in his waist, according to the respondents. Taking this circumstance into account, they add, the search and seizure are valid and lawful for being incidental to the warrantless arrest.[25]

Petitioner's denial regarding possession of the .38 "paltik" revolver has no independent support nor corroboration, according to respondents. On this matter, the Solicitor General comments as follows:

"... PO3 Burdeos clearly testified that he saw the .38 paltik revolver in the possession of petitioner when he arrested the latter. Thus, petitioner's defense of denial, which is uncorroborated and self-serving negative evidence, cannot be given greater weight than the declaration of PO3 Burdeos who testified on affirmative matters (People vs. Ballagan, 247 SCRA 535). Moreover, no proof was shown that the arresting officers had improper or ill motive to testify falsely against petitioner. Accordingly, PO3 Burdeos' testimony should be given full faith and credit (People vs. Gazmen, 247 SCRA 414). Besides, as an arresting officer who is duty-bound to enforce the law, PO3 Burdeos is presumed to have regularly performed his official duty (Section 3 [m], Rule 131 of the Rules of Court; People vs. Basilgo, 235 SCRA 191; People vs. Pacleb, 217 SCRA 92)."[26]

Lastly, respondents refute petitioner's arguments that the negative findings of gun powder residue should be taken to mean that he did not have possession of the gun. Whether or not petitioner fired the gun is not pertinent to the charge of illegal possession of firearms, respondents argue. It does not follow that just because a person is found negative for powder burns, he did not fire a gun, they add. They also cite the findings that even if one has just fired a gun, he may be negative for nitrates.[27]

From a careful study of the records of this case, we find no cogent reason to disturb the findings by the trial court as affirmed by the appellate court. Petitioner's declaration that the police officers trumped up a charge of illegal possession just so that they would "not go home empty-handed" is far from persuasive. Findings of the trial court as to the credibility of the testimonies of the prosecution and the lone testimony of the defense deserve, in our view, great weight. Jurisprudence has consistently held that, in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could have affected the result of the case, its findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal.[28] Furthermore, the presumption of regularity in the performance of official duty[29] strengthens the foregoing doctrine on the credibility of witnesses. The uncorroborated claim of the accused that he had been framed[30] is, to our mind, self-serving as well as baseless.

Considering the circumstances in this case, we find that there was sufficient reason to justify a warrantless arrest of petitioner for illegal possession of firearms. Section 5 of Rule 113 of the Rules of Court, provides that:

"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 paragraph (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."

The findings of the trial court, accepted by the appellate court, show the pertinence of paragraphs (a) and (b) of Section 5 abovesited. Through police dispatch to the scene of a crime report and in the presence of complainants, it was ascertained that a robbery had just been committed, and the arresting officers had personal knowledge that petitioner was directly implicated as a suspect. As explained by a respected authority on criminal procedure:

"It has been ruled that 'personal knowledge of facts', in arrests without warrant must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion. . . . Peace officers may pursue and arrest without warrant any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace. Probable cause for an arrest without warrant is such a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves as to warrant a reasonable man in believing the accused to be guilty. Besides reasonable ground of suspicion, action in good faith is another protective bulwark for the officer. Under such conditions, even if the suspected person is later found to be innocent, the peace officer is not liable. The cases hold that a peace officer might arrest and detain in prison for examination persons walking in the street at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed; but the arrest would be illegal if the person so arrested was innocent and there were no reasonable grounds of suspicion to mislead the officer. The reason of the rule is apparent. Good people do not ordinarily lurk about the streets and uninhabited premises at midnight. Citizens must be protected from annoyance and crime. Prevention of crime is just as commendatory as the capture of criminals. Surely the officer must not be forced to await the commission of robbery or other felony. The rule is supported by the necessities of life." [31]

Petitioner could not dispute that there was an initial report to the police concerning the robbery. A radio dispatch was then given to the arresting officers, who proceeded to Alden Street to verify the authenticity of the radio message. When they reached said place, they met up with the complainants who initiated the report about the robbery. Upon the officers' invitation, both mother and daughter boarded the mobile unit to join them in conducting a search of the nearby area. The accused was spotted in the vicinity. Based on the reported statements of complainants, he was identified as a logical suspect in the offense just committed.

Moreover, at that time that PO3 Burdeos called out to petitioner, the latter was on the act of drawing out his "paltik" revolver. Burdeos' testimony on this matter reads:

"WITNESS:

We alighted and approached and we noticed that there is something the accused is trying to hide and also trying to pull out.

FISCAL:

Was he able to pull that something?

WITNESS:

No.

FISCAL:

And, what was that?

WITNESS:

The .38 paltik.

FISCAL:

When you saw [that] what did you do . . . when you saw the accused pulling out that .38 paltik?

WITNESS:

I pointed [at] him my gun [then] shouted `don't move or I'll shoot!' "[32]

Nothing in petitioner's testimony successfully rebuts Burdeos' narration. Actual possession of an unlicensed firearm, which petitioner attempted to draw out, by itself, amounts to committing an offense in the presence of the arresting officer contemplated in paragraph (a), Section 5 of the abovementioned Rule.

The fact that the robbery case was never brought to trial does not mean that the legality of the arrest was tainted, for such arrest does not depend upon the indubitable existence of the crime.[33] It is not necessary that the crime should have been established as a fact in order to regard the detention as legal. The legality of apprehending the accused would not depend on the actual commission of the crime but upon the nature of the deed, where from such characterization it may reasonably be inferred by the officer or functionary to whom the law at the moment leaves the decision for the urgent purpose of suspending the liberty of the citizen.[34] Furthermore, the Court acknowledges that police authorities can stop a person forcibly when such action is based on something more than a mere "reasonable and articulable" suspicion that such a person has been engaged in criminal activity.[35] All

told, the arresting officers reasonably acted upon personal knowledge at the time, and not on unreliable hearsay information,[36] to effect a lawful arrest.

That the victims of the reported robbery failed to pursue a formal complaint is not decisive in this case. What is material is that the officers acted in response to the events which had just transpired and called for the appropriate police response. As to the element of personal knowledge, the officers could not be faulted. It is not correct to say they acted without observing standards of reasonableness and probable cause. They responded promptly to a legitimate complaint of the victims and they had a reasonable suspicion that the persons pointed out at the scene were the perpetrators of the offense. This in itself is sufficient justification for the officers to call the attention of the accused at that point in time when he was identified as a suspect by the complainants.

The reason which prompted complainants to refrain from identifying the accused during the examination by the police regarding the robbery is not determinative of the resolution of the present case. It bears stressing that the case now before us is for the illegal possession of firearms, and not for the robbery. Petitioner proceeds from a wrong premise when, in support of his assigned errors, he argues that the arrest and the search should be considered invalid merely because the robbery charge was never formally filed and prosecuted. In *Rabaja vs. Court of Appeals*,[37] a Department of Environment and Natural Resources employee, Rabaja, was charged with and convicted of Illegal Possession of Firearms even though the private complainant whom he threatened eventually dropped the charges against him. The charge for illegal possession was pursued by the authorities.

Petitioner avers that complainants "admitted that accused was not the holdupper".[38] A perusal of the records shows no such admission. The resolution, issued by Assistant City Prosecutor Paragua in the robbery case, stated that no information could yet be filed because complainants manifested doubts as to the identity of their assailants.[39] The resolution should not be taken to mean an admission that petitioner Cadua had been totally ruled out as a suspect in the crime. If petitioner wanted to impress the Court that even on probable cause he could not be accosted, then that impression is inaccurate and wrong. On cross-examination, petitioner himself did not object to the question but admitted the fact that the complaint was withdrawn, but not for the reason that he was ruled out as the person who committed the offense.[40]

Given the circumstances in this case, we are constrained to affirm the finding below that the warrantless arrest of petitioner is lawful. We also agree that the incidental search and subsequent seizure of the unlicensed firearm in question is likewise lawful and valid pursuant to Section 12, Rule 126 of the Rules of Court, to wit:

"Sec. 12. Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

Noteworthy, among the exceptions to the necessity for a search warrant is the right of search and seizure as an incident to a lawful arrest. A lawful arrest may be made either while a crime is actually being committed, or soon after its commission. The right to search includes in these instances that of searching the person of one who is arrested, in order to find and seize things connected with the crime as its fruits or as the means for its commission.[41]

When petitioner was searched contemporaneously with the arrest, the "paltik" was found in his possession, and seized. Such seizure cannot be considered unlawful nor unreasonable. Moreover, at that moment of search and seizure, there was in the mind of the arresting officer more than a mere suspicion that petitioner was armed. Petitioner's movements clearly suggested the presence of a weapon tucked at the side of his waist. The fact that Burdeos made an immediate draw for his service revolver was an instinctive response to petitioner's actions which, under the circumstances, indicated a high probability of an offensive attack with a lethal weapon.

Petitioner's counsel mistakenly relies on the case of *People vs. Aminnudin*.^[42] In said case, Aminnudin was acquitted on the charge of illegally transporting marijuana because the Court found that the search could not be considered an incident to a lawful arrest considering that the circumstances did not come under the exceptions provided for by applicable law and the Rules of Court. It was therein held that the warrantless arrest and the subsequent search were illegal, hence the evidence thereby obtained was inadmissible. However, Aminnudin differs radically from the case now before us. In Aminnudin, "[i]t is clear that they had at least two days within which they could have obtained a warrant to arrest and search Aminnudin who was coming to Iloilo on the M/V Wilcon 9. His name was known. The vehicle was identified. And from the information they had received they could have persuaded a judge that there was probable cause, indeed to justify the issuance of a warrant."^[43]

A situation involving a surveillance mission like that of Aminnudin could not compare to that of an unexpected crime of holdup-robbery. Police behavior in the latter case would necessitate a different course of action as well as different rules of engagement, compared to the former. In the case now before us, there is no supervening event, much less considerable amount of time between reaching the scene of the crime and the actual apprehension of the suspect.

Furthermore, in accordance with settled jurisprudence, any objection, to the arrest, or question concerning the defect or irregularity attending an arrest must be made before the accused enters his plea.^[44] The records in this case shows no such objection to the arrest, nor any question as to the irregularity of his arrest, raised by petitioner.

Petitioner's arrest having been found valid and the seizure of the firearms lawful, we now focus on the second issue for resolution, whether or not petitioner is liable for the offense of illegal possession of firearms?

Here two elements must be proved: (a) positively, the existence of the subject firearm, and (b) negatively, the fact that the accused did not have a license or permit to possess the same.^[45] We find both elements present in this case.

First, testimony of witnesses on record affirms that the "paltik" revolver was taken from the person of petitioner at the time he was arrested. Further SPO1 Cesar Gabitan, of the Firearms and Explosive Unit, testified without contradiction that petitioner had no license or permit to possess the gun.^[46] This Court has ruled in several cases that either the testimony of a representative of, or a certification from, the Philippine National Police- Firearms and Explosives Office (PNP-FEO) attesting that a person is not a licensee of any firearm suffices to prove beyond reasonable doubt the second element of illegal possession of firearms.^[47]

Petitioner's claim that since he was found negative for gun powder burns, he should be held innocent and acquitted of the charge, considering that the "paltik" at the time of its confiscation was positive for gun powder residue, does not quite add up logically. The appellate court's holding on the matter deflates petitioner's defense:

"Neither do [w]e find accused-appellant's assertion that he was negative for gun powder burns to be relevant in this case. Whether or not accused-appellant fired the gun in question does not erase his offense of illegally possessing the said gun. Besides, being negative of gunpowder burns does not necessarily mean that accused-appellant has not fired the gun. . . .

x x x" As stated by the trial court:

"On questioning by the Court, witness cited several factors wherein a person who has fired his firearm but was negative for nitrates; the type of caliber of the ammunition of the firearm itself; a new firearm or revolver type would be so close that nitrates could not escape from the bridge of the gun, whereas an old firearm where the mechanism is already a little bit loose, more nitrates appear on the subject who fired the gun; the direction of the wind if the subject is firing the firearm against the target, the nitrates will be blown away from the scene and so he would also be negative of nitrates; depending on the velocity of the wind, humidity of the area where

the shooting happened; in a closed room or place and [where] there is no wind on or against the firearm, he could be positive for nitrates; whereas outside the room he would be negative and the less humid area the less fall of nitrates on the subject, and another possibility is if the subject is using something to cover his hand firing the gun it would be negative for nitrates and in using a .45 caliber gun, which has a close and tight compartment where the bullet is set and with the revolver type firearm which has an open chamber, the former has a greater possibility that he would be negative for nitrates." [48]

The penalty imposed upon petitioner, however, deserves a review. At the time that he was convicted, the penalty for Illegal Possession of Firearms under Presidential Decree 1866 was reclusion temporal in its maximum period to reclusion perpetua. The trial court, as affirmed by the appellate court, imposed on petitioner the penalty of 12 years, 5 months and 10 days of reclusion temporal as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum.[49] In view of the enactment of Republic Act 8294 on June 6, 1997, certain provisions of P.D. 1866 have been amended. With the passage of the aforementioned law, the penalty for simple illegal possession of a low-powered firearm, such as "paltik", has been reduced to prision correccional in its maximum period[50] and a fine of not less than fifteen thousand pesos (P15,000.00). Therefore following R.A. 8294, the penalty imposed on petitioner should now be lowered to benefit the petitioner. For the penalty provided for simple illegal possession in the amendment is lower than that provided for under the old law. Since the provision of R.A. 8294 is favorable to petitioner, it should have a retroactive effect, pursuant to Article 22 of the Revised Penal Code.[51] Moreover, in conjunction with the new law, we should also apply the doctrine laid down in *People vs. Martin Simon*[52] in relation to Section 1 of the Indeterminate Sentence Law.[53] Although Illegal Possession of Firearms is considered a special law, the penalty provided is taken from the range of penalties in the Revised Penal Code, thus, in relation to Section 1 of the Indeterminate Sentence Law, it is covered by the first clause of said section. Here applicable by analogy and extension is the holding in *Simon*:

"It is true that Section 1 of said law, after providing for indeterminate sentence for an offense under the Revised Penal Code, states that 'if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.' We hold that this quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code, as discussed in the preceding illustrations, such that it may be said that the 'offense is punished' under that law. (Emphasis Supplied)[54]

Finally, consistent with the doctrine that an appeal in a criminal case throws the whole case open for review, we find that the appellate court may, in applying the new or amended law, additionally impose a fine which if unpaid will subject the convict to subsidiary imprisonment, pursuant to Article 39 of the Revised Penal Code.[55] Thus, here we find the imposition of a fine also in order.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED, with the MODIFICATION that petitioner is hereby SENTENCED to 2 years, 4 months, and 1 day of prision correccional medium as minimum, to 5 years, 4 months, and 20 days of prision correccional maximum as maximum, there being no aggravating and mitigating circumstances, plus a fine of P15,000.00 with subsidiary imprisonment should petitioner fail to pay. However, since petitioner has already served more than seven (7) years, (5) months in prison, which is now beyond the maximum principal penalty imposed at present for his offense, even if a subsidiary penalty for unpaid fine is included, he is hereby ordered RELEASED immediately, unless he is being held for any other lawful cause.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.

[1] Rollo, pp. 27- 39.

[2] Id. at 26.

[3] Id. at 40-46.

[4] Id. at 45-46.

[5] Records, p.1.

[6] Rollo, pp. 40-41; Id. at 15.

[7] TSN, September 23, 1992, pp. 2-4.

[8] Ibid.

[9] Id. at 4-14.

[10] TSN, October 1, 1992, pp. 2-6.

[11] Records, pp. 2-3.

[12] Id. at 11.

[13] Supra note 5.

[14] Rollo, p. 45.

[15] Id. at 36-37.

[16]Id. at 37.

[17] Id. at 13-14.

[18] Sec. 2, Article III, 1987 Constitution.

[19] Sec. 3, paragraph 2, Article III, 1987 Constitution.

[20] Rollo, p. 14.

[21] Id. at 15.

[22] Id. at 20.

[23]Id. at 23.

[24] Rollo, pp. 72-74.

[25] Rollo, p. 77; See also *People v. Alolod*, 266 SCRA 155, 165 (1997), *Padilla v. Court of Appeals*, 269 SCRA 402, 414-415 (1997), *People v. Jayson*, 282 SCRA 166, 170-172 (1997).

[26] Id. at 79.

[27] Id. at 80-83.

[28] *People vs. Ferrer*, 255 SCRA 19, 32 (1996), citing *People vs. Pacapac*, 248 SCRA 77 (1995).

[29] RULES OF COURT Rule 131 Section 3 (m).

[30] See *People vs. Velasco*, 252 SCRA 135, 142 (1996), citing *People vs. Ponsica*, 230 SCRA 87 (1994).

[31] RICARDO J. FRANCISCO, *Criminal Procedure*, 2nd ed. [1994], pp. 207-208, citing *U.S. vs. Santos*, 36 Phil 853, 855 (1917), also, *People vs. Ancheta*, 68 Phil 415, 419-420 (1939).

[32] TSN, September 23, 1992, p. 5.

[33] MANUEL R. PAMARAN, *Rules on Criminal Procedure*, 1195 ed., p. 195, citing *U.S. vs. Sanchez*, 27 Phil. 442 (1914).

[34] *Id.* at 445, See, *People vs. Molleda*, 86 SCRA 667, 669 (1978).

[35] See, *Padilla vs. Court of Appeals*, 269 SCRA 402, 416 (1997).

[36] *Ibid.* at 417, citing *People vs. Woolcock*, 314 Phil 81 (1995).

[37] See 280 SCRA 290 (1997).

[38] *Rollo*, p. 14.

[39] *Records* p. 11.

[40] TSN, May 13, 1993, p. 10.

[41] *Francisco*, *op. cit.* 575.

[42]163 SCRA 402 (1988).

[43] *Id.* at 409.

[44] *Supra*, note 35 at 417.

[45] *Gonzales vs. Court of Appeals*, 277 SCRA 518, 525 (1997) citing *People vs. Lualhati*, 234 SCRA 325 (1994).

[46] TSN, October 1, 1992, pp. 3-4.

[47] *Supra*, note 35 at 428 citing *Mallari vs. CA and People of the Philippines*, 265 SCRA 456 (1996) citing *People vs. Solayao*, 262 SCRA 255 (1996).

[48] *Rollo*, pp. 37-38.

[49] *Id.* at 45.

[50] Prison Correccional maximum has a range of 4 years, 2 months and 1 day to 6 years.

[51] Art. 22. Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

[52]234 SCRA 555 (1994).

[53] Act No. 4125 as amended.

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code , or its amendments, the court shall sentence the maximum term of which shall be that which, in view of the

attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum as fixed by law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225)

[54]Supra, note 52 at 580.

[55] Supra, note 45 at 527.

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